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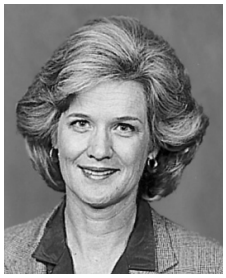
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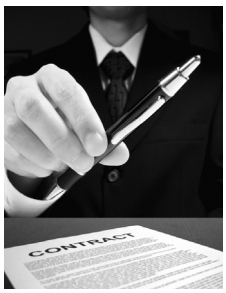
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The Briefs

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Deadline for June Edition: 05/10/2006

The deadline for each edition will be the tenth day of each month. If that day falls on a weekend or holiday, the deadline will be the last working day prior.

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The State of the Bar

Bill Sublette

President George Washington established the tradition of delivering an annual report to Congress, known as the "State of the Union" message, in 1790 after his first inauguration. This annual report on the state of the country is mandated by Article II, Section 3 of the United States Constitution which states that the President, "shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient."

There is wisdom in requiring an annual report on the state of affairs of any entity, regardless of whether that entity is a sovereign nation, a publicly traded company, or, in the case of the Orange County Bar Association, a professional association. What follows is the *State of the Orange County Bar Association* report, a report which I hope will become a tradition at the end of every president's tenure. This inaugural report will address each of three goals the Executive Council adopted for the Bar at its annual retreat last year. Those three goals were: (1) to stabilize the OCBA's finances and programs, (2) to get the OCBA back on the path of growth, and (3) to modernize the Bar's operations.

Stabilization of the OCBA's Finances and Programs

Unbeknownst to most of its rank and file members, the Orange County Bar Association was in serious trouble two and a half years ago. After 20 years of stability under the same Executive Director, Eloise Fox, her successor resigned amidst some turmoil after five years on the job. The resignation occurred just as the OCBA had completed the renovation of its Bar Center and taken on a substantial mortgage after being debt free for the previous decade. After the resignation of the OCBA's Executive Director, the Executive Council and the OCBA's new Executive Director, Brant Bittner, slowly learned that many of the OCBA's signature programs and services had been allowed to languish, and that as a result of the neglect the Bar was operating in the red and would soon deplete, and eventually exceed, its financial reserves if quick action was not taken.

After two and a half years of hard work by the OCBA's Executive Director, staff, Executive Council, and members, I am proud to report that the finances of the Bar are stable once again. The OCBA will end its fiscal year with a healthy surplus, and monthly Executive Council meetings no longer revolve around the question of whether the OCBA will make it to the end of the year without depleting its financial reserves. Furthermore, the OCBA's financial recovery has been accomplished without raising dues, dues which are already among the lowest in the state, and without cutting programs or eliminating services.

The recovery of the Bar's finances is primarily due to the stabilization, and recent growth, of the following programs:

Lawyer Referral Service - Under the capable guidance of past-President and committee Chair, Brian Wilson, and the Lawyer Referral Service committee, and due largely to efficient management of program administrator, Norma Paradiso, fees and dues from the OCBA's Lawyer Referral Service program will exceed the program's budget by 65% this year, and revenue from the program has nearly doubled over the past two years.

Placement Service - For nearly a year the Executive Council struggled with whether to keep the Placement Service program going, or whether it would be wiser to simply shut the program down. What was once the Bar's signature service program for members had become underutilized, inadequately promoted, and inefficiently staffed due to neglect and poor management. The situation was particularly frustrating because the OCBA's Placement Service fee structure is far below the prevailing private placement market rate, and the quality of its job candidates consistently better than those provided by the private sector. However, under the leadership of program administrator, Charlotte Mason, the program has rebounded nicely, it should exceed its revenue budget by 20% this year, and the Executive Council has high hopes again for the program.

Sponsorships - The OCBA's Executive Director, Brant Bittner, has brought the Bar into the 21st century when it comes to marketing the OCBA brand and promoting the Bar to potential advertisers. Prior to three years ago the Bar had never generated any significant sponsorship revenue. This year, the OCBA will generate more than $25,000 in sponsorships from various companies and our appeal to advertisers continues to grow as word spreads in the local market of the value of an OCBA sponsorship.

Facility Rentals - Three years ago the OCBA renovated its Bar Center. Today, our members enjoy the use of a modern, tastefully decorated facility designed as a functional meeting space. What is especially exciting is that after years of little use of the Bar Center due to its poor condition prior to the renovation, our newly renovated Bar Center is a beehive of activity today. As a result of its growing popularity as a meeting and mediation location, this year the Bar will generate more than $30,000 in facility rental payments, revenue which was non-existent in the old facility.

Two other OCBA programs also deserve mention, not for the revenue they generate, but because of the service they provide to our members and the public:

Courthouse Access Cards - This popular, and essential, OCBA service provided to all local lawyers was imperiled after the tragic events of September 11th due to dramatically increased courthouse security. Contrary to the perception of some,

Continued on page 4

this program has never been about the elitism of lawyers not wanting to wait in line with the public. Rather, it has always been about judicial economy and fairness to private litigants and the business community. This is because waits of up to an hour or more in line by counsel contributes to courtroom delays and comes at a high price to litigants. Thanks to the efforts of past-President Paul SanGiovanni, and to the support of Mayor Richard Crotty, the Orange County Commission, Chief Judge Belvin Perry, and Clerk of Court Lydia Gardner, the courthouse access card program was restored under Paul SanGiovanni. The contract was renewed this year, thereby preserving expedited, efficient access to the courthouse for Orange County lawyers and staff.

Citizens Dispute Settlement Program - This program greatly alleviates the strain of small cases on the judicial system and is an invaluable community service to citizens in the midst of minor disputes who are willing to resolve their differences without the need for litigation. The program, which is funded through filing fees and is capably administered by OCBA program administrator Maria Sanchez, has grown dramatically in recent years. Last year 60 *pro bono* OCBA attorneys staffed the program as voluntary mediators and successfully mediated 476 disputes, thus keeping the disputes out of the courts.

Returning the OCBA to Growth

Seven years ago 74% of all Orange County lawyers belonged to the OCBA. By 2005 the percentage of local lawyers belonging to the OCBA had dropped to 60%. Although membership had remained fairly constant at approximately 2,600 members over the past decade, the relevance of the OCBA was being challenged, a fact evidenced by the declining percentage of lawyers joining the OCBA. The Executive Council made it a priority to reverse this disturbing trend.

Unfortunately, reversing a membership decline in any professional association is a very difficult task. Why new lawyers fail to join the local bar association, or why experienced lawyers drop their membership, is a complex question and one which may have as much to do with changing professional and societal landscapes as with anything done, or not done, by the bar association. That being said, the Executive Council this year aggressively attacked the issue of membership through a variety of initiatives:

Monthly OCBA Luncheons - I have always believed that the OCBA's monthly Bar luncheons are its most important connection with its members. Regardless of whether a member attends the Bar luncheons frequently or infrequently, the luncheon is important as a monthly opportunity to connect, or reconnect, with the Bar and one's colleagues in the law. In an effort to attract members back to the monthly luncheons, the Executive Council instituted a widely promoted Speaker Series which sought to bring in interesting monthly luncheon speakers outside of the traditional lineup of lawyers and judges. Luncheon programs have been kept to an hour, and a real effort has been made to focus the luncheon on a singular theme and to end the dilution of the luncheon theme with endless announcements and tabletop clutter.

Committees - Practice area committees are the lifeblood of any professional association. Unfortunately, for a number of reasons the OCBA's committee system had fallen into disarray and the leadership of the Bar was increasingly out of touch with its committees. Over the past year the Executive Council worked hard to reinvigorate the committee system. I think it can be said that we have made some progress. The OCBA's committees seem to have a renewed vitality, many are meeting regularly after years of irregular activity, and we are again seeing thoughtful articles on substantive areas of law from our committees in *The Briefs*. More work, however, remains to be done in strengthening our committee system.

Seminars - Seminars are an important member service and the Executive Council is convinced that a great unmet need for affordable, high quality seminars exists. An OCBA seminar costs only $85 on average, far below the typical seminar fees of $395 or more. However, the production of seminars is integrally connected to the health of the OCBA's committee system, and this year our committees produced only nine seminars for our members. While the Executive Council thanks those committees which put a seminar on for our members, we also believe that we can do much better as a bar association when it comes to the production of meaningful, high quality seminars.

Social - To some, the social calendar of the Orange County Bar Association may not seem to be all that important. In actuality, however, the OCBA's social calendar is, in many ways, the glue that holds the OCBA together. Above all else, membership in the OCBA should be fun and an opportunity to connect, and reconnect, with one's colleagues in the law. The collegiality built through social relationships leads to greater professionalism in our daily dealings with one another and truly sets the Orange County Bar apart from other regions of the state and country. Under the outstanding leadership of Social Committee Chair, Kristyne Kennedy, and with the capable assistance of her committee, the Young Lawyers Section, and the OCBA Foundation, the Bar has enjoyed a terrific social calendar this year. The OCBA Team Trivia contest, OCBA Happy Hour, Young Lawyers Section Golf Tournament, OCBA Poker Tournament, OCBA Wine and Cheese Reception, YLS Evening With The Judiciary, annual OCBA Gala, and innumerable Young Lawyers Section events have made this a fun filled year for all our members.

