

the Briefs

A Publication of the Orange County Bar Association



May 2013
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May 1 - July 30

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OCBA starts its membership drive on a fun note!

Earn prizes for reeling in new members!

Simply renew your membership and get one new* lawyer or paralegal to join. You've landed a catch for the OCBA!

Each time you recruit a member, you'll have the chance to hook one of these great prizes:

- One-night stay at Longboat Key Club & Resort
- One-night stay at Walt Disney's Swan & Dolphin Hotel
- Two-night stay at the Daytona Beach Resort
- \$100 Gift Certificate to the Oceanaire Seafood Room
- \$50 Gift Certificate to Fleming's Prime Steakhouse & Wine Bar – Winter Park
- \$50 Gift Certificate to Fleming's Prime Steakhouse & Wine Bar – Orlando
- One Gift Certificate to Crave Restaurant
- \$75 Gift Certificate to Forte Fitness
- A signed Orlando Magic Basketball
- Fulton's Crab House Private Label Red and White Wines



Enter as many times as you'd like! Each time you land in a new member, your name will be entered in the drawing! Winners will be drawn July 31, 2013 at the OCBA Center.

*A "new" member is any lawyer or paralegal who has never been a member of the OCBA or whose OCBA membership lapsed during our 2012-2013 membership year or earlier.

For more information, contact Karen Fast, Membership Manager, at karenf@ocbanet.org.





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Many west coast companies saw a more significant decline in their business in 2010 as compared to the rest of the country due to the trickle-down effects of the BP oil spill.

A new class action Settlement Program, that received final Court approval on December 21, 2012, is working to provide financial relief to help Florida businesses recover. ERG is working in referral relationships with business, commercial litigation, and consumer law firms across the State of Florida that have clients located along Florida's Gulf Coast. All businesses should be evaluated for a potential BP claim, and ERG is here to help.



Henry "Hank"
Didier



Jay M.
Fisher



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FOR MORE INFORMATION ABOUT HOW WE ARE HELPING FLORIDA RECOVER.

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

presents

TUESDAYS 12:00 p.m.-1:30 p.m.

Marks Street Senior Recreation Complex

99 East Marks Street, Orlando, FL 32803

Cyprus Room

Lunchtime Training

may 7

GAL's Role in Termination of Parental Rights Cases in Juvenile Court
Kate York, Attorney at Law
Clarissa Maldonado, GAL Case Coordinator
CLE applied for

may 21

Dependent Youth with Developmental Disabilities: Impact on the Family
Ericka Garcia, Attorney at Law
CLE applied for

june 11

Finding Forever Families for Developmentally Disabled Dependent Youth
Stephanie Stewart, Attorney at Law
CLE applied for

june 25

GAL Representation of Youth who are Sexual Abuse Victims or Victims of Human Trafficking: Discussion of the Keeping Children Safe Act and the Safe Harbor Act
Kavita Sookrajh, Attorney at Law
Tanika Patrick, GAL Case Coordinator
Tomas Lares, Co-Founder and Chair of the Rescue and Restore Coalition of Orlando
CLE applied for

july 9

Administrative Hearings for Public Benefits
Edward Dimayuga, Attorney at Law
CLE applied for

july 23

Topic 1: How to Conduct Effective Home Visits;
Topic 2: Dependency Staffings 101
Doris Mackey, GAL Case Coordinator
Heather Brangwin, VAC Coordinator
CLE applied for

august 13

Defenses to Garnishments & Debt Collection
Michael Resnick, Attorney at Law
Larri Thatcher, Attorney at Law
CLE applied for

august 27

General and Special Education: Improving Outcomes for Dependent Youth
Tenesia C. Hall, Attorney at Law
CLE applied for

september 10

Immigration Relief for Youth: Special Immigrant Juvenile Status and Deferred Action for Childhood Arrivals
Camila Pachon Silva, Attorney at Law
CLE applied for

september 24

GAL 101: Understanding the GAL's Role At Each Stage Of A Juvenile Dependency Case. Beginner level.
Ericka Garcia, Attorney at Law
Sally McArthur, Attorney at Law
CLE applied for

october 8

Achieving Permanency For Dependent Youth: Essential Advocacy Strategies for GALs
Kavita Sookrajh, Attorney at Law
CLE applied for

october 22

Basic Dissolution of Marriage Part I
Angel Bello-Billini, Attorney at Law
CLE applied for

november 12

Landlord Tenant Update
Michael Resnick, Attorney at Law
Larri Thatcher Attorney at Law
CLE applied for

november 19

Mental Health: Evaluations, Diagnoses, Treatment, and Medications
Coravious Cowart, Attorney at Law
CLE applied for

december 10

Basic Dissolution of Marriage Part II
Angel Bello-Billini, Attorney at Law
CLE applied for

december 17

Medicaid Basics
Edward Dimayuga, Attorney at Law
CLE applied for

For OCBA members, the training is free. For non-OCBA members participating in the LAS *pro bono* program, the training is free.

Pre-registration is required for the free lunch and requested for training (or subject to space availability if not pre-registered).

For more information, please email:
ctucker@legalaidocba.org
or mcarbo@legalaidocba.org
or merazmus@legalaidocba.org.

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DEADLINE INFORMATION

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

May 2013



Kristyne E. Kennedy, Esq.

Things I Learned as OCBA President

It is hard to believe that my term as OCBA president is already coming to an end – time truly does fly when you are having fun. My term as president can be described in many ways... exciting, challenging, fun, time-consuming, tiring, sometimes frustrating, but always rewarding. I would like to share a few things I have learned during the past year:

1. If you are the OCBA president, hope that you are blessed to have fabulous officers as talented, committed, and hard-working as **Paul Scheck, Esq.**, **Nick Shannin, Esq.**, and **Jamie Billotte Moses, Esq.** (and also lucky enough to have past-president friends like **Tad Yates, Esq.**, always there to help and give advice).

2. Being with a firm that supports your bar activities is not only helpful, it is crucial. I joined **Cole, Scott & Kissane, P.A.** shortly before beginning my term and have been extremely grateful for all of the support and assistance my firm has given to help me have a successful year as president. I believe neither my firm nor I fully realized just how much of my time this job would take, but CSK has supported me every step of the way – assisting me with my caseload, scheduling firm obligations around important bar activities, and providing support and assistance to both me as the president and also to the bar as an organization.

3. Our community's legal needs demand the OCBA's constant and unceasing attention. An estimated 75% of those needing legal help in Orange County do not receive it. Of course, not all of us can help by working as attorneys for the **OCBA's Legal Aid Society** or other legal aid organizations, but we can and must continue to provide *pro bono* services and financial support for these organizations whenever possible.

4. While we strive to be excellent attorneys and leaders in our community, we must not lose sight of what *really* matters: our **loved ones**, and our **health, faith,**

happiness, and **well-being**. Many of us are in positions that unfortunately often involve sedentary behavior, high stress, and other negative activities. I try to remind myself often of the following excellent advice someone gave me: "(a) Life is too short to waste hating or being angry with anyone; (b) Never ever take yourself too seriously, no one else does; (c) Pick your battles, carefully; and (d) Call your family often."

5. Behind every great OCBA president is a *fabulous* OCBA staff. I have felt so lucky this year to be working with OCBA executive director **Brant Bittner** and the rest of our amazing **OCBA staff**, who consistently have impressed me with their dedication, hard work, and invaluable support for the OCBA and for me. I can't say it enough: Thank you for making the OCBA and me look good!!

6. Being a member of the OCBA, the **best bar association in the nation**, is a privilege that is so worth the price of admission. The OCBA was founded in 1933. Currently at 3,400+ members strong, we are proud that for 80 years our members have been consistently regarded as professional, hard-working, ethical practitioners who are committed to exhibiting excellence in our profession and promoting honor, dignity, truth, and professionalism within the legal community.

7. **New ideas are the lifeblood of our organization.** As a self-proclaimed "bar-geek" and passionate member of this great organization for several years, I have been thrilled during the past year to see many new faces becoming involved and taking on leadership roles in OCBA activities and programs.

It has been a privilege to serve as your OCBA president.

Kristyne E. Kennedy, Esq., Cole, Scott & Kissane, P.A., has been a member of the OCBA since 2001.



Richard S. Dellinger, Esq.

Remarks upon Receipt of the Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award

One of the great things about this city is its diversity. There are not a lot of native Floridians here in Orlando, and nearly everyone has a great story to tell about their hometowns. Today, I would like to tell you a little bit about my hometown and my childhood and how my past has led me to be the lawyer I am today.

I spent most of my childhood in little towns outside of Winston-Salem, North Carolina, in Stokes County. Our county was right on the Virginia line; it was hilly and we had a few mountains. One of the mountains that I could see outside my front door was Pilot Mountain. You all might know it as "Mount Pilot" in the *Andy Griffith Show*. Our town was rural; the primary businesses were tobacco, textile mills, and banking. Most people strived to work for R.J. Reynolds Tobacco, Hanes Mill Outlet, or Wachovia Bank. They built respectable careers that supported themselves and their families.

At the age of 13, I needed money for nice clothes and a car, so I took jobs at some of the local farms. I worked tobacco in the summer and with hay in the fall. On top of those jobs, I worked regular hours as a busboy and janitor at a local restaurant at age 14. Everyone knows what busboys and janitors do and can imagine just how hard those jobs were. The farming jobs were even harder. Tobacco jobs involved getting up early in the morning, pulling the bottom leaves from the plants, loading them onto a trailer, and walking a long line, bent over, for hours on end. At the end of a day in the fields, you were rewarded with a paycheck, a pack of crackers, and a Mountain Dew. The hay job was a little easier, but it was still difficult. When hay is cut in the fields, it is placed into square bales. In order to get those bales of hay out of the fields, a tractor would ride through the fields with a trailer on the back, and we would pick up the bales, throw them onto the trailer, and stack them up. We would take those bales of hay to the barn and store them where they would be kept for feeding the cows throughout the year.

Those jobs were hard, and the only thing that was required of you was to work as hard as you possibly could until you could not work anymore. In return, you would be rewarded with a paycheck and perhaps a snack. One thing you learn with those jobs, however, is that your brain is of no use to your bosses. I am outspoken by nature, and I can remember providing input to my bosses on how things could be improved. The response to

my meddling was not favorable. I learned that I was not paid to think; I was paid to work, not to think.

That mentality was pervasive in all of my early jobs; it was degrading. The idea that I was not paid to think, only to work, left me with a feeling of helplessness. And, this helplessness threatened to turn to complacency. I can recall being pulled over by police officers for no apparent reason, only because I was driving too late at night. I can also recall that in my hometown, racism was accepted by many and segregation was de facto. People lived apart in their neighborhoods, sat in different places in their schools, and went to different churches. I recall that interracial marriage or dating was seen as strange, and homosexuals were in the closet.

When you are not paid to think, you do not think; you assume things are that way and will always be that way. When you see an injustice, you feel helpless. As a young man, I recall seeing the Rodney King beating and subsequent acquittal and assumed there was nothing that could be done. I recall watching as a group of classmates were arrested, and those without the money served jail time, and those with money to hire a lawyer received probation. I assumed there was nothing I could do about it. I was not paid to think.

