

the Briefs

A Publication of the Orange County Bar Association



April 2009
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Mary Anne De Petrillo
2009 William Trickle, Jr. Professionalism Award Recipient

The Honorable Alice L. Blackwell
2009 James G. Glazebrook Memorial Bar Service Award Recipient

Heather Pinder-Rodriguez
2009 Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award Recipient

Inside this Issue:

A Lawyer's Lawyer
Tad A. Yates

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WHOLE NEW
MEANING.

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Associates, M.D., P.A. v. Parker,**
800 So. 2d 631 (Fla. 5th DCA 2001)
Protected liability on multi-million
dollar medical malpractice action.

Miller v. Jacobs & Goodman,
699 So. 2d 729 (Fla. 5th DCA 1997)
Declared liquidated damages clause
of attorney employment agreement
void and unenforceable.

Wenzel v. Boyles Galvanizing Co.,
920 F. 2d 779 (11th Cir. 1991)
Affirmed a \$2.75 million dollar
personal injury award.

Boyles v. Mid-Florida Television Corp.,
467 So. 2d 282 (Fla. 1985)
Reversed the dismissal of a libel action
against an Orlando television station.

**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.

Whigham v. Shands Teaching Hospital,
613 So. 2d 110 (Fla. 1st DCA 1993)
Reinstated multi-million dollar medical
malpractice action against blood bank.

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

Caiazza v. Tuff Realty Corp.,
805 So. 2d 29 (Fla. 5th DCA 2001)
Protected ownership of two
multi-million dollar Florida
corporations.

Owen v. Owen
867 So. 2d 1222 (Fla. 5th DCA 2004)
Reversed imputation of income with
directions to reduce by 50%.

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President's Message • A Lawyer's Lawyer

April 2009

The first lawyer for whom I worked after graduation from law school was **Jim Russ**. I learned much from him and owe much to him. Jim encouraged me to join the local Inns of Court, where I was mentored by fine lawyers like **Virginia Towns** and **Bruce Blackwell**. Much of my time in Jim's office was spent assisting him in the representation of two men on Florida's death row. Jim's commitment to these two men was extraordinary. In 1997, Jim was presented the Tobias Simon *Pro Bono* Service Award by the Florida Bar.

Jim recently wrote to me enclosing a copy of the 2008 "Chester Bedell Memorial Lecture," delivered by Judge Gerald Tjoflat of the 11th Circuit Court of Appeals. The topic of Judge Tjoflat's speech was "The Independence of the American Lawyer." Jim suggested that the speech be printed in *The Briefs*. With Judge Tjoflat's permission, the speech is reprinted below. It is well worth the read and I thank Jim for encouraging me to share it with you.

It is an honor, indeed, to stand before you today and deliver this year's Chester Bedell Memorial Lecture on "The Independence of the American Lawyer." Chester Bedell once said, "Trial work is all I know." What an understatement that was. True, he was a trial lawyer. But he was much more than that. He was a generalist who just happened to spend most of his time litigating. He exemplified all of the traits that great lawyers possess, and that enabled him to be independent in his practice of law.

Much has been written about Chester Bedell, the lawyer, but little has been written about Chester Bedell, the man. What was he like in everyday life, from day to day? From whence did he acquire the stuff that made him the lawyer he became? What fed his soul? Aside from John DeVault, Charlie Pillans, and Peter Webster, who trained under Chester, I doubt that anyone in this audience actually encountered him in court or even knew him as a person. I had the privilege of knowing Chester Bedell, the lawyer, and Chester Bedell, the man. I therefore take a few moments of my allotted time to tell you about the Chester Bedell I came to know, encountered professionally, and grew to love as a son loves a father.

I arrived in Jacksonville in 1957, following Chester Bedell's graduation from law school. I hadn't been here very long before I heard about Chester Bedell; he was one of the deans of the bar and its most outstanding litigator. To the younger members of the bar, he was a veritable icon. The notion that I might have a chance to be involved in a case with or against him – even as an associate assigned to carry the briefcases – never even entered my mind. I was a mere novice. He was a giant of the profession, twenty-five years my senior.

The chance of being involved in a case with him materialized in 1961. The Bedell firm brought suit in federal district court on behalf of St. Joe Paper Company against Hartford Accident and Indemnity Company and one of our firm's clients, Fidelity and Casualty Co. of New York. Chester and a younger partner, Harris Dittmar, handled the case for St. Joe. I appeared for Fidelity. St. Joe was seeking to recover under Hartford and Fidelity policies that insured it against the dishonest acts

of employees, in this case the manager of St. Joe's box plant in Pittsburgh. The case was hotly contested, and what I learned from Chester and Harris – the care they took in preparing their case – proved to be invaluable.

I had the privilege of encountering Chester in the same district court for a second time, in a suit I filed on behalf of Southern Bell against Florida East Coast Railroad to enforce a contract the railroad had entered into with A.T. & T., Southern Bell's predecessor, in 1917. The contract was of indefinite duration, and Southern Bell took the position that the contract was therefore interminable. Bob Smith worked with Chester in this case, and, once again, what they taught me about preparing a case for trial could fill a book. The experiences I gained in these cases were pure gifts, which I cherish to this day.

In 1967, while these two cases were ongoing, I got involved in a proceeding in which I needed the assistance of someone with the wisdom of Solomon. Representing *pro bono* a tiny group of communicants in my Episcopal parish, I had filed with the Bishop of Florida a complaint alleging that the parish's rector had engaged in several immoral acts and thus was subject to discipline. The rector and his supporters, which made up the majority of the parish, responded with a vengeance. The Diocesan Standing Committee, which served as the ecclesiastical trial court, ignored the canon law's procedural rules and dismissed the case without hearing from my clients. They were terribly distraught. I turned to Chester, a communicant of another Episcopal parish, for advice. After studying what I had presented to the Bishop, he concluded that the Standing Committee had to reconvene and hear what my clients had to say. The letter he wrote to the Committee was straight to the point and a masterpiece of diplomacy. The Committee immediately saw the error of their ways, reinstated the charges, and held the hearing the canon law required.

In June 1968, I left the practice of law for a spot on the bench of the Fourth Judicial Circuit of Florida. In 1970, I joined the United States District Court for the Middle District of Florida. Chester Bedell appeared before me on several occasions while I was a judge of that court and, after 1975, while I was serving on Fifth Circuit Court of Appeals. The manner in which he represented his clients was always the same. The Fellows of the American Bar Foundation provided an apt description of how Chester went about his work in honoring him in 1977:

a splendid advocate, effective but always ethical, forceful yet always scholarly, tenacious but nevertheless courteous, tolerant yet unyielding in his personal standards of morality. . . . A man of unlimited durability, unbounded energy, keen insight, high legal scholarship and sympathetic humanitarianism

I should add to this description the hallmark of Chester's work: thorough, if not exhaustive, preparation.

In his final years, Chester and his wife, Edmonia, were close neighbors, and we had occasion to visit. What he shared with me on these occasions gave me further insight into what his law partners witnessed every day – what made him the incredible lawyer he was.



Tad A. Yates



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Law Day 2009 *A Legacy of Liberty*

Abraham Lincoln: The Great American Lawyer-President

Goldilocks Mock Trial

April 16 - 1:00 pm (Lake Como Elementary); **April 17 - 9:00 am** (Kaley Elementary School); **April 23 - 9:00 am** (Lake George Elementary). A Goldilocks Mock Trial entitled *Wolf v. Pig*, which follows the story line of "The Three Little Pigs," is geared toward elementary age students. The mock trials will be conducted by members of the judiciary, attorneys, and others in the legal profession and will be followed by a question and answer session.

A Day in the Life of a Judge

April 30 - 8:30 am (Orange County Courthouse). Judges from the Ninth Judicial Circuit will host students from the Farm Worker's Ministry and the Parramore Kidz Zone for a special job shadowing program. Following a morning at the courthouse, each participant will attend

the luncheon as a special guest of his or her judge!

Orange County Bar Association Law Day Luncheon

April 30 - 12:00 pm (The Ballroom at Church Street). A special luncheon will be held for OCBA members and their guests. A Law Day Proclamation will be read and the Liberty Bell Award will be presented to an outstanding member of the legal community. In addition, students, their parents, and their teachers will be invited to the Bar luncheon and will be presented with ribbons and awards for their winning entries in a countywide poster and essay contest. More than 350 OCBA members and guests are expected to attend this special luncheon.

DUI Mock Trial Program

May 6 - 10:00 am (Oakridge High

School and Boone High School); **May 6 - 1:00 pm** (Dr. Phillips High School and Apopka High School). Special DUI Mock Trials will be held at the Orange County Regional History Center for several groups of high school students. The mock trials will be conducted by members of the judiciary, attorneys, and others in the legal profession. Following the trials, Jane Dwyer, a national speaker on the consequences of drinking and driving, will present an autobiographical video and give a special presentation.

You're invited to get involved! Volunteers are still needed to assist in various capacities in these very special education activities for students in our community. Please contact Law Day chairperson **Catrina M. Chapin** at 407-245-2422 or cchapin@ralaw.com or co-chair **Paul J. Scheck** at 407-423-3200 or pscheck@shutts.com.

President's Message

continued from page 3

Chester Bedell was a member of the "Greatest Generation," those born between 1901 and 1924. Their values – especially their moral values, their sense of decency, courtesy, and civility – derived from America's Judeo-Christian heritage and were passed on to them by their forebears. The characteristics of the Greatest Generation were high achievement, not recklessness, patriotism, and moral sensitivity.

As a whole, the lawyers of the Greatest Generation ascribed to this value system. Not all actually did, of course. Some paid these values lip service and got into trouble, but the vast majority adhered to them day in and day out. Peer pressure exerted by practitioners like Chester Bedell, who set an example for others to follow, especially younger lawyers, ensured this adherence. As a result, there was no cause for the legislative or executive branches of government to intervene, to regulate the legal profession. Lawyers were fully capable of regulating themselves – they were truly independent.

Chester Bedell exhibited this independence in various ways. I am told that he never took a retainer; he charged his clients case by case. This gave him the freedom to refuse to represent a client for any reason. And the clients he had could not control him. Given this independence and his stellar reputation, Chester could ignore the crowd's reaction to his representation of a presumably guilty and much despised accused. To him, what the public might think was irrelevant. Like all great lawyers, all he was after was the truth and due process, and the justice they combine to yield.

Chester Bedell was a lawyer's lawyer. His reputation among the members of the bar was such that attorneys who were in trouble, charged with a criminal offense or an ethical infraction, sought him out, and he frequently took their case. The charges against many of these lawyers turned out to be baseless, a circumstance that no doubt cemented his belief that lawyers cannot function properly – cannot adequately represent their clients – unless they are truly independent.

The notion that lawyers should be independent and self-regulating was still in vogue when I came to the bar in 1957. Lawyers knew the difference between right and wrong, and for the most part said, "No," when a client suggested a course of action that would be illegal or immoral or not in keeping with the standards of ethics and professionalism expected of practicing attorneys. This explains why a course in ethics or professionalism was not part of law school curricula. The ABA's Standards for Legal Education, which effectively governs law school accreditation, did not mandate a course in ethics until 1973. Prior to the 1970s, it was assumed that entering law students were well grounded in the moral principles of their forebears, and the same code of civility and manners they espoused. It was also assumed that when students graduated from law school and entered the practice of law, the legal profession would ensure – through peer pressure and mentoring – that they conducted themselves in keeping with these principles and the highest standards of the profession.

The assumption that peer pressure and mentoring would ensure such behavior was based on how the typical law firm was structured. Let's assume that a law firm resembles a pyramid. From the late 1940s and early 1950s – when those who had served in World War II were graduating from law school – to the late 1960s – when law school admissions began exploding – this pyramid was tall and had a narrow base. The ratio of partners to associates was one to one, at most one partner for two associates. The partner, a seasoned veteran, taught the new associate how to behave toward the firm's clients, opposing counsel, and the courts. This mentoring was constant. The salary paid a new associate was low enough to permit the partner to take the associate along to a court proceeding, a transactional closing, or a labor negotiation. The associate's time would be treated as "dead time," in that the firm would not bill the client for it. It was part of the firm's cost of doing business.

That is how Chester Bedell started out following his admission to the bar, in 1925, at the age of twenty one. After one year at

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OCBA Luncheon ● Jane Elizabeth Curran

April 30, 2009 ● Executive Director
The Florida Bar Foundation



2009 Liberty Bell Award Recipient

Jane Elizabeth Curran has been a long time advocate for civil legal justice and access to the court system for low income families and children and a huge supporter of improvements for the court system throughout her career.

