

the Briefs

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

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

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

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President's Message

November 2011



Thomas A. Zehnder

Thanksgiving – a Time for Thanks... and for Giving

Thanksgiving has always been one of my favorite holidays. Many of you feel the same, I'm sure. I mean, what's not to like – the turkey, the stuffing, the mashed potatoes, the green bean casserole and, especially, the pumpkin pie are all sublime. (*In our house, it's actually pumpkin chiffon pie – a family tradition and a great treat.*) More important than the wonderful food, of course, is the quality time with family and friends. Our lives are so hectic these days – between work, the house, and taking care of the kids – we can often feel overwhelmed and, sometimes, we lose sight of all that we have.

Thanksgiving provides a welcome respite from our daily labors and the opportunity to reflect on the many blessings in our lives. Our modern Thanksgiving tradition dates back to 1621, when the Pilgrim settlers of Plymouth Plantation held a feast in celebration of their first plentiful harvest. English history records that members of the Wampanoag nation, who had taught the Pilgrims how to fish and to cultivate corn and other crops, and whose leader Massasoit aided the struggling colony by donating food, joined the Pilgrims in a days-long celebration of feasting and games. What an amazing story of survival, of friendship, and of thanks. (*And it sounds like it must have been a great party!*)

We truly have much for which we can be thankful. We live in the greatest nation in the world and, even in this tough economy, the most prosperous. Our democracy is grounded on principles of freedom, equality, and the pursuit of happiness. And our system of justice is based on the rule of law, the foundation for a fair and just society that guarantees responsible and accountable government and strives for peace, prosperity, and security.

Locally, we have much to be thankful for as well. Orlando is a great legal community. Our judiciary (*while certainly underfunded*) remains independent, fair, and impartial, serving as a stalwart protector of equality under the law. And, fortunately, our local lawyers recognize that truly representing their clients' interests faithfully and effectively requires a commitment to practicing with professionalism and with integrity.

But, as the first Thanksgiving reveals, this holiday is not just about being thankful. The Wampanoag

and their leader Massasoit are an early example of another lesson we should take from Thanksgiving. Historians attribute the Pilgrim colony's salvation from certain starvation to the Wampanoags' tutelage and Massasoit's generosity in donating food. And so at the first Thanksgiving, our Native American brothers and sisters taught the Pilgrims – and the rest of us – that those with much must give back to help those with very little.

As lawyers, our training and skill make us uniquely qualified to help the needy. What a gift that is – to be able to help others – and one for which we should be truly thankful. Fortunately, OCBA lawyers recognize this gift and have embraced the lesson of Thanksgiving by reaching out to those most in need.

OCBA lawyers unselfishly give of their time in extraordinary ways. Through the various programs and services offered by the OCBA's Legal Aid Society, our lawyers donated nearly 23,000 hours of *pro bono* service in 2010 alone. That effort closed 1,424 cases and allowed 1,194 new cases to be opened. That is the true spirit of Thanksgiving – giving back in thanks for what we have.

As we celebrate Thanksgiving this year, let us be truly thankful for our many blessings. But let us also be mindful of our never-ending responsibility to give back. Despite our great efforts, the needs of many in our community remain unmet. I'm saddened to report that in dependency cases alone, our LAS is unable to assign *pro bono* GALs to an average of 75 children every month.

I hope you all enjoy your holiday, the great food, and the well-deserved, precious time with your families. We have much to be thankful for, and we have much to give back.

Thomas A. Zehnder is a partner with King, Blackwell, Downs & Zehnder, P.A. He has been a member of the OCBA since 1995.



Travis Pickens

Ethics “Desiderata”

In 1927, American writer Max Ehrmann wrote a prose poem titled “Desiderata.” It was thought that Ehrmann had written it for his children, and the poem was extremely popular in the '60s and '70s, especially among young adults. “Desiderata” is Latin for “desired things.” The following is an adaptation of the poem.

*Go ethically amid the noise and haste,
and remember what peace there may be in an office practice.*

*As far as possible, without surrender,
be on good terms with opposing counsel and your client.
Make your argument quietly and clearly;
and listen to others,
even to the dull and ignorant;
they too have practiced law, and are now retired.
Tolerate, but do not emulate, rude and vexatious lawyers;
they depress Lady Justice, but sometimes cannot be avoided.*

*If you compare yourself with others,
you may become vain and bitter,
for always there will be lawyers more or less super than yourself.
Enjoy your successes and find lessons in your defeats.
Keep interested in the law, however routine your practice may be;
it is a real possession in a down economy.*

*Exercise caution in negotiations,
for last-minute bargaining is full of trickery.
But let this not blind you to what virtue there is;
many lawyers strive for high ideals,
and everywhere the law is full of professionalism.
Be yourself. Especially do not feign sincerity.
Neither be cynical about civility,
for in the face of all anger and disenchantment,
it is as calming as a stream.*

*Take kindly the counsel of the years,
gracefully surrendering the clients of youth.
Nurture your investments to shield you in sudden misfortune,
but do not distress yourself with imagined missed deadlines.
Many fears are born of fatigue and insecurity.*

*Beyond enough billable hours to satisfy your partners,
be gentle with yourself.
You are a child of the legal world,
no less than the jurists and the justices;
you have a license to be here.
And whether or not it is clear to you,
no doubt your career is unfolding as it should.*

*Therefore be at peace with the law,
whatever your practice may be.
And whatever your losses and victories,
in the stressful confusion of this demanding life,
keep peace in your soul.*

*With all its dangers, duties and fights,
it is still a beautiful career.
Realize your good fortune. Resolve to be happy.*

Reprinted by permission of the Oklahoma Bar Association, *Oklahoma Bar Journal*, August 6, 2011.

OCBA Luncheon Tuesday, November 22, 2011



William T. (Bill) Robinson III

William T. (Bill) Robinson III President, American Bar Association, 2011 – 2012

William T. (Bill) Robinson III is Member-in-Charge of the Northern Kentucky offices of Frost Brown Todd LLC, a regional law firm with offices in Kentucky, Ohio, Tennessee, West Virginia and Indiana. He currently serves as President of the American Bar Association for a one-year term which began on August 8, 2011.

Throughout his forty-year career, Robinson has been a volunteer leader in his profession and in his community. An ABA member since 1972, he has been active in the Association for more than 25 years in various leadership roles, including three years as ABA Treasurer, eight years on the ABA Board of Governors, and nine years as Kentucky State Delegate on the ABA Nominating Committee. Robinson has served as a President of the Kentucky Bar Association, President of the Kentucky Bar Foundation, Founding Chair of Kentucky's Interest on Lawyer Trust Accounts (IOLTA), and President of the National Caucus of State Bar Associations.

Robinson is a Fellow of the American Academy of Appellate Lawyers; Sustaining Attorney Member of the Product Liability Advi-

sory Council (PLAC); Sustaining Member of the American Law Institute (ALI); a Founding Board Member of the Appellate Judges Education Institute (AJEI) at Southern Methodist University; Fellow of the Litigation Counsel of America; Member of the International Association of Defense Counsel (IADC); Fellow of the International Society of Barristers (ISB); and a Life Member of the U.S. Sixth Circuit Court of Appeals, having served on the Life Members Committee and the Judicial Conference Planning Committee.

Robinson is a graduate of Thomas More College and the University of Kentucky College of Law, where in 2004 he was inducted into the Alumni Hall of Fame. He served as Chair of the Kentucky Chamber of Commerce, Chair of the Cincinnati/Northern Kentucky International Airport Board, Chair of the Cincinnati USA Partnership for Economic Development, and is Founding Secretary-Treasurer of the Tri-County Economic Development Corporation (Tri-ED).

The Ballroom at Church Street

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Main Entrance: Garland Avenue between
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To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Thursday, November 17, 2011. The OCBA is happy to provide 10 luncheons as part of your member benefits, but no-shows incur additional charges for the Bar and walk-ins cannot be guaranteed a seat.

Please keep us up-to-date on your reservation status!

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Elizabeth C. Wheeler

Preservation of Error for Appeal: Pretrial Proceedings – Part 2

This is the second in a series of articles presented by the Appellate Practice Committee of the Orange County Bar Association. The first article in this series emphasized the basic principle that, with limited exceptions, a timely and appropriate objection is required as a condition precedent to an appellate court's consideration of whether potential error constitutes a legitimate basis for reversal.¹ The essential requirements for preservation of error – timeliness, specificity, a ruling by the court, and a record of the proceedings – apply to *all* stages of litigation and to *both* sides of the issue. This article will discuss preservation issues that may arise at the pleading stage, through pre-trial motions, and during discovery.

PLEADINGS

Because pleadings form the foundation of every lawsuit, the importance of preserving potential appellate issues cannot be over-emphasized. The fundamental rule is that parties are bound by their pleadings and may not alter their theories of recovery or defense on appeal.² Therefore, the latest pleading of a party is the one that frames the issues. When a claim or defense is dismissed or stricken without prejudice, failure to reply or otherwise indicate intention to preserve, it will constitute an abandonment which cannot be resurrected on appeal.³ An amended pleading supercedes an earlier pleading and must express an intent to preserve portions of the earlier pleading.⁴

Issues may be tried by consent of the parties, with the pleadings amended to conform to the evidence.⁵ The consent need not be expressly given, and a litigant must make timely objections to introduction of evidence on an unpled or defectively pled issue in order to avoid having the court conclude that it was tried by implied consent.⁶ A motion to conform the pleadings to the evidence over objection must be timely, as waiting until the close of all the evidence may be too late.⁷

Claims must be pled with sufficient particularity at the outset of a suit to enable the opposing party to prepare a defense.⁸ Rule 1.140(h)(2) expressly permits the defenses of failure to state a cause of action or a legal defense or to join an indispensable party to be raised at trial.⁹ Therefore, a defectively pled claim may properly be dismissed at the close of all the evidence.¹⁰

The Complaint

Special damages must be pled with specificity.¹¹ Evidence of unpled special damages is inadmis-

sible, and it is error to award such damages.¹² However, the error must be preserved, such as by a motion in limine to exclude the evidence and by a motion for directed verdict on that issue.¹³

Section 768.72, Florida Statutes, allows a claim for punitive damages to be asserted only after obtaining leave of court.¹⁴ The statute cannot be circumvented by presenting punitive damages evidence at trial and then seeking to amend the complaint as the case goes to the jury.¹⁵ The proper procedure is set forth in Florida Rule of Civil Procedure 1.190(f).