I am pleased to report that the various membership initiatives outlined above seem to be paying dividends. At the time of publication, OCBA membership stands at 2,834 members, an increase of 194 over last year, and an all time high in terms of the number of members. More importantly, the percentage of Orange County lawyers belonging to the OCBA is again growing, and currently stands at 62% of local lawyers; however, we still have much work to do. After two years of fits and starts, our formal membership campaign has yet to get off the ground. Its failure to launch is my singular regret from my year as president. And, for a variety of valid reasons (none of which excuse the failure), the OCBA's annual membership

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May 25, 2006 OCBA Luncheon

Downtown Marriott • 11:30 a.m. - 1:00 p.m.

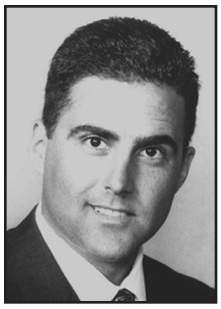
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Installation of 2006-2007 Officers and Executive Council

The Honorable Patricia C. Fawsett will preside over the installation of the 2006-2007 OCBA Officers and Executive Council members at the May 25, 2006 Luncheon. Outgoing President Bill Sublette will present awards to members for their outstanding Bar work during the past year.

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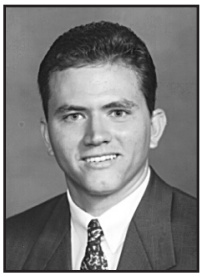
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To ensure proper luncheon count, RSVPs are requested no later than 48 hours in advance. Those reserving less than 24 hours in advance will not be guaranteed a name badge. If you have made a reservation and find that you are unable to attend, please notify us as soon as possible via e-mail. We appreciate your effort to keep us up-to-date on your reservation status.



Editor's Note

Jessica K. Hew

When we began planning the reorganization of *The Briefs*, Tad Yates and I hoped to be able to provide the OCBA membership with a quality, professional publication worthy of our organization. One of our main goals was to encourage the dissemination of substantive legal articles and casenotes, and to provide a forum for the expression of scholarly opinions and debate. We are very fortunate to present this to you in this issue.

In March's edition of *The Briefs*, we published an article entitled, *No Can Do*. Unfortunately, the Florida Supreme Court case upon which the article relied was reversed by the United States Supreme Court this year. Virginia Townes contacted us to let us know, and we let the opinions fly! In this issue, we present a clarification of *No Can Do*, entitled, *Yeah, But...*, from James Markel and an explanation of the United States Supreme Court case from Virginia Townes entitled, *Arbitrators, Not Courts, Must Decide Legality Of Underlying Contract: Buckeye Check Cashing, Inc. v. Cardegna*. We thank both Jim and Virginia for their submissions, and hope you enjoy their opinions on the subject of arbitration.

Although we do not have a formal "Letters to the Editor" section, we encourage and request your thoughts, ideas and opinions as to the content of *The Briefs*. While we understand (and you *know*) that we attorneys will not always agree, we want to be able to act as a forum for you. We are glad that Virginia contacted us, and we encourage you to do so as well. And, while not all ideas and items can be published, we hope that we can provide you with as many of these as we can. Feel free to contact me at jhew@grahambuilder.com; Tad at yatest@criminaldefenselaw.com; or our ever-helpful and dedicated staff member, Peggy Storch at peggys@ocbanet.org. We look forward to hearing from you!

Please also take a moment to look at this month's cover. This visual departure from our previous issues announces a photo contest for the cover of *The Briefs'* October issue. Please look at page 23 of this month's issue for more details. We look forward to your submissions.

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

President's Message

Continued from page 4

directory, a "paid for" member benefit, did not go out to our members this year.

Modernization

After three years of hard work, it can finally be said that your Orange County Bar Association has moved into the 21st century. Beginning under the leadership of past-President Paul SanGiovanni, and continuing over the past two administrations, the OCBA's computer system has been upgraded to current technology standards and the Bar's programs have all been fully computerized. The OCBA's website has also been developed to the point where it is now transactional, and not merely informational. One can now pay dues, sign up for seminars, find a lawyer, hire staff, etc., through the OCBA's website, and development continues on the site.

The Executive Council is most proud, though, of the work done by Executive Council members and *The Briefs* Co-Editors, Jessica Hew and Tad Yates, by Peggy Storch, OCBA Communications Manager, and by Jeff Browder, OCBA printer, in bringing the OCBA's monthly publication, *The Briefs*, into the 21st century. *The Briefs* is critically important to the OCBA. It serves as both the herald and promoter of Bar activities and is the Bar's primary method of communication. We can say, without undue exaggeration, that the Orange County Bar Association now has one of the country's best bar publications in terms of format, professional appearance and, increasingly, substantive content. Each of the afore-mentioned individuals put in countless hours revamping *The Briefs*, and while no amount of thanks can ever repay them for all the work they have devoted to the task, I would ask any who read this publication to please give a personal thanks to Jessica, Tad, Peggy, and Jeff, for what they have done for the Orange County Bar Association.

The Future is Bright

Outgoing presidents traditionally give parting advice. I only have two tidbits of wisdom to offer, so please allow me this indulgence. The first is for future leaders of the Bar to always keep an eye on the primary mission of the Bar, which is to provide law related programs and services to our members and the community. Professional associations such as the OCBA are continually tugged in other directions by outside groups, many of which are laudable, charitable organizations or affiliated professional associations. Ultimately, however, the core obligation of the OCBA is to its own members and to the community through its mission of service through the law.

The second is for those who would be future Bar leaders to understand that OCBA leadership is not an "honorary" role, but is a "working" endeavor in every sense of the word. While the OCBA has competent, professional staff, and while our staff provides us with wonderful support, the successful accomplishment of the Bar's mission inevitably comes down to many lawyers collectively putting in innumerable hours of work.

The future is bright for the Orange County Bar Association. We have come far over the past three years, and as a new administration is installed this month it is comforting to know that the operations, programs, and finances of the OCBA are all on a sound footing. Reviving the finances, programs, and membership growth, of the OCBA has taken three years and countless hours of work by the Executive Council, staff, and many dedicated members of the OCBA. Now it is incumbent upon all of us to keep the momentum going that has been established, and to always bear in mind the truism that staying on top takes as much work as getting on top.

Bill Sublette is a partner with the law firm of Sublette, Sanders & Sanders, P.A. He has been a member of the OCBA since 1988.

Remarks on Receiving The Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award



Thomas A. Zehnder

As I write these remarks, I must admit that I do so with a certain level of trepidation. It is one thing for Bill Wilson - the 2006 recipient of the William Trickle, Jr. Professionalism Award and a senior lawyer with a distinguished, successful career and reputation second to none - to share with us his thoughts on professionalism; it is perhaps quite another for me to do so. That said, I do have something to offer, particularly to younger practitioners who, like me, are still learning how to succeed in our learned profession.

Many legal commentators have attempted to define "professionalism," some with more success than others, I think. Perhaps that is because professionalism is not something that can be readily defined. Instead, it is something that each of us must identify and apply for ourselves. Indeed, the Preamble to the Model Code of Professional Responsibility recognizes that,

> [e]ach lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above minimum standards.

This sentiment was echoed recently by one of our own, Michael P. McMahon, the 2005 recipient of the Trickle Professionalism Award, who in a recent edition of *The Briefs* explained that:

> We know what professionalism is. We know it in our hearts. It is not important to compose words to express what we already know. What is important is to have a desire to conform our actions to what we know is the right thing to do.

Ultimately, professionalism is a state of being, a mind set that governs your conduct both in and out of the courtroom. Our more senior, experienced members of the Bar understand what I mean, but our younger lawyers, who are just starting out, may very well be scratching their heads wondering how I could be any more obtuse! So, let me try to be a little more practical.

To young lawyers, I offer this advice - identify what you believe to be the key qualities of a successful practitioner you know and then strive to adopt those qualities in your own practice. Talk with that lawyer and ask him or her what traits make them successful. I think what you will find is that these lawyers will share that their success stems from their professionalism. In his remarks published in *The Briefs* last month, Bill Wilson commented that "there is a clear correlation between professionalism and success." Bill is absolutely right. For you senior lawyers, I ask that you mentor those of us coming up. We learn from you how to practice with professionalism, and your duty as lawyers is to teach us what to do and what not to do. The Florida Bar's Center of Professionalism (quoting the Georgia Supreme Court's Aspirational Statement on Professionalism) has said,

> [t]he way in which we resolve our disputes defines part of the character of our society and we should act accordingly...The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation.