But that just did not seem fair. How can the legal system be so unfair? How can two people who commit the same crime with the same record be sentenced differently based on the money they could raise to pay a private lawyer? And, how could the system allow anyone to make major decisions without the benefit of good, competent counsel, regardless of their income? It did not seem right then and it still is not right today.

If you have ever been to the U.S. Supreme Court, the engraving over the columns at the top of the stairs at the front of the building reads: Equal Justice Under Law. This same phrase is over the bench in the courtrooms here in Orange County. When we see this phrase in prominent places, it causes us to think about its meaning. To me, "Equal Justice Under Law" means that when any one of us finds oneself inside the courtroom, we should be treated equally, regardless of our income, the color of our skin, our gender, or our sexual preference. We have made a lot of strides in most of those areas, but there are still major inequalities depending on our income.

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The Orange County Bar Association,
The Legal Aid Society of the OCBA,
The OCBA Foundation, The Young Lawyers
Section of the OCBA, and The OCBA
Paralegal Section



Invite you...

to the Sixth Annual Officer Installation and Awards Banquet,
featuring the installation of the 2013-2014 officers of the OCBA,
the Legal Aid Society of the OCBA, the OCBA Foundation, the
OCBA Young Lawyers Section, and the OCBA Paralegal Section.

Join the Legal Aid Society of the OCBA in presenting its 2012-2013
Pro Bono Awards.

With remarks by keynote speaker The Honorable John Antoon, II,
United States District Court for the Middle District of Florida and
recipient of the 2013 Judge James G. Glazebrook Memorial Bar
Service Award.

Thursday
May 30, 2013

Please RSVP by May 23, 2013
to the OCBA at
reservations@ocbanet.org

Cocktails served from 5:30 p.m. until 6:30 p.m. (cash bar)
Dinner and Program commencing at 6:30 p.m.

Cost is \$10 for OCBA members and \$40 for non-OCBA members and Guests.

Serving the Legal Profession. Serving the Community.



To Kill a Mockingbird

On Thursday February 21, 2013, at the Orange County Regional History Center, a celebration was held to commemorate the 50th anniversary of Harper Lee's classic novel, *To Kill a Mockingbird*. The entire evening was sponsored by the Orange County Bar Foundation. Kyle Shephard, Esq., legal counsel with the City of Orlando and a member of the History Center board, provided comments on the significance of the courthouse and historic courtroom where the event took place. Richard Dellinger, Esq., an attorney with Lowndes, Drosdick, Doster, Kantor & Reed, P.A. and president of the OCBA Foundation, was master of ceremonies and guided both the evening's events and the discussion afterward. Assistant U.S. attorney Roger Hanberg,

Esq. acted as the prosecutor, and federal assistant public defender James Smith, Esq. acted as defense counsel. The closing arguments and jury deliberations were presided over by Judge Bob LeBlanc, circuit judge for the Ninth Judicial Circuit.

A sold-out crowd of educators and interested parties filled the historic courtroom to capacity, and the lively discussion of the historical context of that famous trial (and conviction) reminded everyone of the darker days of jurisprudence in American history. The jury unanimously acquitted Tom Robinson, the fictional defendant, in this new trial. It was a great evening and a great venue to commemorate Harper Lee's classic story.



PHOTOS: Glenn Clark

The Florida BarNews

The Florida Bar Board of Legal Specialization & Education announced on March 18, 2013, that 221 of The Florida Bar members who earned legal board certification in civil trial or tax law in 1983 have maintained their board certification status for 30 years, including eight who hold emeritus specialist status.

In Florida, only board certified lawyers may use the terms "specialist," "expert," or "B.C.S." for Board Certified Specialist

when referring to their legal credentials. Members who hold emeritus specialist status no longer practice law, but are recognized for their past and continuing contribution in the advancement of the specialty area through other career activities.

"Maintaining board certification for 30 continuous years is a significant professional accomplishment," said Florida Bar president Gwynne A. Young of Carlton Fields in Tampa. "These individuals are

leaders by example in Florida's legal profession and we salute their commitment to excellence and professionalism in the practice of law."

The Orange County Bar Association congratulates the following attorneys from the Ninth Judicial Circuit for their excellence and commitment to the profession.

Civil Trial



John W. Bussey III, Esq.
Wilson Elser Moskowitz Edelman
& Dicker LLP
Orlando



Craig Cameron, Esq.
Cameron, Hodges, Coleman, LaPointe,
& Wright, P.A.
Orlando



James Nolan Carter, Esq.
Law Offices of Nolan Carter, P.A.
Orlando



Elizabeth Hawthorne Faiella, Esq.
Faiella & Galden, P.A.
Winter Park



Dan Hudson Honeywell, Esq.
Honeywell Mediation
Winter Park



David B. King, Esq.
King, Blackwell, Zehnder
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Orlando



William Lee Kirk Jr., Esq.
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Wooten, Kimbrough and
Normand, P.A.
Orlando



Thomas R. Allen, Esq.
Thomas R. Allen, P.A.
Orlando



William Parker Battaglia, Esq.
(Emeritus Specialist)
Winter Park



William A. Boyles, Esq.
GrayRobinson, P.A.
Orlando



Michael James Canan, Esq.
GrayRobinson, P.A.
Orlando



Charles Henry Egerton, Esq.
Dean, Mead, Egerton, Bloodworth,
Capouano & Bozarth, P.A.
Orlando



Donald Frank Jacobs, Esq.
Donald F. Jacobs, P.A.
Orlando



Richard Monroe Robinson, Esq.
GrayRobinson, P.A.
Orlando



Matthew G. Brenner, Esq.

Think Before You Give Away Your Old Computer Equipment

Your company has just made a sizable capital expenditure to provide all employees with the latest and greatest in computer technology. You are very proud of this investment and expect extra efficiencies and extra dollars to your bottom line. You were telling a friend of these events and your expectations, and she made an inquiry on behalf of a local charity on whose board she sits. "Our afterschool kids would make great use of your old computer equipment." Seems like a no brainer – no need to store the equipment; no need to dispose of it. Maybe even some tax benefits. Think again.

You have a duty to protect from disclosure personal and private information of your employees and any such information of other persons that your company may garner in its work activities. This type of information may exist on the hardware and software of your computers. This information does not only include medical information (protected by the famous Health Information Portability and Accountability Act ("HIPAA")), but other private information relating to bank accounts (direct deposit on your payroll data?) and social security numbers. The disclosure of this information could subject your company to fines imposed by government agencies as well as potential civil liability, including the cost to defend those lawsuits.

Before making the decision to donate your equipment to any charity (and also before you dispose of the equipment), you should take certain precautions. Remove all data on all equipment before it leaves your office. Drives should be removed and disabled or destroyed. Keep logs of any such activity. Establish a policy for such activities. Vendors for such services exist, but what guarantees and/or certifications do they provide to assure destruction of the data?

You cannot ignore your duty to ensure that sensitive data is secure once a computer is removed from service, stored, disposed of, or given away.

Your charitable action, although altruistic, may prove costly in ways you could not imagine. Establishment of appropriate policies and procedures – especially in the context of your industry regulations – should allow you to avoid the potential liabilities existent with retired computer equipment.

According to *Professional Ethics Opinion of The Florida Bar*, Opinion 10-2, September 24, 2010, lawyers have an affirmative duty to take such precautions to maintain their duty of confidentiality to their clients. Opinion 10-2 concludes as follows:

...when a lawyer chooses to use Devices that contain Storage Media (which is defined as any media that stores digital representations of documents) the lawyer must take reasonable steps to ensure that client confidentiality is maintained and that the Device is sanitized before disposition. These reasonable steps include: (1) identification of the potential threat to confidentiality along with the development and implementation of policies to address the potential threat to confidentiality; (2) inventory of the Devices that contain Hard Drives or other Storage Media; (3) supervision of nonlawyers to obtain adequate assurances that confidentiality will be maintained; and (4) responsibility for sanitization of the Device by requiring meaningful assurances from the vendor at the intake of the Device and confirmation or certification of the sanitization at the disposition of the Device.

Matthew G. Brenner, Esq., Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has been a member of the OCBA since 1986.

“We Occupy A Specific Place where creative ideas lead to better answers”



Kimberly Sands



Richard B. Lord



A. Michelle Jernigan



Sandra C. Upchurch

The sole focus of Upchurch Watson White & Max is settling disputes—anywhere. For over 20 years, the principals and panelists at our firm have guided clients and attorneys through the field of conflict resolution.

**Our experienced mediators will help you and your clients
find the road to common ground.**

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MEDIATION



ARBITRATION

SPECIAL MASTERS

Daytona Beach

Maitland / Orlando

Jacksonville

Miami

Birmingham

To do my part for rendering equal justice under the law, on any given day you may see me at the jail helping indigent clients who were appointed to me in federal court, you may see me in juvenile court representing the interests of children, or you may see me working as a board member with the Legal Aid Society. I am just trying to do my part to fix this potential injustice with the system. So are many of you. And, thanks to that effort, this community makes a difference in providing equal justice.

My hometown is absolutely beautiful. There are rolling hills and large mountains topped with rocky peaks, creeks with crawfish, waterfalls with slippery rocks to slide on, curvy gravel roads, red rivers, deep creeks, rope swings, grassy fields, morning glories and blackberries, country stores, country music, bright stars and dark nights, apple trees, and tall, tall oak trees. But there was also something beautiful about leaving.

That feeling of helplessness – the feeling that my thoughts did not matter, the feeling that I was only paid to work and not to think – was left behind when I left Walnut Cove, North Carolina, in the summer of 1992. From there, my education at the University of North Carolina opened my eyes, and I learned about wonderful things such as the Constitution, elections, and open government. I learned that it was not acceptable for people to discriminate against others based on the color of their skin. I learned that it was wrong for police to stop you for no reason. I learned that politicians should answer to all of the electorate or they could pay a price. I realized that discrimination based on sexual orientation was not the norm. I also learned that the mind is just as important as the arms that had helped me through manual labor up to that point. It is through this higher education that I learned that I could think for myself and that it mattered.

While I was expanding my mind, I also met my wife and partner, Alisa Turner Delinger. Alisa has supported me in every step of my career, and she is also a wonderful mother to our four-year-old son, Rhys. As an attorney, I am grateful every day for the University of North Carolina, which gave me a chance, sent me to law school, taught me that my mind matters. I am grateful for my law firm, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., because it took a chance on a country boy who was much rougher around the edges than the

typical candidate. I am grateful for the clients who rely on me and pay me for thinking – something that was not fathomable when I was growing up. And of course, I am thankful for the other lawyers in this community who have worked with me to help me accomplish my goals through Legal Aid service and with the civics and educational initiatives conducted by the Foundation.