A motion for leave to amend a complaint to assert a claim for punitive damages must make a "reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages."¹⁶ The motion and the supporting evidence or proffer must each be served at least twenty days before the hearing.¹⁷ An affidavit does not alleviate the requirement of an evidentiary hearing. Similarly, evidence or argument presented at a hearing on a motion to strike a punitive damages claim pled without leave of court does not satisfy the procedural requirements.¹⁸

The Answer

Except for lack of subject matter jurisdiction, affirmative defenses not set forth in a motion or the answer will be waived.¹⁹ If an answer contains an affirmative defense that the opposing party seeks to avoid, the opposing party must file a reply containing the avoidance.²⁰ A denial of performance or occurrence of conditions precedent must be made specifically and with particularity.²¹ The defenses of failure to state a cause of action or a legal defense or to join an indispensable party may be raised by motion for judgment on the pleadings or at trial in addition to being raised in a motion or in the answer or reply.²²

Attorney's Fees and Costs

There is no generally applicable statute that entitles a prevailing party to a recovery of attorney's fees. Therefore, proper pleading requires that a party seeking fees put the other party or parties on notice that attorney's fees are at issue in the litigation.²³ A claim for attorney's fees must be pled, but it is not necessary to state the specific statutory or contractual basis for such a claim.²⁴ A motion for attorney's fees does not satisfy the pleading requirement.²⁵ The opposing party by its conduct may waive the right to object to an award of fees based on the failure to plead entitlement.²⁶

When the time comes to seek recovery of fees or costs, or both, the deadline must be strictly met. The motion must be served no later than thirty days after the filing of the judgment or the service of a notice of voluntary dismissal, which judgment or notice concludes the action as to that party.²⁷ A trial court's reservation of jurisdiction to consider entitlement to attorney's fees and/or costs does not automatically extend the thirty-day deadline, but a party may move for an enlargement of time to file the motion under Rule 1.090(b).²⁸

MOTIONS

The movant in the trial court must satisfy all legal requirements in order to preserve any error in the denial of the motion. For instance, a motion to transfer venue for convenience of the parties based upon Section 47.122, Florida Statutes, must be accompanied by sworn proof.²⁹ The bare assertion in an unsworn motion that the defendant has a meritorious defense is legally insufficient, and the defendant must tender either a defensive pleading showing the defense or a sworn motion or affidavit meeting the substance of the allegations against the affiant.³⁰ Merely attaching an unsworn document to a motion for summary judgment does not satisfy the procedural strictures inherent in Rule 1.510(e).³¹ Failure to renew a motion for continuance when the case proceeds to trial may waive the right to seek a new trial based upon the trial court's earlier denial of the motion.³² A motion to set aside a judgment based on defective service must be filed within one year of the date of the judgment pursuant to Rule 1.540(b).³³

Correspondingly, the opponent of a motion must properly preserve any error in

the granting of a motion. Argument in opposition to a motion to dismiss may not be raised by the appellant for the first time on appeal.³⁴ Procedural irregularities in a motion for summary judgment must be raised at the hearing on the motion.³⁵ The opponent must object or file a motion to strike to preserve error as to an affidavit offered in support of summary judgment.³⁶

DISCOVERY

Many discovery issues on appeal relate to claims of privilege. A claim of privilege may not be asserted for the first time as grounds for reversal in the appellate court.³⁷ Such objections must be made at the earliest opportunity.³⁸

Rule 1.280(b)(5) outlines requirements when a party withholds information otherwise discoverable by claiming that it is privileged or subject to protection as trial preparation material. Rule 1.280(b)(5) requires the objecting party to provide a privilege log which makes the claim expressly and describes the nature of the documents, communications, or things not produced or disclosed in a manner that will enable other parties to assess the applicability of the privilege or protection. At a minimum, information in the privilege log should include the sender, recipients, title or type, date, and subject matter of each document; identification of documents in bulk or as a class such as "claims file" should be the exception.³⁹

Although the privilege log need not be submitted by the due date for the response to the discovery request, it should be provided within a reasonable time before a hearing on a motion to compel.⁴⁰ Failure to provide a privilege log may waive any claim that documents are privileged or protected

from disclosure.⁴¹ However, argument that objection was waived by failure to prepare a privilege log must be made to the trial court in order to preserve that issue for appeal.⁴² Failure to request an evidentiary hearing on privilege objections will waive any argument related to the trial court's failure to conduct such a hearing.⁴³

The Florida Rules of Civil Procedure were recently amended to address the inadvertent disclosure of privileged materials. New Rule 1.285 provides detailed procedures for asserting privilege after inadvertent disclosure and for challenging such assertions, including time deadlines for both the assertion and the challenge. Practitioners should become familiar with these requirements so as not to waive either the privilege or the right to challenge.

CONCLUSION

This article addresses only the tip of the iceberg of preservation issues that may arise during pre-trial proceedings. Hopefully, the examples provided will lead to a better understanding of steps that must be taken by both the proponent and opponent of particular issues that could become the subject of review by an appellate court. The next article in this series will address preservation of error that may occur during jury selection.

Elizabeth C. Wheeler is Board Certified in Appellate Practice and Civil Trial and has just completed a six-year term as a member of the Appellate Practice Certification Committee, of which she served as Chair in 2008-2009. She has been a member of the OCBA since 1989.

¹Michael R. D'Lugo, *Preservation of Error for Appeal*, THE BRIEFS, Oct. 2011, at 14.

²*United Bank of Pinellas v. Farmers Bank of Malone*, 511 So. 2d 1078 (Fla. 1st DCA 1987).

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Investiture: The Honorable A. James Craner

The **Honorable A. James Craner** took the oath of office during a Judicial Investiture Ceremony held on Friday, September 9, 2011, in the Honorable Frederick Pfeiffer/Honorable Rom Powell Jury Assembly Room at the Orange County Courthouse.

James J. DeKleva, Esq., gave the introduction, and Dr. Dan DeBevoise, Park Lake Presbyterian Church, Orlando, gave the invocation. The Honorable Belvin Perry, Jr., Chief Judge of the Ninth Judicial Circuit, introduced dignitaries, gave opening remarks, and administered the Oath of Office. Members of Judge Craner's family, including DeVonna Craner and Alessa, Lane and Audrey Craner, conducted the enrobing ceremony.

The Honorable Lydia Gardner, Clerk of Courts, presented Judge Craner with a plaque, and the Honorable Steve Jewett of the Ninth Judicial

Circuit and Kristyne E. Kennedy, President-elect of the Orange County Bar Association, acknowledged Judge Craner. Ms. Kennedy spoke on behalf of other local bar associations and legal organizations. Judge Craner followed with personal remarks. A reception followed the investiture.

Judge Craner has been a sole practitioner since 1996. Previously, he was an assistant state attorney with the State Attorney for the Ninth Judicial Circuit Court from 1993 to 1996 after interning and practicing as an associate with Alan Robinson, P.A. from 1988 to 1993. He earned his bachelor's degree from Kent State University and his law degree from the University of Akron School of Law.



The Honorable Lydia Gardner presenting the plaque to Judge Craner



Kristyne E. Kennedy
OCBA President-elect



The Craner Family



Catherine A. Tucker

Susan Khoury Wins 2011 Child Advocacy Award

Susan Khoury, Guardian ad Litem Program Director, was recognized by Florida's Children First, Inc., for her work with children at an event on September 9, 2011 at the Citrus Club. Past OCBA President Paul SanGiovanni introduced her and presented her with the plaque. Other advocates celebrated were Jeff Faine of The Faine House and George Diaz of the *Orlando Sentinel*.

Founded in 2001, Florida's Children First, Inc. (www.floridaschildren-first.org), is a statewide advocacy program for children's issues. Dick J. Batchelor serves on the Board of Directors, and Gerry Glynn and Heather Morcroft serve on the Advisory Board.

Since 1986, Susan Khoury has worked at the Legal Aid Society as coordinator of the GAL Program, where she began her effort to bring safety and stability to the lives of abused and neglected children in dependency cases in juvenile court. Always short-staffed and on a shoestring budget, Susan has had the burden and joy of advocating for thousands of Orange County youth in the dependency system. She has worked on over 5,000 cases in her years with Legal Aid.

For the first 14 years, Susan and her assistant struggled to work with up to 900 volunteer attorneys with only limited support from other staff at Legal Aid. In 2000, funding from the state of Florida allowed Legal Aid to expand its GAL in-house staff. Through continued funding from the statewide GAL Program, The Florida Bar Foundation, Orange County, donations from Orange County Bar members, and funding from

several local foundations, Susan has put together a multidisciplinary staff to support the work of the *pro bono* attorneys who donate their time by accepting appointments as GALs for abused and neglected children.

Today Susan manages a staff of 19, including six attorneys. They provide both case management and litigation support, not only in general dependency law but also with education, immigration, developmental disabilities, and adoption law.

In 2010 Susan and her staff and volunteers helped secure 180 adoptions, while reducing the time between termination of parental rights and adoption finalization from nine months to four months. She and her staff participated in successful reunifications or permanent guardianships for 504 children and helped 120 developmentally disabled children obtain essential services from the Agency for Persons with Disabilities.

With a firm commitment to achieving permanency as quickly as possible, the GAL Program serves more than 1,100 children annually. Susan's leadership

shows her fierce determination to see that every dependent child has a champion, as well as achievable stability through permanency.

Catherine A. Tucker is the Pro Bono Coordinator for the Legal Aid Society. She has been a member of the OCBA since 1998.

Susan Khoury
Paul SanGiovanni



Susan Khoury





Donna A. Haynes

“Hall of Fame” Addition from the Legal Aid Society!

From its inception in 1979, the National Alliance on Mental Illness (NAMI) has been dedicated to improving the lives of individuals and families affected by mental illness. For three decades, NAMI has become recognized as the most formidable grassroots mental health advocacy organization in the country. Dedication, steadfast commitment, and unceasing belief in NAMI's mission by its advocates have produced profound changes in the lives of those it serves.

Sandi Sumner has been a dedicated legal assistant at the Legal Aid Society since 1992. Twelve years ago, she took a class through NAMI that changed her life personally and professionally. As an individual who received NAMI services, she has her own unique story about how she chose to “pay it forward” by educating others. Because of her work, Sandi was recently named to the NAMI Florida Hall of Fame.



Sandi Sumner

Sandi has taught the LAS Family-to-Family Class to approximately 225 individuals, whose knowledge has impacted countless others. Recently trained as an educator/trainer, Sandi educates new teachers, enabling NAMI to provide more Family-to-Family courses. Additionally, Sandi has been trained to teach a provider education class from the

family and consumer perspective and is hoping to impact professionals and line staff who work at mental health facilities in and around Orlando.

NAMI's Family-to-Family education program is a free, twelve-week course designed to foster learning, healing, and empowerment for family caregivers of individuals diagnosed with severe mental illnesses. People of all walks of life find themselves needing mental health education; the course is not something for those with poverty law issues alone. While working at Legal Aid, Sandi uses her knowledge and advocacy skills with clients. Many clients who arrive at Legal Aid come not only to seek help with multiple legal issues but to find help for themselves or family members with mental health issues. Sandi steps in

with a no-fault approach, speaking openly about mental health and providing information about available resources. She believes that only through education can the stigma associated with mental illness be eradicated.

“Having mental illness and trying to deal with legal issues can be a daunting, if not impossible task. Without help, this population of people would fall between the cracks. Many people suffering from ‘biological brain disorders’ are afraid to talk about it. I want to offer them hope, and working at Legal Aid affords me the opportunity to do that by sitting down with people and educating them about NAMI. I am hoping that the information I share with those clients opens the door to resources and education they need to assist them personally and in better navigating the mental health system,” says Sandi.

Donna Helsel, the NAMI Greater Orlando Education Director, stated: “I have had the privilege of teaching Family-to-Family with Sandi for the past ten years. She is a dedicated teacher who brings professionalism as well as compassion and understanding to the families in the classes. She is making a difference by giving families knowledge, hope, and empowerment to help their loved ones.”

Like other award recipients, Sandi knows that helping others is the reward itself.

Our congratulations go to Sandi for the great work she does for the Legal Aid Society and the Orange County community.

If you know of someone who can use NAMI services, please call the Greater Orlando chapter at 407-253-1900, or fax 407-253-1912. NAMI's email address is naming@namingo.org and the web page is www.namingo.org.

To find out more about Sandi's involvement, contact SSumner@legalaiddocba.org.

To find out more about donating time or money to the Legal Aid Society, a nonprofit charity, please contact Donna Haynes, Manager of Development, at dhaynes@legalaiddocba.org or 407-841-8310, ext. 3250.

Donna A. Haynes is the Director of Development at the Legal Aid Society. She has been a member of the OCBA since 2008.

