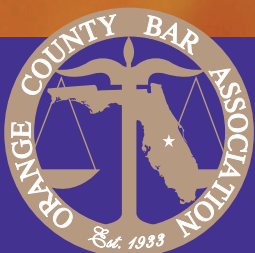


the Briefs

A Publication of the Orange County Bar Association

Welcome
2009



December 2008/
January 2009
Vol. 77 No. 1

Inside this Issue:

OCBA January Luncheon

Robert H. Jerry, II
Dean, Levin College of Law
at the University of Florida

Legal Aid Society News

Pro Bono Attorneys Help Orange County
Foster Youth Transition to Adulthood
Bethanie Barber

Appellate Practice Committee

The Wacky World of Appellate Costs
John R. Hamilton

Criminal Law Committee

Handling an Immunity Claim Under the
New Self-Defense Laws
Jon H. Gutmacher



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Table of Contents:

President's Message <i>Happy New Year!!</i> Tad A. Yates	3
OCBA Luncheon Robert H. Jerry, II Dean, Levin College of Law at the University of Florida	5
Social Committee <i>Good Times Good Causes</i> Kimberly D. Webb	6
Legal Aid Society News <i>Pro Bono Attorneys Help Orange County Foster Youth Transition to Adulthood</i> Bethanie Barber	7
Professionalism Committee <i>Turn the Page... 2009: The Saga Continues</i> Magistrate Howard D. Friedman	9
Appellate Practice Committee <i>The Wacky World of Appellate Costs</i> John R. Hamilton	10
Legal Aid Society News What We Do . . . Change the World! Donna Graf	14
Criminal Law Committee <i>Handling an Immunity Claim Under the New Self-Defense Laws</i> Jon H. Gutmacher	16
Hearsay Nicholas A. Shannin	22-23
YLS on the Move <i>Ring out the Old, Ring in the New</i> Bridget Heffernan Labutta	24-27
Side Bar Jessica K. Hew	28
Presentation Skills for Lawyers <i>The Proper Use of Notes During Trial</i> Elliott Wilcox	29
Rainmaking <i>Can Tracking Your Marketing Efforts Make You More Money? Part II</i> Mark Powers and Shawn McNalis	30
New Members	32
Announcements	34
Classifieds	38
OCBA Calendar	40

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

Copy - 1st of the month prior to the month of publication

The deadline for each edition is the first day of each month. If that day falls on a weekend or holiday, the deadline is the next business day.

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President's Message ● *HAPPY NEW YEAR!!*

December 2008/
January 2009

I hope that each of you had a wonderful holiday season and that the New Year holds great things for you. I'm certain that it does for the OCBA.

One of the highlights of the OCBA social calendar is our annual Gala. The co-chairs of this year's Gala are **Vivian Cocotas** and **Kristen Cox**. Many thanks to both of them for the work they have done in planning this event, which is sure to be a blast. Please mark your calendars for **Saturday, April 18, 2009**. This year, the Gala will be held at the **Gaylord Palms Resort and Convention Center**. If you've never experienced the Gaylord Palms, I can assure you that it is a beautiful venue. Maybe you'll consider getting away for the evening

or weekend at the resort. Special room rates will be available for our members.

Several of our 2009 luncheons are now planned. On **January 29, 2009**, we will be joined by **Robert Jerry**, Dean of the Fredric G. Levin College of Law at the University of Florida. Dean Jerry will speak on the subject of "Changes in Legal Education."

The **Paul C. Perkins Bar Association** will co-host our **February 26, 2009**, luncheon. Florida Supreme Court **Chief Justice Peggy A. Quince** will do us the honor of joining us on that date.



Tad A. Yates

Our annual **Professionalism Luncheon** will be held on **March 26, 2009**. On that date, the Professionalism Committee of the OCBA will recognize the 2009 recipients of the James G. Glazebrook Memorial Bar Service Award, the William Trickett, Jr. Professionalism Award, and the Lawrence G. Mathews, Jr. Young Lawyer Professionalism Award.

As always, thank you for your support of the OCBA. Best wishes for a great 2009!

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



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OCBA Luncheon

JANUARY 29, 2009



Robert H. Jerry, II

Dean, Levin College of Law at the University of Florida

Robert H. Jerry, II, is Dean and Levin Mabie and Levin Professor of Law at the Fredric G. Levin College of Law at the University of Florida.

Following graduation from the University of Michigan Law School in 1977, a clerkship with Judge George E. MacKinnon of the United States Court of Appeals for the District of Columbia Circuit, and three years of practice with an Indianapolis law firm, he joined the faculty at the University of Kansas School of Law in 1981. He was promoted to Professor in 1985 and served as Dean of the KU School of Law from 1989 to 1994. In 1994, he became the first permanent holder of the Herbert Herff Chair of Excellence at the Cecil C. Humphreys School of Law at the University of Memphis. In 1998, he became the Floyd R. Gibson Missouri Endowed Professor at the University of Missouri-Columbia School of Law, a position he held until accepting the deanship at the Levin College of Law in 2003.

He is the author of numerous books (including *Understanding Insurance Law*, published by Lexis, now in its third edition), book chapters, articles, and essays in the field of insurance law, and is a frequent lecturer on insurance topics. He is a past chair of the Insurance Law Section of the Association of American Law Schools, a member of the American Law Institute, and a Fellow of the American Bar Foundation.

His service activities include chairing the Faculty Executive Committee at the University of Kansas in 1988-89, election to the Faculty Executive Committee at the University of Missouri in 2000-01, and numerous committees and boards at every university where he has been a faculty member. He has also been active in numerous community service organizations.

His honors and awards include the Distinguished Faculty Achievement Award at the Missouri Law School in 2001, the Distinguished Alumni Award from Indiana State University, his undergraduate alma mater, in 1992, and the KU Chancellor's Award for University Service at KU in 1989.

He lives in Gainesville with his wife Lisa and their three children: John, Jim and Beth.

The Ballroom at Church Street

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

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Please RSVP to reservations@ocbanet.org by Friday, January 23, 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, January 23, 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! *Thank you.*



Social Committee ● Good Times ● Good Causes

Ten boxes of food and nearly \$300 in cash! No - that's not what Tad consumed for Thanksgiving dinner. That is the donation that was raised for the Destiny Foundation's Thanksgiving food drive by members of the Orange County Bar and our fellow voluntary bars at this year's **Joint Happy Hour** at Brick & Fire Pizza Co. And you thought the Social Committee was just about throwing parties...

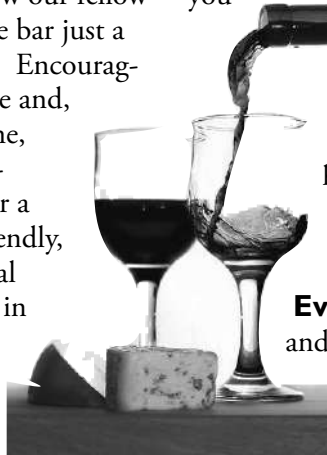
Well, okay - we are about throwing parties. And some pretty good parties at that. So far this year alone, the Social Committee of the Orange County Bar has brought you its annual **Trivia Event and the Joint Happy Hour**. Both were great events. Lots of fun. But, look under the surface a little and you will see that these weren't just happy hours - these were events with a purpose. While we were all wracking our brains over Curtis Earth's tricky trivia questions at July's Trivia

Event at Slingapour's, we were also networking with members of our Orange County legal community. Getting to know our fellow members of the bar just a little bit better. Encouraging camaraderie and, at the same time, hopefully helping to engender a more open, friendly, and professional practice of law in our community. And all the while, we were raising money for charity.

Then again, at the **Joint Happy Hour** on November 6, while mingling with friends and colleagues over pizza and martinis, we raised more than ten boxes of food, plus nearly \$300, to help members of our community who are struggling through these tough economic times put food on their tables for Thanksgiving.

We hope you have enjoyed the events we have held

already this year. If so, the Social Committee has been hard at work planning more events to come. We invite you to join us at



Ember on **January 29, 2009** from 5:30 p.m. to 7:30 p.m. for our annual **Wine & Cheese Event**. Come

and enjoy a glass of wine with us, mingle with your friends and col-

leagues, and unwind from the post-holiday catch-up you have been doing at work this month.

Then mark your calendars and watch *The Briefs* for more information on the upcoming **Texas Hold 'Em Poker Tournament** taking place on **March 19, 2009**.

And, as always, feel free

to give me a call (407-393-2900) or drop me an email (KDWebb@littler.com) if you would like more information on any of these events or are interested in becoming involved in the Social Committee.



Kimberly D. Webb is an associate with Littler Mendelson, P.C. She has been a member of the OCBA since 2002.



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There's an obvious sense of urgency associated with each dependency case. When a child is abused, abandoned, or neglected, an arsenal of professionals is ushered in to provide the child access to a myriad of services, including education, counseling, and health care. These services are common to almost every child in care. *Pro bono* Guardian ad Litem like **Ann Marie Gilden** work tirelessly to ensure the children they represent receive those services and aren't lost in the system.

In the most optimal of scenarios, parents diligently work with professionals to remedy problems and, when it's safe, are reunited with their children. In other instances,

children are adopted or enter into some form of long-term care arrangement with relatives or friends. However, in too many cases the pursuit of reunification with family or loved ones is no longer a feasible option. Often this means the youth will grow up in the foster care system and will transition into

"independent living," where they work toward a self-sufficient adulthood. Ms. Gilden, whose GAL work focuses primarily on these children, is determined to see them prepared for the adulthood they will soon face.

Older youth preparing to transition out of foster care often find themselves on the brink of triumphant success or grave failure. These teens are months away from their high school graduation, full-time employment, or first apartment. However, in addition to these common challenges faced by most youth, foster children on the independent living track are also confronted with the possibility of welfare dependency, lack of access to higher education, unemployment, homelessness, mental illness, and incarceration. Finding advice or a helping hand to avoid these situations

often isn't as simple as picking up the phone as it is for most teenagers; rather, foster children in independent living have to seek out the adults in their life willing to help.

While the Florida Statutes wisely provide a system of care for children age 13 to 23 to assist them in obtaining independence upon reaching age eighteen, foster youth are simultaneously restricted and assisted by the law. For instance, transitioning teens are provided a financial stipend and state college tuition vouchers but are not guaranteed a residence after age 18. Youth are provided with Medicaid, but they still face the challenge of finding a Medicaid provider to address their needs.

The statistics are bleak. Nationwide, one in five transitioning foster youth will become homeless at some point in their life after age 18.¹ Roughly 58 percent of transitioning foster youth receive a high school degree by age 19, compared to 87 percent of non-foster youth.² On average, less than three percent of children who "age out" of the foster care system earn a college degree by age 25.³

Without the tireless effort of the community and an intricate legal system involving judges, case managers, and *pro bono* Guardian ad Litem, transitioning youth would have to face these extraordinary challenges on their own. Fortunately, Orange County transitioning youth have dedicated GALs such as Ann Marie Gilden committed to being a part of this support system and assisting in averting these problems. Ms. Gilden knows such dilemmas first-hand. She has served as *pro bono* GAL for transitioning foster youth in Orange County for more than five years and, despite facing proverbial dead ends and seemingly insurmountable challenges, she has no plans to stop. "The problems and needs become greater as the kids get older," Ms. Gilden says. "Our greatest responsibility is to work with foster youth to help them transition into society."