In my continuing struggle to practice with professionalism - and yes, I say "struggle" because in our adversarial (and often competitive) system maintaining your professionalism can be challenging - I have concluded that professionalism is the sum of three qualities: honesty, courtesy and a love of the law. I have been fortunate in my career to work with lawyers who embody each of these qualities of professionalism and they have all been and continue to be amazing mentors.

From David King, our senior partner and the inaugural recipient of the Trickle Professionalism Award, I learned that honesty is the hallmark of a successful and professional practice. David taught me that your word is your bond and that credibility with your opponent and the court is the first component of success. I have been so very fortunate to watch David in action and witness first hand how his honesty, and thus his credibility, have led not only to the unfailing respect of his peers, but to excellent results for his clients. From Bruce Blackwell, I learned that courtesy not only makes the practice of law more enjoyable but, in most instances, it leads to a fairer, quicker and less costly result for the parties. Abraham Lincoln once said that lawyers should "never stir up litigation" but instead should serve as "peacemakers." Bruce has taken those words to heart and is a wonderful lawyer because of it. Finally, from Mayanne Downs, perhaps the brightest legal thinker I know, I learned that we must love the law to practice with professionalism. Mayanne has taught me that the law is sacred and must be treated with respect and dignity. When we cite cases, we must do so accurately. We must not argue positions that are not supported by legal authority. When we misrepresent the holding of a case or argue untenable positions we denigrate ourselves and our profession and, worse, we denigrate the law, which is the tie that binds a civilized society together. As lawyers we have a much higher calling than just winning an argument, we have a duty to follow the law.

Continued on page 18

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.

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

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.

Stockstill v. Stockstill,
770 So. 2d 191 (Fla. 5th DCA 2000)
Reversed due to trial court's extensive questioning and denial of motion to recuse.

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,
706 So. 2d 107 (Fla. 5th DCA 1998)
Reversed modification judgment due to denial of due process.

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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I am proud to be a member of the legal profession. How we, individually, practice our profession and live our lives reflects on all the other members of our profession. We, as lawyers, have a unique opportunity to serve our fellow man, as well as have an impact on the future and at the same time earn a good living. We have the ability to represent abused or neglected children and help secure a safe future for them. As lawyers, we have access to and are familiar with the legal system - a system that remains a mystery to many citizens.

As Family Lawyers, we have the unique opportunity to assist divorcing couples to find a peaceful solution that will serve them and their children well. Children, faced with the breakup of their family, can grow up with an understanding that divorce does not have to be a war, to be won at all costs. The lawyers must be the voice of reason when the parties are so hurt and emotional that they cannot think rationally.

Particularly in the area of Family Law, we need to be the "Counselor." Our job is to guide the client to a resolution that serves the client's needs, without destroying the family. The parties in a family law case will have to deal with each other for years to come. There will be graduations, weddings, births, deaths and other family matters that will require consideration and/or cooperation.

The attorney is the most visible and personal view of our legal system. People enter the courthouse with a sense of apprehension and dread. They don't know the rules of this place. We, on the other hand, enter familiar territory, which is inhabited with familiar faces. We must help our clients to understand and respect our legal system by our words and our actions.

We all can get caught up in the moment and do things that we may later regret. In our hectic lives and busy schedules, we need something to remind us of who we are and why we have chosen this work. I commend to you a verse that I read each day to help me maintain the proper perspective in work and life.

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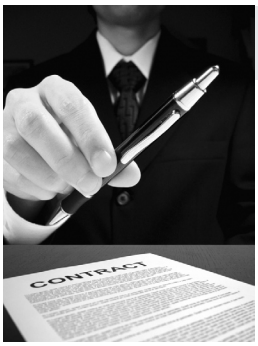
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Case Note

Yeah, But...

In a contract providing for arbitration, an arbitrator, not a court, must decide whether the contract is unenforceable as arbitration provisions are favored and enforced under the Federal Arbitration Act. The United States Supreme Court in the decision of *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. ___ (2006), overturned the Florida Supreme Court's decision of *Cardegna v. Buckeye Check Cashing, Inc.*, 894 So.2d 860 (Fla. 2005), and by application, *Vacation Beach, Inc. v. Charles Boyd Construction, Inc.*, 906 So.2d 374 (Fla. 5th DCA 2005).

James W. Markel

Shortly after the publication of the author's article "No Can Do" in the March, 2006 issue of *The Briefs*, Volume 74. No.3, Virginia Townes, Esq. notified the editors of *The Briefs* and the author that the recent decision of the U.S. Supreme Court in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. ____ (2006), upheld the principle of severability of an arbitration clause and overturned the Florida Supreme Court's decision of *Cardegna v. Buckeye Check Cashing, Inc.*, 894 So.2d 860 (Fla. 2005). The *Cardegna* decision, *supra*, was the underlying basis for the holding in *Vacation Beach, Inc. v. Charles Boyd Construction, Inc.*, 906 So.2d 374 (Fla. 5th DCA 2005), that the court, not an arbitrator, must decide as a matter of state law whether a contract with an unlicensed contractor is void and unenforceable. Virginia Townes graciously volunteered to author an article in this issue of *The Briefs* explaining and discussing the severability issue of arbitration clauses, a subject with which she has more than a passing familiarity and expertise.

This author is compelled to clarify the effect and application of the Supreme Court's decision in *Buckeye Check Cashing, Inc.*, *supra*. The author incorrectly discussed and concluded that a court must decide the issue of whether a contract is unenforceable when the rule is that an arbitrator must decide initially whether a contract is unenforceable, the issue being one of federal law under the Federal Arbitration Act (FAA). This principle, that an arbitrator must initially determine all questions under a contract with an arbitration provision *unless there is a challenge to the arbitration clause*, is based upon the FAA.The FAA created federal substantive law "to overcome judicial resistance to arbitration" which substantive law is "applicable in state and federal court." *Buckeye Check Cashing*, *supra*. This principle has long since been determined in earlier Supreme Court decisions and re-affirmed in *Buckeye Check Cashing, Inc.*, *supra*.

The holding and reasoning in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. _____ (2006), written by Supreme Court Justice Scalia, states,

> *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967), and *Southland Corp. v. Keating*, 465 U.S. 1 (1984), answer the question presented here by establishing three propositions. First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts. The parties have not requested, and we do not undertake, reconsideration of these holdings. Applying them to this case, we conclude that because respondents challenge the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract. The challenge should therefore be considered by an arbitrator, not a court.

Buckeye Check Cashing, Inc., *supra*. Justice Scalia concludes,

> It is true, as respondents assert, that the *Prima Paint* rule permits a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void. But it is equally true that respondents' approach permits a court to deny effect to an arbitration provision in a contract that the court later finds to be perfectly enforceable. *Prima Paint* resolved this conundrum - and resolved it in favor of the separate enforceability of arbitration provisions. We affirm today that, regardless of whether the challenge is brought in federal or state court, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator.

Buckeye Check Cashing, *supra*.

What the decision in *Buckeye Check Cashing, Inc.*, *supra*, means is that there can be no doubt that arbitration provisions in contracts are enforced so that all issues, save for the severability of the arbitration provision, are to be decided by the arbitrator. Understanding and accepting the primacy of the FAA is aided by reading in more detail the overlooked and under-appreciated (by this author) dissenting opinion of Florida Supreme Court Justice Cantero in *Cardegna v. Buckeye Check Cashing, Inc.*, 894 So.2d 860 (Fla. 2005),

> At their heart, *Party Yards, Inc. v. Templeton*, 751 So.2d 121 (Fla 5th DCA 2000), and the majority opinion evince a basic distrust of arbitration and place the court as jealous guardian of the determination of legal issues. By endorsing *Party Yards*, the majority not only disregards controlling

Continued on page 18



Case Note

Arbitrators, Not Courts, Must Decide Legality of Underlying Contract:

Buckeye Check Cashing, Inc. v. Cardegna



Virginia B. Townes

Pursuant to the Federal Arbitration Act, the United States Supreme Court has ruled that a party may not avoid the effect of an otherwise binding arbitration agreement by alleging that the underlying contract is illegal and therefore void *ab initio*. In *Buckeye Check Cashing, Inc. v. Cardegna*,[1] the United States Supreme Court reversed the decision of the Florida Supreme Court on this issue and clarified the application of *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*,[2] thus resolving a split in decisions between state and federal courts.