Jane is the Executive Director of the Orlando based Florida Bar Foundation, which is the ad-

ministrator of Florida's Interest on Trust Accounts program. She joined the Foundation in June 1982, having moved to Orlando from Washington, D.C. where she was the assistant director of the Consortium of Universities of the District of Columbia. Prior to that, she served in several capacities, including assistant to the executive director of the American Judicature Society in Chicago.

The Florida Bar Foundation's first office was located in the Orange County Bar Center at 800 North Orange Avenue in Orlando. As its first and only executive director, Jane became a supporter of the OCBA, especially its tremendous *pro bono* efforts, including the public interest law firm it created: The Legal Aid Society of the OCBA, Inc.

Jane has served now for more than 26 years as the executive director of The Florida Bar Foundation. During that time, she has been the institutional voice of the Foundation. She has avoided the limelight, preferring to give credit for her many visionary accomplishments to others. She oversees the single most effective IOTA program in the nation, a program that is the envy of every other state. While most states are currently struggling with providing virtually any services to the poor because of the drop in IOTA revenue related to the economic downturn, Florida is ensuring our legal aid lawyers are given raises, have loans for law school repaid, and are able to keep our level of service virtually the same as last year. While other states are laying off legal aid staff, Florida is providing funding to encourage summer clerkships and careers in legal aid. None of this would be possible were it not for Jane's visionary efforts. The Florida Bar Foundation was recently named the second most well run charity in the entire State of Florida. More than 90% of all funds collected from all sources are put to use in the field, not allocated for the Foundation's operating expenses.

Jane has pioneered numerous concepts that have become common place throughout the United States during the past 25 years. Perhaps chief among them is the implementation of rules of comparability, which require banks to provide to IOTA account holders the same returns as provided to other valued accounts. She has the grudging respect of the banks - no mean feat when one considers that every dollar in IOTA is a dollar less in banking profit to the banks. She has shepherded those funds and served as a role model on fiscal responsibility. Several years ago when revenues

were high, a decision was made to invest a substantial portion of those funds (in excess of \$100 million) for rainy days when interest rates would crater. That decision has proven wise and provided the ability to continue the current level of funding to more than 35 separate legal aid and numerous other programs throughout the state despite sharply reduced annual IOTA revenue.

Through Jane's efforts, there have been systemic studies over the years on critical infrastructure issues that affect the delivery of legal services. As a result, programs have been developed to improve the treatment of migrant workers and to require school boards to provide an education to young people lodged in jails throughout state. At her insistence several years ago, the Foundation developed Team Child, a comprehensive pilot program in Ft. Lauderdale, Gainesville and Tallahassee that was most effective at getting at the root causes of juvenile delinquency. The program involved the juvenile justice system, local sheriffs, states attorneys, public defenders, and the school system. It was wildly successful, but then, as now, the state had no budget to fund the program statewide.

Also because of Jane's efforts, law-related education is funded at a statewide level, and local voluntary bar associations throughout the state (including the OCBA) have been able to find innovative

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Co-hosted by the
OCBA Law Week Committee

The Ballroom at Church Street

11:45 a.m. - 1:00 p.m.

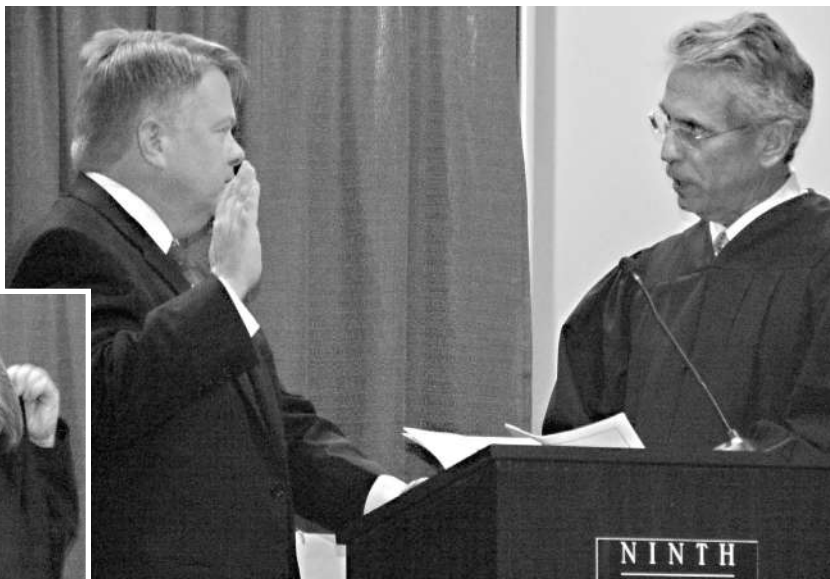
225 S. Garland Avenue

Orlando, FL 32801

Please RSVP to reservations@ocbanet.org by Friday, April 24, 2009

Main Entrance: Garland Avenue between Church Street and South Street

To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, April 24, 2009. 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!



The Honorable Kenneth A. Barlow, Jr.



The Honorable N. James Turner



Judicial investiture ceremonies were held on Friday, February 20, 2009, for the **Honorable N. James Turner** and the **Honorable Kenneth A. Barlow, Jr.**, in the Jury Assembly Room at the Orange County Courthouse. Judge Turner was invested as a Judge of the Circuit Court and Judge Barlow as a Judge of the County Court.

The **Honorable Belvin Perry, Jr.**, Chief Judge of the Ninth Judicial Circuit Court, gave the opening remarks and introduced the dignitaries. Presentations to Judge Turner and Judge Barlow were made by Circuit and County Court judges, the Clerk of Courts, and the Orange County Bar Associations. Leaders of other local bar associations attended and were acknowledged.

Lavon W. Bracy, Ed.D. introduced Judge Turner, who was sworn in by the **Honorable Jacqueline R. Griffin**, Fifth District Court of Appeal. Mr. Bracy then enrobed Judge Turner. Attorney Joerg F. Jaeger introduced Judge Kenneth Barlow, who was then sworn in by the **Honorable John Antoon, II**, United States District Court. Judith Adams Barlow enrobed Judge Barlow.

The ceremony was called to order by Orange County Sheriff **Jerry L. Demings**. The Pledge of Allegiance was led by the **Honorable Lydia Gardner**, Clerk of Courts, while Pastor Randolph Bracy, Jr., Senior Pastor, New Covenant Baptist Church of Orlando, gave both the invocation and benediction. Judge Belvin Perry concluded the ceremony and closed the court.

A reception for family, guests and colleagues was held immediately following the ceremony.

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Family Law Committee ● A Glimpse into the New Parenting Statute - PART 2

This is Part 2 of a two-part article dealing with the new parenting law and recent amendments to Chapter 61. Part 2 continues with a discussion of the impact of the Parenting Plan requirements and also addresses the newly upgraded factors and other changes in the law.



Angel M. Bello-Billini

I. Factors to be used in Determining Best Interest - Additional Factors and Important New Language of Florida Statute Section 61.13(3)

As in the previous law, the amended statute retains the list of factors that the courts are required to consider when making a best interest determination – an assessment that has to be made in deciding on the suitability of a child-rearing plan. This has always been one of the most important sections of the statute, and it has now acquired additional importance because of an increase in the number of factors and a change in language emphasizing consideration of the parents' history of participation in the life of the child. At least 10 of the 20 factors are either brand new or complete redrafts and upgrades of prior factors, and the new language is repeated in at least eight of the factors.

Particular attention should be given to the new language of Florida Statute section 61.13(3). For example, factor (a) reads: **"The demonstrated capacity and disposition** of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time sharing schedule, and to be reasonable when changes are required." (Emphasis added.) A further example is in factor (c) which reads: **"The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs of the parent."** (Emphasis added.) The phrase 'demonstrated capacity and disposition' repeatedly appears at the very beginning of many of the factors, and so the clear message regarding the importance of past history is not easily avoided. Additionally, several of the new factors pointedly ask and test for past participation in, and knowledge of, the child's routines. See, for example, factors (j), (k), (o), and (r).

Thus, it would appear that the past practice of some judges of applying a sort of "dogs' free bite" rule to parental responsibility, one that allowed an uninvolved parent to immediately receive maximum time-sharing/visitation and full participation based on nothing more than a promise of future participation and responsibility, may be improper. It would seem that now, however, such a ruling, without some justification or explanation for the parent's absence in the child's life and without some gradual and conditioned increase in this new participation, is likely to receive more careful and less favorable appellate scrutiny. This is good news for caring and involved parents, and decidedly bad news for parents who are simply using the family dispute as a way of getting back at the other parent and clogging the courts with frivolous claims that consume all of the couple's, and the children's, assets and emotional well being.

II. Consequences and Remedies for Failure to Honor Time Schedule

In the past, the complaints that seem to have attracted the most attention were those of unhappy parents who claimed visitation had been denied them. However, the new parenting law

attempts to take a more balanced approach and addresses the potential failure of both parents to comply with a time-sharing plan. In other words, not only is the issue of lack of access dealt with, the previously stealth issue of failure to appear at a scheduled exchange/visitation is now addressed as well, first in Florida Statute section 61.13(3)(a) and more specifically in Florida Statute section 61.13(4)(c)(2). This is extremely important. Continuous failure to pick up a child, or to do so in a timely manner, can have serious emotional consequences on a child that is left waiting, with a bag of favorite toys and clothing for someone that will never show or that will show long after the child has begun to agonize over the absence of the parent.

Also, parents who work in certain industries and who work on weekends or unusual hours routinely make the time-sharing schedule part of their daycare arrangements. Thus, failure of a parent to appear timely for a weekend visitation will force a parent, who works weekends or unusual hours, to make last minute day care arrangements that are frequently at higher than regular cost, if available at all on such short notice. Since these additional expenses are rarely foreseen and therefore not factored into the child support calculations, there is the added damage of the deterioration in the ability to support the child. Although Florida Statute section 61.13(4)(c)(2) only specifies the payment of court costs and attorneys fees for violations of the parenting plan, the general content of this section and of the statute clearly authorizes the court to force the violating parent to pay for any expenses that were directly and reasonably caused by the violation.

III. Domestic Violence

Domestic Violence continues to be a major consideration in the amended statutes, as indicated in Florida Statute section 61.13(3)(m)-consideration of evidence of domestic violence, child abuse, *etc.* and 61.13(3)(n)-evidence of false claims before the court relating to of domestic violence, abuse, *etc.* The changes mostly try to make the terminology of 741.30 consistent with that of Chapter 61, to the extent that it can be done without destroying or diluting its protections. See subsections (3)(b) and (3)(d), and (5)(a)3, and (6)(a)3, where the option of 100% of the time sharing reserved for the victim is still very much alive.

IV. Limited Applicability to Out of Wedlock and Paternity Statutes

Similarly, the changes do not alter the philosophy and protections afforded to out-of-wedlock mothers and/or caretakers under Florida Statute section 742.031. This is a completely separate group, with its own unique problems, including the separate world of paternity determination and rights of putative fathers, a world apart from married individuals. This is recognized in the

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Family Law Committee

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legislative treatment. To the extent possible, some of the terminology has been changed to bring it in line with Chapter 61, but not the basic law.

V. Potential Concerns/Questions Regarding the Statute

a. Too Many Terms Deleted?