With that central belief as her driving force, Ms. Gilden seeks every potential community resource in the pursuit of stability for her foster youth. She consults with attorneys of various practice areas to establish guardianships for developmentally disabled youth and reaches out to foster parents in hopes of extending a youth's stay despite a lack of funding. Ms. Gilden serves as a voice for transitioning youth at all judicial hearings and maintains constant contact with case management organizations to ensure her foster children receive maximum available services. If she feels there's more work to be done, Ms. Gilden doesn't hesitate to extend her judicial appointment as GAL. "These children need more voices. It's that simple," she explains.

continued page 8

Rick Gross, immediate past chair of The Florida Bar Business Law Section, presented an award of recognition



to The Honorable Renee A. Roche for her substantial contributions to the Orange County Business Court. The award was presented on behalf of the Florida Bar Business Law Section and the Orange County Bar Association's Business Law Committee at the OCBA's October luncheon.

Legal Aid Society News

continued from page 7

For transitioning foster youth, the stakes are high and opportunity is at risk. Overwhelmingly, foster youth yearn for the opportunity to begin adulthood on the same footing as their peers. They seek the opportunity to live up to their own expectations of success, become self-sufficient, and contribute to society. In Orange County, thanks to the assistance of dedicated individuals such as Ms. Gilden, success is in sight.

Submitted by **Bethanie Barber**, a Transitions Attorney at the Legal Aid Society. Ms. Barber is a new member of the OCBA.

¹Northwest Foster Care Alumni Study, Casey Family Programs, 1998.

² Courtney, M.E. & Dworsky, A. (2005). *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at age 19*. Chicago: Chapin Hall Center for Children.

³ National Census Bureau. "Educational Attainment in the United States: 2004." Accessed April 12, 2007: <http://www.census.gov>.

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Professionalism Committee ● Turn the Page... 2009: Committee ● The Saga Continues

Happy New Year to all OCBA members. Let us try to fulfill all our New Year's resolutions, including a renewal to our commitment to improve the level of professionalism in our practice.

Recapping OCBA Professionalism Committee activities in 2008 – we selected **Judge Emerson R. Thompson, Jr.** to be the first recipient of the James G. Glazebrook Memorial Bar Service Award, **Elizabeth McCausland** as the recipient of the Lawrence G. Mathews, Jr. Young Lawyer Professionalism Award, and **Counsel Wooten, Jr.** as the recipient of the William Trickle, Jr. Professionalism Award. These esteemed individuals were honored at the March 2008 OCBA Officer Installation Dinner.

These individuals are the standard bearers of the level of professionalism which we all can achieve. I encourage all OCBA members to advance the purpose of professionalism by volunteering to serve our community; by being mindful that our value as a profession is in some measure weighted by public opinion; and by considering that it is probably preferable to be able to focus on your clients' cases without worrying about having to "watch your back" for fear of retribution for your conduct. Enough with the aphorisms.

Throughout 2008 we worked on, and later in the

year finalized, the OCBA *Standards of Professionalism, Professional Courtesy and Courtroom Decorum* in an effort to "raise the bar" for professionalism in Orange County. In 2009, we shall continue the process to establish an informal peer review system through these established local professionalism standards. I want to thank OCBA past president **Gene Shipley**, current president **Tad Yates**, president-elect **Woody Rodriguez**, the rest of the OCBA Executive Council, and all OCBA members for their continued support in this endeavor.

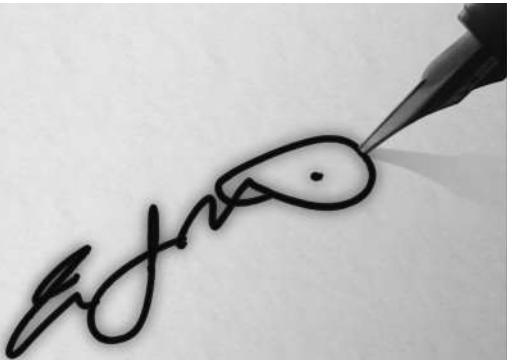
We hope to have selected the 2009 OCBA Professionalism Award recipients around the time this article is published. Special thanks to **Jules Cohen** for again chairing the OCBA Professionalism Award Subcommittee and as well to **Lee Bennett** and the Gray-Robinson firm for graciously hosting the subcommittee meetings in their conference room.

We will keep you posted on the 2009 Professionalism Awards and our progress in establishing informal peer review for Orange County. Until next time, everyone have a safe and prosperous month.

Submitted by Magistrate **Howard D. Friedman**, chair of the OCBA Professionalism Committee.



General Magistrate
Howard D. Friedman



DWKM&R
welcomes
a new
suit.

Dellecker Wilson King McKenna & Ruffier
is pleased to announce that
W. Doug Martin
has joined the firm
as an associate.



Doug received both his Bachelor of Science and Juris Doctor degrees from the University of Florida. His practice focuses on personal injury, medical malpractice and insurance litigation. Prior to joining DWKM&R, he worked as an associate at two prominent Orlando law firms.

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Appellate Practice Committee



The Wacky World of Appellate Costs

Is it possible for me to make the subject of appellate costs interesting? Probably not. And you should resist – and worry about yourself – if you indeed find yourself intrigued by that topic. You may want to check the top of your head to ensure that it isn't developing a point, the same point that I – and others of my ilk – have. It's a slippery slope. If you're not careful, before too long you'll find yourself eager to discuss arcane issues of appellate jurisdiction for fun, and one day you'll suddenly wonder why people always avoid you at cocktail parties.



John R. Hamilton

But can I scare you into thinking that you *need* to know some of the basic rules that govern the world of appellate costs? Maybe, at least if you ever venture into the appellate realm. The rules concerning the taxation of appellate costs are tricky and highly technical – and many of them are counter intuitive. As a consequence, practitioners frequently make mistakes. Sometimes those mistakes can be fixed; sometimes they can't. When they fall into the former category, a client may suffer (and the threat of malpractice could then rear its ugly head). But even when they fall into the latter category, the mistakes can nonetheless be embarrassing.

Is there a rule? Yes, and this, as always, is where you should start when confronted with any issue concerning appellate costs. It's rule 9.400(a) of the Florida Rules of Appellate Procedure. It's short. Read it. Know it. Follow it. Note in particular that appellate costs and appellate attorneys' fees are treated differently under the rule.¹

Where does one file a motion for ap-

pellate costs? The trial court. This is the most frequent mistake that lawyers make in this area; they file their motion for appellate costs in the wrong court.

As bizarre as it may seem, it is improper to file a motion for appellate costs in the appellate court. The motion is instead filed in the trial court, after the conclusion of the appeal.²

Who is entitled to recover appellate costs? Rule 9.400(a) is clear enough in providing that "[c]osts shall be taxed in favor of the prevailing party." But, in practice, it's not always quite so easy to identify the "prevailing party." The trial court must determine which

party prevailed on the significant issues at the appellate level, and there might well be a battle on that issue.³ It isn't true that *any* level of success by an appellant renders it the "prevailing party."⁴

When is the motion for appellate costs filed? The motion must be *served* no later than 30 days after the appellate court issues its mandate.⁵ That is the mistake that lawyers make with the second-highest level of frequency – and this is one that often can't be fixed. That deadline is jurisdictional. A trial court has no authority to award appellate costs pursuant to a motion served beyond that 30-day period. Moreover, because the deadline *is* jurisdictional, it is not subject to enlargement or waiver.⁶

One scenario in which this phenomenon frequently arises is when proceedings in the trial court continue for weeks, months, or even years after an appeal has been concluded. For example, the appellate court may reverse a summary judgment and remand for a trial – or the appellate court may conclude that a trial was tainted by reversible error and reverse for a new trial. At the conclusion of such a case in the trial

court, the prevailing party will often move to tax costs against the other party – and it will include in that request the costs incurred in connection with the long-concluded appeal in which it was also the prevailing party. At that point, however, it's too late; the prevailing party lost its ability to recover appellate costs by its failure to serve its motion for appellate costs within 30 days after the issuance of the appellate court's mandate. By the conclusion of the case, the trial court no longer has jurisdiction to tax those costs.

Can the trial court deny a timely motion to tax appellate costs? No, at least not properly. If the prevailing party in the appeal serves a timely motion for appellate costs, the trial court has no discretion to deny the motion.⁷ To be sure, rule 9.400(a) provides that the prevailing party in the appeal is entitled to recover appellate costs "unless the court orders otherwise." But the reference to "the court" in the rule is to the appellate court, not the trial court.⁸ Accordingly, if a nonprevailing party at the appellate level wants to avoid liability for the opposing party's appellate costs, it needs to file a motion with the appellate court asking for that relief. (And I wish you good luck in that effort.)

Can the trial court at least postpone the taxation of appellate costs? Again, not properly. A corollary of a trial court's lack of discretion to deny a timely motion to tax appellate costs is that a trial court also lacks the authority to postpone the taxation of appellate costs until the end of the case – or, indeed, to defer the taxation of those costs to any later point at all. The party entitled to recover appellate costs is, in fact, entitled to the entry of an *immediate* money judgment for those costs. It need not await anything further, and it need not be the ultimate prevailing party in the case.⁹

If your client is held liable for appellate costs, can you force the opposing party to repay them at the end of the case if your client is ultimately the prevailing party? No, at least not at the circuit court level under current law. The First District Court of Appeal has held that a party previously held liable for appellate costs cannot obtain a disgorgement or reimbursement of those costs when seeking to tax costs after becoming the ultimate prevailing party in the lawsuit.¹⁰ One decision from the Third District Court of Appeal contains dictum expressing disagreement with that view,¹¹ but the First District's decision so far remains the only reported case on point on this issue – and that decision is, of course, binding precedent on all circuit courts in the state unless and until either another district court or the Supreme Court of Florida reaches a contrary holding.

Is the trial court required to award the prevailing party all of the appellate costs that it requests? Of course not. The trial court's lack of discretion to deny a timely motion to tax appellate costs does not mean that a trial court is without discretion concerning either the amounts to award or the individual cost items to tax (or not tax) against the nonprevailing party in the appeal. On the contrary, a trial court retains broad discretion on those issues.¹²

What items are taxable? Rules 9.400(a) lists certain items of taxable costs.

Routine, minor items of taxable appellate costs include: filing fee for notice of appeal; record preparation fees; fees charged by the clerk to approve supersedeas bonds; and copying charges for copies of briefs and appendices actually filed with the appellate court. In a typical appeal, there are usually only two "big ticket" cost items: (1) the cost for trial and hearing transcripts; and (2) the premiums for supersedeas bonds.