In *Cardegna v. Buckeye Check Cashing, Inc.*,[3] the Florida Supreme Court had ruled that legality of a contract was a matter of state law and that enforcing an arbitration agreement contained in an illegal contract would "breathe life" into an otherwise non-existent contract.[4] *Cardegna* arose from a series of pay-day lending transactions. Each transaction was documented by a written contract that assessed fees which, if deemed to be interest, exceeded Florida's usury limit.[5] Each contract contained an agreement to arbitrate all disputes arising from the transaction, including the validity of the contract, and waiving the right to bring a representative claim. Notwithstanding the arbitration clause, Plaintiffs brought a putative class action in circuit court to declare the contracts usurious, therefore void *ab initio*; Defendant sought to enforce the arbitration agreement. The trial court denied Defendant's motion to compel arbitration, and the Fourth District Court of Appeal reversed, requiring the trial court to enforce the arbitration agreement.[6]

Cardegna sought and obtained review by the Florida Supreme Court, based on conflict with *Party Yards, Inc. v. Templeton*.[7] The Court reversed, holding "that where a party sufficiently alleges that a contract is void for violation of Florida's usury laws, the Florida courts, and not an arbitrator, must first determine the contract's legality before a party may be required to submit to arbitration under a provision of the contract."[8]

In reaching this decision, the Florida Supreme Court distinguished the issue before it from that decided by the United States Supreme Court in *Prima Paint*.[9] In *Prima Paint* the party opposing arbitration contended that the underlying contract was fraudulently induced and therefore the entire contract, including the arbitration clause, was voidable. Like the plaintiff in *Cardegna*, the *Prima Paint* plaintiff contended that the challenge to the very existence of the contract nullified the enforceability of the arbitration clause. The United States Supreme Court rejected that argument, looking to section 4 of the Federal Arbitration Act[10] (FAA), which states,

> The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

The Court interpreted the statute as requiring the courts to treat the creation of the agreement to arbitrate as a separate or severable contract. Only when the agreement to arbitrate standing alone is subject to attack "upon such grounds as exist at law or in equity for the revocation of any contract"[11] can the court refuse to send the matter to arbitration.

In *Cardegna*, the Florida Supreme Court interpreted the severability doctrine announced in *Prima Paint* as applying only to voidable contracts; the Florida Supreme Court distinguished contracts void *ab initio*, ruling that "if the underlying contract is held entirely void as a matter of law, all of its provisions, including the arbitration clause, would be nullified as well."[12] In so doing, it joined a number of state appellate courts that had similarly rejected application of the severability doctrine to allegedly void (rather than voidable) contracts.[13] In contrast, the six United States Circuits that had considered the issue reached the opposite conclusion, holding that where a valid agreement to arbitrate existed, the legality of the underlying contract was to be determined by the arbitrator.[14]

Continued on page 20

[1] 546 U.S. ----, 126 S.Ct. 1204 (2006).
[2] 388 U.S. 395, 87 S.Ct. 1801, 18 L. Ed. 2d 1270 (1967).
[3] *Cardegna v. Buckeye Check Cashing, Inc.*, 894 So.2d 860 (Fla. 2005).
[4] *Id.* at 862, (quoting *Party Yards v. Templeton*, 751 So.2d 121, 123 (Fla. 5th DCA 2000)).
[5] §689.02, Fla. Stat. (2005).
[6] *Cardegna*, 824 So.2d 228 (Fla. 4th DCA 2002).
[7] 751 So.2d at 121.
[8] *Cardegna*, 894 So.2d at 865.
[9] *But see, Cardegna*, 894 So.2d at 865, *et seq.* (Bell, J., specially concurring) and 894 So. 2d at 867, *et seq.* (Cantero, J., dissenting).
[10] 9 U.S.C. § 1, *et seq.*
[11] 9 U.S.C. § 2.
[12] *Cardegna*, 894 So.2d at 863.
[13] *See, e.g, Nature's 10 Jewelers v. Gunderson,* 648 N.W.2d 804 (S.D. 2002); *Rosenthal v. Great Western Fin. Sec. Corp*., 926 P.2d 1061 (Cal. 1996); R.P.T. *of Aspen, Inc. v. Innovative Communications, Inc.*, 917 P.2d 340 (Col. Ct. App. 1996); *Silver Dollar City, Inc. v. Kitsmiller Constr. Co.*, 874 S.W. 2d 526 (Mo. Ct. App. 1994).
[14] *See Jenkins v. First Am. Cash Advance of GA., LLC*, 400 F.3d 868 (11th Cir. 2005); *Bess v. Check Express*, 294 F.3d 1298 (11th Cir. 2002); *Snowden v. Checkpoint Check Cashing*, 290 F.3d 631 (4th Cir.), *cert. denied*, 537 U.S. 1087 (2002); *Burden v. Check Into Cash of Ky., LLC*, 267 F.3d 483 (6th Cir. 2001), *cert. denied*, 525 U.S. 970 (2002); *Harter v. Iowa Grain Co.*¸ 220 F.3d 544 (7th Cir. 2000); *3H & Assocs., Inc. v. Hanjin Eng'g & Constr. Co.*, No 97-16751, 1998 WL 657722 (9th Cir. 1998) (unpublished); *Lawrence v. Comprehen sive Bus. Servs. Co.*, 833 F.2d 1159 (5th Cir. 1987).



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Presentation Skills for Lawyers

Roadmaps:
Organizing Your Presentation



Elliott Wilcox

Have you ever been to a presentation where you listened to a speaker for an hour or more, but then walked away and asked yourself, "What the heck did he just say?"

A speaker I watched recently was entertaining, interesting, and engaging, but he rambled from point to point, place to place, and story to story. There was no cohesive theme to the presentation. There was no logical order to the arrangement of his ideas. When he finished, I had absolutely **no idea** what he was talking about.

The terrible thing was this: I **wanted** to remember what he said. I **wanted** to learn the information. But his organization made it impossible for me to absorb the information.

How about you? Are you making it difficult for your audiences to understand you? Are you preventing them from walking out of the room with your information? As a lawyer, you earn your living by communicating ideas. When judges, juries, or arbitrators can't follow the flow of your ideas, your client suffers. Here are three tips to help you organize your presentations to ensure the decision maker follows your presentation and doesn't get lost.

1. You need to actually organize your presentation. What do you plan to say? What are the major points of your presentation? What do you want the audience to remember?

If you don't know yet, you're not ready to make your presentation. No matter how much you know about the subject, you can't just expect that it's all going to come together once you take the stage, grab the microphone, or rise to address the jury. Very few presenters can "wing it." And even those who can are dramatically better when they **prepare**.

Invest the time in advance to ensure you're properly prepared to present. Outline your presentation on a single page to see if the order flows smoothly. Are the main points grouped together? What are the most important ideas you want the audience to remember? Do they stand out? Until you can answer these questions, you're not organized enough to present. However, once you've actually organized your presentation, the remaining steps will be easy to follow.

2. Tell the audience where you're going. Have you ever given someone a ride and relied on them for directions? Although they knew exactly where they needed to go, did they parcel out the directions on a "need to know basis," shouting out "Turn left!" or "Turn here!" moments before you needed to turn?

How frustrated did you get? Did you miss any turns because you didn't know where you were going or weren't fast enough to follow their directions?

It's easier to travel when you know your destination in advance. That's also true for your audience. They'll have an easier time following your ideas when you tell them in advance, "Here's where we're going." Give them a roadmap for the presentation. If you're going to address three separate issues, tell your audience what the issues are and what order you'll address them in. Tell your audience what path you plan to lead them along, and it will be easier for them to follow you.

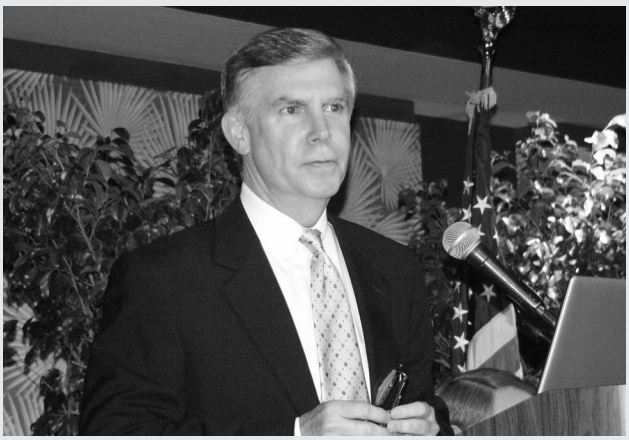
3. Point out landmarks along the way. As you lead the audience to their final destination, help the audience identify the landmarks along the journey. The landmarks in your presentation are those major points, ideas, or areas you want them to remember after you're finished. There are several different ways you can point out the landmarks for your audience:

- **Magic words:** "First..." "Second..." "Third..." For example, "The *first* reason the plaintiff's case law doesn't apply to this case is..."
- **Fingers:** As you address each point, raise your hand and hold up the number of fingers that correspond to the idea you're presenting.
- **Visual aids:** Show the audience a different slide, poster, or other visual image as you reach each stage of your presentation.
- **Physical movement:** Move to different places on the stage or in the courtroom as you discuss each major point. For example, every time you discuss "damages," you move to the far left side of the jury box.