While well intentioned, complete erasure of all of the prior law's terminology can lead to problems because of the need for clear language when it comes to certain matters regarding the child's life. For example, schools, doctors and other service providers will continue to insist on knowing where the "HOME" of the child is located. Pointing to a document with labels such as "time-sharing" and indicating that the child will be in one place Monday through Thursday and at another during the other days may not satisfactorily answer their questions. The inescapable fact is that in most families, for better or for worse, the child lives with one parent and shares some of his/her time with the other parent. You can call it time-sharing, divine soul sharing, or whatever else you like, but the fact remains that in most situations the child has one main home, not one-half or one-third of one. She/he has a base where most of her/his life is spent and where most of her/his belongings are stored. This is what the world is familiar with and, whether we like it or not, you should expect being asked the "home" question repeatedly by service providers. Some practical and easily understandable language or designation may have to be contained in the parenting plan more directly addressing this issue. So long as parents agree, the statute does not prohibit specific designations so long as it meets the considerations outlined in the factors and as long as you refrain from using the actual deleted terms of the previous law.

b. Micromanagement

There is a danger, as there has been with so-called mandatory or even suggested visitation guidelines, that a parenting plan will be drafted that will unnecessarily micromanage the family. Remember, each family is different and this has to be, in effect, a custom made plan. You must not burden your client's family with issues and routines that are foreign to their normal way of life. For example, you should refrain from giving the parties a list of all the potential holidays on our planet, including religious observance days that are clearly not relevant to this particular family. Ask them instead what days are normally important to them and have them draw a prioritized list. Only if you think that they might benefit from knowing about other days should you give them additional, helpful options. Do not throw the parents a mass of information that, to them, might be worthless and that might in fact provide additional combustible fuel in an ongoing dispute. If you must provide the universal menu, you must point out all the provisions in the statute that clearly instruct the court to look at the family's history and routine in making parental responsibility determinations, including the time-sharing schedule.

c. Possible Difficulties for the Financially Compromised

One of the practical concerns about this new law is that perhaps more thought should have been given to how its provisions, particularly the requirement of a parenting plan, were going to be implemented in real life. This is of particular concern when one considers the average family court litigant (i.e., working middle

class individuals without sufficient funds to hire psychologists and board certified family lawyers) and those who are unrepresented because of an even more acute lack of funds. While the well-to-do will be aided by squads of experts, everyone else will have to make do with limited legal representation (or no representation) and little else. This is likely to create serious problems because the average individual has no experience in creating a parenting plan and is unlikely to navigate through the factors sufficiently well to be aided by them. If the parents are unable to agree on the essential terms of the plan, drafting the parenting plan becomes even more onerous.

Neither the new nor the old statutory aids would be available to this large group. In family law, the full weight of the *pro se* and the limited-representation litigants falls squarely on the courts, its mediation alternatives, and the seriously stretched and limited sources of the indigent legal services/legal aid and *pro bono* programs. Since it seems that the majority of litigants are either unrepresented or represented but with limited funds, these very limited resources are the ones present to deal with the need to create parenting plans and help meet the other statutory requirements. This is likely to severely test the already overstressed court system, with potentially less available judicial time for those needing court resolution. If there ever was a time for attorneys to clearly and directly discuss the requirement of the parenting law with the parents at early stages of litigation and to seriously be in control and energetically drive the settlement option early on, that time is now.

VI. Quick Tips

Retroactive application does not appear to be an issue since only procedural changes are normally retroactive. Since it can hardly be said that the changes are anything but substantive, the changes appear to only apply prospectively. See *Antunez v. Whitfield*, 980 So.2d. 1175 (Fla. 4th DCA 2008). This means that if you filed a petition in September of 2008, but your case goes to trial in June of 2009, the law as it existed in September is the one that should be applied.

Child support is not generally affected unless a 40% allocation of overnights results from the time-sharing schedule. In most cases, support is still determined by where the child spends most of her/his time.

The dependant tax exemption is not affected by these changes because the IRS code governs and, generally, IRS bases its determination of entitlement mostly on where the child has been most of the year.

VII. Conclusion

If the changes to the parenting law are viewed as an attempt to upgrade and improve our parenting laws and not as some victory or defeat in some vicious parental war, then the requirement for a parenting plan and related changes might yield a satisfactory way of solving some of the most difficult problems in our society. But more time and attention to detail will now be required. Family law matters may become more expensive for everyone, except perhaps those for whom the change in terms is so meaningful that they find it easier to settle cases and avoid the all destructive custody fight. Alas, the reasons for parents' scorch-earth decisions are numerous and complex, and in most cases may go beyond mere labels.

Angel M. Bello-Billini is an attorney with the Legal Aid Society of the OCBA. He has been a member of the OCBA since 1987. The author would like to thank Annabelle Pratt for her editorial assistance.



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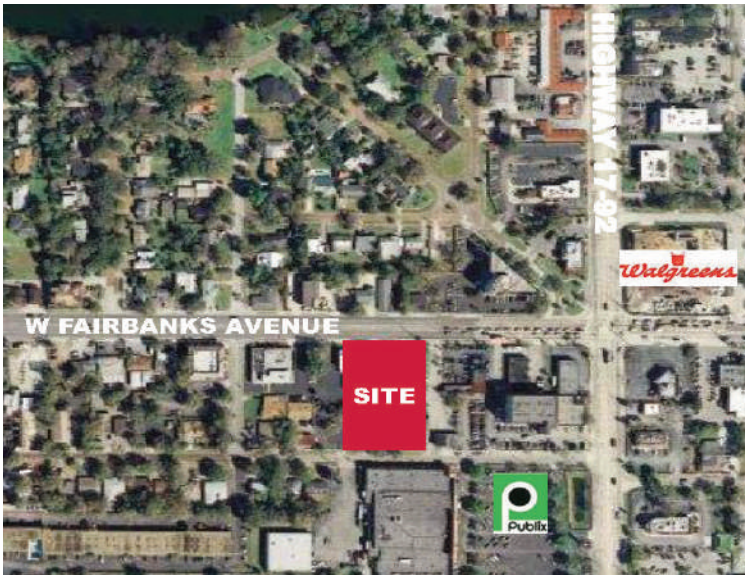
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President's Message

continued from page 4

the University of Florida College of Law, he withdrew, because he found the instruction boring, and returned to Jacksonville – to complete his legal education under the tutelage of his father, George C. Bedell, with whom he practiced until his father's death in 1947. The cost of Chester's training was born by his father, not by the clients.

By the 1970s, when the ABA mandated that the law schools have a course in ethics, the law-firm pyramid had flattened out due to the huge influx of young lawyers and law firm leveraging – a state of affairs that has continued to this day. Today, in many firms, the ratio of seasoned partners to associates may be one to five or even ten. Consequently, if there is any meaningful mentoring of a new associate at all, it is done by an associate with perhaps only one or two years of experience. The result – the blind leading the blind – is predictable. Associates are left to their own devices. In dealing with opposing counsel, especially attorneys of their own generation, they sometimes resort to the law of the jungle.

The lack of mentoring – and the blind leading the blind scenario – is nowhere more manifest than it is in the public sector, especially in the state criminal courts. The circuit judges assigned to the criminal docket will tell you that in lots of cases – especially those with indigent defendants represented by court appointed counsel – it is all the court can do to keep a proceeding on track, and, at trial, to keep the attorneys from overreaching. The judges will say that the younger lawyers act as if they have had no mentoring. Not infrequently, both the prosecutor and defense counsel are novices. Neither are adequately prepared. Some seem unaware of what thorough preparation is, and the time and effort it requires.

Chester Bedell was standing in their shoes in the Summer of 1925, when shortly after being admitted to the bar he represented pro bono a young man his age charged with murder. The accused had allegedly killed his father for abusing his mother. The case was tried four times. The first three trials ended with hung juries. The fourth, which was held after the Florida Supreme Court denied Chester's petition for a writ of prohibition barring a retrial, resulted in an acquittal. It would be interesting if somehow we could compare the preparation Chester invested in that case with the preparation today's young lawyers invest in their cases.

Circuit judges assigned to the criminal docket will also tell you that the level of civility, courtesy toward opposing counsel, and respect for the court that today's young lawyers exhibit leaves much to be desired. I have observed this lack of preparation, civility, courtesy, and respect for the bench in reading the transcripts of some of the state criminal trials I have reviewed on the defendant's petition for a writ of habeas corpus.

The independence of lawyers and the independence of judges are inter-dependent, tied inextricably together. Without an independent bench, an independent bar is but an illusion. To be independent, each must enjoy the public's trust and confidence. The public knows, albeit intuitively, that justice, in the litigation context, is a three-legged stool. The three legs are an independent bar, officers of the court who adhere to the highest ethical and legal standards of the profession; an independent judiciary, consisting of judges who obey their oaths of office and administer justice fairly and impartially; and witnesses, who are likely to tell the truth, as their oath requires, if the first two legs of the stool are sturdy. When one of the three legs collapses, justice is denied. When the denial, or perceived denial, of justice appears to be commonplace, the public reacts. Where the fault lies with the bar, the public pressures the legislative and executive branches to intervene. The same is true where the fault lies with the judiciary.

The legal profession has been striving to maintain the public's trust and confidence for a half century or more. Evidence of this is reflected in the ABA's Standards for Legal Education and the mandate that a course in ethics be part of law school curricula. When lawyers or judges fail to conduct themselves as expected, and the failure becomes widespread, the legal profession reacts by promulgating rules – tweaking old rules or drafting new ones – in an effort to solve the problem at hand. Typical vehicles are the ABA Model Rules of Professional Conduct for lawyers and judges, and the rules of procedure for civil and criminal litigation. When public outcry is loud enough, the legislative and executive branches also get in the act, an example being Sarbanes-Oxley, which creates criminal penalties for in-house counsel's failure to report certain fraudulent activity.

The problem of drafting a rule proscribing specific behavior is that the rule's drafters focus on that behavior and not on the unintended, and often undesirable, consequences – of which

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unintended, and often undesirable, consequences – of which they are unlikely to foresee – that eventually flow from the rule's application. In a society, such as ours, where many citizens ascribe to the notion that behavior that is not explicitly proscribed is permissible – that we are free to do as we wish as long as there is no a rule against it – rule making of the sort lawyers and judges embark on frequently causes all sorts of mischief down the road. When the unintended, and undesirable, consequences eventually come to light, we simply have another go at drafting a rule to deal with them, and so on – until our rule books are so full that it would take a Philadelphia lawyer to tell you how to navigate the labyrinth to a safe harbor. This is what happens when we abandon the fundamental moral value system of our forebears and opt for a system of fine-tuned rules.

We in the federal judiciary have been guilty of using this ad hoc rule-making approach time and time again – in drafting rules of procedure. Rules 11 and 16 of the Rules of Civil Procedure are classic examples. In my view, they have not enhanced the orderly and efficient prosecution of civil litigation; to the contrary, they have added to the transaction costs of litigating civil cases in the district courts, thereby rendering the district courts unavailable to many of our citizens. The transaction costs are so great in some classes of cases that even large corporations avoid the federal courts, if at all possible. In short, they have little, if any, confidence in the ability of the federal courts to do justice. This circumstance invites further regulation, which, all too often, is counterproductive.

Assuming that promulgating more and more specific rules will not solve the problem of inappropriate professional behavior, and in light of the public's growing distrust of lawyers and loss

of faith in our courts' ability to do justice, the independence of lawyers and judges will continue its downward spiral. What can be done to reverse this unfortunate trend? I have a few suggestions, some of which, I am sure, are not original.

First, ethics must be taught in every course in the law school's curriculum. Some courses are particularly amenable to teaching ethics: civil and criminal procedure, contracts, torts, business associations, and legal writing.

Second, young lawyers desperately need mentoring. The American Inns of Court, which Chief Justice Warren Burger fashioned along the lines of the English Inns of Court, constitute excellent fora for mentoring. The opportunity for the young lawyers to hear what the seasoned lawyers have to say and to establish mentoring relationships that might endure for years can be of inestimable value.

Third, seminars on ethics and professionalism also serve as important tools for the betterment of the profession. My experience is that hypothetical ethical problems can be extremely challenging and oftentimes quite humorous.

Fourth, there needs to be far more interaction between the bench and bar than now exists. Judges – especially those of us who have been away from the practice of law for several years – need to be kept abreast of the day-to-day problems lawyers face. Judges need to be aware of the transaction costs they sometimes needlessly create for the litigants because of the way in which they process cases. And lawyers need to understand the negative effect the manner in which they prosecute their cases may have on the litigants standing in the queue waiting to be heard.

Finally, if Chester Bedell was speaking to you at this moment, he would say that the independence of the American lawyer depends, as it always has, on the moral character and integrity of the members of the bar. He would acknowledge that the legal profession has become, in many respects, more like a business than a profession; that it is far more difficult for house counsel in a large corporation or an attorney in a large law firm to be independent than it is for a lawyer in a small law office; that the law schools are turning out so many graduates that the profession can hardly assimilate and train them; that the organized bar is so large that real personal relationships are difficult to develop; and that the level of civility is not what it should be.

Chester Bedell was the quintessential role model. He firmly believed that how he conducted himself from day to day, in his law office, in the courtroom, or in his private affairs affected in some way, perhaps imperceptibly, how other lawyers conducted themselves. I close this lecture in that vein, by reading a passage from the Book of Genesis that I am sure was close to Chester's heart. Cain had killed Abel, and God asked him where his brother was. Cain's reply was, "I do not know. Am I my brother's keeper?" Chester Bedell thought of himself as his brother's keeper, his brother being a fellow lawyer. To him, everyone is somebody's role model, somebody's keeper. So it is with all of us.