Why are transcripts taxable appellate costs? With respect to transcript costs, rule 9.400(a) expressly enumerates "charges for preparation of the record" as among the appellate costs that are taxable under that rule. The prior version of that rule, rule 3.16 of the Florida Appellate Rules, was similarly worded; it provided "that reasonable costs for preparing the record may be taxed as costs in the case." The language of that prior rule was construed as "necessarily includ[ing] the cost of the reporter's transcribed notes of the trial which is specifically made a part of the record on appeal."¹³ Cases under the current rule are to the same effect. The cost of trial transcripts are regularly and routinely taxed as appellate costs in this state.¹⁴ Moreover, when transcripts are obtained and included in the record through the designation-to-reporter process outlined in rule 9.200(b), that rule expressly provides that the resulting cost is a taxable appellate cost.¹⁵

Are supersedeas bond premiums automatically taxable as a matter of right? Not necessarily. Although bond premiums are expressly listed in rule 9.400(a) as a taxable appellate cost, a trial court probably has the discretion to deny the taxation of a bond premium if the appellant obtained the bond without giving the appellee the opportunity to decline it.¹⁶ Additionally, a trial court could reduce the amount taxed for a bond premium if the increased amount

of the premium was due to delays occasioned by the appellant's requests for enlargement of time to file its briefs.¹⁷ And a trial court can deny the taxation of a bond premium altogether if it was not a real, out-of-pocket cost that the party incurred (but was instead merely a "paper transfer" of funds).¹⁸

Are judgments for appellate costs appealable? Well, not really – at least not in the strict sense of an "appeal."

A judgment for appellate costs is subject to immediate appellate review, but the procedure for obtaining that review is through a motion for review filed with the appellate court within 30 days after the rendition of the judgment for appellate costs.¹⁹ The 30-day filing deadline is jurisdictional, and it is not subject to a five-day mailing rule.²⁰

Can the judgment for appellate costs be stayed pending appellate review? Sure, if it's in proper form. A judgment for appellate costs is like any other money judgment – and it will be subject to the same rule governing stays pending review. The governing rule is rule 9.310(b)(1) of the Florida Rules of Appellate Procedure. Under that rule, a party seeking a stay of a pure money judgment can obtain a stay pending appellate review by posting a supersedeas bond for the amount of the judgment, plus twice the statutory rate of interest. When such a bond is posted, a stay is automatic. And a trial court has no discretion to increase or decrease the amount of that bond – or to grant a stay on any other terms.²¹

If a party erroneously seeks appellate review of a judgment for appellate costs through a notice of appeal rather than a motion for review, is that party precluded from obtaining review? Maybe. An appellate court certainly can (and arguably must) treat a notice of appeal as

continued page 12

Appellate Practice Committee

continued from page 11

the equivalent of a timely-filed motion for review if an appeal is erroneously filed from an order awarding appellate costs.²² But the First District Court of Appeal has, on at least one occasion, refused to do so.²³

What standard will the appellate court apply in reviewing the judgment for appellate courts? The familiar abuse-of-discretion standard of review.²⁴ The assessment of costs, even appellate costs, is largely discretionary with the trial court, and its determination will generally not be disturbed unless no reasonable jurist could reach the decision that the trial court reached.²⁵



Can law of the case be created by the appellate court's disposition of a motion for review of a judgment for appellate costs? Yes.²⁶ There may be long-term consequences to a motion for review beyond the mere determination of whether a judgment for appellate costs will remain intact. Be careful.

That's it, but not really. These are general rules and principles – the minimum that an attorney needs to know if he or she is confronted with the issue of appellate costs. You can safely learn these rules without fear of developing my pointy head. But I still don't recommend that you expect to be popular at cocktail parties if you try to discuss them. Trust me on that one.

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

Correction: Due to an OCBA staff communication error, the article "Law Firm Spotlight: Foley & Lardner Embraces *Pro Bono* with a Passion" published in the November 2008 issue of *The Briefs* was incorrectly attributed to John R. Hamilton. The article was provided by the Foley & Lardner firm. We apologize for the error and any inconvenience it may have caused.

¹The subject of appellate attorneys' fees will be addressed in a future article.

²See *Superior Protection, Inc v. Martinez*, 930 So. 2d 859, 860 (Fla. 2d DCA 2006); *Stearman v. Intergraph Corp.*, 585 So. 2d 466, 467-68 (Fla. 2d DCA 1991).

³See *Varveris v. Carbonell*, 785 So. 2d 576, 577 (Fla. 3d DCA 2001); *Mulato v. Mulato*, 734 So. 2d 477, (478 Fla. 4th DCA 1999).

⁴See, e.g., *North American Van Lines, Inc. v. Ferguson Transportation, Inc.*, 662 So. 2d 1275, 1276 (Fla. 4th DCA 1995) (appellant deemed prevailing party entitled to appellate costs when its appeal was successful in obtaining reversal of \$13,000,000 in punitive damages but unsuccessful in seeking reversal of \$1,300,000 award of compensatory damages); *Thaller v. Waterford Point Condo. Apartments, Inc.*, 437 So. 2d 248, 248 (Fla. 4th DCA 1983) (appellant not prevailing party on appeal because trial court affirmed on all points "with the exception of its computation of principal and interest due appellee").

⁵Note that the rule requires the motion to be "served," not "filed," within 30 days. Thus, rule 9.400(a) is one of the few rules that attaches jurisdictional significance to the date a document is served rather than the date the document is filed.

⁶See *Mulato v. Mulato*, 734 So. 2d 477, 478 (Fla. 4th DCA 1999).

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⁷ On the other hand, a trial court could potentially deny appellate costs if it concludes that a party's success at the appellate level was not based on the merits or under other circumstances in which the party cannot truly be characterized as the prevailing party. *See, e.g., Ariko v. Nicholson*, 632 So. 2d 174, 174 (Fla. 5th DCA 1994) (award of appellate costs quashed because new trial had been ordered as a result of destruction of court reporter's trial notes in a fire).⁸ *See Pellar v. Granger Asphalt Paving, Inc.*, 687 So. 2d 282, 284 (Fla. 1st DCA 1997); *American Medical Int'l, Inc. v. Scheller*, 484 So. 2d 593, 594 (Fla. 4th DCA 1985).

⁹ *See Centennial Mort., Inc. v. SG/SC, Ltd.* 864 So. 2d 1258, 1260 (Fla. 1st DCA 2004); *Newell v. Moore*, 819 So. 2d 846, 847 (Fla. 1st DCA 2002); *Florida Power & Light Co. v. Polackwich*, 705 So. 2d 23, 25 (Fla. 2d DCA 1997); *Di Teodoro v. Lazy Dolphin Development Co.*, 432 So. 2d 625, 626 (Fla. 3d DCA 1983); *Swan v. Wisdom*, 392 So. 2d 987, 987 (Fla. 5th DCA 1981).

¹⁰ *See Centennial Mort., Inc. v. SG/SC, Ltd.* 864 So. 2d 1258, 1260-61 (Fla. 1st DCA 2004).

¹¹ *See Higgs v. Klock*, 873 So. 2d 591, 592 n.3 (Fla. 3d DCA 2004), *review denied*, 886 So. 2d 227 (Fla. 2004).

¹² *See Pellar v. Granger Asphalt Paving, Inc.*, 687 So. 2d 282, 285 (Fla. 1st DCA 1997).

¹³ *Wood v. City of Jacksonville*, 248 So. 2d 176, 178 (Fla. 1st DCA 1971).

¹⁴ *See, e.g., Wood v. Walt Disney World Co.*, 405 So. 2d 275, 276 (Fla. 4th DCA 1981); *A.Z. v. State*, 404 So. 2d 386, 387-88 (Fla. 5th DCA 1981); *Akers v. Palm Beach Newspapers, Inc.*, 373 So. 2d 926, 927 (Fla. 4th DCA 1979); *see also* Philip J. Padovano, Florida Appellate Practice § 20.3 (2007-08 ed.).

¹⁵ *See* Fla. R. App. P. 9.200(b)(1).

¹⁶ *See Florida Power & Light Co. v. Polackwich*, 705 So. 2d 23, 26 (Fla. 2d DCA 1997). I suggest that attorneys representing appellees often do not give sufficient thought and attention to the question of whether to decline a supersedeas bond—or whether to explore the possibility of reaching an agreement with the appellant's counsel for an alternative method for securing the judgment pending appeal. Declining a bond may be especially prudent if an appellant is obviously solvent and the chances of a reversal seem particularly high. In my opinion, an appellee's counsel should not lightly or reflexively subject his or her client to the risk of liability for a supersedeas bond premium.

¹⁷ *See American Med. Int'l, Inc. v. Scheller*, 484 So. 2d 593, 594-95 (Fla. 4th DCA 1985).

¹⁸ *See Lone Star Industries, Inc. v. Liberty Mut. Ins. Co.*, 688 So. 2d 950, 951-52 (Fla. 3d DCA 1997) (appellee's claims department had its surety department post the supersedeas bonds), *review denied*, 698 So. 2d 839 (Fla. 1997).

¹⁹ *See* Fla. R. App. P. 9.400(c). There is an exception. If the judgment taxing appellate costs contains other matters that can properly be the subject of a separate, independent appeal (and they are in fact appealed), then the award of appellate costs can be raised as an additional point in that appeal. *See Specialty Restaurants Corp. v. Elliott*, 924 So. 2d 834, 838 (Fla. 2d DCA 2005); *Starcher v. Starcher*, 430 So. 2d 991, 993 (Fla. 4th DCA 1983).

²⁰ *See Bell v. U.S. Acquisition Co.*, 734 So. 2d 403, 412-13 (Fla. 1999).

²¹ These are the basic rules governing stays of pure money judgments. *See generally* Philip J. Padovano, Florida Appellate Practice § 12.4 (2007-08 ed.). The rules are slightly different in the Second District. *See Platt v. Russek*, 921 So. 2d 5, 7-8 (Fla. 2d DCA 2004). An exhaustive discussion of the law concerning stays pending appellate review is, of course, beyond the scope of this article.

²² *See Pellar v. Granger Asphalt Paving, Inc.*, 687 So. 2d 282, 284 (Fla. 1st DCA 1997); *see also* Fla. R. App. P. 9.040(c) ("[i]f a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought").

²³ *See Browning v. New Hope South*, 785 So. 2d 732, 733 (Fla. 1st DCA 2001) ("We decline to approve appellant's theory that the notice of appeal should be treated as a motion for review").

²⁴ *See Lone Star Industries, Inc. v. Liberty Mut. Ins. Co.*, 688 So. 2d 950, 952 (Fla. 3d DCA), *review denied*, 698 So. 2d 838 (Fla. 1997).

²⁵ *See General Cap. Corp. v. Tel Service Co., Inc.*, 239 So. 2d 134, 135-36 (Fla. 2d DCA), *cert. denied*, 240 So. 2d 815 (Fla. 1970); *see generally Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980).

²⁶ *See Borack v. Orovitz*, 963 So. 2d 802, 804 (Fla. 3d DCA 2007), *review denied*, 980 So. 2d 1070 (Fla. 2008).



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Legal Aid SocietyNEWS

● *What We Do...*

● *Change the World!* Donna Graf

Recently unemployed with nowhere else to turn, Sandra Infante arrived with her nephew “John” (not his real name) and tears in her eyes at the Legal Aid Society of the Orange County Bar Association, Inc. looking for help. Ms. Infante’s case was accepted for representation and approved for referral to a *pro bono* attorney. Not a moment too soon, as John needed to be enrolled in school and her apartment management office needed legal papers to prove John’s status as an additional family member on her lease.