On Monday, September 19, 2011, Supreme Court Justice Elena Kagan was awarded an Honorary Fellowship with the Federal Bar Association's Foundation. The ceremony was held at the U.S. Supreme Court in Washington, DC. OCBA Foundation President Richard S. Dellinger was present in his capacity as the Federal Bar Association's 11th Circuit Vice President. Justice Kagan is the Court's 112th justice and fourth female justice. Appointed by President Obama on May 10, 2010, Justice Kagan was sworn in on August 7, 2010. Pictured are Supreme Court Justice Kagan, Robert E. Kohn, with the Kohn Law Group, Inc. in Los Angeles, California, and Richard Dellinger, Lowndes, Drosdick, Doster, Kantor & Reed, P.A.



Legal Aid Society of
the Orange County Bar
Association, Inc.
presents:

**TUESDAY
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VAWA – Violence Against Women Act
Speaker: Charles Conroy, Attorney at Law
CLE Applied for

12:00 p.m.-1:30 p.m. **Comerica Bank**
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Members of the Orange County Bar Association are asked to submit nominations for these awards by using the appropriate form(s), which can be found on the OCBA's website. You may submit supplemental information if you feel that it is appropriate. Please send your completed nomination form to Executive Director Brant Bittner at the OCBA by mail, fax, or email. Nominations will be open until Friday, December 9, 2011.

For more information, please call the OCBA office at 407-422-4551.

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On behalf of the Trial Lawyers Section, your participation would be greatly appreciated.

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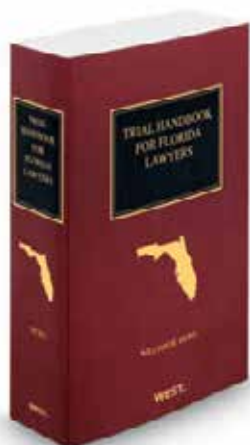
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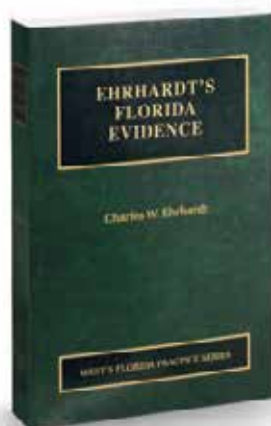
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Learning Civics and the Law through the Law Magnet Program

There is a courtroom at Boone High School. The courtroom has an elevated podium for a single judge and seats for a three-judge panel. There is a jury box, a place for a court reporter and trial clerk, and two tables for counsel. Hanging prominently to the left of the judges, for everyone to see, is a large reprint of the Bill of Rights. The courtroom bears the name of former Florida Supreme Court Justice (and current Orlando resident) Justice Charles T. Wells, and the litigants are all high school students. This is not simply a courtroom; it is their classroom as well.

Guest speakers at this venue venture into the intense world of intellectual legal analysis as well as exposure to the no-holds-barred questions of bright, unfettered minds. These high school students are part of the Orange County Public School's Law Magnet Program. Students from throughout the county strive for an opportunity to be selected for Orange County's prestigious Law Magnet Program, which was established in 1995. The program is administered through Boone High School in conjunction with the Finance Magnet Program and the Criminal Justice Magnet Program.

Students of the Law Magnet Program learn to think critically as they read and brief cases. They regularly debate current events and law with each other, their teacher, and the guest speakers. During the constitutional law students' final month of the school year, they participate in mock oral arguments that are judged by twenty Orange County Bar Association members. This goes a long way in helping the students become skilled in advocacy and speak with clarity. Students regularly participate in the Orange County Bar's Teen Court program and job-shadow real lawyers and judges before they complete the program.

The Law Magnet Program is taught by OCBA member and Orange County Bar Foundation Board Member Cynthia Schmidt. Cindy has a law degree and practiced criminal defense for fourteen years. After volunteering as a guest speaker for Law Week, Cindy found her passion. She walked away from the practice of law so that she could teach law to the students of Orange County. She began by teaching the mock trial team and later became a full-time teacher in the Law Magnet Program.

Cindy has since coached the Boone High School mock trial team to a half dozen regional championships and one state championship. Her trial

teams have a real advantage, because many of them learned the law in her classroom before ever competing.

The success of the Law Magnet Program goes well beyond statistics. Cindy and the school are proud that 100% of the magnet students attend college, but they are even more proud when they see them leave the classroom with a better sense of self, a better sense of community, and a greater ability to analyze current events.



Judge Antoinette Plogstedt

The week of September 17 through September 23, 2011, was National Constitution Week. During that time, members of the OCBA Foundation lectured on the Constitution to local high schools. OCBA Foundation Board Member Judge Antoinette Plogstedt spoke to 7th graders at Arbor Ridge K-8 School. The students were enthused to learn about the three branches of government in Florida. They discussed county and circuit trial courts, appellate courts, and the Florida Supreme Court. None of the students had ever met a judge and were delighted to be introduced to a member of the judicial branch. Judge Plogstedt will be teaching all of the 7th grade classes once a month.

On September 22, OCBA Foundation President Richard Dellinger and OCBA Foundation Board Member Judge Wilfredo Martinez spoke to the Law Magnet's Constitutional Law class about the First Amendment. However, before discussing the First Amendment, the students insisted on speaking about the execution of Troy Davis the night before. Some students had followed the capital murder case for three years and were not shy to voice their opinions. Whether for or against capital punishment, the students debated the case with respect and civility. This was the perfect opening to commence discussion about the First Amendment.

The Law Magnet students spoke critically about current events and First Amendment issues, including the Westboro Church case, the flashing of lights after seeing police, the marching of the skinheads in downtown Orlando, and freedom of speech in Libya and China. The students left the class feeling empowered after learning about

continued page 31



James C. Hauser

Attorney's Fees are Awardable by Contract: Offers of Judgment Just Got More Difficult!

Tierra Holdings, Ltd., v. Mercantile Bank, 36 Fla. L. Weekly D1049 (Fla. 1st DCA 2011)

A contract permitted attorney's fees to the prevailing party. The defendant made an offer of judgment in accordance with \$768.79 for \$178,000, which included the attorney's fees and costs incurred by the plaintiff prior to the date of the offer of judgment. The plaintiff did not accept the offer of judgment and recovered only \$16,232.

The plaintiff conceded the defendant was entitled to recover \$208,627 based on its offer of judgment. The defendant conceded that the plaintiff was entitled to attorney's fees and costs up to the date the offer of judgment was served. What the parties disagreed about was whether the plaintiff was entitled to attorney's fees after service of the offer of judgment. The court ruled that the plaintiff was entitled to such fees and awarded the plaintiff \$232,381. After setting off the defendant's attorney's fees, the plaintiff recovered a net judgment of \$23,753.

The Florida Supreme Court had previously ruled that when attorney's fees are awardable by statute to the plaintiff, if the net amount recovered by the plaintiff was less than 75% of the defendant's offer of judgment, the plaintiff would not be entitled to attorney's fees after the offer of judgment was served. *Danis Industries Corp., v. Ground Improvement Techniques, Inc.*, 645 So.2d 420 (Fla. 1994). In fact, as long as the defendant's offer of judgment exceeds the net amount recovered by the plaintiff, even if plaintiff recovers more than 75% of the offer, the plaintiff will not be entitled to attorney's fees after the date of the service of the offer of judgment. *State Farm Mutual Automobile Ins. Co. v. Nichols*, 932 So.2d 1067 (Fla. 2006).

However none of these cases dealt with attorney's fees awardable by contract. The attorney's fees provision in the contract between the parties did not mention \$768.79. Since the right to attorney's fees under \$768.79 must be strictly construed, the statute could not trump the contract and therefore the plaintiff was entitled to attorney's fees for the entire case, not just for the time period prior to the date that the offer of judgment was served. *Tierra Holdings, Ltd., v. Mercantile Bank*, 36 Fla. L. Weekly D1049 (Fla. 1st DCA 2011).

How does a defendant protect itself from paying attorney's fees to the plaintiff for post-offer of judgment work?

First, just because the plaintiff recovered a judgment for damages does not mean that the plaintiff is entitled to attorney's fees. The test in Florida for the prevailing party based on a contract is the party who prevailed on the significant issue of the case. *Moritz v. Hoyt, Enterprises, Inc.*, 604 So.2d 807 (Fla. 1989). The Florida Supreme Court has subsequently made clear that courts have the discretion to rule that neither party prevailed. *Trytek v. Gale Industries*, 3 So.3d 1194 (Fla. 2009). Thus in *Tierra*, if the plaintiff recovered substantially less than the amount initially sought, the defendant could have argued that the plaintiff was not the prevailing party and therefore was not entitled to any attorney's fees, either pre- or post-offer of judgment.

Second, at the same time the offer of judgment is served, the defendant should tender the amount admittedly owed. A tender is different from an offer in that the tender is unconditional and actual money is sent to the plaintiff. To make a tender, it is necessary for the defendant to mail a certified, not personal, check to the opposing party. See *Kreiss Potassium Phosphate Co., v. Knight*, 124 So. 751 (Fla. 1929); *Rissman v. Kilbourne*, 643 So.2d 1136 (Fla. 1st DCA 1994). The check should include the admitted damages, the opposing party's costs, interest, and attorney's fees that have been incurred prior to the tender, assuming the plaintiff is entitled to attorney's fees by contract. See *Quain v. Financeamerica Industrial Plan, Inc.*, 508 So.2d 759 (Fla. 4th DCA 1987). If the plaintiff and defendant cannot agree upon the plaintiff's attorney's fees and/or costs that have accrued prior to the time of the tender, then the letter accompanying the tender should inform the plaintiff that the defendant is unconditionally paying the amount owed, plus interest, and it will let the court decide the reasonable amount of costs and attorney's fees. If the plaintiff rejects the tender, to assure the court that the defendant was ready and willing to pay the amount owed, the amount of the tender should be posted into the court registry.

By using a tender, if the amount recovered by the plaintiff is less than the tender, the plaintiff will not be permitted to recover attorney's fees after the date the tender was served. Had there been a proper tender in *Tierra*, the defendant would not only have been permitted to recover attorneys' fees for its offer of judgment, it would have prevented

only have been permitted to recover attorneys' fees for its offer of judgment, it would have prevented the plaintiff from recovering attorney's fees.

SUMMARY

If a party is entitled to attorney's fees by contract, as opposed to by statute, the First District has ruled that sending a successful offer of judgment will not deprive the offeree of recovering attorney's fees after the offer of judgment is served, if the offeree is the prevailing party. Thus the offeror will need to tender the money owed, not just make an offer of judgment to insure that the offeree is not entitled to attorney's fees post offer of judgment.

The Appellate Practice Committee and Business Law Committee will present the major seminar: "Attorney's Fees," on Wednesday, November 30, 2011, at the OCBA Center. The seminar will begin at 1:30 p.m. CLE credits are pending. For more information, please contact OCBA Seminars/Events Manager, Marie West, at mariew@ocbanet.org.

James C. Hauser, Esq. is a principal in Attorney's Fees in Florida, P.L. He has been a member of the OCBA since 1979.

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Editors' Note

Got Art?



What's your passion? Do you play a musical instrument, sing with a group, or compose **music**? Have you acted in a play recently, or produced a film or script? Are you a fine or graphic artist? Are you a **dancer** or **choreographer**? If you're a **photographer**, has your work been published? Maybe you're a poet or **novelist**. Perhaps you're a culinary artist. Send us a couple of paragraphs about your participation in an artistic endeavor – along with photos and captions!

If your heart belongs to the law, send your ideas for substantive articles that **explore the intersection of arts and the law or legal profession**.

We're looking forward to bringing you an exciting **February 2012** issue, so contact us as soon as possible – but no later than November 15 – for publication consideration.

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Diana Serrano, Associate Editor

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peggys@ocbanet.org

(Article submission deadline for February 2012 issue: December 15, 2011)



Philip K. Calandrino

Private Trials: Are Voluntary Trial Resolutions a Viable Middle Ground between the Courts and Arbitration?