I look forward to seeing each of you at our annual Law Day Luncheon to be held on April 30, 2009. At the luncheon, we will honor our **2009 Liberty Bell Award** recipient, **Jane Curran**, the Executive Director of **The Florida Bar Foundation**. The Liberty Bell Award is given each year by the OCBA in conjunction with its Law Day Luncheon. The award recognizes outstanding service performed by a lawyer or non-lawyer citizen who has given of his or her time and energy to strengthen the effectiveness of the American system of freedom under law, in keeping with the spirit of our Constitution. Congratulations, Jane!

A final reminder to order your ticket for the 2009 Gala, to be held at the Gaylord Palms Resort on April 18. We look forward to seeing you there and at our Law Day Luncheon.

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



Chester Bedell

Jerome P. McCauley, C.P.A., P.A.

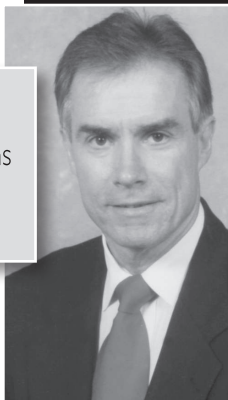
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Homelessness is the condition and social category of people who lack housing, because they cannot afford, or are otherwise unable to maintain, regular, safe, and adequate shelter.¹

Raising a seven-year-old child is hard enough. Add to the mix the caretaker's unexpected, debilitating neurological disease; an unplanned relocation to a nursing home for life-sustaining medical care; the ensuing loss of gainful employment; unpaid credit card debt; a lawsuit to collect the unpaid debt; and then the garnishment of social security benefits, threatening the caretaker's nursing home care.

This is the current life of "Barbara," a recent client of the Legal Aid Society. Thankfully, Barbara's financial crisis was resolved by attorney Mike Resnick, an LAS staff attorney who took an interest in this very tragic situation - a situation that plays out in other equally unfortunate ways hundreds of times a day in Central Florida.

Barbara meets the federally mandated poverty guidelines for representation by an in-house attorney at Legal Aid or a referral to a private attorney through the LAS's *Pro Bono* project. Because time was of the essence, Mike

decided to jump in and handle the case himself. The measurable outcome of



Legal Aid Society attorney Mike Resnick and "Barbara"

this case is amazing: Now there is one less homeless and medically neglected Orange County resident. Barbara's child, who is currently living with relatives,

is able to visit with her mom in a safe, caring environment. When asked about the help Mike Resnick gave her, Barbara responds that, considering her situation, without Legal Aid's help she "would have been homeless." She looks at Mike with pride, stating "that's my attorney" as she introduces him to staff members at the care facility.

Mike typically handles housing and consumer-related issues at the LAS. He serves the under-represented with a dedication and passion understood by few. After receiving his JD from the University of Toledo College of Law, graduating magna cum laude, Mike first practiced law in western Michigan as a corporate tax attorney. When his then pregnant wife fell on ice outside the door to a restaurant, Mike knew it was time to move to Florida, which he did in 1989. After practicing law in Florida for several different law firms and after owning his own law firm, Mike came to the Legal Aid Society almost ten years ago. As Mike often says, "This is what I was born to do!" Mike has found his calling, one that gives him purpose, at the Legal Aid Society of the OCBA.

As a result of his hard work and dedication, there are fewer homeless individuals in Orange County. Not a bad way to spend a day. We change the world.

For more information on how you can help with consumer or housing issues, contact Cathy Tucker, Deputy Director/*Pro Bono* Coordinator at ctucker@legalaidocba.org or dgraf@legalaidocba.org. Mike Resnick is available at mresnick@legalaidocba.org.

Donna Graf, Manager of Development at the Legal Aid Society, has been a member of the OCBA since 2008.

¹<http://en.wikipedia.org/wiki/Homelessness>, 2009

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*Great food, lots of fun and memorable camaraderie were enjoyed by all at the annual **Evening with the Judiciary** sponsored by the Young Lawyer's Section of the OCBA, February 18th at Citrus Restaurant*

Bruce Blackwell and
Judge Nancy Alley



Charles Steinberg
and David B. King



Frank Bedell and Chelsie Roberts



Tad Yates and
Judge F. Rand Wallace



N. Diane Holmes and Judge Robert Evans



Paul Scheck, Judge Julie O'Kane and Nick Shannin

Judge Deb Blechman and Tom Marks



Dan Gerber, John Fisher and Daryl Gottlieb



Jennifer Ling, Kim Webb and Vanessa DiSimone



Frank Pierce, III and Judge C. Jeffery Arnold



Linda Marks, Melissa Woodward and Valerie Evans

April OCBA Luncheon

continued from page 5

ways to serve unmet need. With her help and recommendation, the Foundation has funded the Innocence Project, the Southern Poverty Law Center, Florida Legal Services, Florida Rural Legal Services, The FSU Center for the Advancement of Human Rights, and a host of other projects and programs that uphold the rule of law in our society.

Jane has served on the board of the National Legal Aid & Defender Association and chaired its personnel committee. She is a member of the ABA IOLTA Commission and is a past president and board member of the National Association of IOLTA Programs. She also is a past president of the National

Conference of Bar Foundations. She served for several years on the design team for the joint ABA/NLADA Equal Justice Conference and served as a member of the ABA Law Day Working Group and Ad Hoc Committee on State Justice Initiatives. Jane currently serves as vice-chair of Florida Philanthropic Network and chairs its Partner Development Committee. She has served as the president of the national IOLTA organization as well as the national president for the National Association of State Bar Foundations.

Jane's advice is sought out weekly from lawyers, judges, and legal aid providers around the country. She speaks frequently on a national basis. She has been so much more than the sum of her job. She is the person within the United States that is most listened to on IOTA/IOLTA

issues and has been the guiding force in placing Florida as the undisputed leader in the delivery of legal services to the poor throughout the entire country.

What Jane Curran embodies is the essence of the Liberty Bell Award: to promote a better understanding of the rule of law; to encourage a greater respect for law and the courts; to stimulate a sense of civic responsibility; and to contribute to good government in the community. The Liberty Bell Award is richly deserved. It provides tangible recognition for the extraordinary contributions she has made during her career.

{ There will be no OCBA Luncheon in June. The Installation of Officers Banquet will be held on Wednesday, May 27, 2009, and the next regular luncheon will be held on July 23, 2009 }



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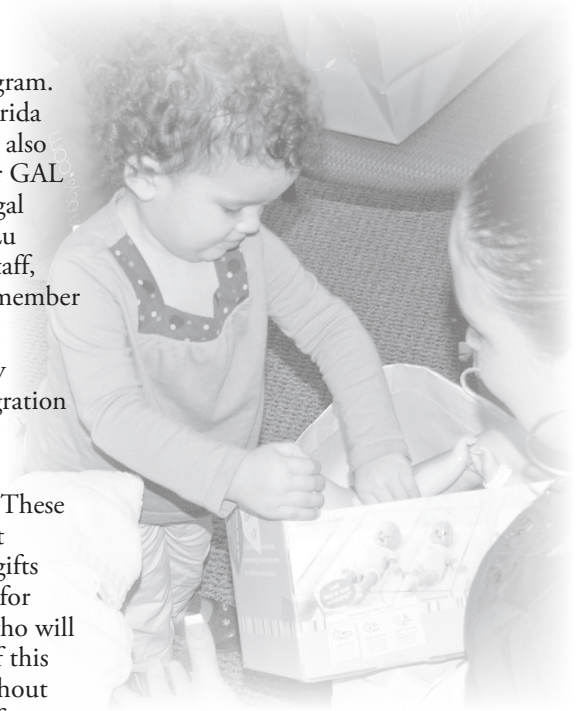
The 2008 Christmas holiday was a special time for children in our GAL Program. In the February issue of *The Briefs*, we highlighted the generosity of the Florida Bar Board of Governors who sponsored 58 children for Christmas. But we also had some local support that made Christmas special for another 62 children in our GAL Program. We'd like to express our appreciation to a group of sponsors from our legal community: the **Fishback Dominick** law firm, particularly Frances Gulash and Lu Cedoz, who were instrumental in putting their effort together; the attorneys and staff, particularly Sandie, from **Dean, Ringers, Morgan & Lawton P.A.**; and OCBA member **Richard Schwamm** and his wife.

We also had two sponsors from outside the legal community: the staff, particularly Karen who helped organize the effort, of **Ciber Inc.**, an international system integration consultancy and outsourcing provider, and the staff and owners of **Heaven Sent Janitorial Service**.

So much more than simply donating money was involved in each of these efforts. These individuals and organizations not only provided generous monetary donations, but they actually went out and purchased the gifts, they beautifully wrapped multiple gifts for each child and then helped the Legal Aid staff load the gifts for delivery. On behalf of the Legal Aid Society and the children who will forever remember this Christmas, we thank all the supporters of this year's Christmas project. This would not have been possible without your kindness and generosity. Legal Aid is proud to be a part of a community that truly cares and knows how to join together in times of need.



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



Free GAL Lunch & Learn Trainings

Please plan to attend one of Legal Aid's GAL lunchtime trainings this year. We've found this to be an effective yet efficient way of providing targeted information on specific topics. Time is short for so many of us, and this is a convenient way to learn, get your CLE and have lunch all at the same time! The trainings take place on the 4th Tuesday of every month. The trainings are free if you are an OCBA member or a non-OCBA member taking *pro bono* cases from Legal Aid. The trainings run from 12:00 p.m. to 1:30 p.m., and lunch is provided at no cost. Many of the trainings carry **CLE credit**.

For those first time GALs and those who've not taken a GAL case in three or four years, our *GAL 101* is a good choice. It covers the basics – duties and responsibilities of the GAL, Legal Aid's Standards and Practices for GALs in juvenile dependency cases, a statutory review of the path of a dependency case, and an overview of how the local social service system works. This year's offering of supplementary topics include:

April 21 - GAL 101–The Basics

May 19 - Handling an Appeal in GAL Cases

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● *Interlocutory Appeals of Non-final Orders* ● *Determining the Jurisdiction of the Person*

Adam H. Sudbury, Esq.¹

Introduction

One of the most powerful tools in a litigator's arsenal is knowing when and how to initiate a legally sufficient interlocutory appeal. A successful interlocutory appeal can dramatically change the landscape of litigation. However, the scope of interlocutory appeals as a matter of right is very narrow and fraught with pitfalls for the unwary. This article is the second part of a series discussing the applicability of Florida Rule of Appellate Procedure 9.130(a)(3)(C) in obtaining interlocutory review of certain non-final orders in civil cases. Specifically, herein I will address the scope of interlocutory appeals that determine "the jurisdiction of the person." Fla. R. App. P. 9.130(a)(3)(C)(i).²

Initial Concerns

As an initial matter, it is important to note that interlocutory jurisdiction will be narrowly construed "so as to limit the number of appealable non-final orders." *Corzo v. Pineiro*, 990 So. 2d 1177 (Fla. 3d DCA 2008). In addition, the jurisdiction of the courts to entertain these types of appeals may only be expanded by the Florida Supreme Court. Art. V, § 4(b), Fla. Const. Statutes which attempt to confer jurisdiction to consider interlocutory appeals will be interpreted by the courts as a declaration of legislative policy and are ineffective in accomplishing their stated purpose. *Osceola County v. Best Diversified, Inc.*, 830 So. 2d 139 (Fla. 5th DCA 2002). Furthermore, unlike other types of appellate jurisdiction where one legitimate basis for jurisdiction can extend jurisdiction to determine other issues not otherwise reviewable, the reviewing court will only determine those specific issues for which there exists interlocutory jurisdiction (under Rule 9.130). *Hitt v. Homes & Land Brokers, Inc.*, 993 So. 2d 1162 (Fla. 2d DCA 2008) (reversing in part and dismissing in part an appeal seeking interlocutory review of several legal questions).

When considering whether or not to file an interlocutory appeal, it is extremely important to thoroughly research both the substantive issues to be presented and argued and the basis for invoking the ap-

pellate court's jurisdiction. Appealing a nonreviewable non-final order will result in the issuance of an order to show cause and will ultimately lead to the nondiscretionary dismissal of your appeal.

Personal Jurisdiction

With these policy concerns in mind, what type of orders determine jurisdiction of the person? For most lawyers, the term 'jurisdiction of the person' or, more commonly, 'personal jurisdiction' brings to mind catastrophic flashbacks of first year civil procedure and the traumatic experience of deciphering the landmark case of *Pennoyer v. Neff*, 95 U.S. 714 (1877). While the legal history of 'minimum contacts' and long-arm statutes is itself an entire book in American jurisprudence, all non-final orders that address this subject are appealable under rule 9.130(a)(3)(C)(i).