Sandra Infante, a 53-year-old Orlando resident, lives with her 14-year-old nephew. Previously employed and earning \$35,228 per year, she tries to make ends meet from her meager household monthly income of \$835. Ms. Infante does not own a vehicle. She pays \$750 per month for her low-income housing apartment. Ms. Infante explains, “I do not want to apply for food coupons, my older daughter helps when she can, and we get by. I stretch it, you know?” She notes with confidence that “it will not be that way forever – I’m a student studying to be a medical transcriptionist so I can work from home and be self-sufficient.” Disposable income is not a reality; after deducting rent, \$85 remains for utilities, food, clothing, health care, and education expenses. There is no money for life’s basic necessities, let alone money for attorneys’ fees or litigation costs. John’s story is heartbreaking – he was 11 years old when his mother died. John’s father suffers from substance abuse problems and his whereabouts are unknown. He hasn’t been a part of John’s life. A few days prior to his mom’s death, John moved in for a short time with

his uncle in the Bronx. In March of 2007, John was relocated to Orlando. John had never even been in Florida and did not know his “Aunt Sandra” well. Ms. Infante was “next relative in line,” and although she had long passed the age when one has completed caring for minor children, she took John into her home and heart.

Ms. Infante’s eyes well with tears when she recalls that “when there was no one else to turn to – Jessica Parker became the family that we needed and our lives are changed every day as a result of her love and caring.”

Jessica Parker is a commercial real estate lawyer with the law firm of Baker Hostetler, a national law firm with offices in Orlando. In law school, Ms. Parker knew she wanted to be a corporate attorney and chose the legal profession as her vehicle to eliminate poverty in her life. Ms. Parker wanted to turn the financial challenges of life into something positive and help similarly situated individuals.

When asked why a commercial real estate lawyer would handle a *pro bono* custody application, Ms. Parker responded “Because, this work is where my heart is.” Diminishing her accomplishments, she proudly speaks about her role with the Girl Scouts as the President of the Board of Directors and five-year volunteer to the economically challenged Girl Scout group that Baker Hostetler supports. “More than anything I wanted to inspire children. Money is one thing, but there is nothing worse than thinking you cannot break out of your cycle of poverty.” With a light in her smile, Ms. Parker adds, “I gave them hope that they, too, could make it in an economically challenged world.”

The Baker Hostetler firm encourages

pro bono work by its attorneys and advocates carrying forth a program that started in the last two years. The attorneys get billable credit hours, approved by the managing partner, allowing a reasonable number of hours over the inspirational goal of 20 hours per year. Young lawyers are encouraged to take *pro bono* cases by the firm and not pay in lieu of service (buy-outs), which raises litigation experience earned by attorneys.

Ms. Parker states, “In a perfect world, we would all be helping others and Legal Aid would, therefore, not be necessary. The Legal Aid Society of the Orange County Bar Association, Inc. does a great job of being the doorkeeper and funneling the eligible cases out to *pro bono* attorneys.”

Ms. Parker’s life goal is to live the Girl Scout Oath. She knows it verbatim, “On my honor, I will try to serve God and my country, to help people at all times and to live by the Girl Scout Law.” Jessica Parker walks the walk! Ms. Parker appreciates the role of the attorney in a civilized society and knows that she has changed the lives of Ms. Infante and John. Access to justice needs to be for the indigent person equal to that of the millionaire. The Amendments to Rules Regulating the Florida Bar, 603 So.2d 501,502 (Fla. 1993) states: “Justice is not truly justice if only the rich can afford counsel and gain access to the courts.” Access to justice was provided in this instance, because of Ms. Parker.

The *pro bono* case is resolved. Sandra Infante has legal temporary custody of



Jessica Parker, an attorney with Baker Hostetler, and Sandra Infante

100 East Robinson Street, Orlando, Florida 32801; (407) 841-8310.

Donna Graf, Manager of Development at the Legal Aid Society, is a member of the Florida Bar Standing Committee on Pro Bono. She has recently joined the OCBA.

John. Ms. Parker has kept an adult and a child from being homeless; she has ensured that John is not in the foster system.

Ms. Infante completed our interview with an inspiring statement. When asked if she could tell other attorneys how important it is to help people such as herself, Ms. Infante eloquently responded, "I would tell them we may not be so educated, or know how to express ourselves, but if you listen with your heart, you can feel our need." *Pro bono* attorney Jessica Parker listened with her heart and changed the world along the way.

For more information about how you can donate money or volunteer time to assist the Legal Aid Society, contact: Legal Aid Society of the Orange County Bar Association, Inc.,



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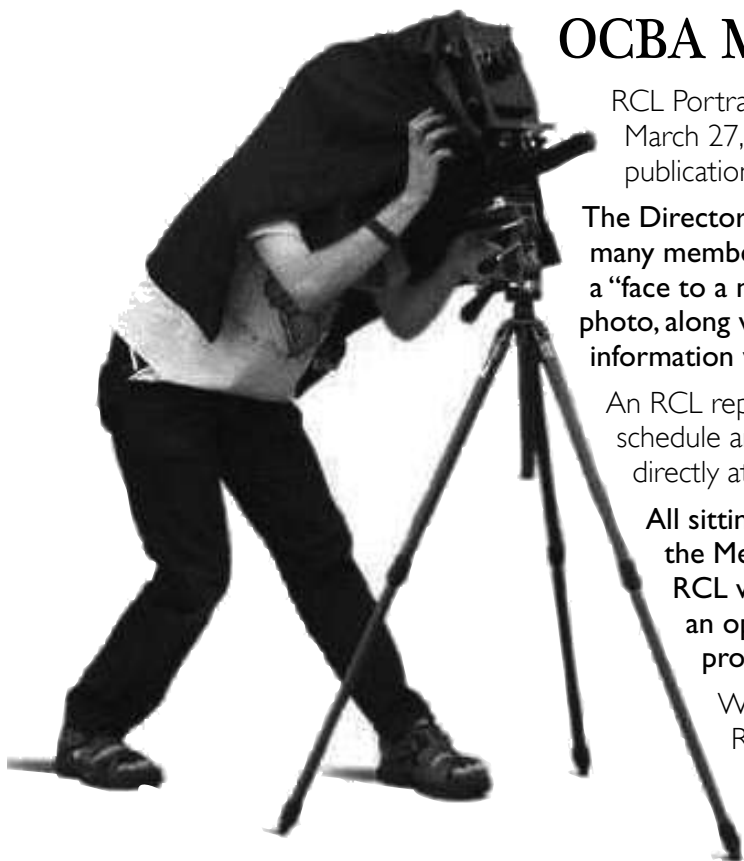
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We look forward to seeing you at the OCBA Center in March.

(For professional photos, appropriate dress is suggested. Ladies: a bold or bright colored long sleeved outfit. Gentlemen: a dark jacket and tie.)

Criminal Law Committee ● Handling an Immunity Claim under the New Self Defense Laws

In 2005 the Legislature passed SB 436 which substantially revised Chapter 776 of the Florida Statutes, and changed forever the self-defense laws of the State of Florida. Prior to that legislation, Florida followed the rule that before a person could use deadly force, they had to retreat if retreat was reasonably possible without increasing the risk of death or great bodily harm to themselves. Of course, there were exceptions - the primary one being the "castle doctrine" where a person in their own home or business did not have a duty to retreat except from a co-occupant. But, all in all, retreat was the rule of law in this State.

The problem with the retreat rule was that it often led to huge problems of practicality for the person using self-defense. For one thing - there is no way to outrun a bullet, and if an attacker is armed, the person getting off the first shot is often the one who survives. Combine that with a dark house, or kids in the upstairs bedroom,



or the myriad of other situations that can happen when dealing with self-defense - retreating isn't normally the best option - and forcing someone to choose retreat versus facing a lengthy mandatory minimum prison sentence is not a wonderful place to be - assuming you're a victim, or are an ordinary citizen just trying to defend yourself, your wife, your kids, or your home.

The Legislature saw the problem and decided to do something about it. In SB 436 they virtually gutted the retreat rule in dealing with any forcible felony and finally allowed Floridians to "stand their ground," even to the extent of using deadly force if they were the victim, or about to be the victim, of a serious crime. While this article is not about the full panoply of what you can or cannot do in "standing your ground," it is about a completely new subsection to Chapter 776 that was added by the new law: F.S. 776.032 - the section on immunity.

Subsection (1) of the immunity statute says:

a person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer As used in this subsection, the term "criminal prosecution" includes

arresting, detaining in custody, and charging or prosecuting the defendant.

While there are few cases that interpret the new self defense statutes, *Peterson v. State*, 983 So. 2d 27, 29 (Fla. 1st DCA 2008), is the first and only one that has truly confronted the meaning of the section on immunity. In *Peterson*, the First District Court of Appeal confirmed what the legislative history of the act had already made clear, that the immunity granted by F.S. 776.032 was a "true immunity" and not merely an affirmative defense. And more importantly, *Peterson* held that when a defendant raised an immunity issue prior to trial - the trial court could not just treat the motion as a (c)(4) motion,¹ or even a motion for summary judgment - but had to decide the issue based upon a "preponderance of evidence" standard the same as in a motion to suppress a confession.

Now, some attorneys have had a problem with *Peterson* because the appellate court mentioned the fact that the trial court had placed the burden on the defendant to show entitlement to immunity by a preponderance, and found the trial court "did what was required." If that's really what the First District meant, then the opinion makes absolutely no sense when it later states, with approval, that the trial court imposed the same burden on the parties as in a motion challenging the voluntariness of a confession. That's because the defendant's burden when challenging a confession as involuntary is simply the burden of "going forward" by establishing a prima facie claim - and then the burden of proof completely shifts to the State to establish the admissibility "by a preponderance" *Wiley v. State*, 427 So. 2d 283, 285 (Fla. 1st DCA 1983):

When a criminal defendant alleges that inculpatory statements made by him were involuntary, the burden is on the State to prove that they were voluntary. The trial court must determine that the statements were voluntary before allowing the jury to hear them. However, the trial court need only find by a preponderance of the evidence that they were voluntarily given. (citations omitted)²

With these cases in mind, the starting place for understanding what the First District really meant in *Peterson* on the immunity issue is found in the case of *Kastigar v. United States*, 406 U.S. 441, 460 (1972). There, interpreting an immunity claim in light of the Fifth Amendment, the United States Supreme Court set the stage for all subse-



Jon H.
Gutmacher

quent interpretations of how an immunity issue would be handled, and held:

Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence. . . . This burden of proof, which we reaffirm as appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.

The *Kastigar* decision is followed in Florida, and is succinctly stated in the case of *Zile v. State*, 710 So. 2d 729, 733 (Fla. 4th DCA 1998), where the Fourth District stated:

However, the Supreme Court did recognize that the government has the burden, faced with an immunity claim, of showing that its evidence is not tainted and comes from a legitimate independent source, adding: This burden of proof, which we reaffirm as appropriate, is not limited to a negation or taint; rather, it imposes on the prosecution

the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.