Once you learn what you can do, the possibilities are endless. If you can learn about the legal system, you can learn how to control your destiny. If you learn about the political system, you can control it even more. One thing you know after you learn more and more is that the system is not as stacked against you as you thought it was when you did not know anything about it and that, in general, people who are involved in the system want the right thing to happen. They want it to be fair and they want justice to prevail.

So, over the past few years, in addition to my Legal Aid work, I have done a lot to organize educational initiatives in this community. I do it because of what I learned about myself when I left that small town. I do it because I knew no lawyers growing up, and I believe it would be a shame for the community not to see the great things that you all do. It is my hope that we can empower and deliver hope to some of the young children who benefit from our educational initiatives.

On August 11, 1957, in Montgomery, Alabama, at the Dexter Avenue Baptist Church, Martin Luther King Jr. said: “An individual has not begun to live until he can rise above the narrow horizons of his particular individualistic concerns to the broader concerns of all humanity.”

Start living today! There are so many great opportunities in this community. Help ensure equal justice under the law by taking a court appointment. Help give hope to a child by telling him or her what you do and how he or she can succeed. You can be a Justice Teaching volunteer. You can get the schools to teach students about the Constitution. You can participate in Law Week and encourage students to write a great speech about things as wonderful as Martin Luther King’s “I Have a Dream” speech. You can participate in mock trials and show students just how the system works. You can get involved in Florida Law Related Education and help students see how the political system works. You can show people the courthouse and teach them that lawyers are well-meaning people who just want to do the right thing and help.

Every time you walk into an Orange County courtroom, you are reminded about justice and equality by a little plaque that the OCBA gives to new judges which reads: “Professionalism Demands Courtesy.” Lawrence Mathews, after whom this award is named, was known to be both a fierce advocate and a gentleman to his adversaries. The process of balancing the skill of being an advocate with being courteous to your adversary is a process that requires time to perfect. The way to obtain this balance is to get to know your opponent and to respect him or her.

About eight years ago, I was an associate with my firm, supporting the head of our litigation department, Terry Young. We worked for several years on the largest case in my career – for two defense contractors whose case related to space technology. I traveled from state to state with opposing counsel, reviewing documents, deposing witnesses, and preparing for trial. During those months I got to know my counterpart on the other side of the case. He was an associate who supported David King, and he was doing similar work to mine. One day, after a particularly long day of depositions in Los Angeles, we agreed that we should go to dinner together. That night we got to know one another and developed respect for one another before starting it all over again the next day. That associate was Thomas Zehnder, and he was one of the attorneys who nominated me for this award. Tom and I are great friends today. We share a similar practice, we are at similar stages in our careers, and we face similar challenges.

Professionalism not only requires courtesy, but also requires service to the community so that we might pay back the community for the opportunity we have been given. Please help ensure equal justice by supporting the Legal Aid Society or by taking an appointment. Empower the next generation, and better the profession by teaching the public about the good things we do. Take the mystery away from what is happening, and we will all be proud of what is really behind the curtain. If we are not, then we all need do something about it.

Richard S. Dellinger, Esq., a partner at Lowndes, Drosdick, Doster, Kantor & Reed, P.A., is president of the OCBA Foundation. He has been a member of the OCBA since 1999.

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Frank M. Bedell, Esq.

Thinking, Fast and Slow *and* Decision Making

As lawyers, we are frequently retained for our ability to provide objective, bias-free advice that clients often bring to the first consultation. We are asked to assist in decision making on all types of matters of varying degrees of importance. These decisions may be fairly mundane, such as whether a client should hire a part-time person who can assist with an expanding business, or more serious decisions, such as whether an accused person should accept a plea deal to avoid the possibility of a longer jail sentence if the impending trial turns out unfavorably. The excellent book, *Thinking, Fast and Slow*, written by Daniel Kahneman, will help you better understand some of the inner workings of our brains that often occur without awareness when we are making a decision for our clients or for ourselves. Reading this book will help you and your clients make better decisions.

Although Kahneman is a psychologist, he won the Nobel Prize in Economics in 2002 for the work he and another psychologist did in decision making and judgment, with an emphasis on choices people make when there's risk associated with the alternatives. In *Thinking, Fast and Slow*, Kahneman brings together some of the recent discoveries in the fields of cognitive and social psychology and discusses these discoveries and associated theories in a highly readable, well-organized, and interesting book.

As the title suggests, Kahneman discusses the interactions between our "fast" thinking and our "slow" thinking. Because these interactions involve complex theories, Kahneman constructs two "systems" that assist with his explanations for how humans approach certain decisions. "System 1" is the term used to describe our fast thinking; it operates automatically with little or no effort and helps us form initial impressions and intuitions. System 1 is more influential than our experience tells us and, if unchecked, it can lead to mistakes in decision making. "System 2" is the term used to describe our slow thinking and can help us with deliberate, problem-solving strategies; it requires effort and, if engaged, it can change how System 1 works. System 2 can also endorse or validate some of the initial impressions of System 1, which then turn into beliefs. Being attentive and more deliberate, System 2 is "is who we think we are," but unfortunately System 2 has limited endurance and is easily influenced by System 1.

After introducing the two "characters" of the book, Kahneman discusses other aspects of

the mind and how we make sense of the world through ideas that evoke other ideas known as "associative activation" and the "priming" effect, which can greatly influence our actions and emotions without our being aware of it. (Not surprisingly, Kahneman states that "the idea of money primes individualism.") He explores some of the interactions between the two systems and how those systems can be affected. For example, Kahneman states that a bad mood interrupts some of System 1's intuition-forming capabilities, while a happy mood loosens up System 2's control over performance, which can lead to making logical errors. Because System 1 is biased toward belief and confirmation, most people, when initially forming impressions about another person, experience the well-known "halo effect," which is the tendency to like (or dislike) everything about that person, including things that have not yet been observed. Political ads frequently attempt to exploit the halo effect.

In a particularly interesting chapter, Kahneman describes the phenomenon that occurs all too frequently when you ask someone a question and that person answers a different, much easier question. Kahneman uses this example of "substitution" to introduce the concept of a "heuristic," which he defines as "a simple procedure that helps us find adequate, though imperfect, answers to difficult questions."

Kahneman discusses the astounding power of multiple heuristics, with particular emphasis on decision making. Although many may have heard of "anchoring," particularly with regard to how persons involved in negotiations react to an initial offer, Kahneman states that the heuristic known as the "anchoring effect" is much more powerful and complex than previously thought. He suggests that anchoring involves both System 1, which attempts to construct a situation in which the anchor is a valid number, while System 2, which is much less trusting, scrutinizes the number, but often after first being influenced by System 1. To combat the phenomena presented by an anchor, Kahneman suggests that we should automatically assume that *any number* in a negotiation has had an influence on our thinking with regard to making an offer or a counteroffer.

In another fascinating chapter, Kahneman explains how certain intuitions can be considered "expert" and worthy of being trusted. While Malcolm Gladwell examined examples of expert intuition in *Blink*, Kahneman cogently and thor-

oughly explains how experience leading to expert intuition can be gained through “a large collection of miniskills” that build on one another. According to Kahneman, expert intuition requires experience in “an environment that is sufficiently regular to be predictable” and “an opportunity to learn these regularities through prolonged practice.”

Kahneman offers various ways to combat some of the effects of certain heuristics, such as making a decision that takes into account “the outside view” offered by a reference class to combat our own “inside view” provided by experience in a similar endeavor. He then examines the powerful role of “loss aversion,” or the lengths to which humans will go during decision making to avoid the possibility that the decision might lead to a loss, even to the point of rejecting an equal possibility of achieving a gain. This concept of viewing decisions based on the framing of the question and whether or not a loss will be sustained are central to the widely praised prospect theory, which is updated in the book and builds on findings from certain studies on biases and heuristics that are included in the academic articles found in the appendix to the book.

Kahneman uses the concept of two “selves”— the “experiencing self” and the “remembering self”— primarily to help explain some of the tricks our memories play on us. He states that the experiencing self is engaged while the event is taking place, but then the remembering self takes over as a way of “keeping score,” and we are then only left with memories. Because the remembering self tends to ignore the duration of the event, whether good or bad, and constructs a memory that is greatly influenced by the peaks and valleys of the experience as well as what is occurring at the end, our memories tend to be imperfect.

I have only touched on some of the major points of the book, so if you are interested in learning more about what occurs when you are asked to make a decision, then you should read *Thinking, Fast and Slow*. In this compelling book, Kahneman explains how decision makers can recognize and avoid some of the pitfalls that are present, sometimes without our even being aware of it.

Frank M. Bedell, Esq., Bedell Dispute Resolution, is a past president of the OCBA. He has been a member of the OCBA since 1987

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Amber N. Davis, Esq.



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America Invents Act: Practical Effects for Patent Prosecutors and Litigators

Effects on Patent Prosecution

The Leahy-Smith America Invents Act (AIA) was signed into law on September 16, 2011, and represents the most significant change to the United States patent laws in sixty years. Most of its provisions affecting patent litigators took effect either the day the AIA was signed into law or just more than one year later on September 16, 2012. One of the most important provisions affecting patent prosecutors, which changed the law from a first-to-invent to first-to-file-system, took effect on March 16, 2013, and this article examines some of the important changes.

Expansion of Prior Art

One of the most significant changes is that the AIA expands the scope of prior art that is available to the United States Patent and Trademark Office (USPTO) when evaluating patent applications. Specifically, patents, printed publications, public uses, or public sales prior to the *effective filing date* of the invention are eligible prior art, whereas equivalent pre-AIA prior art was measured based on the *date of invention*.¹

Additionally, under the AIA, a U.S. Patent Application or foreign PCT Patent Application (that designates the U.S.) by another inventor is eligible prior art based on its *effective filing date (anywhere in the world)*, whereas prior to the AIA, such prior art is only eligible prior art based on its *effective U.S. filing date*.² One caveat to the expansion of prior art under the AIA is common ownership of prior art.³ In spite of this exception, the overall scope of prior art that is available to reject patent applications has expanded under the AIA. Thus, a crucial inquiry for patent prosecutors is to identify under what circumstances a transition application (*i.e.*, a patent application filed after March 16, 2013, with a priority date before March 16, 2013) will be examined using the broader AIA scope of prior art, or using the narrower pre-AIA scope of prior art, so to minimize the instances of examination using the broader AIA scope of prior art, if possible.

By way of example, if an applicant filed a Provisional Patent Application on January 2, 2013, and a Non-Provisional Patent Application on June 6, 2013, the Non-Provisional Patent Application will be examined using the broader AIA scope of prior art if the applicant includes a claim that relies on the June 6, 2013, disclosure. Also, the applicant must provide a statement to the USPTO that the Non-

Provisional Patent Application is to be examined under the AIA rules, but such statement need not specify which claim(s) have an effective filing date after March 16, 2013.⁴ If, however, the applicant only includes claims in the Non-Provisional Patent Application that rely on the January 2, 2013, disclosure, the Non-Provisional Patent Application will be examined under the narrower pre-AIA scope of prior art. In fact, even if the Non-Provisional Patent Application includes new subject matter that is not in the January 2013 Provisional Application (or is a Continuation-In-Part Application to an existing Patent Application), the application will still be examined under the narrower pre-AIA scope of prior art, provided that the Non-Provisional Patent Application does not include a claim that relies on the new subject matter.⁵ Also, the applicant need not provide any statement to the USPTO that the Non-Provisional Patent Application will be examined under the pre-AIA rules.⁶

Based on the notable advantages of a transition application examined under the pre-AIA rules, one beneficial approach may be to separate transition applications into those with claims that have pre-March 16, 2013, effective filing dates and are assessed under the narrower pre-AIA scope of prior art and those with claims that have post-March 16, 2013, effective filing dates and are assessed under the broader AIA scope of prior art. Of course, each applicant must weigh the benefit of examination under the pre-AIA rules against the increased filing and attorney's fees of prosecuting additional patent applications.