Florida's long-arm statute, which provides the basis for personal jurisdiction over nonresidents, is codified as section 48.193, Florida Statutes. Any non-final order dismissing or refusing to dismiss a case based on arguments under this statute are appealable as a matter of right under rule 9.130(a)(3)(C)(i). See *Kountze v. Kountze*, 996 So. 2d 246 (Fla. 2d DCA 2008); *Frohnhofer v. Pontin*, 958 So. 2d 420 (Fla. 3d DCA 2007); *Casita, L.P. v. Maplewood Equity Partners L.P.*, 960 So. 2d 854 (Fla. 3d DCA 2007). In addition, while failure to appeal an appealable interlocutory non-final order does not preclude review of the order once a final order or judgment is rendered in the case, it is good policy and practice to immediately initiate an interlocutory appeal in cases involving close issues determining the applicability of the long-arm statute. The reason for this is obvious and falls squarely within the policy for the entire interlocutory review rule: failure to immediately appeal an order refusing to dismiss a case for lack of personal jurisdiction may result in extensive duplicative judicial labor and waste of parties' resources if the order is eventually overturned post-judgment.

Service of Process

In addition to issues addressing the appli-

cability of the long-arm statute, personal jurisdiction also raises the fundamental legal and constitutional due process issue of service of process. *Diz v. Hellman Intern. Forwarders, Inc.*, 611 So. 2d 18 (Fla. 3d DCA 1992) ("It was improper and, even more, unconstitutional . . . to permit the mere non-filing of a piece of paper to substitute for service of process and cure the fundamental, due process defect of its acknowledged absence.") Issues surrounding the effectiveness of original process and service thereof are contained within the general rubric of personal jurisdiction. *Hitt v. Homes & Land Brokers, Inc.*, 993 So. 2d 1162 (Fla. 2d DCA 2008). This subject area involves the technical sufficiency of a summons, service of a summons and complaint, or the return of service. The sufficiency of constructive service, e.g., service by publication, is appealable under the rule. *Id.* Service or non-service of a registered agent for a business falls within the rule. *Aventura Beach Club Condominium Assoc., Inc. v. Blaustein*, 997 So. 2d 1185 (Fla. 3d DCA 2008). Appealable non-final orders determining the sufficiency of process or service typically take the form of non-final orders denying motions to quash service of process, motions to vacate defaults, and motions for relief from judgments.

The Fifth District Court of Appeal recently determined the case of *Re-Employment Services, Ltd. v. National Loan Acquisitions Co.*, 969 So. 2d 467 (Fla. 5th DCA 2007), which addressed the sufficiency of process and the return of service of process. In response to the original complaint, the defendants filed a motion to dismiss or to transfer venue challenging personal jurisdiction under Florida's long-arm statute. Upon receipt of the affidavits of service and the filing by the plaintiff of affidavits and an amended complaint containing jurisdictional averments, the defendants filed a new motion to dismiss and to quash service of process which contained challenges to the sufficiency of service of process and return of service. Specifically, the defendants pointed out technical defects in the information contained in the return of service required by section 48.21, Florida Statutes.

In reversing the circuit court's order denying the defendants' motion, the Fifth District strictly construed the statutory requirements applicable to service of process. It determined that since the affidavits of service failed to specify a valid and specific time and date that process came to the hand of the process server, service was facially invalid. Since the affidavits of service were irregular on their face, "personal jurisdiction is suspended and it 'lies dormant' until proper proof of valid service is submitted." 969 So. 2d at 472. Thus, even the most highly technical challenges to the sufficiency of original service of process are subject to interlocutory appeal as a matter of right.

What is Not Personal Jurisdiction

Of course, even if an issue sounds like personal jurisdiction, it is not appealable under this provision unless it squarely addresses the jurisdiction of the court *over the person*. Thus, in *Kinead v. State Dept. of Juvenile Justice*, 987 So. 2d 1231 (Fla. 1st DCA 2008), the First District dismissed an appeal of a non-final order vacating a portion of an arbitrator's award without entering final judgment thereon. In *Fisher v. International Longshoremen's Assoc.*, 827 So. 2d 1096 (Fla. 1st DCA 2002), the same court dismissed an appeal of a non-final order dismissing a case on grounds of federal preemption because the order "did not determine jurisdiction of the person within [the] meaning of [the] rule." In *Gomez v. Gomez*, 702 So. 2d 255 (Fla. 3d DCA 1997), the Third District dismissed an interlocutory appeal of an order permitting a petitioner-wife's motion to join her brother-in-law as a party respondent because the order "does not, as the appellant claims, determine jurisdiction of his person" Orders determining entitlement to attorneys' fees or

taxing costs are not appealable under the rule. *Lyndolph v. Davidson*, 880 So. 2d 817 (Fla. 1st DCA 2004).

Even issues that on first blush may seem to address questions closely related to personal jurisdiction are subject to dismissal. In *Traylor Bros., Inc. v. Shipman*, 758 So. 2d 91 (Fla. 2000), our supreme court resolved conflict between the districts involving whether or not an order determining a motion to dismiss for failure to timely serve a complaint under Florida Rule of Civil Procedure 1.070(j) is an order determining jurisdiction of the person. In approving the First District's decision in *Traylor*, the supreme court held that "an order denying a motion to dismiss that is based on untimely service under rule 1.070(j) is not an order which determines 'jurisdiction of the person' and therefore is not directly appealable" *Id.*

Final Question

A remaining question that one might ask is why the supreme court, in enacting Rule 9.130, included interlocutory review of non-final orders addressing personal jurisdiction but omitted interlocutory review of non-final orders addressing subject matter jurisdiction? The committee notes to the rule explain that the inclusion of personal jurisdiction is due to the necessity or desirability of expeditious review, and the exclusion of subject matter jurisdiction from the rule is due to the availability and sufficiency of the writ of prohibition. One may also surmise that the drafters intended to create an interlocutory appeal as a matter of right for issues determining personal jurisdiction, while leaving interlocutory appeals involving subject matter jurisdiction within the sound discretion of the appellate courts.

Conclusion

Knowing when and how to take an interlocutory appeal can be a powerful tool at your disposal as an interlocutory appeal has the power to fundamentally alter your client's disposition in the trial court level proceedings. A successful appeal resulting in dismissal of a case for lack of personal jurisdiction will result in the plaintiff refiling the case out of state. Holding the plaintiff's feet to the fire on issues relating to process and service thereof sends a clear signal of your client's intent to fight every legally justiciable issue. Notwithstanding, the initial determination of whether the non-final order falls within the appellate jurisdiction of the courts of appeal is essential. Appealing a nonappealable non-final order and thereby eliciting an order to show cause and eventual dismissal of the appeal is embarrassing

and could also form the basis for an award of attorneys' fees and costs to your opponent as a sanction.

¹This article is being submitted on behalf of the Orange County Bar Association's



Appellate Practice Committee. Adam Sudbury is a founding member of Soto Sudbury LLP and practices in numerous areas, including civil and criminal

appeals. He has been a member of the OCBA since 2005.

² This series will only address interlocutory appeals under rule 9.130(a)(3)(C). There are other non-final orders addressed in the rule, but this series of articles is limited to those non-final appeals delineated in subsection (a)(3)(C).

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Criminal Law Committee ● Recent United States Supreme Court Decisions Affecting Criminal Law

William Jay

In *Hedgbeth v. Pulido*, the U.S. Supreme Court considered the issue of what standard of review to apply when a defendant is convicted after the jury is instructed on two alternative theories of guilt – and one of those theories is invalid. The Ninth Circuit held that such an error was “structural,” and that the conviction should be set aside regardless of whether the defendant was prejudiced by the error. In reversing the Ninth Circuit, the Supreme Court held that the proper standard of review for such an error is the harmless error standard. The dissent agreed that the standard was “harmless error,” but felt that the Ninth Circuit had implicitly agreed with the District Court’s ruling applying that standard and that remanding the case back to the Ninth Circuit was a waste of resources.

At issue in *Jimenez v. Quarterman* was the timeframe in which a state prisoner may seek federal habeas corpus relief under 28 U.S.C. 2244(d)(1)(A). Mr. Jimenez – through a comedy of errors involving him being at the state department of corrections after a felony conviction, rather than the local county jail – missed his original timeframe to file an appeal in state court. At a much later time, he was allowed to file an untimely appeal in state court. He was ultimately unsuccessful and attempted to file a petition for habeas corpus in federal court, which the District Court dismissed as untimely – holding him to the one-year timeframe starting from the date that his original window of time to file a state appeal was closed, as opposed to the conclusion of his ultimately unsuccessful untimely state appeals. A unanimous Supreme Court agreed with Mr. Jimenez that the plain language of the federal statute granted him one year from the conclusion of his belated state appeal in the state collateral review process since he had not yet sought federal habeas corpus relief.

In *Chambers v. United States*, less surprising was that the Supreme Court held “failing to report” is not a violent crime for sentencing enhancement under the federal guidelines, while more surprising was another opinion of the Court without dissent. What complicated the analysis was that under

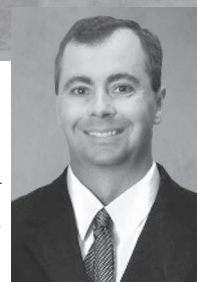
Illinois law, failing to report was lumped in with other conduct, such as escape from custody, which could be considered violent. The Court held that in situations such as that, categorizing the different subsections is appropriate, and found, of course, that failing to report is non-violent.

Florida Statute § 921.16 does not require a criminal court to engage in any fact finding missions before imposing a consecutive sentence rather than a concurrent one. However, in Oregon, there is a statutory scheme which does require a judge to make determinations before doing so. In *Oregon v. Ice*, a divided Court held that allowing a judge to make those determinations and to then sentence a defendant to consecutive sentences does not violate Apprendi/Blakely principles. The four dissenting defenders of the right to have a jury find these facts beyond a reasonable doubt: Justices Scalia, Thomas, Souter, and Chief Justice Roberts.

The Supreme Court divided more predictably in *Herring v. United States*. The swing vote of Justice Kennedy joined Chief Justice Roberts and Justices Scalia, Thomas and Alito to hold that isolated negligence by the police (such as the negligent maintenance of records regarding an outstanding warrant), as opposed to deliberate misconduct, or reckless, grossly negligent conduct does not warrant the application of the exclusionary rule. The Court maintained that the focus of the exclusionary rule should be on the deterrence of police misconduct.



William Jay is an associate with Carsten & Ladan, P.A. He has been a member of the OCBA since 1998.



The verdict is in. Still dealing with guilt issues?



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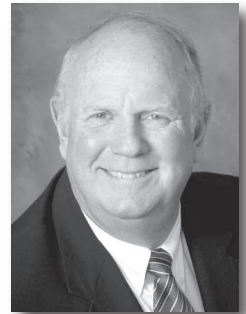
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I. Mediation

On two Wednesdays on March 18 and on May 20, 2009, the Insurance Law Committee of the Orange County Bar Association will make available Ethics CLE Credit of 1.0 hours apiece approved by the Florida Bar. When this article is published in *The Briefs*, the May 20, 2009, Seminar will soon be taking place. Those attending both Seminars will qualify for up to 2.0 Ethics or other CLE Credits from the Florida Bar. In addition, Continuing Mediator Education Credit will be available under the guidelines published online by the Florida



Dennis J. Wall, Esquire

Dispute Resolution Center at http://www.flcourts.org/gen_public/adr/CME/cleguide.shtml.

This is an expanded outline of the submission to the Florida Bar for the successful award of CLE Credit for both Seminars. Mediation provides an alternative means of dispute resolution. The purposes of Mediation are well-established. Mediation is defined by Rule 10.210 of the Florida Rules for Certified & Court-Appointed Mediators as “a process whereby a neutral and impartial third

person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and non-adversarial process intended to help disputing parties reach a mutually acceptable agreement.” The requirements imposed on a given case to qualify for Mediation and the behavior of participants in the Mediation process vary slightly from Court to Court. *See, e.g.*, Fla. R. Civ. P. 1.700 -1.750, inclusive; Local Rules of the United States District Court for the Middle District of Florida, 9.01 - 9.07, inclusive.