While the immunity in the self defense statute is not based on the Fifth Amendment, still, the procedure followed is virtually the same. However, to understand how the procedure of immunity really works in non-Fifth Amendment cases, the best place to look are its counterparts in the “qualified immunity” of civil rights cases, and those dealing with sovereign immunity under the federal Foreign Sovereign Immunity Act of 1976 (28 U.S.C §1602). In explaining the procedure and burdens involved in a sovereign immunity issue the federal Fifth Circuit Court of Appeals made the process very clear:

And, our analysis must also be guided by the well-established principle that, although a party claiming FSIA immunity retains the ultimate burden of persuasion on immunity, it need only present a prima facie case that it is a foreign state; and, if it does, the burden shifts to the party opposing immunity to present evidence that one of the exceptions to immunity applies.³

Likewise, suits brought under the federal civil rights statutes (42 USC 1983, etc.) grant a defendant “qualified immunity” from suit under an almost identical procedure as

continued page 19

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Election of Officers and Members
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The following positions are open for election:

- **Vice President / President Elect** (1-year term)•
- **Treasurer** (1-year term)•
- **Secretary** (1-year term)•
- **Three (3) Executive Council Seats** (3-year term)•



Election of Trustees of the
Board of Trustees of the
Legal Aid Society of the OCBA, Inc.

The following position is open for election:

- **One (1) seat on the Board of Trustees;**•
the elected Trustee will serve from
June 1, 2009 through May 31, 2012



Election of At-Large Members of the
Board of Directors of
The Young Lawyers Section of the OCBA

The following positions are open for election:

- **Five (5) At-Large Members**•
of the Board of Directors (2-year term)



Anyone interested in running for any of these positions should file a written petition at the Association office, 880 N. Orange Ave., Orlando, FL 32801, signed by not less than five (5) members of the Association. Blank petitions are available at the Association office and on the website at www.orangecountybar.org.

Petitions must be received no later than 5:00 p.m. on February 5, 2009. Petitions may be mailed or couriered to the Association office at the above address.

Nominees must endorse their written acceptance on the petition and many NOT accept nominations for more than one (1) office.

No nomination for the office of Vice President shall be accepted unless the nominee has served on the Executive Council at least one (1) year.

Thereafter, the nominating petitions will be canvassed and tabulated by the President and Secretary, who shall thereupon certify the names of all members who have been properly nominated.

Voting shall be by secret ballot mailed to each member of the Association on or before March 2, 2009.

Voted ballots must be returned to the Association office no later than 5:00 p.m. on March 26, 2009.

New Committee!

The OCBA announces the formation
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On March 4, 2009,

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presented by

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For more information about the seminar
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The Second Annual Grand Dame event for women who have been practicing for 20 years or more was held in October at Dubsdread. Shown are 5th DCA Judge Jackie Griffin, newly appointed U.S. Federal Judge Mary Scriven and Chief Federal Judge Ann Conway, event organizers Marybeth McDonald and Mary Ann Morgan, and Judge Sally Kest.

Polly McIntyre, Ava Tunstall and Stacy Smith enjoying Grand Dame festivities.



Criminal Law Committee

continued from page 17

in *Kastigar*, *supra*, and the Foreign Sovereign Immunity Act cases. In the area of civil rights, the cases correspondingly recognize the defense as one being an “immunity from suit” rather than a mere defense from liability.⁴ And, like other immunity types of cases, these cases hold that once the government actor claiming qualified immunity presents a *prima facie* showing that he or she falls within the protected class, the burden completely shifts to the party seeking to overcome the qualified immunity defense, to show it does not exist.⁵

Thus, what is important to understand about raising immunity under *F.S.*

776.032, and dealing with a closer analysis of the *Peterson* case is that the case law makes it clear that the procedure and burdens in raising this immunity defense are exactly the same as in a motion to suppress a confession. Once you understand that, it becomes easy to know how to handle it.

Jon H. Gutmacher, author of the book *Florida Firearms – Law, Use & Ownership* now in its sixth edition, is an NRA Certified Firearms Instructor, former prosecutor, and former police legal advisor. He has been a member of the OCBA since 1995.

¹Fla.R.Cr.P. 3.190(c)(4).

² *Accord*, *Roman v. State*, 475 So. 2d 1228, 1232 (Fla. 1985); *Houck v. State*, 421 So. 2d 1113, 1116 (Fla. 1st DCA 1982)

³*Kelly v. Syria Shell Petroleum Dev.*, 213 F.3d 841, 847

(5th Cir. 2000). *Accord*, *Enahoro v. Abubakar*, 408 F.3d 877, 880 & 882 (7th Cir. 2005); *Int'l Ins. Co. v. Seguro*, 293 F.3d 392, 397 (7th Cir. 2002); *Keller v. Central Bank of Nigeria*, 277 F.3d 811, 815 (6th Cir. 2002).

⁴*Gentile v. Bauder*, 718 So. 2d 781, 784 (Fla. 1998); *Tucker v. Resha*, 648 So. 2d 1187, 1189 (Fla. 1994); *Walsingham v. Dockery*, 671 So. 2d 166, 171 (Fla. 1st DCA 1996); *Griffin Industries, Inc. v. Irvin*, 496 F.3d 1189, 1200 (11th Cir. 2007).

⁵*Gentile v. Bauder*, *supra*; *Brescher v. Dean*, 696 So. 2d 370, 373 (Fla. 4th DCA 1997); *Dahly v. Dept. Children & Family Services*, 876 So. 2d 1245, 1250 (Fla. 2nd DCA 2004); *Junior v. Reed*, 693 So. 2d 586, 590 (Fla. 1st DCA 1997); *Walsingham v. Dockery*, *supra*; *Hathaway v. Bazany*, 507 F.3d 312, 319 (5th Cir. 2007); *Henry v. Purnell*, 501 F.3d 374, 377 (4th Cir. 2007); *Griffin Industries, Inc. v. Irvin*, *supra* at 1199; *Camuglia v. City of Albuquerque*, 448 F.3d 1214, 1218 (10th Cir. 2006); *Jarriett v. Wilson*, 414 F.3d 634 (6th Cir. 2005).



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OCBA and Local Voluntary Bars Joint Happy Hour, November 2008



Judicial Assistants and
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October 2008



LDDKR Businesswomen's
Networking Reception
October 2008



He who rejects change is the architect of decay. The only human institution which rejects progress is the cemetery.

~ Harold Wilson, United Kingdom Prime Minister, 1964-70, 1974-76

Change. A fitting theme for the turn of any year, as Father Time passes his anachronistic gold pocket watch to the nascent YouTube-watching, iPod-listening babe of the New Year. This year, of course, the theme of Change is particularly prevalent. Coming off of a year when we lucky battleground Floridians were treated to endless commercials pitting “Change we can believe in” versus “Change is coming,” we are now finally at a place where the old divisiveness is behind us – and, likely, the new divisiveness lies ahead. Who knows, though – we can always hope, *n’est pas*?

Of course, the now done ’08 elections resulted in some changes at the local level as well. One thing that was a constant, however, was the raw political might of the OCBA! How so? **Lawson Lamar, Lydia Gardner, Alan Grayson and Dean Cannon** – they all have at least two things in common: They all won their elections and they are all members of the OCBA. Coincidence? I think not!

Also, continuing “Hearsay” boldly going into political waters where other columnists fear to tread, it is noteworthy that another OCBA’er, **Sarah “Supafan” Rumpf** took her usual zeal for all things Orange and Blue and converted it to Red, White & Blue, guiding our State Attorney Lamar’s campaign into one that took the prize for most unique campaign flier – one with propellers. Those of you who missed the campaign ad in the sky need to take a cue from Jack Korkhiemer and “keep looking up.” Nicely done, Lady Sarah.

Outside of politics but inside our OCBA world, the Change theme continues. One area where it was on

full display was the first ever Legal Aid Society Breakfast of Champions. Anytime there is a “first,” it automatically qualifies as change. This event, however, was genuine change – and genuine period. The LAS we are all members of (yes, be you a proud financial contributor or an active advocate – or both – as an OCBA’er you are an LAS’er too!) shed its normal law-firm-for-good skin and put on its new charity-for-good outfit. And, based upon the 400-person breakfast hosted by Legal Aid in November, the new clothes fit, and fit well. Visit the website to see the great video created for the breakfast (www.legalaid-ocba.org), but missing the event itself means not seeing the testimonials of clients Joe the Principal and Clerk Lydia’s human resources dynamo, **Betty Jackson**. Both were amazing people whose stories made clear that the best work we do as attorneys is work that we will never be paid for. Kudos to **Jack “Hawai’i Five-O” Lord, Jr., Bill “the U” Umansky, and Glenn “John Quincy who?” Adams**, our trio of charity-first board members who, together with new LAS development director **Donna Graf**, organized and hosted this great event. If you missed it, a reprise is likely next year, although who knows what changes may yet be in store?

Another Change – this one at the ABA. You know, the national organization that tries to match the coolness of the OCBA, but on a much larger scale? OK, well that may never happen, but it will come closer now that **Suzanne “Go Duke” Gilbert** has been elected a Delegate-at-Large to the ABA House of Del-

egates and appointed to the World Justice Project Commission. In the symbiotic way of such things, this is good news for Suzanne – and better news for us since we will have a voice for many years to come for whatever change we seek to come our way from Washington, at least on the bar level. While we’re at the land of the + (ampersands were, apparently sooo 20th century), Kudos goes out to H+K’s **Bill Wilson** who was elected

chair of the Central Florida United Way Fund. United we stand, with Bill leading the Way!

The venue was certainly changed regarding the ultra-successful OCBA Social Committee’s Joint Happy Hour, where the OCBA was joined by each of its sister voluntary bar

organizations to make for one fun event. The new venue was the cool new Pizza + More place that has taken over the Church Street spot where Crackers used to be. (And yes, if you remember Crackers, you are entitled to all the stories you want along the lines of “I remember when we needed to do research with books! And update the research with pocket parts!”)

Anyhow, research was clearly a long way from the minds of the lawyers – although maybe it shouldn’t have been since **Westlaw** was a major sponsor of the event. And what a fun event it was. While the traditional potent potables were ever-present, the unique features were the non-stop gourmet pizza and the classic brick setting that really gave the event a not-your-average-happy-hour feel. And the kicker – it was also a fundraiser for charity, collecting over 300 food items and \$300



Nicholas A. Shannin

for The Destiny Foundation. A great cause and a great time – way to go to each of the participating Bars. The thanks should go to Lowndes Drosdick’s **Jacquelynn** “J-Square” **Jordan**, who chaired the event, aided by social chair **Kim Webb** 2.0 – and did one heck of a job! If you missed it, the social committee strikes again this month, this time at the always anticipated **Winter Wine and Cheese** social, to be held on **January 29, 2009**. Look to your bar emails and fliers for more info on this ever popular winter event, or email Kim Webb at kwebb@littler.com.

Separated at Birth: Is it just me, or do you also see **Wiley** “I brake for roadrunners” **Boston** whenever the



fun Sonic-loving couple start their banter about their Sonic fare? Now my question is this:

Which OCBA member most resembles the wife character on these same commercials? Send in your suggestions to me at the email address below, and maybe your friend will see her name in the big print in March!