Provisional Applications

In light of the AIA using the effective filing date (rather than the invention date) for determining prior art, patent prosecutors may recommend filing provisional patent applications sooner than their pre-AIA recommendations to obtain the earliest possible effective filing date. Additionally, patent prosecutors may recommend filing subsequent provisional patent applications for improvements to the invention to maintain early effective filing dates for the complete invention disclosure. For example, if a Provisional Patent Application filed in January 2013 discloses subject matter A, but the inventor subsequently derives subject matter B in June 2013 as an improvement to subject matter A, a second provisional patent application may be filed in June 2013 that discloses subject matter A and B. Otherwise, if the applicant waits until

December 2013 to file a Non-Provisional Patent Application directed to subject matter A and B, he or she runs the risk that a competitor may have already filed a patent application, published an article, or otherwise publicly disclosed information covering A and B between January and December 2013 and thus blocked the applicant from obtaining a patent for A and B, but not A alone.

Exceptions to Prior Art

The AIA also provides certain exceptions to the prior art in 35 U.S.C. §102(b) for a disclosure within a year of the effective filing date of the claimed invention, if the inventor (or one who obtained the information from the inventor) (a) made the disclosure, or (b) publicly disclosed the information prior to the disclosure.⁷ Thus, it would seem that the inventor benefits from an early public disclosure of the invention within a year of the effective filing date in order to exempt a later disclosure as prior art. This, however, may not be an advantageous approach. As most patent prosecutors are aware, a pre-filing public disclosure by the inventor will surrender foreign patent rights in most countries. Also, the pre-filing public disclosure will only exempt prior art disclosures against claims directed to what is disclosed in the public disclosure, and thus the prior art disclosure may still be used to reject claims that rely on details outside the pre-filing disclosure. Furthermore, the applicant has the evidentiary burden to establish the prior disclosure, by filing an affidavit or declaration to that effect, in order to disqualify a later disclosure that is applied as prior art.⁸ As a result of these noticeable downsides to a pre-filing public disclosure of the invention, early filing of provisional patent applications (and subsequent filing of provisional patent applications based on improvements and new subject matter) may be the most beneficial approach to preserving patent rights under the AIA.

Effects on Patent Litigation

Prior Art

As discussed above, the AIA has expanded what qualifies as prior art. This change will affect patent litigation because almost anything (even foreign prior art) with an effective date before the patent's effective filing date would be considered prior art.⁹ This will help accused infringers in patent litigation by increasing the prior art that they can use to challenge the validity of the plaintiff's patent(s) in a declaratory judgment action or counterclaim. Another avenue, however, for accused infringers to challenge the validity of a patent is through the AIA's new Post-Grant Review (PGR) proceeding.¹⁰ To invoke a PGR, a challenge to the validity of the patent must be filed by a third party within nine months of the patent issue date and prior to the filing of a declaratory judgment action by the accused infringer.¹¹ Notably, counterclaims and PGRs are considered independent of one another, leaving the third party free to pursue an invalidity counterclaim even if it filed a PGR. The standard for initiating the PGR requires that it is more likely than not that at least one claim will be declared unpatentable.¹² Depending on the facts and circumstances, the accused infringer may want to only file a PGR, only file a declaratory judgment action, or file both a PGR and counterclaim. Whatever route accused infringers choose, it is important for patent litigators to be aware of the options and advise their clients accordingly.

Prior Commercial Use

Pre-AIA, defendants in a patent infringement lawsuit could assert prior commercial use of the patented invention as a defense only as it relates to business method patents. Now, under the AIA, this defense has expanded to include any "process, or... machine, manufacture, or composition of matter used in manufacturing or other commercial process, as long as the defendant meets certain requirements."¹³ These requirements include: (1) the patent issued after

September 16, 2011; (2) the defendant used the subject matter in connection with an internal commercial use or an actual arm's length sale; and (3) the commercial use occurred at least one year before the patent application's effective filing date or the date that the invention was disclosed to the public.¹⁴ Some important caveats, among others, are that the defense does not invalidate the patent and abandonment of the use, eliminates the defense.¹⁵ Despite the expansive scope of this defense, it is unlikely that it will have a significant impact on litigation because (1) it will be difficult to meet the requirements for most defendants, and (2) if the defense is raised unreasonably, the patent owner can request that the case be deemed exceptional, potentially warranting attorney's fees.¹⁶

Limitations on Joining Multiple Defendants

The AIA has severely limited the rules regarding joining multiple defendants in one patent infringement case, such that defendants can only be joined if (1) the allegations arise out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process, and (2) questions of fact common to all defendants or counterclaim defendants will arise in the action.¹⁷ The AIA went even further to state that actions based solely on allegations that the accused infringers each infringed on the patent(s) in suit, is not sufficient for joinder.¹⁸ This will affect litigation, primarily as it relates to lawsuits filed by non-practicing entities. Plaintiffs will now be required to file separate lawsuits against defendants unless they meet the requirements prescribed above.

Infringement Opinions/Best Mode/False Marketing

Some additional changes of note are (1) a defendant's failure to obtain and/or disclose an infringement opinion in litigation cannot be used to draw an adverse inference for purposes of willfulness or inducement; (2) the best mode defense has been eliminated; and (3) false marking claims have been severely limited such that only the U.S. government or private parties who can claim a competitive injury may sue under the statute.¹⁹

Conclusion

Overall, the AIA has made some significant changes to the patent laws that will affect both patent prosecution and patent litigation, making it important that anyone practicing in this field be familiar with the AIA and its effects.

Amber N. Davis, Esq., and **Cian O'Brien, Esq.,** Beusse Wolter Sanks Mora & Maire, P.A., have been members of the OCBA since 2007 and 2003, respectively.

¹³ 35 U.S.C. §102(a)(1); *United States Patent and Trademark Office Final Rules*, Docket No. PTO-P-2012-0015, p. 7.

²³ 35 U.S.C. §102(a)(2); *Id.* at 7.

³³ 35 U.S.C. §103; *Id.* at 84.

⁴ *Id.* at 6 and 38-39.

⁵ *Id.* at 15 and 79.

⁶ *Id.* at 15 and 79.

⁷ *Id.* at 7-8.

⁸ *Id.* at 51-53.

⁹ 35 U.S.C. §102(a)(1); *Id.* at 7.

¹⁰ 35 U.S.C. §§321, 324.

¹¹ 35 U.S.C. §§ 321, 325.

¹² 35 U.S.C. §§321, 324.

¹³ 35 U.S.C. §273.

¹⁴ 35 U.S.C. §273(b).

¹⁵ 35 U.S.C. §273(g), 35 U.S.C. §273(e)(4).

¹⁶ 35 U.S.C. §273(f).

¹⁷ 35 U.S.C. §299.

¹⁸ 35 U.S.C. §299(b).

¹⁹ 35 U.S.C. §§298, 282, 292.



Susan Khoury, Esq.



Donna A. Haynes

Helping Kids Shine – Volunteer Advocates for Children

The Legal Aid Society's Guardian ad Litem Program has been in operation for more than 35 years. Known statewide for only using volunteer attorney GALs, the founders of our GAL Program were nevertheless very forward thinking and knew that non-attorneys could also play a vital role alongside the attorney GALs in ensuring the safety and well-being of the children they were charged to represent. You've known these lay volunteers by a variety of names over the years – GAL Volunteer Assistants, GAL Volunteer Investigators, and today they are known as Volunteer Advocates for Children or VACs for short. Heather Brangwin serves as the VAC Program Coordinator. Heather graduated from Florida Gulf Coast University in 2008 with a bachelor of arts degree in psychology.



Heather Brangwin

VACs bring a host of talents and perspectives to their volunteer work that not only help GALs but ultimately benefit the children they both serve. As a GAL, you might ask, "How can a VAC help make my work easier?" For one, think of all the reports you get as a GAL. They contain loads of technical information – results from school testing, medical testing, psychological testing, and developmental testing. As difficult as it may be for lay people to read legal pleadings, it's not always easy for lawyers to understand the language of other disciplines. Our VACs have skills that can help. Some have a background in law, others in education, social work, or the medical field. Perhaps you have a child who speaks Spanish, but you don't. Maybe you have a child who speaks Creole. How do you communicate? We have VACs with those skills. We have VACs who have been mentors to older youth, particularly ones who've had delinquency involvement.

One of the most important ways VACs can help GALs is by sharing the responsibility for the ***frequent, in-person visits with the children that Legal Aid requires of all GALs***. A VAC can visit dependent children at a moment's notice, talk with relatives and caregivers to gain an accurate assessment of family dynamics, and then submit a timely written report of his or her findings to you, the volunteer GAL, so that you can make informed recommendations to the court.

One of our VACs recently worked on a case in-

volving several children who were being cared for by a relative. At her first visit, the caregiver informed the VAC that the caretaker's apartment was infested with mold, and her landlord refused to respond to this problem. These circumstances were extremely threatening to the health of the children, particularly one, who suffers from asthma. The VAC acted immediately, seeking the help of the Legal Aid Society to connect the caregiver with a lawyer who would help her to get out of her apartment. Without the VAC's persistence and resourcefulness, not only the health but the permanency of those children would have been jeopardized. This same VAC was assigned to another case that involved a child with some special learning needs. She took time to go to the child's school and give the student extra help with reading, which the teacher says is helping to get the child closer to grade level.

As a GAL, you can begin working with VACs immediately upon acceptance of a dependency case. Simply placing a call or sending an email to Heather Brangwin requesting VAC assistance will get the ball rolling. VACs are able to assist GALs in a number of ways:

- they are able to regularly visit the children served by the GAL Program;
- attend meetings related to the child's well-being and success;
- review educational or medical documents to provide concise information to the attorney with whom they work;
- send monthly reports narrating the details of their visits, comments, and concerns to the attorney.

Heather, like all Legal Aid employees, is passionate about the work she does at the Legal Aid Society. When I asked Heather why her job was rewarding to her, she stated:

In my work as coordinator of this program, I have been touched and delighted to see the way everyday people take responsibility and have compassion for our community's children. Their commitment and diligence often goes above and beyond. The volunteer referenced above who goes to the child's school every day and reads with her for an hour to try and help her get on track with her grade level did so without my asking. I have a volunteer with such brilliant instincts that she has, on multiple occasions, intervened on a

child's behalf just in the nick of time, because she recognized a problem someone else did not. My volunteers come from all walks of life, all focuses of education, and all professions; where they distinguish themselves from many is that they truly see how much of a need there is for someone to stand up and speak out for our children... and they do it well.