II. Considerations in the Fabric of Mediation

Ethical considerations are embedded in the fabric of Mediation. The first and foremost consideration is to tell the truth and not mislead. *See, e.g.*, Florida Bar Rule of Professional Conduct Rule 3-3(a)(1) (a lawyer shall not knowingly “make a false statement of material fact or law to a tribunal”); Florida Bar Rule of Professional Conduct Rule 4-4.1 (a) (a lawyer representing a client shall not knowingly “make a false statement of material fact or law to a third person”); Likewise, Rule 4-3.3(a)(3) addresses misleading arguments:

Misleading legal argument

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subdivision (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been

disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

In Florida Mediations concerning insurance, it is essential to represent the insurance policy limits fully and truthfully so as not to impede or inhibit settlement. *See Davis v. Nationwide Mutual Fire Insurance Co.*, 370 So. 2d 1162, 1163 (Fla. 1st DCA 1979) (“In view of the allegations that the attorney represented both companies, that he misrepresented the coverage, and that there would have been an offer of settlement had the true liability limits been revealed, we consider that the complaint states a cause of action sufficient to withstand a motion to dismiss.”)

In addition, a Florida statute imposes additional requirements for insurance disclosures. Under Fla. Stat. § 627.4137, disclosure is mandated concerning these facts:

- a. Name of insurer.
- b. Name of each insured.
- c. Limits of the liability coverage.
- d. Statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
- e. ***A copy of the policy.***

In many situations throughout Florida, insurance companies and defense counsel have provided a copy of the *declarations page* of the policy, in accord with common practice throughout Florida. There is at least a question whether this practice can ever comply with Fla. Stat. § 627.4137, *supra*, and with ethical obligations and requirements.

III. The Insurance Good Faith Law of Florida and Considerations before and at the Mediation of the Underlying Case

A. The Insurance Company

It is settled in Florida that the insurance company has a multitude of obligations under Florida law, many of which call for certain behavior by the insurance company before the Mediation. Some of those obligations include 1) advising the insured of settlement opportunities; 2) advising as to the probable outcome of the litigation; 3) warning of the possibility of an excess judgment; 4) advising the insured of any steps she, he or it might take to avoid “same;” 5) investigating the facts; and 6) giving fair consideration to a settlement offer that is not unreasonable under the facts. *Boston Old Colony Insurance Co. v. Gutierrez*, 386 So. 2d 783 (Fla. 1980), *cert. denied*, 450 U.S. 922 (1981).

B. Considerations applicable to Counsel

Some of the obligations outlined above may apply to defense counsel and the insurance company’s coverage counsel.

C. Considerations applicable to Mediators

Mediators are governed by specialized Rules including Rules of Ethics. They are contained in Florida Rules for Certified & Court-Appointed Mediators. In particular, Rule 10.370, "Advice, Opinions, or Information," provides:

- (a) Providing Information. Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.
- (b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent legal counsel.
- (c) Personal or Professional Opinion. A mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct resolution of any issue. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.



Conclusion

The Insurance Law Committee began considering similar issues concerning Mediation at its January, 2009 meeting. The context was an outstanding discussion led by Brian Wilson, Esquire, past president of the OCBA and a member of the Insurance Law Committee. Mr. Wilson kindly consented to lead the discussion on issues of concern to counsel representing Policyholders at Mediation.

The discussion continues on May 20, 2009, particularly from the defense perspective, i.e., the perspective of the insurance company and the defense counsel. Bill Davis, Esquire, the most senior and experienced in-house counsel at Nationwide Insurance Companies, will present the defense perspective at Mediation Conferences. In addition, the perspective of Insurance Coverage Counsel, both for the Policyholder and for the insurance company, will be discussed at appropriate junctures. At the time that this article is printed, the May 20, 2009 Seminar will be on the horizon. Plan on attending at the Headquarters of the OCBA in Orlando!

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Dennis J. Wall, Esquire has been a member of the OCBA since 1977.



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is pleased to announce that

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has been appointed to the firm's mediation panel. Sandra comes with thirteen years of experience in government law beginning with the Florida Attorney General's Office where she specialized in the defense of class action claims. She continued working on local government issues as an Assistant City Attorney for the City of Tallahassee followed by a position in Ormond Beach where she practiced as the Deputy City Attorney for seven years.

In addition to governmental matters, Sandra will entertain a wide variety of insurance, accident related and commercial matters.



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YLS *on the move*

News You Can Use

In his February 2009 *Hearsay* column, **Nick Shannin** humorously noted that his column is a "unique, unidirectional, time-travel device." Not surprisingly, so too is *this* column! By the time you finish this monthly fix of *On the Move*, I will have already (temporarily) departed from the Central Florida legal community in order to welcome my first child into the world. However, publication deadlines being what they are, as I write this column, I am still nine months pregnant, wearing flip flops at my desk, hoping that my little guy will make his grand entrance *before* his March 27th due date.

Rest assured I will return after a brief leave, but for now I will be handing the torch over to **Sunny Hillary**, a fellow YLS member who will continue to keep you up-to-date on the myriad YLS happenings. I have truly enjoyed serving YLS by writing this column over the past year, and I hope that you won't miss me too much!

In March, the YLS was pleased to welcome to its luncheon **Jessica Gavrich** of GreenbergTraurig, a member of the Advisory Council for **Take Stock in Children of Orange County**. Ms. Gavrich and Elisha Gonzalez, director, spoke with us about their organization, a statewide non-profit dedicated to providing scholarships and mentors to Florida's low-income children. Students selected for the program promise to maintain good grades and meet with a mentor once a week, and in exchange, Take Stock provides a four-year college scholarship to these students!

Take Stock began its initiative in Central Florida in 2008 and is working with about 50 students at Lee Middle School, Lockhart Middle School and Howard

Middle School. They are currently recruiting local professionals to serve as mentors for summer 2009, and we hope that YLS members seriously consider donating their time to this incredible cause. If you are interested in

participating, please contact Jessica at gavrichj@gtlaw.com.

Also in March, the YLS sponsored a "**How-To Happy Hour**" in conjunction with **Barry Law School**. We all remember how difficult it was as a first-year associate to walk into a social event or meeting and come face-to-face with a room full of experienced attorneys, all of whom seem to be best friends with each other, and be expected to actively network and socialize with complete strangers. This event was intended to teach law students how to be more comfortable and make the most of these types of situations, and we hope to have similar "How-To Happy Hours" in the future. Thank you to all the YLS members that were able to attend. We hope that the Barry students learned a lot from you!

This year's annual **Orange County Bar Association Gala** is right around the corner! We hope that everyone will be at the **Gaylord Palms Resort & Convention Center on April 18, 2009**, to relax and have some well-deserved fun with other members of the local legal community. If you have any last minute questions, please contact Gala co-chairs Vivian Cocotas (vcocotas@orlandolaw.net) or Kristen Cox (kcox@shutts.com).

Don't forget that YLS is sponsoring a team at this year's **Relay for Life of Winter Park for the American Cancer Society®** to be held **Saturday, May 2, 2009**, at 2:00 p.m. at Showalter Field in Winter Park. We will walk around the track, bond with fellow team members and meet new people. This is an incredible tribute to cancer survivors and caregivers that starts off in the afternoon and ends with a moving ceremony at sunset honoring those who have fought the disease.

The theme for the Relay for Life is: The 1980s. That means you should come out and join YLS in its fight against cancer in your favorite '80s gear! The night before, YLS is planning a happy hour, the details for which will be coming in your YLS email blasts. In the meantime, if you have any questions about the event or would like to join the committee, please contact **Amber Neilson** at aneilson@iplawfl.com or **Samantha Powers** at spowers@foley.com.

The YLS **April Luncheon** will take place on **April 16, 2009**, at 11:45am. We are honored to have **Heather Rodriguez**, the OCBA's **2009 Young Lawyers Lawrence G. Mathews Professionalism Award** recipient, as our guest speaker.

To reserve your seat at the April luncheon, please send an email to ocbayls@gmail.com and be sure to include your name and organization. The cost is \$18 if you RSVP on or before April 13 or \$20 at the door; \$10 for sole practitioners, law students and government attorneys and judges.

Last month, five At-Large Members of the Board of Directors of the Young Lawyers Section of the OCBA were elected by the general membership. Thank you to all of you who took the time to consider the candidates and place your vote. If you want to find out more about our section and its committees and events, please call me at 407-841-2330 x111 or email me at blabutta@addmg.com. If you are not receiving the YLS email blasts, send an email to me or 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.





Chief Justice Peggy Quince was the guest speaker at CFAWL's February 27, 2009 Luncheon honoring Women in the Judiciary. Twenty-three female judges from Central Florida attended.



Gloria Carr, Judge Alicia Latimore, LaShawnda Jackson, Valencia Percy Flakes, Terry Walker



CFAWL President Keersten Heskin Martinez and Justice Quince



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Judge Sally Kest,
N. Diane Holmes,
Judge Tonya Rainwater and
Judge Emerson R. Thompson, Jr.



Side Bar



Jessica K. Hew

The **Central Florida Association for Women Lawyers (CFAWL)**, **Central Florida Gay and Lesbian Law**

Association (CFGLLA) and the **Federal Bar Association (FBA)** recently held a Joint Happy Hour at The Beacon! The CFAWL and CFGALLA also recently had a joint field trip to see *La Cenerentola* with the Orlando Opera. CFGALLA again participated in the Second Annual Central Florida Diversity picnic in late February.

CFAWL recently hosted a luncheon to honor **Judge Anne Conway** and her appointment as Chief Judge of the United States District Court for the Middle District of Florida, as well as its Happy Hour followed by dinner and a viewing of *Much Ado About Nothing*. Continuing its performing arts roll, CFAWL had a group event to *Legally Blonde - The Musical*. On April 8, 2009, CFAWL members are invited to volunteer at the Ronald McDonald House located in College Park to serve dinner to the families there along with a large side order of smiles. Save the date for CFAWL's annual Administrative Day Luncheon on April 22, 2009; location TBD.

CFAWL announces its Young Lawyers Committee, chaired by **Bridget Labutta**. The committee will focus on educating CFAWL's young lawyers on the history of the organization and its structure, and will provide mentoring and volunteer opportunities. Additionally, CFAWL recently participated in The Florida Bar Young Lawyers Division Affiliate Outreach Conference, which took place at the Hard Rock Hotel in Orlando. CFAWL's representatives, **Sarah Reiner** and Bridget Labutta,

"Unity" is the word of the day! Our local bar associations are joining forces! This issue of "SideBar" is chock-full of the recent joint events of our organizations!

departed the AOC in great spirits, having received a grant for its Young Lawyers Committee proposal.

As part of the OCBA's Law Week celebration, **Judge Faye Allen** and **Judge Bob LeBlanc** co-chaired an event called *Pathways in the Law*, which consisted of a legal presentation to provide youth insight about the judicial system, a mock trial with youth participants, and a jail tour. This year's Law Week event was held on Monday, March 30, 2009, at the Orange County Courthouse and hosted students from the Apopka Farmworker's Ministry. Many of the children who are serviced by the Apopka Farmworker's Ministry are Hispanic, and many are working on their English speaking skills. The **Hispanic Bar Association (HBA)** helped to staff the event.

HBA also announces the formation of its Young Lawyers Division, chaired by **Felipe Guerrero**. The HBA YLD already has its connection! The Young Lawyers Division of the Florida Bar presented HBA a special award and

to be part of the Conozca Sus Derechos 2009 Committee, contact Felipe Guerrero.

A 20th Anniversary Celebration Committee to head-up the celebration and also work on researching HBA's group history, growth, and accomplishments has been formed in anticipation of HBA's 20th Anniversary. If you are interested, contact **Cindy Duque**. Also, watch for registration for the HBA Annual Dominoes Tournament, which will be held on May 2, 2009, at Cheviche.

Paul C. Perkins Bar Association (PCPBar) recently co-hosted the February luncheon of the OCBA, featuring **Chief Justice Peggy Quince** as the speaker. The PCPBar also celebrated National Black History month at CityWalk and participated in the Oath of Office ceremony of **Geraldine Thompson**, the first African American female to represent Orange County in the Florida legislature.

Finally, the **South Asian Bar Association (SABA)** recently participated in the 11th Annual National Conference of SABA in Miami, Florida.

UNITY. Let's keep it up!

If you have any legal organizational news to share, please email me at jessica.hew@burr.com.

Jessica K. Hew is a partner with Burr & Forman LLP. She has been a member of the OCBA since 1995.