Where are you leading the audience? To be the guide they can trust you need to know where you're taking them, tell them where you're leading them, and point out the important landmarks along the way. When you do that, your audience will reach their final destination safely, they'll know how they got there, and most importantly, they'll remember how to return to that destination, even after you've left the room.

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Elliott Wilcox is the creator of Trial Tips Newsletter, a weekly ezine for trial lawyers that reveals the simple, effective strategies and techniques you need to win more trials, guaranteed! Sign up now for your FREE trial advocacy tips at www.TrialTheater.com.



William B. Wilson, the 2006 William Trickel, Jr. Professionalism Award recipient, spoke at March's OCBA Luncheon. "In the final analysis," he said, "professionalism is a goal - something to which we aspire and, once attained, something we constantly must strive to maintain." Bill is the executive partner of Holland & Knight's Orlando office and has been an OCBA member since 1973.



Bill Wilson receives the 2006 William Trickel, Jr. Professionalism Award from the Honorable John M. Kest.



The Honorable John M. Kest presents Thomas A. Zehnder, King, Blackwell, Downs & Zehnder, P.A., with the 2006 Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award at the March Luncheon.

HEARSAY

Well, somehow here it is May again and we're heading back into summer! Temperatures are rising as summer law clerks are being welcomed, vacations and retreats are being planned, and OCBA members are staying busy as usual. Time to dust off those flip-flops and turn up the air-conditioners, because things are really starting to heat up! Here's what's up....

Congratulations to **Frederick W. Leonhardt**, a shareholder with GrayRobinson, who received the distinguished "Silver Beaver" award by the Boy Scouts of America (BSA). Of the hundreds of awards that the BSA presents each year to those on the local council, regional, and national levels, the Silver Beaver is one of the most prestigious. The recognitions are granted by one's own peers for distinguished service to youth. Leonhardt currently serves as President of the Central Florida District Council of Boy Scouts

Diego "Woody" Rodriguez, with the law firm of Marchena & Graham, was recently certified as a Circuit Court mediator in Orange County. **Samuel P. King** with Dellecker, Wilson, King, McKenna & Ruffier, has been reaffirmed as AV® Rated by Martindale-Hubbell. King is also board certified in civil trial law by the Florida Bar.

Kenneth J. McKenna, a partner with the law firm Dellecker, Wilson, King, McKenna & Ruffier, has been elected to the board of directors of the Ronald McDonald House Charities of Central Florida, Inc. The Ronald McDonald House is a not-for-profit organization that provides a "home-away-from-home" for families with children receiving medical treatment at local hospitals in Orlando. Since 1996, the program has housed more than 6,800 families at its two Central Florida locations on the campuses of Florida Hospital Orlando and the Arnold Palmer Hospital for Children & Women.

Albert F. Tellechea has joined the Orlando office of Holland & Knight as a partner in the Litigation Section. Tellechea's practice will focus on complex civil and criminal litigation, currency matters, international law and U.S. customs law. Previously, Tellechea held positions as Special Federal Prosecutor for the U.S. Department of Justice; Special Attorney for the U.S. Department of the Treasury (Operation Greenback); Assistant Regional Counsel for the U.S. Customs Service; and Assistant U.S. Attorney for the District of Puerto Rico, where he was the Chief Civil Division and the Chief of the White Collar Cases Unit.

The **OCBA Social Committee** is hard at work again planning its calendar for the upcoming year. Last year's events, like the poker tournament, trivia event, and wine and cheese party, were such big hits that we will be bringing them back by popular demand! Be sure to mark your calendars now for the following events: **July 19, 2006**: Trivia Event/Happy Hour; **September 14, 2006**: Happy Hour (possibly another joint happy hour); **November 16, 2006**: Poker Tournament; and **January 25, 2007**: Wine & Cheese



Kristyne Kennedy

Party. If you would like more information about these events or would like to participate on this committee, contact me at kennedyk@jacksonlewis.com. The OCBA Social Committee is always seeking interested volunteers to help with planning and chairing these events. The Committee generally schedules meetings in the evening (after work) in a downtown restaurant or bar. If you are unable to attend one of our meetings but are interested in getting involved, please contact me.

And as usual, those busy young members of the OCBA Young Lawyers' Section (YLS) have been working on bringing you even more great events. Join the YLS on **May 20, 2006** for their annual **Great Oaks Village Fun Day**. Great Oaks Village is a group foster home for children ages 6 - 18 who have been removed from their homes due to abuse, neglect or abandonment. Great Oaks provides children with educational, counseling and recreational services and prepares older children for independent living. YLS members host this event each spring, providing a day of sports, water games, arts and crafts followed by lunch with the children and their counselors. For more information contact **Lori Nazry** at lnazry@fordharrison.com or **LaShawnda Jackson** at ljackson@rumberger.com.

The YLS is planning many more great events coming up this summer! Don't miss the annual **Law Clerk's Reception** on **July 13, 2006** at the Orlando Museum of Art. This is always a fun event and open to everyone. For more information, contact **Lauren Heatwole** at lauren.heatwole@lowndes-law.com or **Taylor Kessel** at tkessel@dbksmn.com. Another great event for law clerks and new attorneys is the **Afternoon at the State Courthouse** on Friday, **July 28, 2006**. For more information contact **Jeremy Springhart** at jspringhart@raileyharding.com. Many other great YLS events are coming up, including the YLS Family Picnic (6/3), YLS Beginning of Summer Pub Crawl (6/9), Dog Day Afternoon Pet Picnic (6/24), Morning at the Federal Courthouse (June), Paint the Town service project (7/22), Happy Hour (7/28), End of Summer Pub Crawl (8/11) and the YLS Backpacks Service Project (8/19). For more information about these events or the YLS, contact **Wiley Boston** at wiley.boston@hklaw.com. Also, congratulations to YLS Board Member **Chris Wasula**, who is the proud new owner of **Cactus Bob's**, a bar and grille in Sanford! Be on the lookout for an upcoming event to celebrate her new place with her fellow OCBA members!

Until next time, keep your news, updates and information coming! If you have news that you would like included in this column, you can send it to me at to kennedyk@jacksonlewis.com or fax (407) 246-8441.

Kristyne E. Kennedy is an attorney with Jackson Lewis LLP. She has been a member of the OCBA since 2001.



A highlight of OCBA's Law Week is the annual poster contest judging. In April, members of the Law Week Committee met at the Bar Center for the difficult task of determining the winners, in various age categories, from among nearly 100 entries. The theme of this year's contest was "Liberty Under Law: Separate Branches, Balanced Powers."



The Boone High School Mock Trail Team won the recent State Mock Trial Competition and will be headed to Nationals in Oklahoma in May. Their coach is Cindy Schmidt, a former OCBA member and Past President of the Central Florida Association of Criminal Defense Lawyers. Good Luck, Team!



OCBA members who attended March's Luncheon were treated to a special surprise courtesy of Sigrid Tiedtke, our guest speaker. Sigrid, who is the President of the Enzian Theater, showed several quirky and entertaining clips from shorts films showcased at the Florida Film Festival.

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YLS on the Move!



Chelsie Roberts

Join the YLS at May's luncheon for another changing of the guards. We will say goodbye to Tom Zehnder, the 2005-2006 YLS President, and welcome Wiley Boston of Holland & Knight to lead the charge. Tom has lead the YLS this past year with enthusiasm and charisma, and I know I speak for so many YLS members when I say that Tom will be missed. Now that he's "all grown up," you can catch him in action on the OCBA Executive Board. We can't wait to see what you have in store for us, Wiley!

Congratulations are much deserved by Jen Jones and Jeff Feulner, who organized the Spring Party and Relay for Life of Event on March 24th and 25th. Friday's party at Slingapour's raised more than $2,000 for the American Cancer Society, thanks to the generosity of all who attended. Special thanks to Learned Hand for donating their time and musical talent, to committee members Samantha Powers of Fisher & Phillips, LLP, and Reed Bloodworth of Dean Mead, and to the YLS team members who walked during the Relay for Life event on Saturday.

The next YLS luncheon will be on Thursday, May 18th at the Citrus Club from 11:45 a.m. - 1:00 p.m. RSVP to reservations@ocbanet.org at least 24 hours in advance. The cost is $18 for those who RSVP in advance ($10 for solo practitioners and government attorneys) and $20 for walk-ups. On the agenda will be Wiley's induction, as well as the 2006-2007 YLS Officers and Board members.

The YLS is teaming up with members of the Labor and Employment Section for happy hour on Friday, May 19th. The event is tentatively scheduled at Level 23, but watch your e-mail blasts for further details.

Join the YLS at the annual Great Oaks Village Fun Day event on Saturday, May 20, 2006. Great Oaks Village, located at 1718 East Michigan Street, Orlando, 32806, is a group foster home for children ages 6-18 who have been removed from their homes due to abuse, neglect or abandonment. Great Oaks provides children with educational, counseling and recreational services and also prepares older children for independent living. Each spring YLS members host a day of sports, water games and arts and crafts followed by lunch with the children and their counselors. For more information contact LaShawnda Jackson at ljackson@rumberger.com or Lori Nazry at lnazry@fordharrison.com.