The courts are clogged. Funding problems have forced many circuits to cut judicial support staff. That has overloaded the civil divisions, made hearing times hard to get, and filled up the trial dockets. Although arbitration might be a good option in some cases, the process limits discovery options and forces the litigants to waive their jury trial and appellate rights. For parties who are unwilling to accept those restrictions, private civil trials might provide a practical solution.

The idea of private judging is gaining traction. Many states' laws now permit private civil trials.¹ The proceedings are extremely popular in states where the courts are flooded with cases, such as California.² The Judicial Conference of the United States has even endorsed the use of summary jury trials – a nonbinding form of private trials using lay jurors – in the federal circuits.³

Florida's Private Trial System: Voluntary Trial Resolutions.

Even Florida has embraced the concept of private trials. In 1999, the Trial Lawyers Section of The Florida Bar sponsored legislation patterned after California's system.⁴ The legislature passed the bill, which appended a new proceeding – the voluntary trial resolution (VTR) – to Florida's existing procedural statute on arbitrations.⁵

Under the VTR provisions, found at Fla. Stat. § 44.104, parties may enter into an agreement to have a dispute determined by an attorney sitting as a private trial resolution judge.⁶ The agreement may be contained either in a pre-existing contract or a separate resolution voluntarily adopted by the parties at any time.⁷ But, to be eligible for the VTR process, the matter cannot raise a constitutional question; involve a child custody, visitation, or support issue; or affect the rights of an indispensable but unwilling third party.⁸

If a VTR-eligible case is not already pending in the court, a party may initiate the process by submitting an application to the local judicial circuit's clerk.⁹ The filing fee is the same as for any other civil action.¹⁰ Filing tolls the running of all applicable statutes of limitation.¹¹

The attorneys for each party must then agree on the appointment of the trial resolution judge.¹² Only an attorney who has been a member in good standing of The Florida Bar for more than five years can serve as the resolution judge.¹³ If the parties don't agree within 10 days, the court will select the resolution judge for them.¹⁴

Voluntary Trial Resolutions Differ from Arbitration Proceedings.

Private judging is only superficially similar to arbitration. Each procedure avoids the expense of traditional trials, accommodates the scheduling needs of the litigants, and allows the parties to pick a person with specific knowledge of the area of law or factual context of the dispute. But, while arbitration is quite informal and relaxed, resolution judges conduct hearings under the same procedures and with the same formality as traditional court judges.

This is true because both the Florida Evidence Code and Rules of Civil Procedure apply to VTR proceedings.¹⁵ The statute empowers the trial resolution judge to administer oaths, conduct the proceedings, issue subpoenas, and render a final decision.¹⁶ If a party or witness fails to comply with any ruling, the private judge may apply to the court for orders compelling attendance and production of documents.¹⁷

Where arbitrations come with virtually no appellate rights, a VTR litigant may appeal a ruling on points of procedure, resolution judge bias, or constitutionality grounds.¹⁸ The presiding circuit court hears the appeal.¹⁹ In doing so, it must accept all factual findings the resolution judge made²⁰ and follow the harmless error doctrine.²¹ Theoretically, these restrictions strike a balance between unfettered court judgment appeals and a complete lack of arbitration award review.

Nevertheless, one thing would readily set VTRs apart from arbitrations: a jury resolution option. Although the statute does not expressly state that empanelling a VTR jury is possible, it does permit the resolution judge to follow all rules of procedure. The Thirteenth Circuit, in fact, has issued an administrative order providing for the use of court jury pools in resolution proceedings.²² Unfortunately, no published opinion has yet addressed their propriety.

Recognizing this ambiguity, for each of the last two years, the legislature has worked on a bill to amend the VTR statute to expressly allow for jury trials.²³ Both bills died in committee review, however, and no bill has been introduced in the current session.

All things considered, the risk of having a costly jury resolution discarded is probably too great for many parties to venture beyond the express language of the statute.

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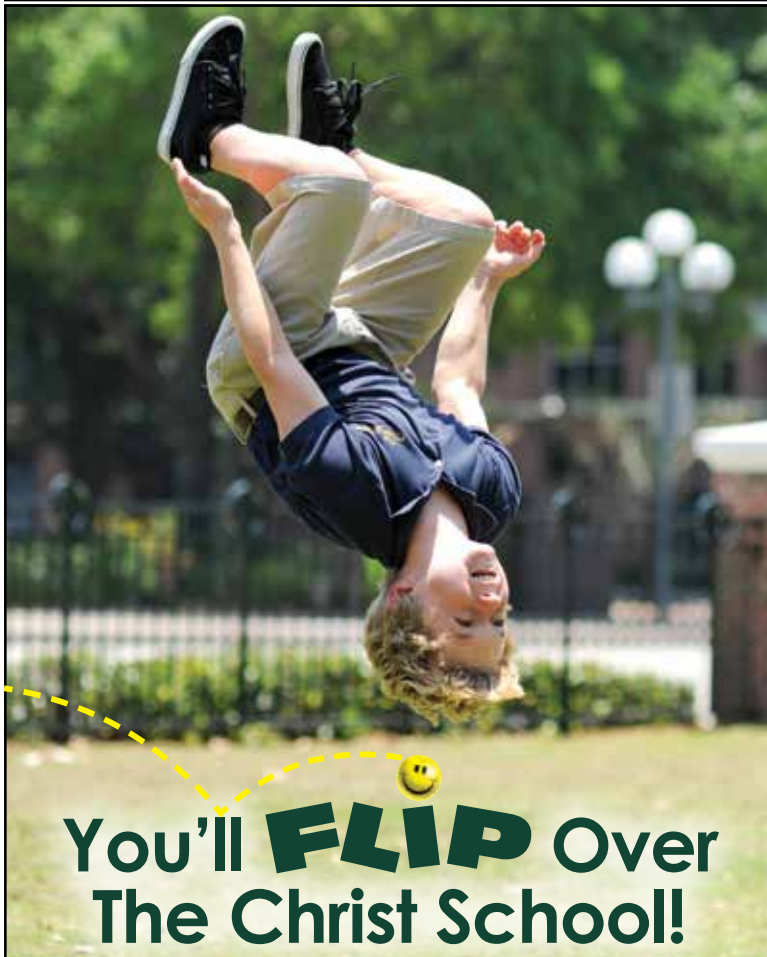


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Is Voluntary Trial Resolution a Practical Litigation Alternative?

The courts have not kept statistics on the use of VTR proceedings in Florida. The lack of publicity suggests that they have been rarely used, and no published study has tried to measure their efficacy.

While the VTR certainly offers speed and flexible scheduling, those come at a price. It's entirely conceivable that a lengthy VTR on complex issues might cost more than \$50,000 in private judge's fees. Only wealthier parties can afford that.

On the other hand, litigants using VTRs would have the benefit of choosing someone with an expertise in the subject matter. That could translate to less time spent on fundamental issues, making for much shorter trials. Cost savings like those

ought to help offset the additional expense, which might make trial resolutions a cost-effective alternative after all.

While it is true that those same benefits are available in arbitration, VTRs are governed by more predictable and formal rules. They also permit full discovery and appellate rights with a reasonable degree of privacy. Hence, using them might work better in complex, unusual, or lengthy cases, especially ones with sensitive issues or, if juries are allowed, cases where credibility is a factor.

In sum, voluntary trial resolutions are a relatively new and untested third option. They could serve as a viable middle ground between an informal and unreviewable arbitration and a drawn out and public court battle, particularly if juries become available. Only time will tell whether practitioners find the private trials useful.

Philip K. Calandrino, Calandrino Law Firm, P.A., is Chair of the OCBA Business Law Committee. He has been a member of the OCBA since 2004.

¹Corbin, Lillian (1999) "Private judging in California," *ADR Bulletin*: Vol. 1: No.7, Article 3. Available at <http://epublications.bond.edu.au/adr/vol1/iss7/3>.

²Haynes, Stephen K., *Private Means to Public Ends: Implications of the Private Judging Phenomenon in California*, 17 U.C. Davis L. Rev. 611 (1983-1984).

³See 28 U.S.C. § 331. For a complete description of summary jury trials, see generally Lambros, Thomas D., *The Summary Jury Trial Report to the Judicial Conference of the United States*, 103 F.R.D. 461 (1984).

⁴Private Judges, Expedited Trials May Cut Costs, Delays, 12/15/1999 FLBN 1.

⁵See ch. 99-225, § 3 at 4-6, Laws of Fla.

⁶Fla. Stat. § 44.104(1).

⁷Fla. Stat. § 44.104(2).

⁸Fla. Stat. §§ 44.104(1) and (14).

⁹Fla. Stat. § 44.104(5).

¹⁰Fla. Stat. § 44.104(5).

¹¹Fla. Stat. § 44.104(6).

¹²Fla. Stat. §§ 44.104(2) and (4).

¹³Fla. Stat. § 44.104(2).

¹⁴Fla. Stat. § 44.104(4).

¹⁵Fla. Stat. §§ 44.104(7) and (9).

¹⁶Fla. Stat. § 44.104(7) and (8).

¹⁷Fla. Stat. § 44.104(7).

¹⁸Fla. Stat. §§ 44.104(10)(a)-(c).

¹⁹Fla. Stat. § 44.104(10).

²⁰Fla. Stat. § 44.104(10).

²¹Fla. Stat. § 44.104(12).

²²See Admin. Order S-2001-027, Thirtieth Judicial Cir. Ct.

²³See S.B. 130 (2010)/H.B. 13 (2010); S.B. 1420 (2011).

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The Business Law Committee, chaired by Philip Calandrino, hosted the seminar: "When Worlds Collide" in September. Dustin Cole spoke about the economy, technology, and the future of the legal profession.