CFAWL had a "Girls' Night Out" at Ginger, a clothing store in Winter Park



a \$3,500.00 grant to fund the Conozca Sus Derechos 2009 community education program. If you would like

Wendy Vomacka,
Judge Faye Allen and
Gennette Coleman



Event co-chair Elaine Lerner
and Suzanne Meehle



**CFAWL's Professional
Women's Exchange
wine tasting in
February was held
at the Lowndes
Shakespeare Theatre.**

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The Young Lawyers Section of the OCBA



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Join the Legal Aid Society of the OCBA in presenting its 2008-09 Pro Bono Awards.

With remarks by keynote speaker The Honorable Alice L. Blackwell, Judge of the Ninth Judicial Circuit Court and the second recipient of the Judge James G. Glazebrook Memorial Bar Service Award.

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May 27, 2009

Please RSVP by May 20, 2009
to the OCBA at
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Cocktails served from 5:30 p.m. until 6:30 p.m. (cash bar)
Dinner and Program commencing at 6:30 p.m.

Cost is \$10.00 for OCBA members and \$40.00 for non-OCBA members and Guests.

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February Luncheon:

The Honorable Peggy A. Quince, Chief Justice of the Florida Supreme Court, was the guest speaker at the OCBA's February luncheon, which was co-hosted by the Paul C. Perkins Bar Association.

Harriet Brown, Jerry Girley and Stephanie St. Louis



Justice Peggy Quince and Judge Emerson R. Thompson, Jr.



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Elliott Wilcox

The President has it easy.

When he stands before a joint session of Congress to deliver his State of the Union address, he commands the attention of the entire room. Regardless of whether the audience members love him or hate him, they show their respect. They turn off their cell phones and Blackberries, they don't talk while he's speaking, and they don't stand up and walk out of the room.

Unfortunately, it won't be as easy for you. When you speak, you'll probably be contending with talkative audience members, ringing cell phones, and a variety of other distractions. The strength of your presentation will depend upon how you handle these distractions, so here are a few tips for preventing talkative audience members from disrupting your presentation.

Control the room setup. Room layout plays a major role in how talkative your audience will be. If your room is filled with circular tables, your audience will be more talkative because their attention will be directed towards the people seated at their tables rather than towards the speaker at the front of the room. If you're lucky enough to have control over your room setup, turn all of the seats to face towards the front of the room. This focuses their attention on the speaker, rather than each other, and discourages them from talking during your presentation.

Grab their attention. When Jana Stanfield spoke at the National Speakers Association's (NSA) annual conference, she faced a formidable challenge: How do you get a room filled with 1,500 people to be quiet? Keep in mind, the National Speakers Association is a group of professional speakers. These are people who get paid to talk for a living, people who *love* to talk, and people who are notoriously difficult to shut up. Here's how Jana handled the situation. She walked out to the center of the stage, stood still, and then smiled at her audience. She didn't say a word. And she *wouldn't* say a word until her audience was quiet. Audience members urged their talkative neighbors to be quiet, and within a few moments, the entire room fell silent. (This technique worked in a convention center with a lighted stage and a live camera feed on a gigantic projection screens, but it will also work well in a small venue if everyone in your audience can easily see you.)

Fellow NSA member Bob Proctor uses an entirely different technique to grab his audience's attention. When he takes the stage, the first words out of his mouth are, "If you can hear my voice, clap once." Usually, only a small percentage of his audience responds, but the unexpected sound interrupts the attention of the people seated near the clappers. A moment later, he continues, "If you can hear my voice, clap twice." This time, more audience members respond, which grabs the attention of the rest of the room. Once he's got everyone's attention, he begins his presentation.

Another interrupting technique you can use to grab your audience's attention involves asking them to raise their hands in response to two or three questions at the very beginning of your presentation (ex: "By show of hands, how many of you have had a case affected by the reduction in court funding?").

The purpose of asking these questions isn't to take a detailed survey, it's to get audience members involved and attract the attention of people seated around them. The more you can involve your audience in your presentation, the less likely it is that they'll disrupt your speech.

Don't react to every interruption. Some speakers take great offense at any disruption. But just because someone is laughing or talking during your presentation doesn't mean that they're being disrespectful. Are they talking because they're excited about the information you're sharing, or are they talking because they're bored and don't want to listen to you anymore? Evaluate each situation and ask, "Should I deal with this disruption or not?" Most of the time, you probably don't need to address the talkative audience members. But when you do, here are a few different ways to handle the situation:

Talk directly to the offending parties. One way to handle talkative audience members is to speak directly towards their group and make direct eye contact with one of them. Don't make any overt comments ("Shut up, you inconsiderate dolts!"), just turn your body towards that section of the audience and focus your attention towards them while continuing with your presentation. Once your eyes connect, the talkative audience members will usually realize their mistake ("Busted!") and quiet down.

Stand near the talkative group. If you have the liberty to walk around the room while presenting, moving towards the talkative group and standing near them can interrupt their conversations and quiet them down. Once again, you're not going to openly call attention to their rudeness, you're just going to quietly stand near them. Once they realize that they've become the center of attention, they'll usually stop talking.

Plant a friend in the audience. If you expect that you'll need some help, get someone from the hosting organization on your side, such as the meeting organizer or a leader of the organization. Ask this person to help you from behind-the-scenes, quietly approaching any outspoken groups and asking them to be quiet.

However you choose to handle the talkative audience, make sure that you handle it diplomatically. You don't want to shout over your audience or look like a bully. When you're at the front of the room with a microphone in your hand, you command more power than anyone else in the room. If you insult someone, it's the equivalent of using a sledgehammer to swat a fly. Even if the talkative group deserves it, refrain from calling them out. Instead, use the techniques in this article to handle the situation like a professional, and you'll dramatically improve your presentation's chances for success.

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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.

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● PART 3: *Cultivating Media Exposure*

"I'm going to be interviewed on the radio this Saturday," an attorney client of ours announced at the conclusion of a recent meeting. Another attorney piped in, **"How do you manage to get so much press? Every time I turn around you're in the paper or you're being interviewed on the news."** He sounded agitated, and several other attorneys who looked on seemed equally put out. **"No one's knocking at my door to interview me. Are you just lucky, or what?"**

In this third section of our series on law firm public relations, we'll explain that luck plays a small part, but a plan makes all the difference when it comes to garnering media attention. With a focused approach and a little persistence, almost any attorney can cultivate media attention. If the information age in which we live has produced anything, it is the ongoing need for more information. The 24-hour news cycle, the proliferation of cable channels, radio stations, and thousands of specialty print publications make up a media machine that has a voracious appetite for news, commentary, and fresh perspectives on the issues of the day. Fortunately, this demand for more news presents a wealth of opportunities for those of you interested in raising your profile and becoming known for your expertise.

But how do you start? How do you find your way in and around the media outlets that might be interested in what you have to say – if only they knew who you were? Well, not unlike the approach you must take in any aspect of client development, you must know *Who to Talk to*, *What to Say* and *How and When to Say It*.

Who To Talk To

To figure out *"Who"* to talk to, you must first ask yourself what types of clients you are trying to attract with the press you seek. Keeping that answer in mind, ask yourself where those types of clients (or referral sources – your media efforts might be focused only on building credibility with, or attracting new, referral sources) tune in for their information. Think about what newspapers or trade journals they read and to which drive-time radio programs they are likely to listen. To identify the reporters, journalists, editors, and producers associated with these programs or publications, look at newspaper by-lines, read the editorial staff listings, or spend a little time on the program or publication's websites to locate their names. Assemble a list of these names, and then study their reporting history to learn what they typically cover.

Since a great deal of work goes into creating a list like this, it's a good idea to delegate this research to an assistant who can help you with your marketing efforts. Once the list is done, you've established *Who to Talk to*. Now you must focus on *What to Say*.

What to Say

There are two main ways to go about getting your message across – either through a *press release* or a *media advisory*. The first method is to persuade a wide variety of journalists, reporters, or producers that you or your firm has news worth reporting. This means that when a case, a client, a result, or event that you are involved with is newsworthy, you or your team write a press release and submit it by e-mail or fax to all the different media

contacts on your list for whom it is appropriate. These are the news organizations that are likely to use it on-air or in print, either as a stand-alone piece or as part of a larger story. Refer to the second part of this series on public relations for further detail on the contents of a press release, but basically it is a one-page summary of a story with an interesting angle written in such a way that it is of interest to the target audience and is not blatantly self-promotional.

The second way to get your message across is more *personality-driven*, but still often involves a written document – the *media advisory*. Here the goal is to persuade reporters that you – because of your experience, perspective, or specific expertise – are worth interviewing. This approach is generally targeted at particular reporters and journalists with whom you build a relationship and is decidedly opportunistic because your commentary may piggy-back on an event of national interest currently in the spotlight. If, for example, a story about underage drinking or the plight of the elderly has captured the national spotlight, a hometown reporter or journalist may call upon a local attorney to provide the local perspective.

Generally, the attorney they interview is not chosen at random out of the phone book but because they've either cultivated a strong relationship with him or her or because they've been sent a *media advisory*. Also known as a "pitch," a media advisory is a one-page document that spells out how an individual is especially suited to comment on an issue and outlines his or her particular angle or perspective. If done well, it contains only those issues of interest to the audience the reporter or journalist typically serves. A hard news piece about white collar crime, for example, would be inappropriate for an arts and entertainment publication. To maximize its effectiveness, always match the topic of the advisory to the audiences' interests.

How and When to Say It

There are two differences between a press release and a media advisory – how it is tailored and when it is sent.

When you write a press release, you're packaging ideas for reporters en masse and writing a one-page memo describing an event, case, client, or action with which you are associated. The success or failure of the release is not based on how well you know the intended reporter or journalist (though targeting the right publication is critical), but more on how interesting your story might be to the readers or viewers. Press releases are often sent in advance of an event.

When you write a pitch or media advisory, you may be tailoring



Mark Powers



Shawn McNalis

an idea for a single reporter and sending your pitch out after the news has been made. As we have mentioned, this only works if you've done your homework and have read the publication or watched the show and know what kind of commentary they seek. You've researched the reporters' work and are developing some level of relationship with them. The message sent by your media advisory is, in essence, "I think you'll be interested in speaking to me because..." and you go on to state compelling reasons.

Here's what's in a media advisory: this one-page document starts out with a prominent headline announcing the topic and letting the reader/reporter know who the expert is and what he or she has to offer. This is followed by a short introductory paragraph. Below this, the topic is expanded upon by using bullet points made up of sharp, to-the-point sentences. Keep in mind the reporters and journalists who receive these media advisories are going to scan them quickly and look for the most important information and an angle they think their audience might find interesting. Eliminate legalese and make it easy for them to grasp your main points.

Also make it easy for them to connect with you. Make sure your contact information is available at-a-glance in an easily accessible format at the bottom of the page. The whole point of writing an advisory is to alert reporters to the availability of you or your spokesperson and your position on the topic in a timely fashion.

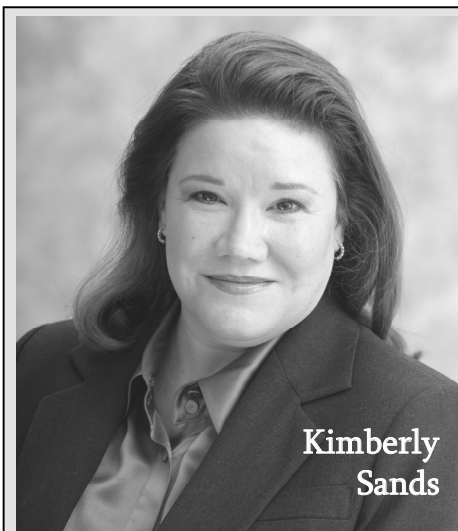
If you've sent your alerts to a radio or television program and they like what you have to offer, you will probably get a phone call from the editor or producer. If this happens, you must be enthusiastic and engaging on the phone as this call may actually be a "pre-interview" in which your viability as a guest speaker or interview subject is being tested. If you

sent your alert to a print publication and it's a story they wish to explore further, you'll receive a phone call or an e-mail to gather additional information.