Child advocacy can be the stopping point for dysfunction in a child's life; it can be the difference between a child flunking out of school or graduating; it can be the difference between a child learning to transcend his or her trauma or suffering forever as a victim; it can be the difference between a child feeling voiceless or having someone speak out loud for their well-being. Being a VAC, like being a GAL, is being a voice.

The Legal Aid Society recruits new VACs year round. We would appreciate your partnership in that endeavor. Do you know someone who is willing to step in and change the life of an abused or neglected child? There is no law degree needed to volunteer with this project – just time and the ability to communicate with *pro bono* attorneys, and the desire to change the life of our Guardian ad Litem children. If you, or someone you know, would care to join our VAC program, please contact Heather Brangwin at hbrangwin@legalaidocba.org for an application. Once the application is completed, aspiring volunteers are welcome to attend a mandatory training session on June 22, August 17, or October 19, 2013. Federal background checks are required of all prospective volunteers.

Legal Aid would also like to see more GALs request VACs for their cases. There are two things required of GALs who receive VAC assistance: supervision and communication. The VAC works under the direction and supervision of the assigned GAL. Just as you

may co-counsel a case with a fellow lawyer, working with VACs requires the same type of two-way communication: accepting your VAC's phone calls, acknowledging receipt of their reports, specifying what they are to do next, etc. Communication is key to a successful working relationship.

If you are interested in sponsoring the Breakfast of Champions or donating time or money, please contact Donna Haynes at 407-515-1850, 100 East Robinson Street, Orlando, Florida 32801, or dhaynes@legalaidocba.org. As always, thank you for your continued support of the Legal Aid Society. You are appreciated.

Susan Khoury, Esq., is the Legal Aid Society Guardian ad Litem Program Director. She has been a member of the OCBA since 1988. **Donna Haynes** is the LAS Manager of Development and has been a member of the OCBA since 2008.

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Editors' Note

July's *Briefs* will be devoted to **technology and the law**. Technology is trending! Please contact Peggy Storch at peggys@ocbanet.org if you have questions or suggestions. **The deadline for submission of articles is May 15, 2013.**

The Briefs Editors



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Jim Edwards with his wife, Marcia Edwards, and son, Steve Edwards



Presentation of the William Trickel, Jr. 2013 OCBA Professionalism Award to James A. Edwards, Esq., by Kristyne E. Kennedy, Esq., OCBA President.



Mary Wilson, legal assistant; Jim Edwards; Nancy Coffman, paralegal



The Hon. John Antoon, II, recipient of the James G. Glazebrook Memorial Bar Service Award, and Kristy E. Kennedy, Esq.



Ava Doppelt, Esq.

OCBA Luncheon

March 21, 2013

The Ballroom at Church Street

Sponsored by Orlando Magic

Co-hosted by the OCBA Professionalism Committee



Presentation of the Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award to Richard S. Dellinger, Esq., by Kristy E. Kennedy, Esq.



The Hon. John Kest



The Hon. Emerson Thompson



Lantaff, Schroeder & Carson, LLP: Robert Freschlin, Nathan Stravers, Esq., James Armstrong, Esq., with Paul Scheck, Esq., OCBA President-Elect

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The Tech Law Firm, PLLC: Keith J. Kanouse Jr., Esq., Donna M. Chesteen, Esq., with Paul Scheck, Esq.

PHOTOS: Flo Boehm



Last year, Min Cho approached the YLS board about starting a Diversity in the Pipeline project with Orange County Public School students. "Pipeline" programs have enjoyed nationwide success in shepherding minority high school students toward a career in law. Following through on his idea, Min and six members of his Diversity in the Pipeline committee represented the YLS at Olympia High School in March. After putting on an outstanding presentation, they answered questions from 9th and 10th graders who participate in the AVID program (Advancement Via Individual Determination). AVID is a college-readiness system that works with students who live in poverty, are minorities, or face some type of obstacle that may make college an impossible dream. Min and his team inspired a very motivating and uplifting discussion, encouraging the students to continue their education through high school and acquire the skills needed to attend college. Thanks to each of you for providing such a positive community service.

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Pipeline**

Skinner Louis, Esq.; Kim Nguyen, Esq.; Jessica Hoch, Esq.; Min Cho, Esq.; Alvin Benton, Esq.; Kelli Murray, Esq.; Karla Valladares, Esq.

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YLS on the move



Sunny Lim Hillary, Esq.

On Thursday, March 14, 2013, **Judge John Marshall Kest** presented the monthly **Brown Bag Lunch** entitled: *Planning Your Discovery: Use of Rags, Depos, R/P, Records P/U, and R/A*. On Thursday, April 11, 2013, he presented: *Objections: Making, Preserving, and Arguing*. Brown Bag lunches are held in the Judicial Conference Room on the 23rd Floor of the Orange County Courthouse from noon to 1:15 p.m. CLEs are available. For more information, please contact Judge Kest's judicial assistant, Diane Iacone, at 407-836-0443 or ctjadil@ocnjcc.org.

The YLS welcomed this year's **Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award** recipient, **Richard Dellinger, Esq.**, as its guest speaker Friday, March 15, 2013. Richard, a partner at Lowndes, Drosdick, Doster, Kantor & Reed, P.A., is an AV-rated litigation attorney, and his practice includes complex litigation, civil litigation, commercial litigation, business litigation, intellectual property litigation, and federal criminal litigation. In addition to his involvement in *pro bono* work, he is president of the OCBA Foundation. His remarks at the YLS luncheon appear in this issue of *The Briefs*.

David Henry, Esq., was the guest speaker at the YLS luncheon April 19, 2013. David is a partner at the law firm of Alvarez, Sambol & Winthrop, P.A., and works primarily with insurers of both public and privately-held companies to litigate business and insurance disputes, products and professional liability suits, wrongful death claims, and business torts. He is also a well-regarded Supreme Court Certified Circuit Civil Court Mediator.

This month's **YLS Luncheon** will be held on Friday, May 17, 2013, at the **Citrus Club** from 11:30 a.m. to 1:00 p.m. It will be the annual ceremonial **Passing of the YLS Gavel** from current YLS president, **Anthony Sos, Esq.**, to incoming YLS president, **Lauren Heatwole McCorvie, Esq.** Come and listen to the words of wisdom of the past YLS presidents and to Lauren's inaugural speech. Casual attire is perfectly appropriate. For a three-course meal, the cost is only \$10 for all young lawyers and for judges, thanks to our amazing sponsors. Please RSVP to yls.ocba@gmail.com **no later than May 14, 2013**. A late charge of \$4 will be added for all RSVPs made after May 14, 2013. YLS is charged for anyone who RSVPs, so show up if you RSVP, or let us know if you cannot make it. We look forward to seeing you at the luncheon!

On Thursday, March 21, 2013, the YLS did a stellar job representing **Olympia High School** in **Diversity in the Pipeline**, a program designed to reach out to students of color about potential careers in law. **Min Cho, Esq.**, and his team, **Alvin Benton, Esq.**, **Jessica Hoch, Esq.**, **Skinner Louis, Esq.**, **Kelli Murray, Esq.**, **Kim Nguyen, Esq.**, and **Karla Valladares, Esq.**, answered questions from 9th and 10th graders participating in the **AVID** program (Advancement Via Individual Determination). AVID was created to level the playing field for students who live in poverty, are minorities, or face some type of obstacle that may make college an impossible dream. Many of them will be the first in their family who will go to college. Min and his team gave a very inspiring presentation in an effort to motivate these students to continue on their journey to college. A huge congrats to all of these young lawyers for providing such an important community service.

Each year, the YLS selects an Orange County high school graduate or GED recipient to receive a four-year college scholarship. The recipient will receive assistance to attend Valencia College for the first two years, and then to attend any state of Florida university for the remaining two years. The deadline for students to apply for the scholarship was March 31, 2013. Keep your eyes and ears open for the deserving recipient of the **YLS Scholarship**.

Mark your calendar for the annual **YLS Great Oaks Village Fun Day**, which will be held Saturday, May 18, 2013, at Great Oaks Village (GOV), 1718 E. Michigan Avenue, Orlando, Florida, 32806. GOV is a foster care facility that houses more than 100 abused and/or neglected Orange County youngsters. One day a year, we invite lawyers and judges to spend a fun-filled day with these children. Also, as part of this event, we are collecting donations to purchase new shoes for the GOV boys and girls. This is an integral part of the event. Donations in any amount are greatly appreciated and can be made payable to: Young Lawyers Section – OCBA, and mailed to **Michael Barber** at 415 N. Orange Ave., Orlando, Florida 32801.

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

Hearsay...



Christine A. Wasula, Esq.

As I prepare to discuss some of the exciting Social Committee events that have taken place over the past few months, I cannot help but reminisce about the inaugural event in 2005 – the Winter Wine and Cheese Social at Sam Snead's – which was organized by **Jessica Hew, Esq., Kristyne Kennedy, Esq., Judi Garabo Hayes, Esq.,** and **myself.** As the founding members of the Social Committee, it was our goal to host four annual events that would give members of the "Big Bar" an opportunity to socialize outside of the monthly luncheons. Since then, the Social Committee and its events have grown tremendously in size and scope, as demonstrated by this year's Wine and Cheese Social, held January 30, at Ember. This year's event was sponsored by **Westlaw** – which sponsored the inaugural event in 2005 and every year since then (Thank you, Westlaw!). There was a great turnout, with more than 100 people coming out to eat, drink, and socialize with their fellow OCBA members.

The Social Committee also introduced two new "family-friendly" events this year, including the Cars & Coffee car show held February 16 at the University Club. This unique event gave OCBA members and their families an opportunity to socialize and check out members' amazing cars while enjoying coffee, pastries, and classic rock 'n roll music. There was a great mix of classic cars, modern performance, and specialty vehicles. Special thanks to the sponsors, **Rumberger, Kirk & Caldwell, Orange Legal, Credence Corporation,** and **Forms & Supplies Unlimited,** who made this exciting event possible.

There was also a great turnout for the 9th Annual Texas Hold 'em Charity Poker Tournament and Happy Hour (did I mention that I helped to organize the first one?), which took place on March 14 at One-Eyed Jack's and the Loaded Hog. The tournament was sponsored by **BMO Harris Bank**, and there were 91 players this year – a new record. The winner was **Hope Touchton, Esq.,** with **Phelan Hallinan, PLC,** who was also the top attorney, top female, and first-ever female to win the tournament. Congratulations Hope, on breaking through the glass ceiling! Second place went to **Phil Calandrino, Esq.,** with **Calandrino Law Firm,** who was the top male player. Third place went to **Rob Bamberg** with **ProServe USA,** who was the top non-legal player. Other awards go to **The Umansky Law Firm,** which was the top law firm, and our very

own Social Committee chair, **Amy Guy,** who was the first player eliminated from the tournament but who graciously stayed around until the bitter end to cheer on the other players.