Finally, mark your calendars for this summer's exciting events:

- Saturday, June 3 - Family Day Picnic
- Friday, June 9 - Beginning of Summer Pub Crawl
- Thursday, June 15 - June Luncheon
- Saturday, June 24 - Dog Day Afternoon
- Thursday, July 13 - Law Clerk Reception
- Thursday, July 20 - July Luncheon
- Saturday, July 22 - Paint the Town
- Friday, July 28 - Afternoon at the State Courthouse
- Friday, July 28 - July Happy Hour
- Friday, August 11 - End of Summer Pub Crawl
- Thursday, August 17 - August Luncheon
- Saturday, August 19 - Backpack Project
- Friday, September 8 - Charity Golf Tournament

If you have any questions about YLS events or would like information on how to get involved with the YLS, e-mail me at croberts@fordharrison.com.

Chelsie J. Roberts is an associate with Ford & Harrison LLP. She has been a member of the OCBA since 2003.

THE 100 CLUB!

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Is your firm part of the 100 Club? Any firm with two or more attorneys and 100% membership in the OCBA can be a member of the 100 Club. If you think your firm is eligible, e-mail a typed list of your attorneys to Susan Laviolette at susanl@ocbanet.org and she'll let you know!

Case Note: – Yeah, But... *Continued from page 10*

> federal law and the federal preference for enforcing arbitration clauses, but it has created a new analysis for arbitration claims. Under express terms of the FAA, a party opposed to arbitration must challenge the making of the arbitration agreement itself. Under the majority's reasoning, the opponent need only allege that the underlying contract violates a state statute or public policy that renders it void. Because the majority's decision contradicts federal law favoring arbitration and fails to follow federal cases directly on point, I respectfully dissent.

Cardegna, *supra* at page 875.

From the standpoint of elucidation and education, the author stands by the earlier conclusion that the Fifth District's opinion in *Vacation Beach, Inc.*, *supra*, is not only a model of logic and reasoning, but also, is, and should remain, the classic holding that contracts with unlicensed contractors and unlicensed business organizations are illegal and unenforceable (as are construction liens filed by the unlicensed). While there may be mild to severe disagreement from practitioners who profess to "hate arbitration," one should not expect to experience significantly different results from rulings of arbitrators as to the illegality of contracts with unlicensed contractors.

Practice tip: Conduct your practice and modify your pleadings, if necessary, to uphold agreements to arbitrate. The Florida Arbitration Code, Chapter 682, Florida Statutes (2005), should be part of your basic knowledge, specifically Section 682.03 "Proceedings to compel and to stay arbitration." Also, be aware of Chapter 684, Florida Statutes (2005), The Florida International Arbitration Code.

James W. Markel is of Counsel with the firm of Graham, Builder, Jones, Pratt and Marks, LLC, is an adjunct professor teaching construction law at Barry University School of Law, and has practiced construction law since 1970. He has been a member of the OCBA since 1966.

Professionalism Award *Continued from page 7*

I hope that these words ring true for all of us and, for the young lawyers coming up, offer some insight into how to practice with professionalism. Each of us is on our own journey as lawyers with different practice areas, different clients and different experiences. But all of us share one unifying and common trait - we are professionals who have the privilege, not the right, to practice law. Let us always be mindful of our responsibility as professionals to be honest, courteous and to love the law.

I thank the OCBA's Professional Committee for this great honor and I am proud to join Tad Yates and Nick Shannin as a fellow recipient of the Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award.

Thomas A. Zehnder is a shareholder in the law firm of King, Blackwell, Downs & Zehnder, P.A., where he began his complex commercial litigation practice after graduating with honors from the University of Florida Levin College of Law in 1995. Tom currently serves as President of the OCBA Young Lawyers' Section, and is a member of the OCBA's Executive Council, a Trustee of the Legal Aid Society and a director of the Orange County Bar Foundation, Inc. He has been a member of the OCBA since 1996. He and his wife, Leigh Sigman Zehnder, have two children, Ryan and Sarah.

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OCBA Legal Aid News

Pro Bono Highlight: Lee Mangas



Catherine A. Tucker

For approximately 20 years, the Legal Aid Society has offered government attorneys and in-house corporate counsel the opportunity to fulfill their *pro bono* obligation by answering the Society's phones on Saturdays. The attorneys arrive at the Society's office bright and early six Saturdays a year in order to prescreen applicants for eligibility and make appointments. One attorney who gives up his Saturdays is Lee Mangas. Lee has been participating in the phone-screening program since 1990.



Lee Mangas

Lee has a B.A. from Yale, a J.D. from Indiana University-Bloomington, and an L.L.M. from Emory University in Atlanta. In addition to being a member of the Florida Bar, he is an active member of the District of Columbia Bar and Indian Bar associations, and has been a member of the Orange County Bar Association since 1990. Lee, who has been with the State Attorney's office for sixteen years, began participating in *pro bono* work through the Legal Aid Society immediately upon coming to Orlando and was actively involved in many aspects of *pro bono* service prior to his arrival in Central Florida. He has a long and very distinguished career, including having written briefs in cases before the U.S. Supreme Court while he was in private practice.

In his spare time, Lee is busy acquiring the necessary CLE credits to maintain his bar memberships. He also enjoys baseball, Broadway, 19th Century American novels, and researching British and American history. Although he leads a very busy life, Lee says that he enjoys spending some of his Saturday mornings working at the Legal Aid Society on behalf of low-income residents who need to find out whether they qualify for Legal Aid. Speaking about his work, Lee says,

> "I enjoy spending time at Legal Aid as it makes me realize the severity of problems faced by low-income individuals. I also find satisfaction in the thanks that I receive from the humble callers on Saturdays."

Lee recalls that from the age of seven he has wanted to be a lawyer and that by the time he reached high school he knew he wanted to be a prosecutor. He feels fortunate to be doing the work he likes and has wanted to do from an early age, and is more than happy to be able to do *pro bono* at the same time. Hats off to Lee Mangas for excellent *pro bono* and civic commitment!

Catherine A. Tucker is the Deputy Director/Pro Bono Coordinator of the Legal Aid Society of the OCBA. She has been a member of the OCBA since 1986.

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The United States Supreme Court in *Buckeye* rejected any effort to limit *Prima Paint* solely to voidable contracts and also rejected the Florida Supreme Court's assertion that the issue was one of state law and policy. The Court itemized three analytical principles deriving from *Prima Paint* and from the Court's subsequent decision in *Southland Corp. v. Keating*[15] that required reversal of the Florida Supreme Court's decision:

> First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts.[16]

In the conclusion to the opinion, Justice Scalia, writing for the majority,[17] addressed the dilemma that caused the Florida Supreme Court (and the Fifth District Court of Appeal, before it) grave concern – the possibility that enforcing an arbitration clause in a legally void contract would "breathe life" into it.

> It is true, as respondents assert, that the *Prima Paint* rule permits a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void. But it is equally true that respondents' approach permits a court to deny effect to an arbitration provision in a contract that the court later finds to be perfectly enforceable. *Prima Paint* resolved this conundrum–and resolved it in favor of the separate enforceability of arbitration provisions.[18]

The *Buckeye* decision does not mean that arbitration agreements in Florida are unassailable in a court of law. The grounds for attacking the enforceability of an agreement to arbitrate are those that exist to attack the creation of any contract: whether the contracting party lacked legal capacity to enter into a contract,[19] whether the signatory of the contract had authority to bind the party against which the arbitration agreement is sought to be enforced,[20] whether the party ever signed the agreement at all,[21] and whether the signature was forged,[22] or whether there was a failure of offer and acceptance.[23] Notably, Justice Cantero, in his dissent to *Cardegna*, carefully distinguished the grounds for attacking the formation of the agreement to arbitrate from those attacking the legality of the underlying contract[24] and the United States Supreme Court agreed with that analysis: "The issue of the contract's validity is different from the issue of whether any agreement between the alleged obligor and obligee was ever concluded."[25] If the party resisting arbitration mounts a challenge to the formation of the agreement to arbitrate, **only** the court can resolve that dispute.

Neither does *Buckeye* stand for the proposition that a court gives its imprimatur to the legality of a contract alleged to be legally void by enforcing the severable arbitration agreement. The apparent fear that arbitrators would ignore Florida's law against usury (or, by extension, Florida's law voiding a construction contract entered into by an unlicensed contractor, or Florida's law voiding illegal franchise agreements) appears to partake more of the very judicial mistrust of arbitration that the FAA was adopted to ameliorate and to provide that arbitration agreements governed by the FAA would be entitled to the same enforcement in both state and federal courts.[26]

Virginia B. Townes is a shareholder with Akerman Senterfitt. She has been a member of the OCBA since 1985.