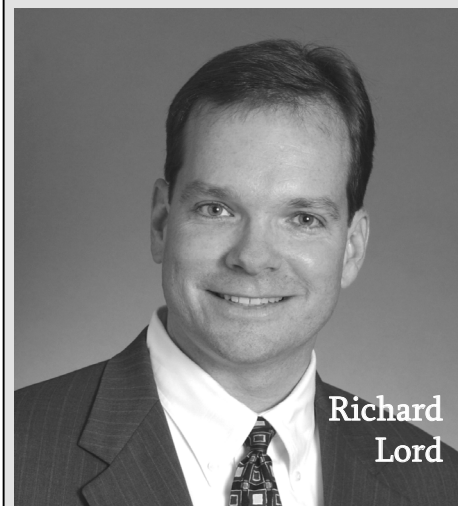
If you don't receive a response from your advisory, whether it was sent to a media outlet or a print publication, call to check on whether or not the information was received. Stay alert for productive tangents as opportunities will sometimes arise in these conversations. In any case, your ability to showcase your personality and credentials plays an important role here. Focus on building the relationship with your contact for the next time you send an advisory even if you aren't selected for an interview. Only a small percentage of press releases and media advisories that are sent out are successful. Public relations efforts like these require dogged persistence (delegate as much of the footwork as you can to a marketing assistant), but they are worth the effort.

No matter how you get your message across, whether you engage in extensive community relations efforts, write press releases, or cultivate the press through media advisories, using public relations to build your credibility and attract new clients should be an essential part of your overall client development plan. Take advantage of the expansive reach and tremendous leverage provided by the media to propel you and your firm to new heights.

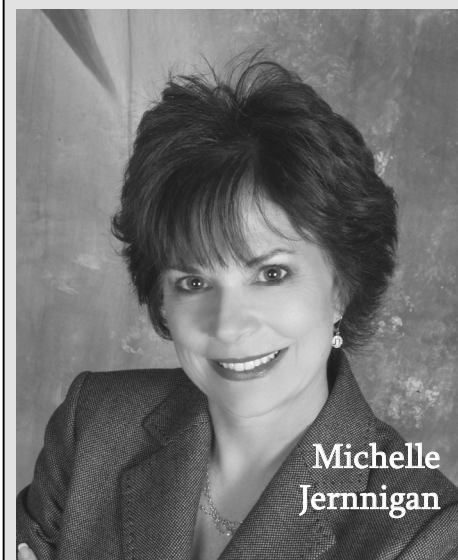
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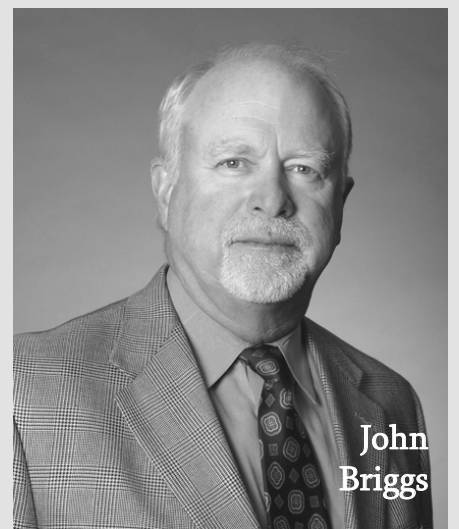
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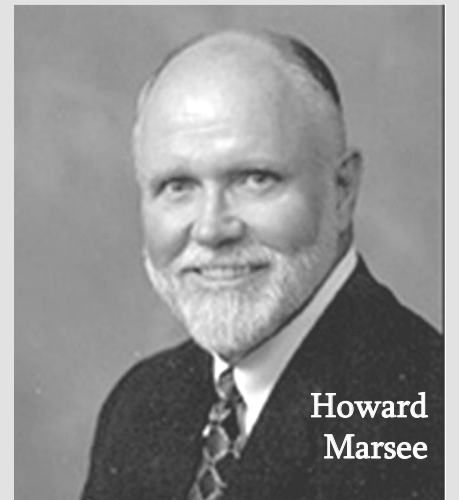
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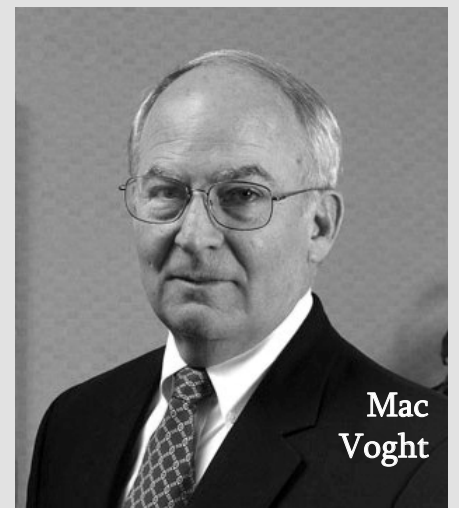
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Speaking Engagements

Robert D. Guthrie, Orange County Attorney's Office, gave a presentation on Orange County's participation in the Neighborhood Stabilization Program to the Eighth Annual Richard E. Nelson Symposium on Local Government Law sponsored by the Levin College of Law on February 13, 2009.

Bill Lowman, a ShuffieldLowman Corporate & Business Taxation attorney and firm name partner, gave a presentation on "The Overview of Estate Planning" to a group of SunTrust bankers in January.

Published

Dennis Wall's article, "Bad Faith After the Complaint? Courts Carve Out Actionable Cases Against Property Insurers," has been published online and in print by The Property Insurance Committee, IADC.

Seminars

Apr. 7 - *Unemployment Compensation Basics*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m.; First Presbyterian Church, Orlando. CLE pending. RSVP: ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

Apr. 9 - *Update on Land Development*. OCBA Real Property Law Committee. 12:00 p.m.-1:00 p.m. OCBA Center; 1.0 CLE pending. RSVP: Marie at marieb@ocbanet.org.

Apr. 17 - *The Basics - Marketing Your Law Firm Online* (Part 1). Sponsored by FindLaw. 11:30 a.m.-1:00 p.m. OCBA Center. 1.0 CLE pending. Fee: \$10. RSVP: Marie at marieb@ocbanet.org.

Apr. 21 - *GAL 101 - The Basics*. LAS GAL Lunchtime Training. 12:00 p.m.-1:30 p.m. Details: Susan Khoury at skhoury@legalaidocba.org.

Apr. 21 - Beta Center - Counseling Services. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Details: ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

Apr. 28 - *The Florida Bar Discipline System*. OCBA Solo & Small Firm Committee. 11:30 a.m.-1:00 p.m. OCBA Center. 1.0 CLE. RSVP: Marie at marieb@ocbanet.org.

May 1 - *Child Support*. Association of Court Clerks. 10:00 a.m.-3:00 p.m. OCBA Center 5.0 CLE pending. Fee: \$50. RSVP: Marie at marieb@ocbanet.org.

May 5 - *Preserving Income for Low Income Clients*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m.; First Presbyterian Church, Orlando. CLE pending. Details: ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

May 8 - *Beyond the Basics - Standing out from the Crowd* (Part 2). Sponsored by FindLaw. 11:30 a.m.-1:00 p.m. OCBA Center. 1.0 CLE pending. Fee: \$10. RSVP: Marie at marieb@ocbanet.org.

May 12-16 - *Trial Advocacy Seminar*. The Florida Bar/Trial Lawyers Section. UF - Levin College of Law. RSVP by April 13. Call: 850-561-5831 or see OCBA website for registration form.

May 19 - *Handling an Appeal in GAL Cases*. LAS GAL Lunchtime Training. 12:00 p.m.-1:30 p.m. Details: Susan Khoury at skhoury@legalaidocba.org.

May 20 - *Mediation: From Defense and Others' Perspective* (Part 2). OCBA Insurance Law Committee. 11:30 a.m.-1:00 p.m. OCBA Center. 1.0 CLE pending. RSVP: Marie at marieb@ocbanet.org.

News to Note

Inside the Courts - The Judges of the Ninth Judicial Circuit will offer FREE presentations to the public on **April 14, April 21, April 28 and May 5**, from 6:30 p.m. - 8:30 p.m., Orange County Courthouse, 425 N. Orange Ave., Orlando. The program explains the workings of the judicial system. Seating is limited. RSVP to **407-836-0517**.

Barry University Law School - Honored the **Hon. Winifred J. Sharp** with the Allies for Justice Award during the school's Allies for Justice Gala in March. She was recognized for her 35 years of service to the legal profession. Barry 2L and OCBA member **Jerry Girley** received the Alumni Ally Award.

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- :: Landlord/Tenant.
- :: Simple Wills - reciprocal will package; simple planning package, including will, designation of medical agent and power of attorney; reciprocal planning package, including will, designation of medical agent and power of attorney.





OCBA CALENDAR

APRIL - MAY 2009

OCBA Luncheon

Thursday, April 30, 2009

Jane Elizabeth Curran

Executive Director, The Florida Bar Foundation
2009 Liberty Bell Award Recipient

RSVP by April 20 to:
reservations@ocbanet.org

April

- 1 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.
- Elder Law Committee**
12:00 p.m. • Bar Center
- 4th Annual Texas Hold 'Em
Poker Tournament**
6:00 p.m. • Slingapours
- 7 LAS Lunchtime Training**
Unemployment Compensation Basics
12:00 p.m. • First Presbyterian Church
- 8 Estate Guardianship &
Trust Committee**
12:00 p.m. • Bar Center
- 9 Real Property Law Committee
Seminar**
Update on Land Development
Speaker – Dan Grandin
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

- 10 Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 14 Executive Council Meeting**
4:30 p.m. • Bar Center
- 15 Insurance Law Committee**
12:00 p.m. • Bar Center
- 16 YLS Luncheon**
11:45 a.m. • Citrus Club
- 17 FindLaw Seminar**
*The Basics – Marketing Your Law Firm
Online (Part 1)*
11:30 a.m. • Bar Center
- Family Law Committee**
12:00 p.m. • 425 N. Orange Ave., #2310
- 18 OCBA 12th Annual Gala**
6:30 p.m. • Gaylord Palms Resort &
Convention Center

- 21 Professionalism Committee**
8:00 a.m. • Bar Center
- LAS GAL Lunchtime Training**
GAL 101 Basics
12:00 p.m. • TBA
- LAS Lunchtime Training**
BETA Center-Counseling Services
12:00 p.m. • First Presbyterian Church
- Social Committee**
6:00 p.m. • TBA
- 23 Appellate Practice Committee**
12:00 p.m. • Bar Center
- 24 Bankruptcy Law Committee**
12:00 p.m. • Bar Center
- 28 Solo & Small Firm Committee
Seminar**
The Florida Bar Discipline System
11:30 a.m. • Bar Center
- 29 Business Law Committee**
1:00 p.m. • Location varies.
Contact Chairperson
- Labor & Employment Law Committee**
12:00 p.m. • Bar Center
- 30 OCBA Luncheon**
Jane Elizabeth Curran
11:30 a.m. • The Ballroom at Church St.

May

- 1 Florida Association of Court Clerks**
Child Support Seminar
10:00 a.m. • Bar Center.
- 5 LAS Lunchtime Training**
Preserving Income for Low Income Clients
12:00 p.m. • First Presbyterian Church
- 6 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.
- 7 Federal Judicial Relations Committee**
12:00 p.m. • Judge Conway's Chambers
- 8 FindLaw Seminar**
*Beyond the Basics – Standing out from the
Crowd (Part 2)*
11:30 a.m. • Bar Center
- 20 Insurance Law Committee**
12:00 p.m. • Bar Center
- 21 YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 25 Memorial Day - Bar Closed**
- 27 Business Law Committee**
1:00 p.m. • Location varies.
Contact Chairperson
- OCBA Installation of Officers Banquet**
5:30 p.m. • The Ballroom at Church St.
- 29 Bankruptcy Law Committee**
12:00 p.m. • Bar Center

For additional information about seminars (excluding LAS seminars), please contact Marie at the OCBA at
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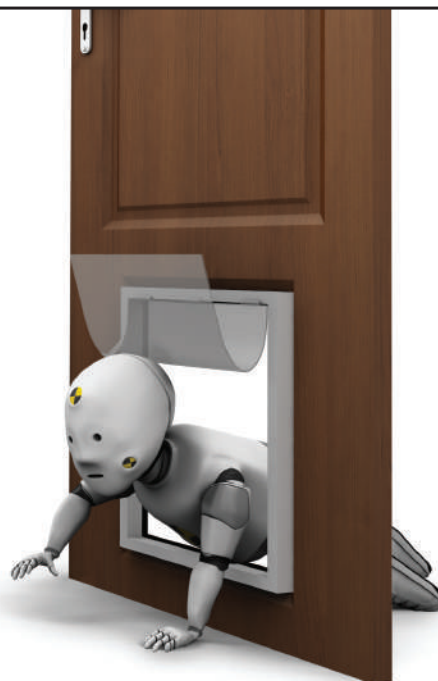
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