But back to our theme to ring in the New Year: Change. Quoth Sheryl “Lance Who?” Crow, “A Change Will Do You Good.” Change has come to America, to Orange County, to our Legal Aid Society and, perhaps, to us all. As we start this

new year, perhaps we should heed the wisdom of The Right Honourable Harold Wilson and invite the prospect of change for ourselves as well. One thing not to change, though, is the willingness to send me information about you, your friends, or those who were your friends before you sent me the scoop, so that those tidbits can appear here in future columns. Please send them to nshannin@floridalawonline.com. So, enjoy the changes even if it isn’t of the seasons, and we’ll see you in February!

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



The FBA Orlando Chapter held its annual State of the District Luncheon in October. Chief Judge Anne C. Conway (above) delivered her first State of the District address, and William Suter, Clerk



of the U.S. Supreme Court (right), was the guest speaker. Richard Dellinger (left), incoming chapter president, shared his vision for the coming year.





YLS *on the move*

Ring out the Old, Ring in the New!

The past few months have seen the Young Lawyers busy with everything from golf tournaments to luncheons to jazz festivals, and the upcoming winter season is looking to be just as hectic. I have to admit that the holiday season is one of my favorite times of year, and I can only hope that I can keep up with my overloaded calendar of celebrations and charitable activities!

It's been an invigorating election season and, back in October, YLS was pleased to welcome to its luncheon several candidates from local races who were gracious enough to share with us their visions for the future of this community, including several candidates for the Florida House of Representatives, Orange County Property Appraiser, and Orange County Tax Collector. It is always a great honor to welcome such guests, and we look forward to all of our newly elected and re-elected officials serving successful terms.

On Friday, October 17, the YLS hosted a **Happy Hour** at Ember – which was, as always, a smashing success. This gorgeous new restaurant and bar was a great location for us to gather together and toast the end of a long week. Many thanks to **Kristen Cox** and **Melanie Shoemaker** for their efforts in organizing this event, which had a huge turnout, including several students from Barry University School of Law.

On Saturday, October 18, the YLS



hosted the annual **Dog Day Afternoon** at the large pavilion in Fleet Peeples Park near Baldwin Park. According to YLS President **Chelsie Roberts**,

it was a beautiful day and a lot of fun to see everyone's kids (two-legged and four-legged)! As you can see from everyone had

the photos, a great time. **Kristen Cox** and **Mike Caborn** were responsible for putting this event together, and a big thank you goes out to those two.

The YLS is very grateful to the law firm of **Dellecker, Wilson, King, McKenna and Ruffier** and **Tony Sos** for organizing and hosting a hospitality reception just before the **College Park JazzFest** on November 8, 2008.



Bridget Heffernan
Labutta

We are also grateful to **Jonathan Stimler** and **Taylor Kessel** for organizing this year's **Gator Bus Trip** to Gainesville

on November 15 to see UF play South Carolina.

The **Orange County Teach In** took place on Wednesday, November 19. We owe a big thank you to **Melanie Shoemaker** for ensuring our members' attendance at that event, which involved members going into local classrooms to share with students experiences about career choices, goal-setting, academic preparation, and anything else to help expand the horizons of today's children.

The upcoming holiday season is the perfect time to give back to your local community, and YLS is pleased to be a part of several charitable endeavors this year, including the following two events:

Seniors First is a clothing drive to benefit senior citizens, running from now until the end of year. YLS asks

you to consider donating some of your gently used clothing to those individuals who do not have enough to wear through this winter season. All you need to do is fill a bag with donated clothes and contact

Allison Imber at aimber@addmg.com to arrange pick up or drop off. Each donation of something warm and fuzzy comes with a free warm and fuzzy feeling! Please



also contact Allison if you have any questions, or if you want to help organize the collection of multiple donations from your single office.

Holidays in January is one big party, currently scheduled for **January 15, 2009**

(location to be determined – check out your upcoming YLS email blasts for more info!). We are going to have a pizza party and hand out presents for the children who

November's Gator Bus Trip

attend the Downtown and Parramore Boys & Girls Club. Gift donations for children aged 5-10 will be collected at the January luncheon – so come prepared! Please contact **Molly Young** at myoung@bellroperlaw.com with any questions.

Looking ahead to the New Year, look for information about the **2009 Evening with the Judiciary** reception, which will be held in February. Further details will be in upcoming YLS email blasts, on the OCBA web site, and in February's *The Briefs*. For more information, contact **Kim Healy** at khealy@kdbzlaw.com or **Melanie Andre** at MFA@aswmpa.com.

The Florida Bar Young Lawyers Divisions' Affiliate Outreach Conference will take place **January 23-24, 2009** at the Orlando Hard Rock Hotel. This event draws young lawyers and law students from across the state together to apply for grant money, compete for YLD awards and network at one of Orlando's most popular attractions! Highlights include Friday night's dinner at the Hard Rock Live Café and Saturday's trip to Islands of Adventure after the grant and awards program. Please contact **Chelsie Roberts**, croberts@fordharrison.com, for more information.

In conjunction with the YLD AOC, we will be hosting our January **Happy Hour** at **Jimmy Buffett's Margaritaville** at Universal CityWalk on **January 22, 2009 at 5:30 p.m.** We hope to see you there!

The YLS **January Luncheon** will be held on **January 15, 2009**, and the **February Luncheon** will be held on **February 19, 2009**. Join us at the Citrus Club at 11:45 a.m. Email your RSVP to ocbayls@gmail.com. The cost is \$18 if you RSVP on or before January 9 and February 13, respectively, or \$20 at the door; \$10 for sole practitioners, law students and government attorneys and judges.

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.

Attorneys from LDDKR, in collaboration with Ferrell Wealth Management, took part in the Habitat for Humanity of Greater Orlando Team Build in October. Among the participants were firm attorneys Matt Brenner, Quino Martinez, Jamie Walson and Kim Hosley.

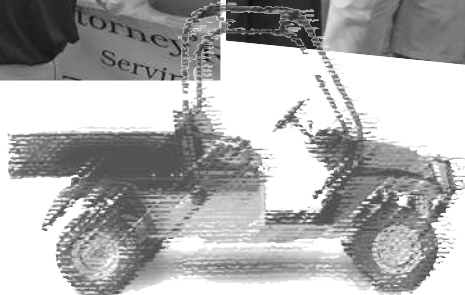




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Side Bar



Jessica K. Hew

Although it's a busy holiday season with a slumped economy, the legal community has continued striving to help the community at large through these challenging times. Kudos to the law firms who have opted to donate this year in lieu of holiday parties. Thank you to those of you who have donated to the many "adopt-

a-family" or toy donation causes. And, an even bigger thank you to those of you who are volunteering your most valuable time to perform *pro bono* services, including to the **OCBA's Legal Aid Society**. As a lawyer, you are the only ones who can perform these services. I am proud to be a member of this organization, as it has members like you!

Our fellow legal organizations are also working hard in the community. Here's a run down of the latest and greatest news.

The **Central Florida Gay and Lesbian Law Association** (CFGALLA) will be sponsoring the Central Florida Diversity Picnic on February 28, 2009 at Stetson University College of Law, Tampa Law Center. All minority law school students from all Florida law schools are invited to attend. The event will allow law students from diverse backgrounds an opportunity to meet and begin to establish mentoring relationships with attorneys and members of the judiciary from Central Florida. For more information, contact Tony Cabassa at lcabassa@tsg-law.com. The organization also recently participated in the "Peaceful No on 2 Protest."

The **Central Florida Paralegal Association, Inc.** (CFPA) hosts monthly lunches at three locations: Winter Park/Maitland (2nd Thursday of the month), Downtown Orlando (2nd Wednesday of the month), and Altamonte Springs (final Friday of the month.) CFPA hosts monthly Membership Mixers/Happy Hours the 3rd Thursday of the month. For more information on any and all of these events, please visit the CFPA website at www.cfpainc.org.

The **Federal Bar Association** (FBA) welcomed the newest United States District Judge to the Orlando Division – Judge Mary Scriven. An investiture ceremony was held in Tampa in November. Judge Scriven was previously a magistrate with the Tampa Division of the Court,

serving since 1997. We welcome Judge Scriven to our legal community!

The **Hispanic Bar Association of Central Florida** (HBA) announces that its 2009 Installation Dinner will be held on Saturday, January 17, 2009, at the Disney's Yacht & Beach Club Convention Center and will include a fabulous dinner, entertainment, and after dinner dancing. Francisco R. Angones, Esq. will be the guest speaker. Please contact cduque@duquelawfirm.com for sponsorship opportunities or to RSVP.

The **South Asian Bar Association** (SABA), in conjunction with the OCBA Legal Aid Society and the Hindu Society of Central Florida, recently presented the *Seminar on Domestic Violence Awareness & Impact of Immigration Law on South Asian Victims of Violence*. Speakers included domestic violence attorney Amy Beauchaine, immigration attorney Charles Conroy, and LAS attorney Kavita Sookrajah.

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

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

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Presentation Skills *The Proper Use of Notes During Trial* for Lawyers

How many notes do you use during trial?

It's a delicate balancing act. Too few notes, and you run the risk of forgetting to address an important element of your case. Too many notes, and you risk sounding scripted.

Here are a couple of quick tips for improving your use of notes during trial.

When Speaking Directly to the Jury

The importance of eye contact in the courtroom can't be overstated. The visible (sometimes *barely* visible) reactions of your jurors can help you decide whether or not to pursue an argument, whether to follow up on a line of questioning, and whether you need to return to a line of questioning to clear up potential misunderstandings. You'll need to pick up on the small non-verbal clues that they're sending you, and you can't do that if your head is buried in your notes. Are they telling you to speed up? To slow down? Are they confused? Bored? Do they need part of the testimony repeated? If you don't look at them and read those clues, you'll never know.

Make sure that you're making eye contact with the person you want to persuade. Since you're trying to persuade the jurors, rather than your legal pad, try to minimize how much time you spend looking at your notes.

When Speaking to a Witness

Jurors take their clues from you about how they should treat witnesses. If you act like a witness is important, jurors are more likely to think the witness is important. If you act as if the witness's testimony doesn't matter, they're more likely to dismiss what he says, regardless of its actual importance.

When you look at your notes instead of making eye contact with the witness, it's not only rude, it sends a message that you don't care what he has to say and that his answers don't matter. To avoid sending the wrong message to your jury,

look up from your notes and make eye contact with the witness before asking your question, and finish listening to his answer before you look down at your notes for your next question. You can even hold eye contact with the witness for an additional moment after he finishes answering to show that you're paying close attention to what he's saying and encourage the jury to pay more attention too. Just don't stare at him because it will make him feel uncomfortable and he'll look uneasy on the stand.

Minimizing Your Notes

It's okay to write out your arguments or questions word-for-word when you're preparing for trial so that you know what you want to accomplish. But don't make the mistake of bringing those scripts up to the lectern. Those notes will become a mental crutch, and your eyes will never leave the page.

Anyone can read from a script. With a well-scripted direct or cross-examination, you could pick someone off the street, send him into court with the script, and let him conduct the examination. He'd do fine, right up until the point when one of the witness's answers went off-script. Then he'd be completely lost and would have no idea what to do next.

Unlike trials on TV or in the movies, **real** trials don't stick to a script. Trial lawyers who depend on scripted examinations don't always react very well when the unexpected happens. That's why the fewer notes you bring to the lectern, the more freedom you enjoy.