---

[15] 465 U.S. 1 (1984).
[16] *Buckeye*, 546 U.S. at ---, 126 S.Ct. at 1209.
[17] Justice Thomas dissented; Justice Alito, who joined the Court after the case was argued on November 30, 2005, did not participate in the consideration or decision of the case.
[18] *Id.* at 1210.
[19] *Spahr v. Secco*, 330 F.3d 1266 (10th Cir. 2003).
[20] *Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99 (3d Cir. 2000); *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136 (9th Cir. 1991).
[21] *Chastain v. Robinson-Humphrey Co.*, 957 F.2d 851 (11th Cir. 1992); *Opals on Ice Lingerie v. Body Lines, Inc.*, 320 F.3d 362 (2d Cir. 2003).
[22] *Sphere Drake Ins. Ltd v. All American Ins. Co.*, 256 F.3d 587 (7th Cir. 2001).
[23] *See, e.g., Will-Drill Resources, Inc. v. Samson Resources Co.*, (5th Cir. 2003).
[24] *Cardegna*, 894 So.2d at 872-73 (Cantero, J., dissenting).
[25] *Buckeye*, 546 U.S. at -----, 126 S.Ct. at 1208, n.1.
[26] *Southland*, 465 U.S. at 14, 15; 104 S.Ct. at 860.

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MAY 24, 2006 AT NOON

The Orange County Bar Association is planning to implement the Modest Means Program in July 2006. The program's objective is to provide legal service to a significant segment of society that cannot afford or does not qualify for legal service through traditional means.

This program needs energetic lawyers eager to work at rates that will accord them fair compensation while significantly reducing the financial hardship clients might encounter if they are billed at traditional firm rates.

The Modest Means Program is seeking attorneys who will make up a Modest Means Panel. Panel members then can take clients that are pre-screened for eligibility. In the initial phase of the program, cases covered will include: (a) bankruptcy; (b) family law - dissolutions, custodial disputes, support enforcement, adoption, etc.; (c) landlord-tenant; and (d) Wills and trusts.

Individuals who qualify for the program will be responsible for paying participating attorneys according to the following schedule:

(a) Bankruptcy: $1,500 for Chapter 13 cases, $800 for Chapter 7 cases.

(b) Family Law: $850 as a retainer for dissolutions and custodial disputes, and thereafter $100 per hour to the extent that a participating attorney reasonably expends in excess of 8.5 hours of billable time in the case. For all other family law matters, $350 as a retainer, and thereafter $100 per hour to the extent that a participating attorney reasonably expends in excess of 3.5 hours of billable time in the case.

(c) Landlord-tenant: $350 by way of retainer, thereafter $100 per hour to the extent that a participating attorney reasonably expends in excess of 3.5 hours of billable time in the case.

(d) Simple Wills: $100 for a simple Will; $150 for a reciprocal will package; $250 for a simple "planning package," including Will, designation of medical agent, and power of attorney; $350 for a reciprocal planning package, including Will, designation of medical agent, and power of attorney.

The OCBA will be offering a free luncheon workshop on Wednesday, May 24, 2006 at Noon at the OCBA offices, 880 N. Orange Avenue, Orlando, FL 32801 for those attorneys interested in participating in this important new program. To register, please complete the form below and mail it to OCBA (at the address immediately above), fax to 407-843-3470, or email the requested information to info@ocbanet.org

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Speaking Engagements

Susan K. McKenna, a partner with *Jackson Lewis LLP,* recently presented an "Overview of Employment Law" as part of the Human Resources Management Certificate Program at Rollins College.

Kristyne E. Kennedy with *Jackson Lewis LLP* recently presented on the topic "Avoiding EEO Liability: The Fundamentals of Discrimination Law" at the Workforce Central Florida University.

The Central Florida Human Resources Association recently hosted a half day Employment Law Seminar that featured a number of OCBA members as presenters: **Patrick Muldowney** with *Baker & Hostetler* spoke on the topic, "Workplace Technology: Emerging Legal Issues for the HR Professional"; **Patricia Sigman** of *Sigman & Sigman PA* and **John Finnigan** with *GrayRobinson* presented a panel discussion entitled, "Why Employees Sue Companies for Employment Claims"; **Kristyne Kennedy** with *Jackson Lewis LLP* presented rthe topic, "How to Prepare for and Be a Good Witness in an Employment Case"; and **Aaron Zandy** with *Ford & Harrison* spoke on the topic, "Dealing with Employee Leaves."

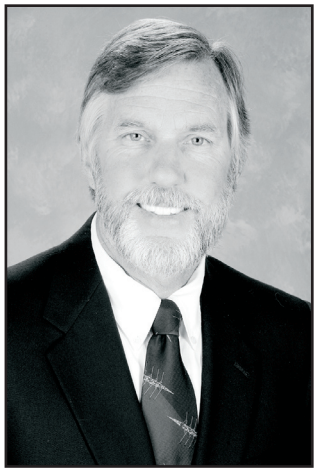
News to Note

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The ORLANDO OFFICE seeks (1) a public finance attorney with 6 + years of significant public finance experience. Practice consists of bond counsel, disclosure/underwriter's counsel, trustee counsel and borrower counsel representation, (2) land use & zoning associates with 3+ years of experience. Prior governmental experience is not required but may be beneficial, (3) real estate associates with 3+ years of transactional commercial real estate experience. Environmental, land use or tax and entity formation experience a plus, and (4) real estate attorneys with 8+ years experience in real estate and/or land use experience plus significant portable business.

Strong academic credentials and excellent writing skills required for all positions. Florida Bar membership or willingness to sit for next examination required. Send resume/cover letter to: Danielle Shannon, Akerman Senterfitt, One SE Third Avenue, 28th Floor, Miami, FL 33131. Fax: 305-374-5095 or Danielle.Shannon@akerman.com. See full listing of current hiring needs at www.akerman.com.

LAND USE/REAL ESTATE ATTORNEY: Bogin, Munns & Munns, an AV rated law firm, with seven offices in Orlando and Central Florida, seeks experienced land use/real estate attorney with 3 to 5 years or more experience to assist with dynamic and expanding real estate practice. Creative compensation arrangements available with great opportunity for growth and advancement. Send resume in confidence by fax to: 407-578-2128 or e-mail to bmm@boginmunns.com.

BOGIN, MUNNS & MUNNS, an AV rated law firm, with seven offices in Orlando and Central Florida, seeks two real estate attorneys, one with one to three years experience and one with 5 to 10 years experience to assist with dynamic and expanding real estate practice. Creative compensation arrangements available with great opportunity for growth and advancement. Send resume in confidence by fax to 407-578-2128 or e-mail to bmm@boginmunns.com.

BOGIN, MUNNS & MUNNS, an AV rated Orlando firm seeks bi-lingual attorney with 3-5 years experience in plaintiff personal injury including trial experience. Outstanding opportunity to join growing dynamic firm with excellent benefits and compensation package. Send resume in confidence by e-mail to bmm@boginmunns.com or fax to 407-578-2128.

STUMP, CALLAHAN, DIETRICH & SPEARS, an AV rated firm, seeks associate with 2 or more years of civil litigation/trial or real estate experience with strong research and writing skills. Please send cover letter, resume and writing sample to P.O. Box 3388, Orlando, FL 32802-3388, or fax response to 407-425-0827.

BOGIN, MUNNS & MUNNS AN AV RATED Orlando law firm, seeks experienced attorney for high volume, growing corporate/tax practice. Excellent opportunity to join rapidly growing, dynamic law firm. Experience with structuring real estate transactions helpful. Exceptional team atmosphere and opportunity for growth and advancement. Send resume in confidence by fax to 407-578-2128 or e-mail to bmm@boginmunns.com.

REAL ESTATE ASSOCIATE - Shuffield, Lowman and Wilson, P.A., an AV rated firm, seeks an attorney for its Orlando office. Position requires 2+ years exp. in commercial real estate. Excellent academic background. Reply in confidence to: Firm Administrator, P.O. Box 1010, Orlando, FL 32802,or swendel@shuffieldlowman.com.

AV RATED LAW FIRM IN ORLANDO seeks attorney experienced in business litigation, estate and business planning. Outstanding opportunity for growth and participation. Send resume in confidence to *Briefs* reply box 310.

SPECIALTY DEFENSE FIRM seeks Associate Attorneys with 2-5 years litigation experience for its Maitland and Tampa offices. SIU/Anti-fraud insurance defense experience preferred. Fax/Mail resume to: Office Manager (407) 647-9966, KINGSFORD & ROCK, P.A., 2300 Maitland Center Parkway, Suite 101, Maitland, FL 32751.

EXPANDING A-V RATED Orlando firm seeks experienced condemnation attorney with five or more years of experience. Outstanding opportunity to join growing dynamic firm. Send resume in confidence to *Briefs* reply Box 311.