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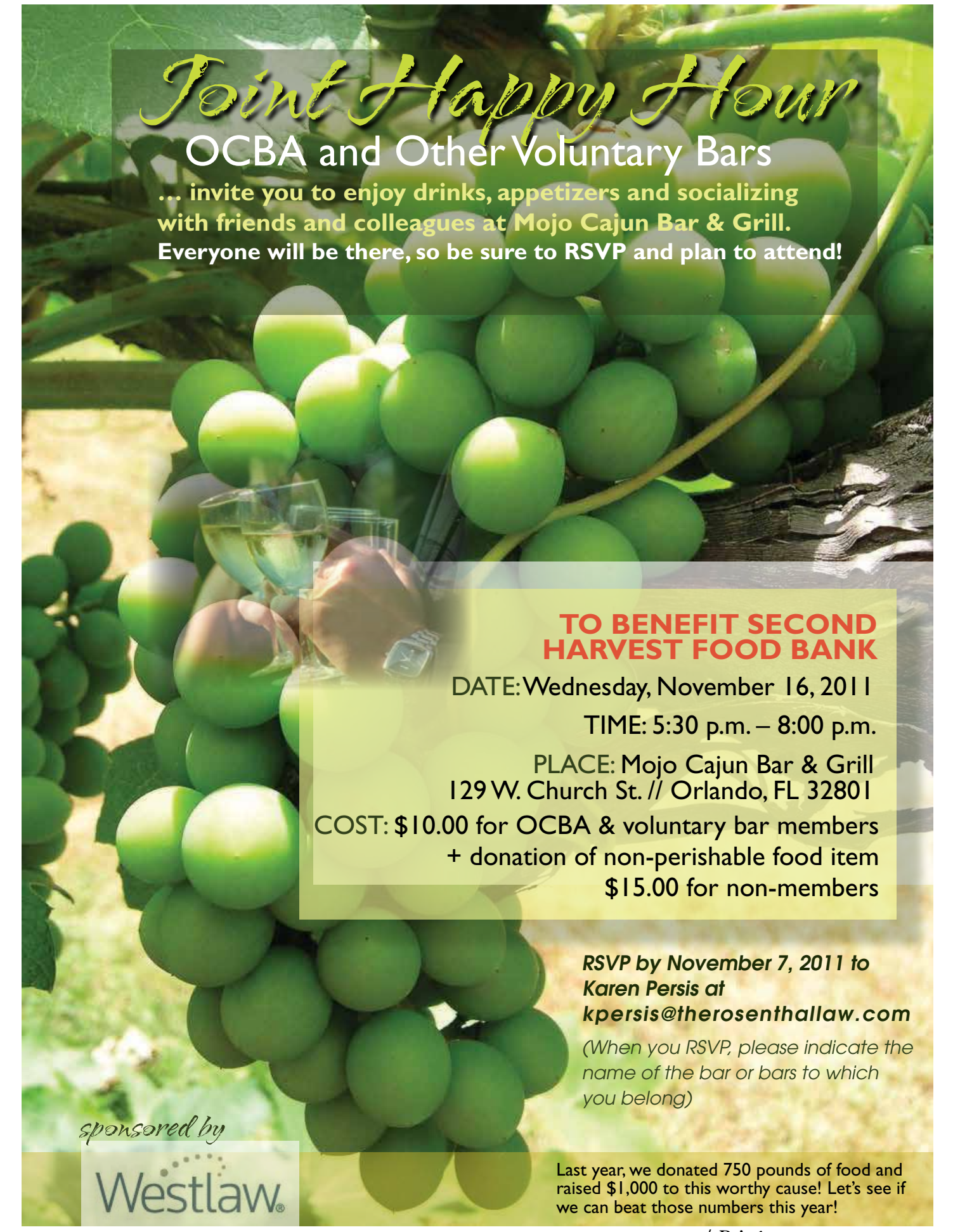
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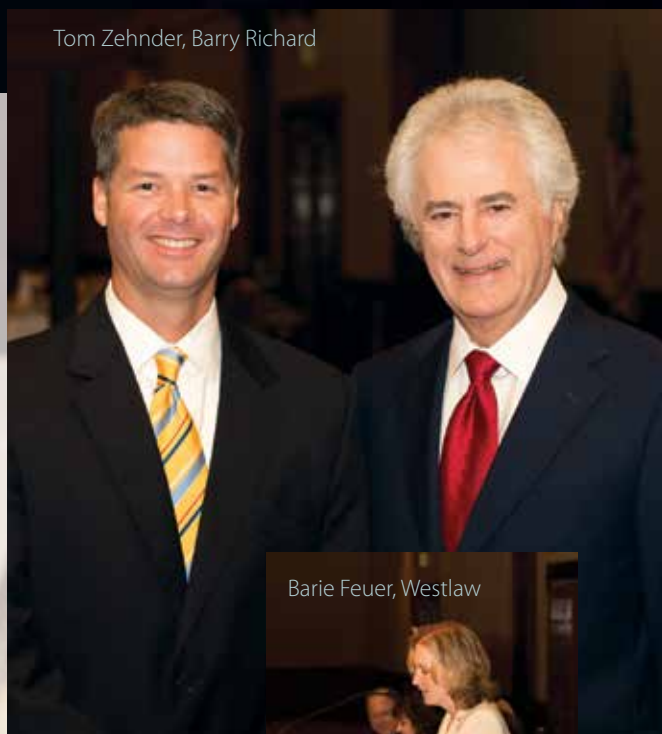
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YLS *on the move*



Jacquelynne J. Regan

With Thanksgiving just around the corner, we at YLS have a lot to be thankful for! We are so grateful to all of our members for participating in our events, and to the OCBA and our sister voluntary bar associations for lending their endless support to our endeavors. On November 25, as you gather around your Thanksgiving feast of turkey, turducken or even tofurky, as the case may be, know that YLS will be thinking of you and giving thanks for your ongoing involvement with YLS!

And now, a look at the most recent and upcoming YLS events:

The **YLS-Law Student Mentoring Committee** held its **Second Annual Kick-Off Lunch & Orientation Session** on Friday, September 23 at the OCBA offices. Young lawyer mentors and their law student mentees came together for a free lunch (sponsored by **Barry University School of Law** and **FAMU College of Law**), learned about the upcoming year of mentoring, and completed their mentoring plans. The program has almost 140 participants this year.

It's not too late to be a YLS Mentor!! This is a great opportunity for YOU to give back and educate the next generation of attorneys! Please visit www.ylsmentoring.org to apply and for more information.

On September 26, 2011, YLS ushered in Orange County's newest members of the bar with the **2011 Oath of Administration Ceremony and Reception**, hosted by YLS at the Council Chambers at City Hall. Students, family members, lawyers, and members of the judiciary gathered to witness the swearing-in of our newest members of the Bar. Many thanks to Committee Chair **Chanel Mosley**, as well as her committee members, for planning this special event. We would also like to thank the members of our judiciary for participating in this event.

On Friday September 30, 2011, the **OCBA Young Lawyers Section 20th Annual Golf Tournament** went off without a hitch at Reunion Resorts and raised more money than ever before! The 144 lawyers, judges, and local business people who took the field had an absolute blast.

A special thanks goes out to the sponsors of the tournament:

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Look for the golf tournament photo spread in January's issue of *The Briefs*!

YLS Mentoring Kickoff in September

The YLS-Law Student Mentoring Program kicked off its second year with an Orientation Session Luncheon on Friday, September 23 at the OCBA offices. Kristopher Kest, Cinnamon Baker from Barry University School of Law, and Elizabeth Dorworth from FAMU College of Law were on hand to welcome the new mentors and mentees. The mentoring program has been a huge success, gaining the support of both law schools and pairing 68 law students with 68 young lawyers. YLS is always accepting applications from additional young lawyers interested in mentoring a second- or third-year law student. Please visit www.ylsmentoring.org for details.



Photos courtesy of FAMU College of Law



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Richard S. Dellinger, a shareholder with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., serves as President of the OCBA Foundation. He has been a member of the OCBA since 1999.

The Honorable Wilfredo Martinez is a County Judge with the Ninth Judicial Circuit. He has been a member of the OCBA since 1997.



OCBA Foundation Board Member Judge Wilfredo Martinez (far left) and OCBA Foundation President Richard S. Dellinger (far right) with Boone High School's Law Magnet Constitutional Law Honors class

YLS*on the move*
continued from page 27

All of the proceeds from the golf tournament will be used to support the many charitable endeavors that YLS participates in throughout the year, ranging from assisting elementary schools to homeless outreach programs. A special thanks goes out to **Brett Renton, Jerry Lee Hanbery**, and all the committee members for making the tournament an absolute success!

The YLS **November Luncheon** will take place on **November 16, 2011**, at 11:45 a.m. at the University Club. Please email your RSVP to admin@ocbayls.org. If you **RSVP at least 48 hours in advance**, the cost is \$20 for lawyers and \$12 for law students,

government attorneys, solo attorneys, and judges. A late charge of \$2.00 is added for all late RSVP's. **There will be no YLS Luncheon in December.** The next YLS Luncheon will be on January 18, 2012.

To find out more about the YLS and its committees and events, please contact Jacquelynne Regan at 407-418-6438 or reganjj@lowndes-law.com. If you are not receiving the YLS email blasts, send an email to admin@ocbayls.org to sign up!

Jacquelynne J. Regan is an attorney with Lowndes, Drosdick, Doster, Kantor, & Reed, P.A. She has been a member of the OCBA since 2007.



The YLS hosted the annual Oath of Administration Ceremony and Reception on September 26, 2011, at Orlando City Hall and Rotunda.



Sunny Lim Hillary

Your local voluntary bar associations have already filled the fall calendar with activities! Read on to find out what's happened and what's happening, and get involved!

CFAWL

On September 27, 2011, the Central Florida Association for Women Lawyers hosted its first quarterly mentoring luncheon of the 2011-2012 year. Approximately 70 mentors and mentees met for a feature presentation entitled, "So Many Choices: What area of law best suits me?" presented by **Diana Tennis, Brenda London, Mary Ann Morgan, and Denise Kim**. This luncheon served as an opportunity for mentors and mentees to gather with other members of the mentoring program, socialize, and compare notes. Both mentors and mentees walked away from the event having laughed and learned something new. Many thanks to Mentoring Chair **Elaine Lerner**, who did such a great job planning the luncheon!

On October 6, 2011, CFAWL hosted **Fall Into Fashion**, an event that offered attendees the rare treat of seeing "up-close and personal" the best of the fall lines that our local women-owned boutiques are carrying this season, and the opportunity to learn from and talk personally to the fashion experts from these boutiques. CFAWL especially thanks the following women for all of their help planning and hosting this event: Committee Chair **Kim Hosley, Terra Sickler, Megan Malec, Chrissy Haddad, Amanda Green, Louise Zeuli, Conti Moore, Charity Johnson, Jessica Hew, Elaine Lerner, Jacquelynne Reagan, and Melanie Griffin**. Additionally, the event would not have been possible without the help of all of the Barry and FAMU law school students who came early and volunteered throughout the evening.

Fall Into Fashion was hosted to raise money for **A Place for Children**, a non-profit daycare facility in the Orange County Courthouse that provides childcare for children of all persons having business at the courthouse so that the children do not have to

witness difficult legal proceedings, including divorce and domestic violence. Proceeds were also used to establish CFAWL's inaugural scholarship benefiting third-year law school students who need financial assistance preparing for The Florida Bar exam. Thanks to the generous donations of CFAWL members and the local business community, CFAWL raised over \$10,000 from this event!



CFAWL Fall Into Fashion



The next quarterly mentoring luncheon is on November 3, 2011, and is entitled, "Blowing in the Wind: How to start and manage a solo law practice." On January 24, 2012, mentors and mentees will gather for the presentation, "Climbing the Ladder: Steps to making partner."

GOAABA

On September 13, 2011, the Greater Orlando Asian American Bar Association and Central Florida Gay and Lesbian Law Association organized a **Food Truck Café Mixer** at the Law Offices of Bailey, Zobel & Pilcher. The members of both organizations enjoyed wine and beer and sampled the delicious food truck dishes from the Maitland Food Truck Cafe on Lake Lily, including YumYum Cupcake Truck, Treehouse, Big Wheel, and more. Thank you to **SunTrust Wealth Management** for sponsoring this mixer and **ChART** charity art for the beautiful artwork and prizes. And, thank you to **Donna Hung** of GOAABA and **Susan Kutkiewicz** of CFGALLA for organizing this fantastic event!



On October 22, 2011, lawyers and law students from throughout the community, members of GOAABA, the Central Florida Gay and Lesbian Law Association, and the Paul C. Perkins Bar Association enjoyed delicious food, drinks, dessert, and the spectacular Walt Disney World fireworks at

a **Halloween Pre-Holiday Dessert Party** co-hosted by GOAABA, the Central Florida Gay and Lesbian Law Association, and the Paul C. Perkins Bar Association. Thank you to GOAABA member **William Voight** for hosting, and to **Donna Hung** and **William Voight** for planning a fun and exciting night!

Through a joint effort of The Florida Bar Equal Opportunity in Law Section, a committee of the Orlando minority bar associations and the Orange County Bar Association (Diversity Committee and



Photo courtesy of chART

Joe Seagle and Don Nguyen at the joint GOAABA and CFGLLA Food Truck event

YLS), the **Central Florida Diversity Picnic** will be held in Orlando in February 2012. If you are interested in helping with the inaugural Orlando picnic, please contact **Kim Nguyen** at Kim.Nguyen@lown-des-law.com.

The **Alien Land Law Committee** is moving toward organizing for a ballot initiative! It is not too late to join in this community service event! If you are interested in helping with the ballot initiative, please contact **Christine Ho** at CHo@litchris.com.