When preparing the notes that you'll bring to court, instead of writing out a

word-for-word script, write down only what you need. Rather than full sentences, use brief phrases or single words. Besides, when you're in the heat of trial, your eyes won't easily focus on full sentences like "Mrs. Johnson, would you please tell us how you know the defendant?" All you'll really need is a quick reminder, like "RELATIONSHIP?" or "KNOWS DEFENDANT?" to prompt the correct question.

Make it Easy on the Eyes

Finally, if you want to minimize your time spent looking at the page and maximize your eye contact with the jury, it will help if your notes are easy to read. To reduce how much time you need to look at the page, don't rely on your chicken scratch handwriting. Instead, type up your notes (preferably in 18pt or 24pt type) with a simple sans serif font. You'll be able to glance down at your notes for an instant, absorb the idea, and then immediately return to making eye contact with your jurors or your witness.

Make an extra effort to improve your use of notes during trial, and you'll immediately reap the benefits of improved eye contact and deeper connections to your audience. With a little practice and preparation, the jurors won't even notice your use of notes; they'll just focus on the strength of your case!

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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.

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

In last month's column, we discussed the fact that if you can't measure your marketing activities, you can't manage them. It's a cliché, we know, but it's one that's worth repeating in this case. We offered the following form as a spreadsheet you could use to measure your level of marketing activity and your marketing success (we define success as gaining new, qualified clients). Below the form, we explain what all of the key indicators mean. We've narrowed it down to the eight most important ones for marketing purposes. To improve your marketing, take a look at the form below and then read through the following explanations.

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



Mark Powers



Shawn McNalis

1. The total number of marketing activities occurring on a monthly basis:

The math here is very simple: generally the more marketing contacts you make, the more referrals you'll get. We stand on our recommendation of three marketing contacts a week, which will amount to well over a hundred marketing contacts a year. When this number goes up, expect to see an increase in the number of new clients down the line. There is usually a lag time between the marketing event and the referrals that will come from it. Unfortunately, the reverse is true when you slow down your marketing efforts.

2. What percentage of your new clients are referred by past and present clients?

This is a statistic that shows how closely related customer service is to marketing. In fact, we believe delivering a high level of customer service *is* marketing. If you want to know how your clients feel about the service they receive from your office, look at the spreadsheet to determine the number of

referrals they send. Compare this number with the overall number of referrals sent to figure your percentage. With a few exceptions, for most practice areas, having past and present clients refer new business means one thing: they were more than satisfied with the level of care they were given. They show their approval by telling others. An attorney in South Carolina that we've worked with recently boasts a client satisfaction rate in the high nineties (they survey their clients religiously) and not surprisingly, receive a huge number of client referrals.

If you want to fine-tune your marketing, without ever leaving the office, focusing on great client service is a great place to start.

3. What percentage of your clients come from the Yellow Pages? And how many are price-shopping?

Probably your largest client development expense is any phone book advertising you do. Wouldn't it be nice to know if it was paying off? Here's how you can

tell: track the number of clients that call from the yellow pages (this works to track clients who come from any referral source) by saying, "May I ask how you heard about us?" then marking down the source on the spread sheet. If the caller is overly intent on finding out the price of your firm's services before going any further, and appears uninterested in scheduling an appointment without hearing the fees, or *upon* hearing the fees, note that the caller is probably unqualified, or a price-shopper. Phone book ads are notorious for bringing in a great many price-shoppers, but once in awhile, they deliver a substantial client. To figure out whether or not your phone book ad is worth what you spend, look at how much your phone book originated clients bring in compared to what you spend on the phone book ads. You will want to do this calculation once every six months and then once a year in order to have enough data to make an effective comparison. If you find the fees from

phone book clients is less than what you spend on your ads, you are spending way too much. Your fees should exceed your expenses by ten to twenty-five percent, at a minimum, in order for the ad to be considered profitable.

4. What percentage of the potential clients who call your office inquiring about your services are qualified or desirable clients? They are qualified if they appear to be able and willing to pay and meet all of the rest of your client selection criteria.

5. What percentage of your inquiries and clients come from referrals in general? Out of everyone who dials your office to inquire about your services, how many come from a live person as opposed to an advertisement of some kind? It is generally accepted that clients who are referred by people who know you and heartily recommend your services are easier to work with, more loyal and less price-sensitive. To find out what percentage of your clients come from referral sources, subtract the number that come from ads of some kind from the total number of clients who hired you. The number that remains is your answer. If you were hired by one hundred clients last year and twenty-five came from advertisements, seventy-five percent of your clients come from referral sources. Typically, the higher this number, the less stressed and more profitable you are. As mentioned before, referred clients are generally more desirable. If this number is low for you, ramp up your marketing efforts and focus on face time with referral sources.

6. What percentage of the qualified clients who call actually make an appointment to talk to a lawyer? If eight out of the ten qualified potential clients who called this month to set an appointment don't end up booking one, something is wrong with your inquiry call script. Whether you are handling the conversation, or someone else in your firm is, you could be turning off potential clients by saying the wrong thing. Problems in this area happen more often than you'd imagine. If you are going to spend the time, money and effort to get clients to call in the first place, don't allow the system to break down at this point. Refine your scripts.

There is a delicate art to converting an inquirer in to a client and any breakdowns here are worth investigating.

7. What percentage of those who schedule a consultation actually become paying clients? This is the final step in the journey that a potential client takes in the course of becoming a client. If you aren't converting at least seventy-five percent of the qualified clients who come in for an initial consultation, something is off. If you don't know what you are doing wrong, have someone sit in on a consultation and evaluate your performance. Sometimes the problem lies with the way in which the attorney explains how she can help. Sometimes the attorney doesn't spend enough time listening to the client's story and the person feels unheard. Sometimes the attorney lacks the ability or doesn't devote enough time to building a sense of rapport with the client. Many elements go into a successful consultation and any number of them could be off. If this statistic is low for you, or someone in your firm, get someone to mentor you on this.

8. What is your average fee per file? Why is this statistic important? To insure, from a business standpoint, that you are always working with "A" and "B" level clients, doing high-quality work and being paid for that work. If you start working with a great many "C" and "D" level clients, this number will drop. If you have collections issues, this number will drop. Over time we would prefer to grow the business by increasing the average dollar per case as opposed to just increasing the volume of cases.

You won't gather this information off of the spreadsheet we have given you –

you'll have to pull this figure off of your quarterly or annual financial reports. To calculate this, take the number of new cases you opened during the period and divide them by the total fees generated. Do this for each type of case you handle for the most accurate reading. This one statistic is a great way to tell the overall health of your practice, and you should set goals to raise it on a regular basis.

Keeping track of these eight key indicators will allow you to make intelligent, informed marketing decisions. When a negative trend begins and you see, for example, client referrals falling off, or your total number of client inquiries decline, you should be poised to take remedial action. Keeping track of your numbers will show these trends early so you aren't caught short. Keeping track of these indicators will also, after you've kept track for a year, give you a record of last year's numbers enabling you to compare your current numbers. This can be invaluable in mapping out and counterbalancing your business cycles. We believe that keeping your eye on these numbers will help you maximize your marketing efforts and grow your firm intelligently. We'll say it again: you really can't manage what you don't measure.

Mark Powers, President of Atticus, Inc., and **Shawn McNalis** co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners" and are featured writers for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.



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Speaking Engagements

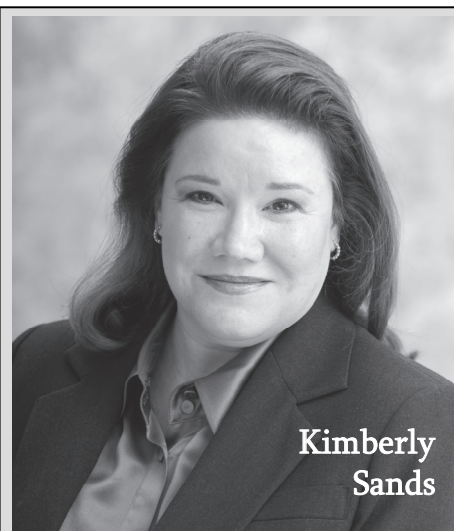
Brian W. Bennett of Page, Eichenblatt, Bernbaum & Bennett, P.A., was a guest speaker at the 2008 ABA Forum on the Construction Industry's presentation of *The Construction Contracts Program: Understanding and Negotiating the Clauses in the New Industry Form Documents*. The forum was held at the Rosen Shingle Creek on November 6, 2008. Mr. Bennett's presentation was on the *Architect's Administration of the Construction Contract*.

Steven M. Brady, senior shareholder of the Swartz Campbell LLC Law Firm in Orlando, presented a seminar on advanced personal injury law for the National Business Institute on September 26, 2008. Mr. Brady presented the ethics section and participated in a faculty roundtable discussion on current events in Florida law.

Gregory A. Chaires, managing partner of Chaires, Brooderson & Guerrero, P.L., lectured on *Board of Medicine Investigations and Medicare and Medicaid Audits* at the Florida Wellcare Alliance meeting on October 5, 2008. His session emphasized government investigations, and procedure and tactics to reduce exposure to audits and investigations.

Jim Cunningham of the Law Offices of James O. Cunningham, P.A. was a presenter at the Advanced Personal Injury Seminar in Orlando, Florida on September 26, 2008. He spoke on the topics of calculating and proving damages and working with expert witnesses.

Todd Demetriades with the law firm of Winderweede, Haines, Ward & Woodman, PA, spoke to the Commercial Builder's Council of the Home Builder's Association of Metro Orlando on October 8, 2008, on legal topics regarding commercial construction and residential development projects.



Kimberly Sands



Richard Lord



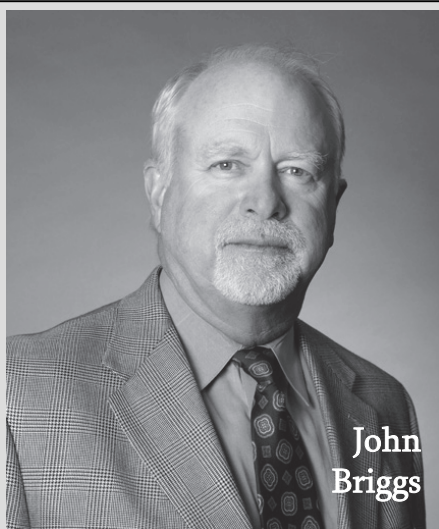
Michelle Jernigan

Finding the road to resolution requires zealous preparation.