Thank you to Amy and all the other Social Committee members for organizing these great events.

Despite their frequent socializing, our OCBA members have also found time to pursue professional accomplishments. Here are some of the highlights since last month:

Past OCBA president **Tad Yates, Esq.,** with the **Law Offices of Tad A. Yates, P.A.,** has been appointed by the Florida Board of Governors to The Florida Bar Foundation Board of Directors, where he will serve a three-year appointment. Tad is also currently serving as chair of the Judicial Nominating Commission for the Ninth Judicial Circuit, proving that there is life after the OCBA presidency.

The Florida Bar recently announced a milestone celebrated by 19 Orange County attorneys: They all marked 30 years of continuous legal board certification, a milestone celebrated by only 19 attorneys in Orange County. We wanted to take time to recognize the professional accomplishment of these outstanding attorneys, so we've put together a special photo spread in this issue of *The Briefs*. Please see page 7.

Suzanne E. Gilbert, Esq., a partner in **Holland & Knight's** Orlando office, has been appointed to the Florida Hospital Foundation Cardiovascular Institute Board of Directors, where she will also serve as the chair to the Community Awareness Committee. In addition, my former colleague, **Ben Subin, Esq.,** also a partner at **Holland & Knight's** Orlando office, has been elected to a three-year term on the law firm's Directors Committee, which is composed of 24 partners from across the firm. Ben is the practice group leader of the firm's Florida Construction Industry Group and is also Board Certified in Construction Law. I can hardly believe that it's been 13 years since Ben and I worked together, when I was fresh out of law school and he was making me do research on construction liens.

Sara Lindquist Pape, Esq., a shareholder with **Zimmerman, Kiser & Stuccliffe, P.A.,** has been elected to serve as secretary of First Tee of Central Florida's Board of Directors, whose mission is to impact the lives of Central Florida youth by providing educational programs that build char-

acter, instill life-enhancing values, and promote healthy choices through the game of golf.

Melvin B. Wright, Esq., of **Colling Gilbert Wright & Carter**, has been selected for membership in the invitation-only American Board of Trial Advocates, which is dedicated to educating the public and the profession on the importance of preserving the Seventh Amendment right to jury trial in civil cases. His colleague, **Nathan P. Carter, Esq.**, of **Colling Gilbert Wright & Carter**, has been selected for membership in the Melvin Belli Society, an invitation-only professional organization of distinguished trial lawyers.

Drew Sorrell, Esq., a partner at **Lowndes, Drosdick, Doster, Kantor & Reed, P.A.**, has been elected to the Central Florida Information Technology Society Board of Directors.

Paul J. Scheck, Esq., a partner at **Shutts & Bowen LLP** and incoming OCBA president, has been appointed to a two-year term on the board of directors of Orlando, Inc.

Richard Lord, Esq., a shareholder at **Upchurch Watson White & Max**, has become a fellow of the American College of Civil Trial Mediators, a non-profit organization of professionals distinguished by their experience, skill, ethical standards, and professional commitment to mediation, conflict management, and alternative dispute resolution.

Merrill Bailey, Esq., managing partner at **Bailey Zobel Pilcher**, was one of the judges at the annual UCF Joust Business Plan Competition semi-finals, which was held on March 22 in the Fairwinds Alumni Center. Sponsored by the UCF Center for Entrepreneurship & Innovation, the Joust is an annual event in which UCF students from an array of educational disciplines de-

velop and present business proposals, and then compete against one another in hopes of being judged as having the most promising plan. The judging panel was made up of prominent members of the Central Florida business community, ranging from experienced entrepreneurs, to investors, and corporate executives.

Congratulations to these OCBA members on their outstanding professional accomplishments.

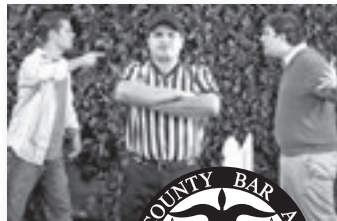
On a more personal (and less serious) note, I would like recognize **Kim Webb, Esq.**, **Jamie Billotte Moses, Esq.**, **Margaret Connor Giacalone, Esq.**, and all the other OCBA members who constantly remind me (via Facebook) that they like to get up at the crack of dawn on the weekends to participate in the latest 5K run. I wholeheartedly congratulate you on your efforts, and I wish you the best of luck. However, I will not be joining you anytime soon!

Please remember to send me any newsworthy items at christine.wasula@csklegal.com. Otherwise, I'll see you next month!

Christine A. Wasula, Esq., Cole, Scott & Kissane, P.A., has been a member of the OCBA since 2002.

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GOAABA
**Membership Drive/
 Happy Hour**
 OLV Café
 March 14, 2013



Theresa MacDowell, Esq.
 Christine Malamanig Berk, Esq.



Kim Nguyen, Esq.; Eddie Yang, Esq.;
 Mark Hillary, Esq.; Felipe Guerrero, Esq.



Donna Hung, Esq.
 Lisa Gong, Esq.



Stephen Chong, Esq.
 Angela Miller, Esq.

Ingrid Keller, Esq.
 Sunny Hillary, Esq.

CFAWL
Annual Judicial Reception
 Courtyard at Lake Lucerne
 March 20, 2013



CFAWL Photos: Lauren Watai



Sunny Lim Hillary, Esq.

Your local voluntary bar associations have been doing great things this spring! Read on to find out what's happened and what's happening, and get involved!

CFAWL

The Central Florida Association for Women Lawyers (CFAWL) proudly served as a co-sponsor and the host city for the **National Association of Women Lawyers' 2013 Mid-Year Meeting**, February 14-16, 2013, at the **Grand Floridian Resort and Spa** in Walt Disney World®, Florida. CFAWL's very own **Ava Doppelt, Esq.**, recipient of the 2012 Rosemary Barkett Outstanding Achievement Award from FAWL, introduced **The Honorable Rosemary Barkett** at the NAWL Awards Dinner. Also, **Elaine Lerner, Esq.** served as a panelist at the Saturday morning session: *Ethical Issues for Inside and Outside Counsel*.

Conceived with the goal of achieving balance in professional and personal endeavors, the NAWL Mid-Year Meeting offered interactive, dynamic CLE programs geared to assist women working in all legal disciplines at every career stage. Members obtained advice and knowledge about taking their careers to the next level in a healthy, purposeful, and meaningful way.

On March 1, 2013, the ladies enjoyed a fondue **CFAWL Table for Eight** with **Kimberly Lorenz, Esq.** and **Christine Arendason, Esq.** The hostesses provided delicious cheese and chocolate fondues, and wine for the table, with dinner left to each guest's discretion.

CFAWL's Young Lawyers Committee is seeking volunteers for its **Developing Distinction in Women** project geared toward all fields of women in the Central Florida Community. This program will reach out to female members of law enforcement, education, health, and public service to encourage networking and leadership among women throughout the Orlando community. Workshops addressing physical, emotional, and professional development will be offered. The event

will be held mid-May 2013. If you would like to join this committee, please email CFAWL's Young Lawyers chair, **Jessica Thomas, Esq.** at Jessica@cb-slaw.com.

On Wednesday, March 20, 2013, CFAWL held its **Annual Judicial Reception** at the **Courtyard at Lake Lucerne**. Thanks to the contributions of 34 generous sponsors, more than 150 guests enjoyed a wonderful event! This year's event embraced a Spanish theme that featured paella, sangria, Flamenco dancers, and a Spanish guitar player!

GOAABA

On February 10, 2013, the Greater Orlando Asian American Bar Association (GOAABA) participated in the **Dragon Parade Lunar New Year Festival 2013!** The parade began at Hillcrest/Hampton and ended at Hillcrest/Mills in the Mills 50 District of Orlando. GOAABA and members of the community celebrated the Year of the Snake with dragon and lion dances, martial arts, Japanese Taiko, acrobatic performances, arts and crafts, exotic food, and kids' activities.

GOAABA hosted a **Membership Drive/Networking Happy Hour Event** at **OLV Café** March 14, 2013. Members and new members networked over complimentary beer, wine, and appetizers. Thank you social chair, **Donna Hung, Esq.**, for another successful event!

On Thursday, March 21, 2013, GOAABA President, **Kim Nguyen, Esq.**, participated in representing **Olympia High School** in **Diversity in the Pipeline**, a program designed to reach out to students of color about potential careers in law. Kim, along with other voluntary bar leaders and local attorneys, answered questions from 9th and 10th graders participating in the **AVID** program (the Advancement Via Individual Determination). See photos page 22.

Come and join GOAABA on Wednesday, May 15, 2013, from 5:30 p.m. to 7:30 p.m. at **310 Lakeside**, located at 301 E. Central Boulevard, Orlando, FL 32801, for our **Annual Membership Meeting and Social!** A limited amount of FREE appetizers and drinks will be provided! Please RSVP to **Donna Hung, Esq.** at donna@donnahunglaw.com by May 13, 2013.

Keep your eyes and ears open for more exciting events, including GOAABA's annual happy hour installation event in July. Please contact **Donna Hung, Esq.** at donna@donnahunglaw.com for more information.

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

GOAABA Dragon Parade Lunar New Year Festival 2013

February 10, 2013



Sunny Hillary, Esq.; Glenn Leong, Esq.; Amy Mai, Esq.; William Voight, Esq.; Lisa Gong, Esq.; Greg Maaswinkel, Esq.; Yen Maaswinkel





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E-Discovery: The New Frontier of Discovery and You Need to Know

The modernization of the legal profession took another step forward with the recent amendments the Florida Rules of Civil Procedure related to the discovery of Electronically Stored Information (ESI). This article will discuss those amendments and some of the practical implications of them.

The amendments to seven of the Florida Rules of Civil Procedure regarding the discovery of ESI became effective on September 1, 2012. Specifically, the Florida Supreme Court amended Rule 1.200 (pretrial procedures); Rule 1.201 (complex litigation); Rule 1.280 (general limitations on discovery); Rule 1.340 (producing ESI in response to interrogatories); Rule 1.350 (production of documents); Rule 1.380 (sanctions related to discovery); and Rule 1.410 (subpoenas). These rules do not provide grandfather provisions exempting lawsuits filed before September 1, 2012.

Florida Rule of Civil Procedure 1.200 (Rule 1.200) was amended to allow the trial court to consider the discovery of ESI during a pretrial conference. Rule 1.200 allows for a case management conference to be convened by order of the court or by a party serving a notice setting the conference. Rule 1.200 also prompts the litigants to discuss electronic discovery matters by stating that, at the case management conference, the court may “consider... stipulations regarding... electronically stored information,”¹ “consider the need for advance rulings from the court on the admissibility of... electronically stored information,”² and “discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources.”