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ASSOCIATE POSITION - Sole practitioner with busy estate, guardianship and real estate practice needs full time personable, detail oriented associate. Candidate must have minimum 3 years experience in above fields and a dedicated work ethic. Please respond by e-mail to lynn@yergeyandyergey.com or fax to 407-843-0433.

AV-RATED WINTER PARK FIRM is looking for an attorney with 2 to 5+ years experience in personal injury and workers' compensation. Please send resume to email@deciccio.com.

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A-V RATED LAW FIRM IN ORLANDO seeks attorney with three or more years of experience in labor and employment law, primarily plaintiff. Some representation of management may also be involved. Creative compensation packages available with excellent benefits and working conditions. Please send resume in confidence to *Briefs* reply box 313.

A-V RATED ORLANDO LAW FIRM seeks 3+ years experienced attorneys to service Legal Service Plan administered by the firm. Good people skills are necessary for primarily telephone consultations with a strong team approach; full-time status. Non-smoker. Diverse legal background and Spanish speaking a plus. Reply to PPL, Managing Partner, P.O. Box 87, Orlando, FL 32802-0087; fax to 407-992-3595; or e-mail kshutler@dksmn.com.

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LARGE ORLANDO A-V RATED litigation law firm seeks two attorneys with 3+ years of civil litigation exp., focused in commercial litigation and domestic to service Legal Service Plan administered by the firm. Good people, communication and writing skills are necessary. Non-smoker. Reply to PPL, Managing Partner, P.O. Box 87, Orlando, FL 32802-0087; or fax to 407-922-3595; or e-mail kshutler@dksmn.com.

LARGE ORLANDO A-V RATED litigation firm with 30 years of exp. seeks attorney with 3+ years of civil litigation exp., focused in PIP/insurance defense. Excellent writing/communication skills a must. Excellent compensation & benefits package! Non-smoker. Please respond to Hiring Partner via e-mail: kshutler@dbksmn.com or fax: 407-992-3595.

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LITIGATION ASSOCIATES - the law firm of Cooney, Mattson, Lance, Blackburn, Richards & O'Connor, P.A. is currently recruiting attorneys for their Orlando office. Qualified candidates must have 3+ years of litigation experience, insurance defense is a plus. We offer a competitive compensation and bonus package. Please submit resume and salary requirements to Firm Administrator at (954) 568-0085, or e-mail to kjames@cmlbro.com.

WELL-ESTABLISHED MAITLAND/ORLANDO law firm seeks Associate Attorney with 3-5 years litigation experience for plaintiffs' personal injury and first party practice. Salary commensurate with experience and includes excellent health benefits and retirement plan. Please send cover letter, resume and salary requirements, in confidence, to: Hiring Partner, P.O. Box 940897, Maitland, FL 32794-0897 or email to maitlandlawfirm@cfl.rr.com.

ASSOCIATE POSITIONS AVAILABLE for AV-rated Orlando law firm: Real Estate: seeking associates with 2 - 8 years of real estate experience; real estate development and conveyancing experience preferred. Corporate: seeking associates with 3- 4 years of corporate experience. Commercial Litigation: seeking associates with 3 - 4 years of commercial litigation experience. Please submit resume and recent writing sample if applicable in confidence to: Soledad Hasan, Firm Administrator, Gronek & Latham, LLP, P.O. Box 3353, Orlando, FL 32802, shasan@groneklatham.com.

AV RATED ORLANDO DEFENSE FIRM seeks Florida Bar-admitted associate, 0-2 years experience seeking growth & advancement. Medical malpractice/nursing home section. Competitive salary + benefits. Please send cover letter and resume to Administrator, Grower, Ketcham, et al., 390 N. Orange Avenue, Suite 1900, Orlando, FL 32801. Drug Free Workplace.

ORLANDO BASED STAFF COUNSEL office for GEICO Insurance Company seeks attorney with minimum 2 years insurance defense experience. Salary commensurate. Please fax resume to: Law Office of Stephen F. Lanosa (407)648-2650.

REAL ESTATE ATTORNEY: Lowndes, Drosdick, Doster, Kantor & Reed, P.A., an AV-rated law firm located in Orlando, Florida, seeks an attorney with a minimum of three years transactional real estate experience to assist with dynamic and expanding real estate practice. Applicant must possess good academic credentials, excellent writing skills and excellent references. Compensation will be commensurate with experience. The law firm offers outstanding financial stability with steady practice growth, sophisticated clientele, outstanding credentials and excellent facilities. Send resume and writing sample in confidence to Nicholas A. Pope, Esq. , or Jacqueline Bozzuto, Esq., Post Office Box 2809, Orlando, Florida 32802.

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LEGAL ADMIN ASSISTANT for small growing law firm in downtown Orlando. Duties incl. data entry, filing, general secretarial and receptionist duties. Computer experience incl. MS Word and Outlook required as are organizational skills, attention to detail and willingness to learn. To apply, follow instructions at www.theconstructionlawfirm/legalassistant.htm.

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2006 May - June Calendar

OCBA Luncheon • May 25, 2006

Installation of 2006-2007 Officers

RSVP by May 24th to reservations@ocbanet.org

May

2 ***OCALSS Meeting***
6:00 p.m. • Bar Center

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

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

OCBA Paralegal Committee
5:30 p.m. • Bar Center

5 ***CFAWL Bar Luncheon***
11:30 a.m. • Citrus Club

Criminal Law Committee
12:00 p.m. • Bar Center

8 ***Executive Council Meeting***
6:00 p.m. • Brio Tuscan Grille, Winter Park Village

10 ***Estate Guardianship & Trust Seminar*** *"A Buffet of Tasty Topics"*
9:00 a.m. • Bar Center

Judicial Relations Committee
12:15 p.m. • Orange County Courthouse, 21st Floor Conference Room

11 ***Real Property Committee***
12:00 p.m. • Bar Center

Young Lawyers Board Meeting
5:30 p.m. • Bar Center

12 ***Diversity Committee***
12:00 p.m. • 255 S. Orange Ave., Ste. 1401

16 ***Professionalism Committee***
8:00 a.m. • Bar Center

International Law Committee
12:00 p.m. • 201 E. Pine St., Rissman, Weisberg, et al.

17 ***Family Law Committee Seminar***
"Advancing the Best Interest of the Children: How to Choose and Use Resources for Families"
1:00 p.m. • Bar Center

Solo & Small Firm Committee
12:00 p.m. • Bar Center

18 ***Young Lawyers Luncheon***
11:45 a.m. • Citrus Club

Paul C. Perkins Bar General Meeting
6:00 p.m • FAMU College of Law

19 ***Family Law Committee***
8:00 a.m. • 425 N. Orange Ave., Room 2310

22 ***9th Annual Gary L. Formet Sr. Memorial Golf Tournament***
7:30 a.m. Registration • Bay Hill Club & Lodge • 9:00 a.m. Tee-off

23 ***Legal Aid Society Board Meeting***
11:45 a.m. • 100 E. Robinson St.

Technology Law Committee
12:00 p.m. • GrayRobinson

Federalist Society
Senator Dan Webster "Eminent Domain"
12:00 p.m. • Bar Center

24 ***Modest Means Free Workshop***
12:00 p.m. • Bar Center

CFACDL
11:45 a.m. • Sorosis Club

25 ***OCBA Luncheon***
2006-2007 Installation of Officers
11:30 a.m. • Downtown Marriott

26 ***Labor & Employment Committee***
12:00 p.m. • Bar Center

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

29 **Memorial Day - Bar Closed**

31 ***Business Law Committee***
12:00 p.m. • 255 S. Orange Ave., Ste. 1401

June

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

OCBA Paralegal Committee
5:30 p.m. • Bar Center

2 ***CFAWL Luncheon***
11:30 a.m. • Citrus Club

Criminal Law Committee
12:00 p.m. • Bar Center

5 ***CFAWL Board Meeting***
12:00 p.m. • Bar Center

6 ***OCALSS Meeting***
6:00 p.m. • Bar Center

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

7/8 ***Diversity Committee 2-day Free Seminar***
"Successful Lawyering in a Diverse Society"
9:00 a.m. • Bar Center
Contact Florida Bar: 850-561-5743

8 ***Real Property Committee***
12:00 p.m. • Bar Center

Young Lawyers Board Meeting
5:30 p.m. • Bar Center

9 ***Diversity Committee***
12:00 p.m. • 255 S. Orange Ave., Ste. 1401

10 ***2nd Annual Barrister's Ball of the Caribbean Bar Association's Central Florida Chapter***
Contact: cbacf@hotmail.com

13 ***Executive Council Meeting***
11:30 a.m. • Bar Center

14 ***Labor & Employment Law Spring Seminar***
12:30 p.m. • Bar Center

Estate Guardianship & Trust Committee
12:00 p.m. • Bar Center

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

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