Coming up soon, on November 3, 2011, at 6:00 p.m., everyone, including GOAABA non-members and non-lawyers, are invited to see the classic movie, "National Velvet," put on by **Winter Park's Popcorn Flicks at Central Park**, 251 Park Avenue South, Winter Park, FL 32789. Directed by Clarence Brown ("The Yearling"), this two-time Oscar® award-winning film stars the late Elizabeth Taylor, Mickey Rooney, Anne Revere, and Angela Lansbury. Bring a picnic basket, a blanket and/or some chairs, and set up camp! Social starts at 6:00 p.m. and the movie starts at 7:00 p.m. (Note: Our "rain out" date is the next night for a viewing of "Sherlock Holmes," put on by **Date Night at Leu Gardens**. Social starts at 7:00 p.m., and the movie starts at 8:30 p.m. Please

contact **Donna Hung** at donna@donnahunglaw.com with any questions and to reserve in case of rain-delay/cancellation; we can contact you!

HBACF

On Thursday, October 13, 2011, the Hispanic Bar Association of Central Florida hosted a special **Happy Hour** at the Hunter's Creek BB&T located at 2051 Town Center Boulevard, Orlando. The Happy Hour event was part of the HBACF's outreach efforts in Osceola County. Members of the community enjoyed good food and drinks and live entertainment from **Conjunto Quimbobó**. A special thank you to Hunter's Creek BB&T for sponsoring the event!

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



CFAWL mentoring luncheon
September



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continued from page 7

³*Stone's Throw Condo. Ass'n, Inc. v. Sand Cove Apts., Inc.*, 749 So. 2d 520, 523 (Fla. 2d DCA 1999).

⁴*State Farm Fire and Cas. Co. v. Tippet*, 864 So. 2d 31 (Fla. 4th DCA 2003).

⁵*See Fla. R. Civ. P. 1.190(b).*

⁶*Id.*

⁷*E.I. DuPont de Nemours and Co. v. Desarrollo Indus. Bioacutico S.A.*, 857 So. 2d 925 (Fla. 4th DCA 2003).

⁸*Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp.*, 537 So. 2d 561, 563 (Fla., 1988).

⁹*Id.*

¹⁰*Id.*

¹¹*Fla. R. Civ. P. 1.120(g).*

¹²*Precision Tune Auto Care, Inc. v. Radcliffe*, 804 So. 2d 1287 (Fla. 4th DCA 2001).

¹³*See id.*

¹⁴*Simeon, Inc. v. Cox*, 671 So. 2d 158, 160 (Fla. 1996).

¹⁵*Turner v. Fitzsimmons*, 673 So. 2d 532, 535-36 (Fla. 1st DCA 1996).

¹⁶*Fla. R. Civ. P. 1.190(f).*

¹⁷*Stephanos v. Paine*, 727 So. 2d 1075 (Fla. 4th DCA 1999).

¹⁸*WFTV v. Himm*, 705 So. 2d 1010, 1011 (Fla. 5th DCA 1998).

¹⁹*See Jojo's Clubhouse, Inc. v. DBR Asset Mgmt., Inc.*, 860 So. 2d 503 (Fla. 4th DCA 2003).

²⁰*Fla. R. Civ. P. 1.110(a).*

²¹*Fla. R. Civ. P. 1.120(c).*

²²*Fla. R. Civ. P. 1.140(h)(2); Schopler v. Smilovits*, 689 So. 2d 1189 (Fla. 4th DCA 1997).

²³*First Protective Insurance Co. v. Featherston*, 978 So. 2d 881 (Fla. 2d DCA 2008).

²⁴*Caufield v. Cantele*, 837 So. 2d 371 (Fla. 2002).

²⁵*Sardon Found. v. New Horizons Serv. Dogs, Inc.*, 852 So. 2d 416 (Fla. 5th DCA 2003).

²⁶*Stockman v. Downs*, 573 So. 2d 835 (Fla. 1991).

²⁷*Fla. R. Civ. P. 1.525.*

²⁸*Saia Motor Freight Line, Inc. v. Reid*, 930 So. 2d 598 (Fla. 2006).

²⁹*Platt v. Health Mgmt. Assocs., Inc.*, 897 So. 2d 556 (Fla. 2d DCA 2005).

³⁰*Hill v. Murphy*, 872 So. 2d 919 (Fla. 2d DCA 2003).

³¹*First Union Nat'l Bank v. Ruiz*, 785 So. 2d 589 (Fla. 5th DCA 2001).

³²*Betty's Design Co., Inc. v. Evans*, 863 So. 2d 1255 (Fla. 5th DCA 2004).

³³*See Cannella v. Auto-Owners Ins. Co.*, 801 So. 2d 94 (Fla. 2001) (distinguishing defective service, which renders a judgment voidable, from a total want of service, which renders a judgment void).

³⁴*Wilkerson v. Alachua County*, 675 So. 2d 951 (Fla. 1st DCA 1996).

³⁵*Wong v. Crown Equip. Corp.*, 676 So. 2d 981 (Fla. 3d DCA 1996).

³⁶*West Town Plaza Assoc., Ltd. V. Pines Props, Inc.*, 600 So. 2d 477 (Fla. 4th DCA 1992); *Scott v. NCNB Nat'l Bank*, 489 So. 2d 221 (Fla. 2d DCA 1986).

³⁷*Leonhardt v. Masters*, 679 So. 2d 73 (Fla. 4th DCA 1996).

³⁸*Jenney v. Airdata Wiman, Inc.*, 846 So. 2d 664 (Fla. 2d DCA 2003).

³⁹*See Bankers Sec. Ins. Co. v. Symons*, 889 So. 2d 93 (Fla. 5th DCA 2004). *See also TIG Insurance Corp. v. Johnson*, 799 So. 2d 339 (Fla. 4th DCA 2001) for information which should be included in a privilege log.

⁴⁰*Bankers Sec. Ins. Co. v. Symons*, 889 So. 2d 93 (Fla. 5th DCA 2004).

⁴¹*Nationwide Mut. Fire Ins. Co. v. Hess*, 814 So. 2d 1240 (Fla. 5th DCA 2002).

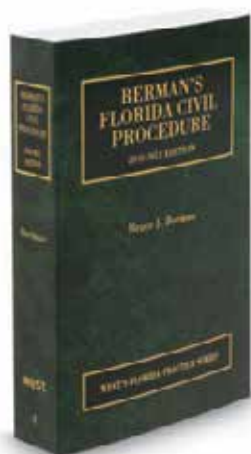
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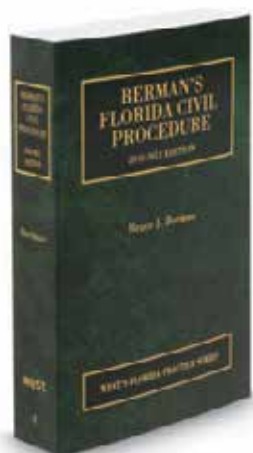


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Presentation Skills for Lawyers



Elliott Wilcox

The Secret to Getting What You Want: How to Ask Questions the Right Way

How many times a day do you ask judges, clients, or co-workers to do something or to give you something? During any given week, you probably make hundreds, perhaps even thousands, of requests. You ask your co-worker to work on a project, you ask your assistant to handle a client issue, you ask your kids to help with the dishes... the number of requests that you make each week is staggering. But how many of those requests are actually granted? Have you ever had a problem with someone not doing what you asked?

Why? You're a lawyer. Shouldn't you be the master of persuasion who can get what you want, when you want it, and how you want it, every single time?

Unless your name is "Svengali the Master Manipulator," chances are that many of your requests are not being granted, or at least not being carried out exactly the way you'd like to see them handled. But it's not because your requests are falling on deaf ears. In fact, your listeners are probably hearing *exactly* what you're saying. The problem is that you're asking for the wrong thing.

That's because when most people make requests, they don't ask for what they want. Instead, they actually ask for what they *don't* want.

For example, has your boss ever asked you to work on an important client issue? Many bosses will say something similar to, "This is our most important client, so whatever you do, don't mess this up!"

But look at the embedded command in that request for help: "Mess this up." Rather than asking you to do a great job or to help the client, your boss is telling you to do the exact *opposite* of what he really wants done.

The reason he's telling you to do the opposite of what he wants is because our brains aren't wired to hear the word "Don't." Our minds think in images. When you hear the word "Orange," you don't think of the letters "O-R-A-N-G-E." Instead, you think of the fruit, the color, or maybe even a bottle of orange juice. When you recall information, your mind pulls up the pictures that help you "see" the memory.

This phenomenon makes it difficult to see the negative of something. If I ask you to think of "Not an Orange," your brain has difficulty following my request because it doesn't have a readily available picture for "Not an Orange." Instead, your brain reverts back to your picture for "Orange," because

that's the only picture it can pull up. Rather than thinking of what I hoped you would think about, you actually began thinking of the exact *opposite*.

The same thing happens when your boss tells you, "Don't mess this up." You don't have a readily available picture for "Not Messing Up," but you sure have a great picture of "Messing Up." Your picture for "Messing Up" may include the image of you fumbling and bumbling your way through the presentation, missing an important legal development in your research, or sleeping through the filing deadline. Whatever your picture of "Messing Up" looks like, *that* will be the image that jumps into your mind when your boss tells you not to mess up.

That's why it's important to ask for what you want, rather than what you *don't* want. Rather than telling you "not to mess this up," your boss would get better results from you by saying, "This is our most important client, so I know you're going to do an exemplary job." Rather than embedding a negative command into your head, now your boss is embedding a positive command, "Do an exemplary job." Your brain can absorb this positive request and put it into action, because you know (hopefully) what an exemplary job looks like.

If you'd like to get better results when you ask others to do something, take a moment to rephrase your request in a positive format before you make your request. Any time you feel yourself getting ready to say, "Don't," ask yourself, "What do I want this person to **DO**?" Rephrase your question positively so that the listener is given a positive command and clear direction for what to do next. Here are some examples of how changing the phrasing of your request can change the outcome:

Rather than: "These are our most expensive dishes, so whatever you do, don't *drop them*."

Ask for what you want: "These are our most expensive dishes, so whatever you do, *hold onto them carefully*."

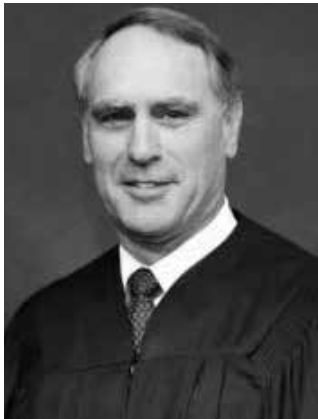
Rather than: "The game is on the line, so don't *drop the ball*."

Ask for what you want: "The game is on the line, so *protect the ball*."

Rather than: "The statute of limitations has almost expired, so don't *miss the filing deadline*."

Ask for what you want: "The statute of limitations has almost expired, so *file these pleadings by Friday*."

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The Honorable John M. Kest

Top Trial Tips for Paralegals to Assist their Attorney, the Court and the Jury or How Your Paralegal Can Save the Day and the Case - Part 2

Part 2 is a continuation of the article, “Top Trial Tips for Paralegals to Assist their Attorneys, the Court and the Jury or How Your Paralegal Can Save the Day and the Case,” which appeared in October’s issue of *The Briefs*.

Order of Proof for Attorneys:

It has been shocking to see the number of lawyers who attempt to try a case without an order of proof front and center on their counsel table. An “Order of Proof,” at least from this author’s definition, is an outline of the entire trial and as such is an index to the boxes of files, exhibits, depositions, testimony outlines and legal research you will have and use in the courtroom. It is alarming to the court to observe a party who is about ready to rest their case, scrambling through files, boxes and notebooks to try and determine whether they have (1) proved their elements, (2) entered all of their exhibits, and (3) fully presented their case. An order of proof provides a one stop, organized, condensed summary of the trial and checklist upon which the attorney can rely and reference.