As opposed to the permissive nature of Rule 1.200, Florida Rule of Civil Procedure 1.201 (Rule 1.201) requires parties to address the discovery of ESI during a case management conference. Under that rule, during the case management conference, litigants are required to discuss “the possibility of obtaining... voluntary exchange of... electronically stored information, (and) stipulations regarding authenticity of... electronically stored information...”³ Parties are also required to address “the extent to which such electronically stored information should be preserved, the form in which such information should be pro-

duced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources.”⁴

The amendment to Florida Rule of Civil Procedure 1.280 (Rule 1.280) explicitly permits the discovery of ESI, but also sets limitations on the discovery of ESI if it is not reasonably accessible because of burden or cost.⁵ Even if that showing is made, however, Rule 1.280(d)(1) allows the court to require the discovery of ESI upon the showing of good cause. Rule 1.280 also sets restrictions on the discovery of ESI if such production is duplicative, if the documents or information may be acquired through another source that would be less costly or less burdensome, or if the burden or expense outweighs the benefit of production.⁶

Florida Rules of Civil Procedure 1.340 (Rule 1.340) and 1.350 (Rule 1.350) permit a party to produce ESI in response to an interrogatory or request for production, respectively. Importantly, Rule 1.350 allows the party requesting documents to specify the form of the production of ESI. In the absence of such specification, however, Rules 1.340 and 1.350 do not require production in any particular format. Instead, those rules state that a party may produce the ESI in the form in which it is ordinarily maintained or in a reasonably usable form.⁷ Lastly, Florida Rule of Civil Procedure 1.410 (Rule 1.410) allows litigants to subpoena ESI and provides a procedure and grounds for subpoenaed parties, and non-parties, to object to the production of such documents.

Since Rules 1.340, 1.350, and 1.410 do not require the production of ESI in any particular form, disputes between litigants will inevitably arise regarding the format of production of ESI. For example, one party may insist on production in “native” format and the other party may vehemently object. To avoid such discovery disputes, and to potentially save clients’ money, Rules 1.200 and 1.201 allow parties to agree on the format of the production of ESI at the outset of a lawsuit. As such, even if the case is not designated as “complex,” it may behoove the parties to agree on the form of production of ESI in a case management conference at the beginning of a lawsuit.

As with the amendment to any rule, attorneys and paralegals should consider the practical implications of the new rules regarding the discovery of ESI. For example, a litigant may find it beneficial to insist at a case management conference on the production of documents in native format if he or she anticipates that email correspondence will

be vital in the case, or if there is the potential for a nefarious opposing party to “doctor” relevant documents. In that regard, a party may be able to get information during discovery that was previously more difficult to obtain.

Lastly, practitioners should strongly consider discussing the production of ESI with their clients at the outset of any potential litigation to avoid any potential sanctions. Although the amendment to Florida Rule of Civil Procedure 1.380 states that a court may not impose sanctions on a party for failing to provide ESI that was lost as a result of routine, good-faith operation of an electronic information system, the potential for any such sanctions can be easily avoided if the client creates a method of preserving ESI at the instruction of an attorney.

In conclusion, attorneys and paralegals should take the time to learn the rules regarding the discovery of ESI and use those rules their clients’ benefit.

Jeffrey S. Elkins, Esq., and **Bethany Gibson** are with de Beaubien, Knight, Simmons, Mantzaris & Neal, LLP. They have been members of the OCBA since 2007 and 2012, respectively.

¹Fla.R.Civ.P. 1.200(5)

²Fla.R.Civ.P. 1.200(6)

³Fla.R.Civ.P. 1.201(b)(1)(I)

⁴Fla.R.Civ.P. 1.201(b)(1)(J)

⁵Fla.R.Civ.P. 1.280(d)(1)

⁶Fla.R.Civ.P. 1.280(d)(2)

⁷Fla.R.Civ.P. 1.340(c); Fla.R.Civ.P. 1.350(b).

PhotoOp



Steve Eichenblatt, Esq., Kurt Spengler, Esq., Gregg Page, Esq., Ted Brown, Chip Brown

Gregg Page, Esq., and Steve Eichenblatt, Esq., founding partners of Page, Eichenblatt, Bernbaum & Bennett, P.A., ran in this year’s Gasparilla Half Marathon to raise funds for 14-year-old Billy Brown, son of Ted and Regina Brown. Ted is a 25-year veteran of the Orange County Sheriff’s Office. Their son was diagnosed in October 2012 with a rare and stubborn form of leukemia called ETP or early T-cell precursor, and the family was advised that the University of Minnesota Amplatz Children’s Hospital would be the best location to treat Billy. Billy and his family were flown to Minneapolis on March 4, and Billy underwent the transplant surgery on March 24 after undergoing intense chemo and radiation treatment. Friends of the Brown’s rallied to help with the extraordinary expenses associated with Billy’s medical care, and on February 24, Ted and Chip Brown, as well as Kurt Spengler, Esq., a partner with Wicker Smith O’Hara McCoy & Ford P.A., ran for Billy in Tampa’s annual Gasparilla Distance Classic. Not only did they reach the 13.1 mile finish line, but they met all their fundraising goals for the Brown family.

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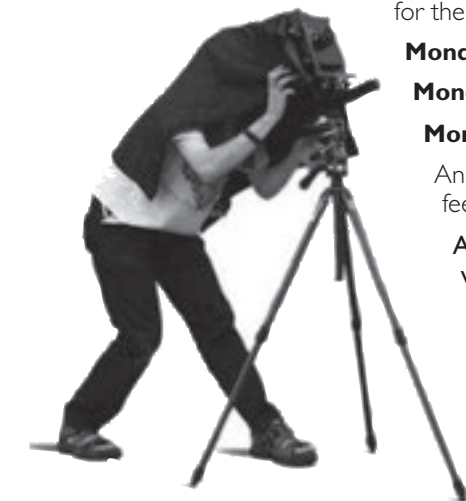
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We look forward to seeing you at the OCBA Center in June, July or August.

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





Michael Hammond, Esq.

Are You Minding Your Own Business?

This is the third in a series of articles about the basics of word-of-mouth marketing. The emphasis thus far has been on “who to talk to,” and the focus has been identifying and selecting good clients. Now, the focus will shift to your top twenty influencers or referral sources. Referral sources are key individuals who can directly refer your services to prospective clients, or influence those who can. They are usually people you know – peers and other professionals with whom you have networked.

Similar to understanding the profile of your primary clients, it is equally important to understand the profile of your primary referral sources. Identifying and cultivating those people who send you your best business is the most important step you can take to build your practice and lay the foundation for your future client development efforts.

Just as the Pareto Principle – or the “80/20 rule” – applied to your client base, it also applies to your referral sources. If you took the time to do the same analysis, you would likely discover that 80% of your referrals come from about 20% of your referral sources. The quality of your practice can be measured by the quality of your referral sources. So, who’s in your top twenty influencer group and do you know how to tell the difference between the 20% and the 80%?

Who Are Your Top Twenty Influencers?

Your top twenty influencers are those referral sources who are the most active and send you your highest quality business. They send you the kind of matters you specialize in and the kinds of cases that you most prefer to work on. They consistently send you the types of clients you most enjoy working with. Most simply put, your top twenty influencers send you “A” client referrals. Most attorneys who have practiced for five or more years will have a small group of referrers that fit into this category.

Prioritizing your client development efforts is crucial to your marketing success, and that’s why targeting this group of people is critical to your future growth. One good referral source can send thousands of dollars worth of business every year and hundreds of thousands over the life of your practice. It’s likely that your firm owes its existence to the continuing goodwill of a handful of people who know you, like you, and have faithfully demonstrated this by sending you “A” client referrals. Calculated or not, you’ve done something to impress them, and they demonstrate

their trust and confidence in you by repeatedly sending new clients to you. It’s important that you know exactly who they are and how to meet more people like them. The question is: Are you minding your own business?

Why Do They Refer To You?

As you work through the top twenty exercise, think about what you have done to cultivate the relationship you have with each referral source. Have you invested time and energy in getting to know them as people, over and above the relationship you have with them as colleagues? Do you know their spouses or families? Do they like you because you have a lot in common as people? Are you friends and colleagues with some of the same people? Do they send you work because of your quick turnaround time? Do you possess a certain expertise that they have come to rely upon? Does your work make them look good to their superiors, their clients, or end-users? To be effective with this key group of influencers, you must nurture your relationships with them and continue to build on whatever level of trust and rapport that currently exists between you.

Are You Cultivating Those Relationships?

Never let these top referral sources wonder whether or not their referrals came to you. Always express your appreciation as quickly as you can – even if the client did not ultimately engage your services. You want to continually reinforce the referral pattern so that you remain top of mind when they have a matter to refer. Immediately let your referral sources know that you appreciate their ongoing faith in you.

Send them thank you notes. Yes, I mean handwritten thank you notes – since people now live with a daily deluge of emails, this has become a powerful way to differentiate yourself in a much more warm and personal way. Take them to lunch. Remember their birthdays and the names of their spouses and children. Find out as much as you can about their interests and hobbies. Keep a growing database of this kind of information in your contact management system and continually add to it as you learn more about them in casual conversation. Never take them for granted. Invite them to join you in social or charitable activities to further strengthen the bonds between you. Have fun with them if it is appropriate for the relationship. Let them know about changes in your firm that may affect them or new developments in the law that they may be interested in and want to know more about.

Solicit their feedback – ask them how you can improve and provide a higher level of service to them.

What's The Next Step?

Now, using the form provided, make a list of your top twenty influencers in the left-hand column under "Name." Next, list the type of influencer that the person is, such as "attorney" or "CPA" under "Type." Then, in the columns marked "High Rapport" and "Low Rapport," put a check mark in the appropriate box – and be honest with yourself. In the far right column, list the total annual value of the referrals they have sent to you using the last full calendar year, plus any year-to-date revenue as well. When this is complete you will have a matrix that clearly illustrates your most valuable referral relationships.

Once you've analyzed this data, you might notice that you now have the basis for a marketing plan. Here's why: Those influencers with whom you have high rapport should be put into a maintenance rotation – that is, you should contact them at a regular, yet comfortable, rate for the relationship. For some relationships, this will be two or three times a month, for others, once or twice a quarter. For those relationships marked "Low Rapport," make it a priority to cultivate them a little more aggressively, based on their receptivity, their availability, and their ability to send you more work. Use this matrix to plan your marketing activities. Follow your plan faithfully and more than likely you will see an increase in new business – and that's one very good reason to start minding your own business.

The first three articles have focused on "who to talk to" in your word-of-mouth marketing campaign. In the next one we'll look at "what to say" – the strategic conversations.

Michael Hammond, Esq., is a "founding father" of Atticus and is a Certified Practice Advisor. A licensed attorney since 1983, he has spent his entire career either practicing law or supporting and promoting the practice of law. Michael has a depth of experience in lawyer marketing, one-on-one business coaching, and strategic planning. He is currently a featured writer for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.

Top Twenty Influencers

Name	Type	High Rapport	Low Rapport	Annual \$ Worth (to your practice)
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Speaking Engagements

James T. Armstrong, Esq., of Walton Lantaff Schroeder & Carson, LLP, presented a seminar to Workers' Compensation Insurance Adjusters at Employer's Insurance Company in Maitland. His presentation, *How to Develop a Litigation Strategy in Workers' Compensation*, touched on a number of key areas, including current events and challenges with dispensing of prescriptions by physicians.