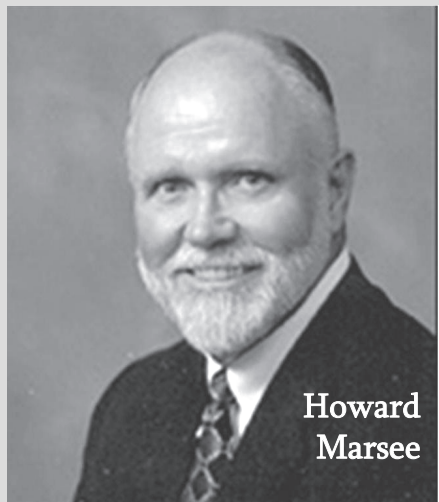
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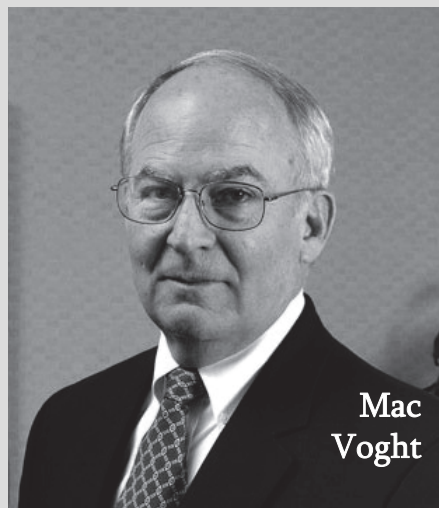




John
Briggs



Howard
Marsee



Mac
Voght

Finding the path to common ground requires relentless perseverance.

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Henry N. Didier, Jr. of the Didier Law Firm recently spoke to the Southern Trial Lawyers Association on *Current Trends in Products Liability Cases*.

Robert D. Guthrie, Orange County Attorney's Office, gave a presentation on *Ethics and Real Estate Transactions* to the annual combined meeting of the Paralegal Association of Florida, Inc. and Central Florida Paralegal Association, Inc. at Lake Buena Vista on October 18, 2008.

David W. Henry of Allen Dyer Doppelt Milbrath & Gilchrist moderated a Webinar on September 11, 2008, hosted by the AIPLA titled *IP Insurance: The Big Secret Corporate Counsel Cannot Ignore*.

Patrick C. Howell, Taylor & Carls, P.A., was a presenter at the Orange County Homeowners Association Workshop on Saturday, September 27, 2008, at the Orange County Convention Center, sponsored by Orange County Utilities. Mr. Howell addressed xerascaping and water challenges for homeowners associations.

Michelle Jernigan, shareholder with Upchurch Watson White & Max and co-director of the firm's Family Business services panel, presented *Conflict Resolution in the Family Business* to Stetson University's Future Leaders Association in November 17, 2008.

Bill Lowman of ShuffieldLowman participated in a panel discussion with the High Technology Incubator at UCF in September speaking on the topic *Government Contracts*. The program drew an audience of people who do (or plan to do) business with the government.

Suzanne Meehle of ShuffieldLowman spoke in October on the topic, *Legal Liability and Planning for E-Discovery* to over 200 Central Florida Structured Query Language (SQL) server software and database professionals in Central Florida.

Larry D. Smith, Managing Partner of Cabaniss, Smith, Toole & Wiggins,

PL, delivered the closing remarks to the Florida Bar Equal Opportunity in Law Section symposium at the University of Miami on October 17, 2008.

Anthony F. Sos, an associate with the law firm Dellecker, Wilson, King, McKenna & Ruffier, served as a panelist for a seminar on *Professionalism and Ethics* presented by the American Association for Justice. The seminar for students enrolled in Barry University's College of Law took place in Orlando, Fla. on October 20, 2008.

Dennis Wall of Winter Springs and Orlando spoke on *An Occurrence in Florida: The CGL Decisions of the Florida Supreme Court* on Saturday, September 13, 2008, at the 2008 Annual Meeting of the Jacksonville Association of Defense Counsel, Amelia Island, Florida.

Louise B. Zeuli, Esquire, of Louise B. Zeuli, P.A., recently presented a lecture on *Legal Implications of Parish Nursing* at the Florida Hospital Community Outreach Program, Center for Community Health Ministry, in Orlando, Florida.

Events

Jan. 29 - OCBA Annual Winter Wine & Cheese Party. 5:30 p.m. to 7:30 p.m., Ember, 42 W. Central Blvd., Orlando, FL 32801. \$5.00 members/\$10.00 non-members.



February (TBA) - Evening with the Judiciary. Look for details in upcoming email blasts and February's *The Briefs*, or contact Kim Healy (khealy@kdbdzlaw.com) or Melanie Andre (MFA@aswmpa.com).



continued page 36

ANNOUNCEMENTS

continued from page 35

Seminars

Feb. 6 - Immigration Law Updates for Attorneys. 9:00 a.m.; OCBA Center. CLE pending. Speaker: Richard Maney. Contact: Marie at marieb@ocbanet.org.

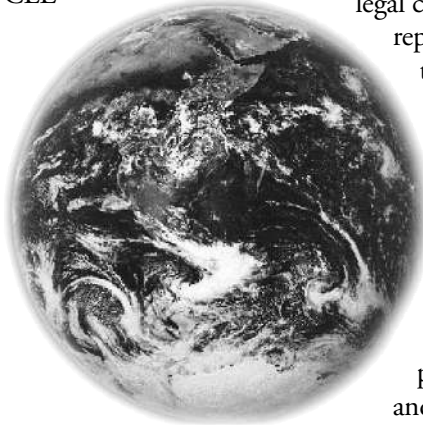
Feb. 13 - Product Liability Seminar. 9:00 a.m.; OCBA Center. CLE pending. Speaker: Henry Didier. Contact: Marie at marieb@ocbanet.org.

News to Note

Needed: Mediators certified by the Dispute Resolution Center of the Florida Bar - In response to the foreclosure crisis and to ease docket congestion, the OCBA is helping to organize a discounted fee mediation process for low-cost mediation. We are preparing a list

of certified mediators interested in participating and willing to work at substantially discounted rates. *Pro bono* volunteers are welcome, but do not receive LAS credit. Please send bio and contact information to David Henry, at dhenry@addmg.com. Details to come.

Barry University's School of Law has established an Earth Advocacy Clinic that will focus on providing legal counseling and representation to individuals, groups and organizations on environmental issues. Faculty and staff will work in partnership with non-profit and private attorneys and law firms. The Law School also won the University of Puerto Rico School of Law Trial Competition in San Juan on October 25, 2008.



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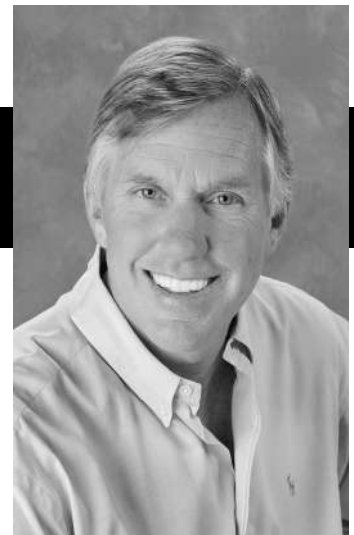
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Thomas v. Fusilier,
966 So. 2d 1001 (Fla. 5th DCA 2007)
Reversed forfeiture of \$250,000
payment required by marital
settlement agreement.

**Florida Emergency Physicians-Kang &
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.

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

JANUARY-FEBRUARY 2009

OCBA Luncheon

Thursday, January 29, 2009

Robert H. Jerry, II

Dean

Levin College of Law at the University of Florida

RSVP by Jan. 23 to:

reservations@ocbanet.org

January

- 7 Criminal Law Committee**
12:00 p.m. • Courthouse, 23rd Flr.
Judges' Conference Rm.
- Elder Law Committee**
12:00 p.m. • Bar Center
- 8 Legal Aid Executive Meeting**
8:00 a.m. • 100 E. Robinson St.
- Real Property Law Committee**
12:00 p.m. • Bar Center
- Social Security Committee**
12:00 p.m. • Bar Center
- OCBA Paralegal Committee**
5:30 p.m. • Bar Center
- YLS Executive Board Meeting**
5:30 p.m. • 300 S. Orange Ave., #1300
- 9 Workers' Compensation Committee**
11:45 p.m. • Smokey Bones
- 13 Executive Council Meeting**
4:30 p.m. • Bar Center
- 14 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Judicial Relations Committee**
12:15 p.m. • Courthouse,
21st Floor Conference Rm.
- 15 YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 16 Family Law Committee**
12:00 p.m. • 425 N. Orange Ave., #2310
- 20 Professionalism Committee**
8:00 a.m. • Bar Center
- Social Committee**
6:00 p.m. • TBA

- 21 Insurance Law Committee**
12:00 p.m. • Bar Center
- 27 Solo & Small Firm Committee**
11:30 a.m. • Bar Center
- 28 Business Law Committee**
1:00 p.m. • Location varies.
Contact Chairperson
- Labor & Employment Law Committee**
12:00 p.m. • Bar Center
- 29 OCBA Luncheon**
Robert H. Jerry, II, Dean,
Levin College of Law at the
University of Florida
11:30 a.m. • The Ballroom at Church St.
- Winter Wine & Cheese Party**
5:30 p.m. • Ember (downtown)
- 30 Bankruptcy Law Committee**
12:00 p.m. • Bar Center

February

- 4 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.
- 6 Immigration Law Updates
for Attorneys**
9:00 a.m. • Bar Center
- 10 Executive Council Meeting**
4:30 p.m. • Bar Center
- 11 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- 12 Legal Aid Executive Meeting**
8:00 a.m. • 100 E. Robinson St.
- Real Property Law Committee**
12:00 p.m. • Bar Center
- Social Security Committee**
12:00 p.m. • Bar Center
- OCBA Paralegal Committee**
5:30 p.m. • Bar Center
- YLS Executive Board Meeting**
5:30 p.m. • 300 S. Orange Ave., #1300
- 13 Product Liability Seminar**
9:00 a.m. • Bar Center
- Workers' Compensation Committee**
11:45 p.m. • Smokey Bones
- 17 Professionalism Committee**
8:00 a.m. • Bar Center
- Social Committee**
6:00 p.m. • TBA
- 18 Insurance Law Committee**
12:00 p.m. • Bar Center
- 19 YLS Luncheon**
11:45 • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 20 Family Law Committee**
12:00 p.m. • 425 N. Orange Ave., #2310
- 25 Labor & Employment Law Committee**
12:00 p.m. • Bar Center
- Business Law Committee**
1:00 p.m. • Location varies.
Contact Chairperson
- 26 OCBA Luncheon**
Chief Justice Peggy A. Quince,
Florida Supreme Court
11:30 a.m. • The Ballroom at Church St.
- 27 Bankruptcy Law Committee**
12:00 p.m. • Bar Center



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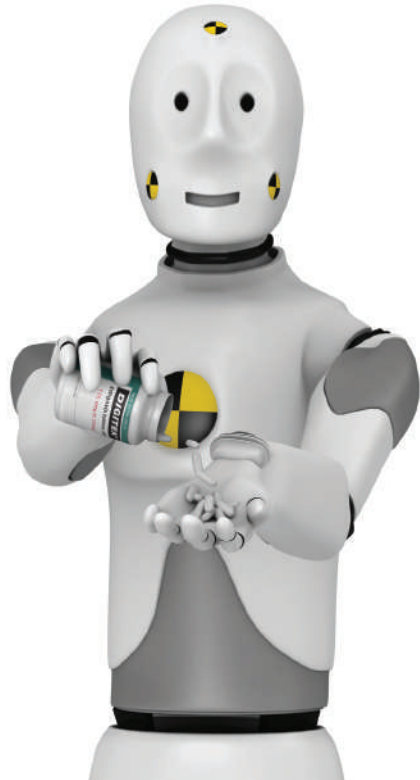
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