The design and organization of an order of proof will vary from attorney and paralegal. It is usually a dynamic document that will constantly change as discovery and preparation ensues. Even during trial it will be a work in progress that should be accurately maintained. Many times it will be the paralegal who will be charged to sit at the counsel table¹ and maintain the order of proof and, with it, the exhibits and demonstrative aids.

At a very basic level, a paralegal in preparing an order of proof should include the name of the witness and with that witness (1) the facts they will establish, (2) if an expert, the opinions they will express, (3) any exhibits that will be brought in through that witness or predicate that witness will establish for an exhibit, (4) any demonstrative aids that will be used with that witness, and (5) the essential elements that this witness’ testimony will assist in proving. If the paralegal maintains the order of proof in a current status during the trial, checking off what has been accomplished and highlighting what has not, the attorney will be continually aware of the status of the evidence and exhibits.

Voir Dire:

A note taker, a second set of eyes and ears, an analyst, a researcher, an observer and evaluator – all describe the role of the paralegal during jury selection. An effective voir dire by an attorney is

one which allows the attorney to concentrate on the individual jurors and the venire as a whole. Taking notes and being tied to counsel table interfere with the voir dire process and make it more difficult to build a rapport with the individual jurors. In this computer-age environment, many paralegals are charged by their counsel solely to conduct immediate, on-site background investigations on members, or a specific member, of the venire panel during the voir dire process.

The paralegal, if allowed, should be at counsel table,² taking notes of the responses and reactions to the voir dire. Notes can be handed to the inquiring attorney of areas that need to be explored further or to remind the attorney of something that she/he may have missed or overlooked. The paralegal also is able to observe the body language of other jurors to the responses of a particular juror who is being questioned.

The actual selection of the individual jurors and the assertions of the challenges for cause, and the peremptory strikes, should involve the observations of the paralegal who has been observing the voir dire. The paralegal can provide not only observations and thoughts as to the individual juror in question, but the paralegal’s observation of how a particular juror may interact with, or react to, other jurors who are under consideration. Further, it is not unusual for a judge to have to rely on the notes and recollections of the attorneys and the court. Occasions have arisen in which the paralegal’s notes of what was said have served as a basis for the court either excusing a juror or not doing so.

Trial Exhibits:

The topic of handling, organizing, marking, and utilizing exhibits is a subject that could require hundreds of pages to cover in detail as it relates to paralegals. However, an overview can be addressed.

The paralegal is the key to proper preparation, organization, and the understanding of exhibits to be offered and used during the trial. All exhibits must be pre-marked in a timely manner before trial and usually at or before the pre-trial conference. If exhibits have more than a page or two, they should be Bates stamped. Marking exhibits early makes it easier to refer to the exhibit by its number and then page number, if applicable, both in discovery as well as at trial. If the paralegal has met with the court’s trial clerk, exhibits

can be marked early, and continuity can exist in the marking. Ideally, although not always possible, the marking of exhibits at or prior to the first series of depositions or at records pick-up depositions allows for orderly discovery and use of records later at trial.

While the actual attorney should, and in some courts must, be at the exhibit exchange, the paralegal should also attend. Each exhibit that is displayed should be initialed (probably on the back) so there is no issue as to what was displayed prior to trial. *Fla. R. Civ. P.* 1.200 and 1.201(a)(2)(F). The exhibit should be displayed to opposing counsel in the same condition that it will be in when offered for admission at trial. Efforts should be made to obtain stipulation on exhibits, which will allow those exhibits to be marked directly into evidence.

If enlargement of the exhibits are going to be made to be used as demonstrative aids at trial, the paralegal should make sure that the aid has a notation on the back that "this aid is an enlargement of plaintiff's/defendant's exhibit #___." Further, if the exhibit is going to be projected on the screen or shown on a computer screen, the paralegal shall make certain that the necessary equipment is (1) available in the courtroom, (2) that the equipment works with the recording device, (3) that it will be visible to the jury and the court, and (4) that a hard copy or copy of the disc is marked and filed in the court file.

In addition, a copy of every exhibit to be offered should be (1) in a notebook for the attorney at counsel's table and (2) a second copy handed to the court. The court generally cannot see the exhibits shown to the jury from the bench. Further, once an exhibit is marked by the clerk, it should not leave the courtroom or the custody of the clerk. Therefore, a copy for your attorney is critical if she/he is going to be using the exhibit that night to get ready for the next day.

This concludes Part 2 of a four-part series. Part 3 of this article will appear in the January 2012 issue of *The Briefs*.

The Honorable John M. Kest, Ninth Judicial Circuit Court, has been a member of the OCBA since 1979. Prepared by Judge Kest, June 2011.

¹If the attorney is desirous of having their paralegal sit at counsel table during the trial including jury selection, the matter should be addressed to the Court well before trial and probably at the pre-trial conference. So there is no misunderstanding, it may be appropriate to have an order entered to that effect. Most times opposing counsel will not object, but seeking permission from the Court with an appropriate order entered is still suggested.

²See footnote #1 supra

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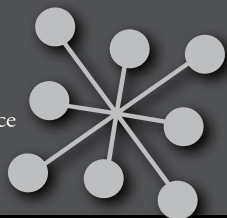
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Four Steps to Branding Yourself as a Trusted Advisor – and Winning Lifelong Clients.

I don't want clients to hire me to solve a one-time problem," says an estate planning and business lawyer. "I want them to work with me for life."

Unlike many practitioners who don't focus on creating lifelong client relationships, this attorney seeks to provide his clients with service and support for the long haul. From the name of his firm to the way he packages his services, everything his client encounters is designed to elevate the level of his services above that of lawyer-for-hire to that of long-term, trusted advisor. This is all part of how he builds his brand.

He isn't concerned that surveys peg CPAs as the most trusted advisors in the United States; he believes the approach he takes and the level of service he provides is comprehensive, and the trust his team engenders is well-deserved. He's at the leading edge of a trend that has been growing among entrepreneurial attorneys who see the limitations, not to mention the time and expense, of constantly originating and working with new clients.

Instead, why not serve a broader spectrum of client needs in-house and do it so well that clients regard you as their most trusted advisor?

According to David Maister, Charles Green, and Robert Galford, authors of *True Professionalism*, the evolution of the client-advisor relationship is a four-step process that starts the day attorneys first hang out their shingle. Careful not to overstep, they may perform with excellence but take great care to stay within the narrowly defined bounds of their practice area. In this first phase, the scope of what they offer is limited, and the attorney-client relationship is typically friendly but business-like. Consequently, clients have respect for their knowledge but don't see these attorneys as trusted confidants. Many traditionally minded attorneys stay at this stage for their entire career.

Entrepreneurial attorneys, however, challenge themselves to broaden their scope of services. At this level, which authors Maister, Green, and Galford point to as the second step in the process, they start to offer both advice in affiliated fields and increasing intimacy in their client relationships. When done well, their clients respond by confiding in them more and consulting with them during the early "defining stages" of their problems, instead of waiting until their problems are fully formed – both clear signs of increasing trust.

When clients begin to consult their attorney *pro-actively* – well in advance of their actual needs – the client is signaling that the attorney's advice is more highly regarded, and he or she is viewed as a valuable resource. In this third step, the client depends on the attorney to put issues into context, offer new perspectives, and interact with him or her on a strategic level. This step is additionally characterized by greater rapport in the attorney-client relationship, and it is only reached by a small percentage of attorneys.

Fewer still reach the fourth step. Here, the highest level of trust is present. In what Maister, Green, and Galford have labeled the *pinnacle relationship*, the depth of the relationship is matched only by the breadth of the issues the client is willing to discuss. In the pinnacle relationship, the client views the attorney as a friend, a confidant, and his or her most trusted advisor.

If you believe that branding yourself as a trusted advisor is easiest in practice areas such as estate planning and business law, you are right – but exciting variations are developing in unlikely practice areas as well.

Take the example of a forward-thinking criminal defense firm that has developed an expertise in addiction treatment centers. Painfully aware of the role drug and alcohol addiction plays in the life of their clients, the firm's attorneys study which treatment centers will best serve their needs. Then, as an additional service, they make recommendations to the client and his or her family to help them sort through the alarming array of available options.

Unlike the estate planning and business attorney whose goal is to serve clients throughout their lives, these criminal defense attorneys attempt to intervene in the revolving-door cycle of clients who return time after time. What drove them to innovate this way? According to the firm's founder, three things drove the decision: "The clear-cut connection between criminal activity and addiction to drugs or alcohol, the confusing number of treatment centers, all of which offer various types of services and differing lengths of stay and, most importantly, the desire to do more than just handle the client's immediate legal issues." As a result, the firm's clients are beginning to perceive them not just as attorneys, but as advisors who offer life-altering advice.

How do your clients view you? Where are you in the four-step process of branding yourself as a

trusted advisor in your practice? To analyze how you and your firm are viewed, ask yourself the following questions:

What do you think your "brand" or image is now?

Do your clients see you as a professional with a narrowly defined expertise? Are you regarded as someone who offers a wide range of services? Are you considered a confidant, friend, and/or long-term advisor?

Take action: If you don't have a handle on how you are perceived, mentally survey the client feedback you've gotten over the years. Also, look at any thank-you cards you might have received throughout your career. Personalized exit surveys can also be useful for learning what your clients think. In addition, ask your staff members to report back comments they've heard about you and the level of service your firm provides. Be sure to capture both good and bad comments, as all remarks are instructive.

How is your firm perceived by the local community of professionals? In other words, what is your firm's reputation?

Does your firm offer a wide range of services? Are you considered a firm that cares about and works closely with its clients, serving them on many levels?

Take action: Bounce this question off of a few of your close colleagues, or interview a few friendly referral sources to benefit from their outside perspective.

What image do you want people to think of when they hear your name?

Do clients view you as someone they confer with on a broad range of issues or as someone for hire on an as-needed basis? Are you regarded as the wise senior partner who has long-standing relationships? As a younger attorney who presents cutting-edge solutions? Or something in between?

Take action: Ask yourself how you'd change your image if there were no barriers to reinventing your professional brand.

How can you build on your present image to bring it closer to your ideal?

No doubt, there are some aspects of your personality and the way you present yourself that already fit the image you are trying to convey. What else could you add that will further round out your image?

Take action: Should you add to your knowledge base by attending workshops and seminars so you can expand what you offer clients? Should you devote a portion of your client meetings to building rapport instead of only focusing on business? Should you dress differently or work out of a better office?

Who presently embodies the image you'd like to convey?

Think of one or two people who could serve as role models for you. The human brain is wired to learn by imitation. Just observing how colleagues or partners relate to their clients and gain their trust can be very instructive.

Take action: Interviewing those you admire is very effective for learning how they do what they do. If and when it is appropriate for you to do so, sit down and talk with one or two people you believe to be masterful at building their brand.

What additional frustrations do your clients mention when you are dealing with their legal issues?

Client complaints, comments and off-hand remarks can hold great promise if viewed as clues to client frustrations and unserved needs.

Take action: Out of frustrations and needs can come expanded services, so ask yourself whether there are ways you can help. Offering help with these unmet needs may not only exceed client expectations, it can create an additional stream of income.

How could you expand your present offering to provide ethical, ancillary services?

For some of you, offering more means you must acquire additional training or hire additional expertise for a more well-rounded firm.

Take action: If you are presently in the habit of informally advising clients on issues ancillary to your typical services, could any of this advice be packaged as an additional fee-for-service offering? Analyze your present services and see how you can repackage, bundle or "productize" them.