James T. Armstrong, Esq. and **Scott Berglund, Esq.,** of Walton Lantaff Schroeder & Carson, LLP, co-presented a seminar to Insurance Professionals at United Self Insured Services (USIS) and FHM Insurance Company in Orlando. The topics, covering recent legal developments in workers' compensation, focused in the areas of dispensing of prescriptions by physicians, Independent Medical Examinations (IMEs), and recent case law developments.

Philip A. Diamond, Esq., Carlton Fields Orlando of Counsel, presented to the Central Florida Pension Study Group on March 6, 2013. His presentation, *Legislative Update – 2013*, included a summary of recent pension legislation in the American Taxpayer Relief Act of 2012, potential new laws affecting 401(k) plans, and potential new regulations to be issued by the Internal Revenue Service and the Department of Labor that will affect participants and employers who sponsor 401(k) plans.

Transition

Frank Bartolomeo, Esq., passed away January 6, 2013, at the age of 46 after a one-year battle with cancer. He had been a member of the OCBA since 2007. A benefit event for the Leukemia/Lymphoma Society will be held on May 11, 2013. Please contact Alyce Bartolomeo at 407-625-5858 for more information.

Events

May 30 – OCBA Installation Dinner. 5:30 p.m. Church Street Ballroom, 225 S. Garland Ave., Orlando, FL 32801. Keynote Speaker: Hon John Antoon, II, James G. Glazebrook Memorial Bar Service Award recipient. \$10 OCBA members; \$40 non-members and guests. RSVP to reservations@ocbanet.org by May 24, 2013.

June 7 – YLS Afternoon at the State Courthouse. 1:00 p.m.-4:30 p.m. Orange County Courthouse, Jury Assembly Room, 425 N. Orange Ave., Orlando, FL 32801. CLE: pending. Cost: \$10. See ad in this issue of *The Briefs*.

Seminars

May 7 – Finding Forever Families for Developmentally Disabled Dependent Youth. LAS Lunchtime Training. 12:00 p.m. - 1:30 p.m. Speaker: Stephanie Stewart, Esq. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcargo@legalaiddocba.org or 407-841-8310, ext. 3121.

May 10 – Stand Your Ground in Florida – Is it the Wild, Wild West? Criminal Law Committee Seminar. 12:00 p.m. - 1:00 p.m. Speaker: William "Bill" Sheaffer, Esq. CLE: 1.0 General CLE credit and certification credits: Criminal Appellate Law 1.0 and Criminal Trial Law 1.0. OCBA Center. RSVP to jessicatravispa@gmail.com.

May 14 – Florida's New E-Discovery Rules and Best Practices for All Cases – Taming the ESI Beast. Intellectual Property, Business & Technology Committees Joint Seminar. 2:00 p.m. - 5:00 p.m.

Speakers: Kevin, Gowen, Esq.; Joshua Brown, Esq.; Drew Sorrell, Esq.; Donna Chesteen, Esq.; Christopher Newton, Esq.; Lawrence Kolin, Esq. CLE: 5.5, including 1.0 ethics. OCBA Center. \$40 (OCBA members); \$55 (non-members). Registration form is available on OCBA website calendar. **Registration deadline: May 7, 2013. Sponsored by: Elijah, Ltd.**

May 17 – Starting from the Start: An Advanced Guide to Fighting Bad Pleadings (and not filing them yourself!). Family Law Committee Seminar. 12:00 p.m. - 1:00 p.m. Speaker: Diana M. Tennis, Esq. CLE: 1.0. OCBA Center. Bring your own brown bag lunch.

May 21 – Dependent Youth with Developmental Disabilities: Impact on the Family. Speaker: Ericka Garcia, Esq. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcargo@legalaiddocba.org or 407-841-8310, ext. 3121.

May 29 – Under the Microscope: The Right to Bear Arms & the Second Amendment. Paralegal Section Seminar. 11:30 a.m. - 1:30 p.m., OCBA Center. Speakers: David Simmons, Esq., State Senator, District 10; Arthur Hayhoe, Executive Director, Florida Coalition to Stop Gun Violence; Sean Carranna, Founder and Executive Director, Florida Open Carry, Inc. Moderator: Paul Owens, senior editorial writer, *Orlando Sentinel*. CLE: pending. \$35 (student/government employee), \$40 (OCBA members), \$50 (non-members). Registration form is available on OCBA website calendar. **Registration deadline: May 22, 2013.**

June 11 – GAL's Role in Termination of Parental Rights Cases in Juvenile Court. LAS Lunchtime Training. 12:00 p.m. - 1:30 p.m. Speakers: Kate York, Esq., Clarrisa Maldonado, GAL Case Coordinator. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcargo@legalaiddocba.org or 407-841-8310, ext. 3121.

June 13 – Tech Check-up for Lawyers. Technology Committee Seminar. 11:45 a.m. - 4:00 p.m. OCBA Center. Primary Speaker: Adriana Linares, President and Founder of LawTech Partners. CLE: 4.0. General. \$35 (OCBA members); \$50 (non-members). See OCBA website calendar for registration form.

June 19 – Diversion Programs. Criminal Law Committee Seminar. 12:00 p.m. - 1:00 p.m. OCBA Center. Speakers: The Hon. Deb S. Blechman, Kelly Steele, Drug Court Program Manager, Chris Allan, State Probation Officer, and Gladys McClendon, County Probation Officer. CLE: pending.

June 25 – GAL Representation of Youth Who Are Sexual Abuse Victims or Victims of Human Trafficking: Discussion of the Keeping Children Safe Act and the Safe Harbor Act. LAS Lunchtime Training. 12:00 p.m. - 1:30 p.m. Speakers: Kavita Sookrajh, Esq., Tanka Patrick, GAL Case Coordinator; Tomas Lares, Co-Founder and Chair of the Rescue and Restore Coalition of Orlando. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcargo@legalaiddocba.org or 407-841-8310, ext. 3121.

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 Ahlers & Langley, LLP
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 Hilyard, Bogan & Palmer, P.A.
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MISC.

IN THE ORPHANS' COURT DIVISION OF THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA

IN RE :

ADOPTION OF :

: No: 27 OF 2013
Tiara Tatyana Pickett-Long :
(Adoptee's name as on birth certificate) :

ATTORNEY: Charles F. Wade

NOTICE (Involuntary Termination)

TO: Joshua James Long, birth father of Tiara Tatyana Pickett-Long

A petition has been filed asking the court to put an end to all rights you have to your child Tiara Tatyana Pickett-Long. The court has set a hearing to consider ending your rights to your child. That hearing will be held before the Honorable Judge Feliciani in Courtroom # 10, Westmoreland County Courthouse, 2 North Main St., Greensburg, Pennsylvania 15601, on the 31st day of July, 2013 at 9:00 A.M. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the court without your being present.

You are notified of Act 101 of 2010 which allows for an enforceable voluntary agreement for continuing contact of communication following an adoption between and adoptive parent, a child, a birth parent and/or birth relative of the child, if all parties agree and the written voluntary agreement is approved by the court.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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OCBA Calendar

MAY - JUNE

OCBA Annual Officer Installation And Awards Banquet

May 30, 2013

5:30 p.m. – 9:30 p.m.

The Ballroom at Church Street

RSVP by Thursday May 23, 2013

reservations@ocbanet.org

May

- 1 Business Law Committee**
12:00 p.m. • OCBA Center
- 7 LAS Lunchtime Training**
Finding Forever Families for Developmentally Disabled Dependent Youth
12:00 p.m. • Marks Street Senior Center
- Professionalism Committee**
12:00 p.m. • OCBA Center
- 8 Lawyers Literary Society**
12:00 p.m. • OCBA Center
- Executive Council**
5:30 p.m. • OCBA Center
- 9 Social Security Committee**
12:00 p.m. • OCBA Center
- 10 Criminal Law Committee Seminar**
Stand Your Ground Law in Florida – Is it the Wild, Wild West?
12:00 p.m. • OCBA Center
- 13 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 14 Intellectual Property, Business Law & Technology Committees Joint Seminar**
Florida's E-Discovery Rules & Best Practices for All Cases
11:45 a.m. • OCBA Center
- 15 Elder Law Committee**
12:00 p.m. • OCBA Center
- Veterans' Committee**
12:00 p.m. • OCBA Center
- 17 YLS Luncheon**
11:40 a.m. • Citrus Club
- Family Law Committee Seminar**
Starting from the Start: An Advanced Guide to Fighting Bad Pleadings
12:00 p.m. • OCBA Center
- 21 LAS Lunchtime Training**
Dependent Youth with Developmental Disabilities: Impact on the Family
12:00 p.m. • Marks Street Senior Center

- 22 Judicial Relations Committee**
12:00 p.m. • Orange County Courthouse, 23rd Flr.
- 24 Solo & Small Firm Committee Seminar**
Probate in a Nutshell
12:00 p.m. • OCBA Center
- 27 Memorial Day**
OCBA Office Closed
- 29 Paralegal Section Seminar**
Under the Microscope: The Right to Bear Arms & the Second Amendment
11:30 a.m. • OCBA Center
- 30 OCBA Installation Banquet**
5:30 p.m. • Ballroom at Church Street
- 31 Bankruptcy Law Committee**
12:00 p.m. • OCBA Center

June

- 4 Professionalism Committee**
12:00 p.m. • OCBA Center
- 5 Business Law Committee**
12:00 p.m. • OCBA Center
- 10 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 11 LAS Lunchtime Training**
GAL's Role in Termination of Parental Rights Cases in Juvenile Court
12:00 p.m. • Marks Street Senior Center
- 12 Lawyers Literary Society**
12:00 p.m. • OCBA Center
- 13 Technology Committee Seminar**
Tech Check-up for Lawyers
12:00 p.m. • OCBA Center
- Social Security Committee**
12:00 p.m. • OCBA Center
- 18 Solo & Small Firm Committee Seminar**
The Small Firm Rollercoaster
12:00 p.m. • OCBA Center

- 19 Criminal Law Committee Seminar**
Diversion Programs
12:00 p.m. • OCBA Center
- Elder Law Committee**
12:00 p.m. • OCBA Center
- 21 Family Law Committee**
12:00 p.m. • OCBA Center
- YLS Event**
Afternoon at the State Courthouse
12:30 p.m. • Orange County Courthouse Jury Assembly Room
- 25 LAS Lunchtime Training**
GAL's Representation of Youth Who Are Sexual Abuse Victims or Victims of Human Trafficking: Discussion of the Keeping Children Safe Act and the Safe Harbor Act
12:00 p.m. • Marks Street Senior Center
- 26 Appellate Practice Committee**
12:00 p.m. • OCBA Center

June Luncheon
11:30 a.m. • Ballroom at Church Street
Date: TBA

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

Seminar and event information must be submitted at least six weeks in advance of publication in order to be listed on The Briefs calendar.