If, after answering these questions, you find yourself lacking in any area and your goal is to brand yourself differently, we have a few words of advice. The quickest change you can implement is that of deepening your client relationships. You can do this immediately with very little preparation. When you meet with clients, make it a point to devote a minimum of 10 minutes to learning about them – ask questions about their background, their goals, and their ambitions. Tailor your questions to the types of people you see, but get to know them better. This is one of the most important steps you can take toward your goal of being their most trusted advisor, and it's up to you to initiate it. Given the delicate balance of power that exists in the attorney-client relationship, the responsibility is yours: you must invest time in clients before they'll invest their trust you.

Mark Powers, President of Atticus, Inc., and **Shawn McNalis** co-authored *How Good Attorneys Become Great Rainmakers* and *Time Management for Attorneys*, and are featured marketing writers for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus (www.atticisonline.com) does with attorneys or the Atticus Rainmakers™ (www.atticusrainmakers.com) program, please visit or call 352-383-0490 or 888-644-0022.

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Litigation and Prevention of Insurer Bad Faith

By Dennis J. Wall



Carey N. Bos

In *Litigation and Prevention of Insurer Bad Faith*, Third Edition, Dennis Wall exhaustively updates the vast changes that have taken place in the world of insurer good faith and fair dealing since publishing the first edition in 1985. The Third Edition serves as an excellent reference source for the practitioner who is faced with any facet of bad faith claims, including prevention and handling insureds, third parties, and insurers. This is true regardless of whether the practitioner is defending or prosecuting a claim. The treatise provides the courts, the profession, and the public a clear, succinct, and time-saving resource.



Dennis J. Wall

The author examines the background and the expansion of insurance bad faith law and how it has evolved in ways that could not have been contemplated earlier. In this rapidly expanding and dynamically changing area of the law, Wall has provided his experience and wonderful insights to assist the bad faith practitioner. The Third Edition of this treatise broadly covers the state of the law and legal developments within all juris-

dictions of the United States. The two-volume comprehensive treatise is divided into five parts. Part 1 introduces the reader to the background of insurer bad faith claims, Part 2 discusses third-party claims in the context of bad faith litigation and its related facets, Part 3 discusses standards of insurer conduct in first-party claims, Part 4 addresses the issue of damages in insurer bad faith actions, and Part 5 summarizes the current state of the law relating to litigation and the prevention of insurer bad faith.

Other useful resources within the treatise are the appendices, which include sample letters, pleadings, discovery, and jury instructions, all of which are useful in both state and federal court and which might prove beneficial to the practitioner.

The practice tips and insights in the book can be a valuable research source for practitioners who deal regularly with insurance companies.

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Presentation Skills

continued from page 37

By changing the picture in your listener's mind, you change the outcome. Rather than urging listeners to focus on the negative outcome, you shift their focus towards the positive outcome you desire. Eliminate the word "don't" from your request vocabulary, and ask for what you want. When you do, your presentations and your requests will become dramatically more persuasive.

Elliott Wilcox limits his trial practice to DUI cases. He has been a member of the OCBA since 2001.

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Speaking Engagements

Elizabeth A. Green, partner, and **Jimmy D. Parrish**, Of Counsel, Baker Hostetler, presented at the Central Florida Bankruptcy Law Association's Annual Seminar on Thursday, October 6 held at the Embassy Suites Hotel on E. Pine Street in Orlando.

Andy Rock and co-presenter Justin Kestner, P.E., Haag Engineering Company, spoke at the Haag Engineering Seminar. In this DFS-accredited presentation, Mr. Rock discussed the legal principles and trends concerning sinkhole claims. He also presented a class for HSA Engineers & Scientists, a DFS-accredited presentation, in which he discussed the legal principles and trends concerning sinkhole claims.

Published

Patrick John McGinley of Winter Park is the author of "Florida Elements of an Action," which has just been released in its third edition by West Publishing Company in print and online.

Events

Nov. 9 – *Breakfast of Champions*. Legal Aid Society fundraiser. 8:00 a.m.- 9:00 a.m. The Ballroom at Church Street. Contact: Donna Haynes at dhaynes@legalaidocba.org.

Nov. 16 – *Joint Happy Hour*. 5:30 p.m.-8:00 p.m. Mojo Cajun Bar & Grill, 129 W. Church St., Orlando. Cost for voluntary bar members: \$10 (\$15 for non-members) + donation of non-perishable food item. RSVP by Nov. 7 to Karen Persis at kpersis@therosenthallaw.com.

Seminars

Nov. 1 – *Landlord Tenant Law Update*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE pending. Speakers: Attorneys Larri Thatcher and Michael Resnick. Free for members. Contact: ctucker@legalaidocba.org; mcarbo@legalaidocba.org.

Nov. 4 – *Preparing Your Team for Mediation: A Primer for the Industrious Paralegal*. Paralegal Section Seminar. 11:30 a.m. OCBA Center. CLE: 1.5. Speaker: Sandra Upchurch. Lunch provided by Upchurch Watson White & Max. Contact: Amy Guy at 407-601-4905.

Nov. 10 – *Ethics & Estate Planning, Probate, Elder Law – New Power of Attorney*. Major Seminar. Estate, Guardianship & Trust Committee Seminar. 9:00 a.m.-5:00 p.m. OCBA Center. CLE: 9.0, including 2.0 Ethics. Contact: Stephanie Smith at ajparalegal1@aol.com.

Nov. 11 – *Aspects of ADR*. Major Seminar. Alternative Dispute Resolution Committee Inaugural Seminar. 9:30 a.m.-4:00 p.m. OCBA Center. CLE:5.0, including 1.5 Ethics (pending). Featured speaker: Jay Cohen. Contact: mariew@ocbanet.org.

Nov. 15 – *The Basics of Workers' Comp*. Solo & Small Firm Committee Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0 pending. Contact: mariew@ocbanet.org.

Nov. 18 – *Collaborative Law as an Option in Family Law Cases*. Family Law Committee Seminar. 12:00 p.m. OCBA Center. CLE:1.0. Contact: mariew@ocbanet.org.

Nov. 30 – *Attorney's Fees*. Major Seminar. Appellate Practice and Business Law committees. 1:30 p.m. OCBA Center. CLE: pending. For more information, contact: mariew@ocbanet.org.

Dec. 6 – *Violence Against Women Act*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE pending. Speaker: Attorney Charles Conroy. Free for members. Contact: ctucker@legalaidocba.org; mcarbo@legalaidocba.org.

Dec. 14 – *2011 Legislative Case Law Update*. Estate, Guardianship & Trust Committee. 4:00 p.m. - 5:00 p.m. OCBA Center. Holiday party to follow seminar. Contact: mariew@ocbanet.org.

Jan. 12 – *Requests to Produce Under FLA. R. CIV. P. 1.350 AND 1.351: Are they Really Requests?* Brown Bag Lunch with Judge John Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Floor Judicial Conference Room. CLE: 1.5. Free. Please tell security that you will be attending the Brown Bag Lunch. Contact Diane Iacone at 407-836-0443 or ctjadi1@ocnjcc.org.

Other News

The Barry University Dwayne O. Andreas School of Law has expanded its campus in Orlando with the opening of the new three-story Legal Advocacy Center. The 32,400 square foot facility opened with a blessing ceremony performed by the Most Reverend John Noonan, Bishop of Orlando on Oct. 7, 2011.



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

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OCBA Calendar

NOVEMBER-DECEMBER 2011 JANUARY 2012

Bill Robinson

President, ABA

Tuesday, November 22, 2011

11:30 a.m.

The Ballroom at Church St.

RSVP by Thursday, November 17, 2011
reservations@ocbanet.org

Sponsored by:



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November

- 1 LAS Lunchtime Training**
Landlord Tenant Law Update
12:00 p.m. • Comerica Bank
- 2 Business Law Committee**
12:00 p.m. • Bar Center
- 4 Paralegal Section**
*Preparing Your Team for Mediation:
A Primer for the Industrious Paralegal*
11:30 a.m. • Bar Center
- 9 Lawyers Literary Committee**
12:00 p.m. • Bar Center
- Judicial Relations Committee**
12:15 p.m. • Courthouse
21st Flr. Conference Rm.
- Executive Council**
4:30 p.m. • Bar Center
- 10 Estate, Guardianship & Trust
Committee Seminar**
*Ethics & Estate Planning, Probate, Elder
Law – New Power of Attorney*
9:00 a.m. • Bar Center
- Social Security Committee**
12:00 p.m. • Bar Center
- 11 Alternative Dispute Resolution
Committee Inaugural Seminar**
Aspects of ADR
9:30 a.m. • Bar Center
- Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 15 Professionalism Committee**
12:00 p.m. • Bar Center
- Solo & Small Firm Committee Seminar**
The Basics of Workers' Comp
12:00 p.m. • Bar Center
- 16 YLS Luncheon**
11:45 a.m. • University Club
- Elder Law Committee**
12:00 p.m. • Bar Center
- Insurance Law Committee**
12:00 p.m. • Bar Center
- OCBA Annual Joint Happy Hour**
5:30 p.m. • Mojo Cajun Bar & Grill
- 18 Family Law Committee**
*Collaborative Law as an Option
in Family Law Cases*
12:00 p.m. • Bar Center
- Technology Committee**
12:00 p.m. • Bar Center
- 22 OCBA Bar Luncheon**
Bill Robinson, ABA President
11:30 a.m. • The Ballroom at Church St.
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23 Appellate Law Committee
No Meeting

24 – 25

Thanksgiving Holiday
Bar Center Closed

29 Tax Law Committee
12:00 p.m. • Bar Center

**30 Appellate Practice & Business Law
Committees Major Seminar**
Attorney's Fees
1:30 p.m. • Bar Center

December

- 6 LAS Lunchtime Training**
*Immigration – Violence Against
Women Act*
12:00 p.m. • Comerica Bank
- 7 Business Law Committee**
12:00 p.m. • Bar Center
- 8 Social Security Committee**
12:00 p.m. • Bar Center
- 9 Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 13 Intellectual Property Committee**
12:00 p.m. • Bar Center
- 14 Lawyers Literary Committee**
12:00 p.m. • Bar Center
- Estate, Guardianship & Trust
Committee Seminar**
2011 Legislative Case Law Update
4:00 p.m. • Bar Center
- 16 Family Law Committee**
No Meeting
- 21 Elder Law Committee**
12:00 p.m. • Bar Center
- Tax Law Committee**
12:00 p.m. • Bar Center
- 26 – 30**
- Winter Holidays*
Bar Center Closed
- 12 Social Security Committee**
12:00 p.m. • Bar Center
- Brown Bag Lunch with Judge John Kest**
*Requests to Produce Under FLA. R. CIV. P.
1.350 AND 1.351: Are they Really Requests?*
12:00 p.m. • Courthouse
23rd Floor Judicial Conference Rm.
- 13 Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 17 Professionalism Committee**
12:00 p.m. • Bar Center
- Solo & Small Firm Committee Seminar**
12:00 p.m. • Bar Center
- 18 YLS Luncheon**
11:45 a.m. • University Club
- Elder Law Committee**
12:00 p.m. • Bar Center
- Insurance Law Committee**
12:00 p.m. • Bar Center
- 19 Technology Committee**
12:00 p.m. • Bar Center
- 20 Leadership Law**
8:30 a.m. • Bar Center
- 23 OCBA Luncheon**
11:30 a.m. • The Ballroom at Church St.
- 25 Labor & Employment**
11:30 a.m. • Bar Center
- Appellate Law Committee**
12:00 p.m. • Bar Center
- 27 Bankruptcy Law Committee**
12:00 p.m. • Bar Center
- 31 Tax Law Committee**
12:00 p.m. • Bar Center

January 2012

- 2 New Year Holiday**
Bar Center Closed
- 4 Business Law Committee**
12:00 p.m. • Bar Center
- 11 Estate, Guardianship & Trust
Committee**
12:00 p.m. • Bar Center

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

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