


CLEARWATER BAR

ASSOCIATION
Oct./Nov.
2002

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**Your Areas of Practice for
publication in 2003 CBA/
SPBA Directory**

**Advertise Your Firm in
2003 CBA/SPBA Directory**

**Reciprocal Membership in
St. Pete Bar**

**DIGNITY
IN LAW**

RES IPSA LOQUITUR

Upcoming Events

November 14, 2002

Membership Luncheon

The November 14 Clearwater Bar's membership luncheon will feature guest speaker Toni R. Jernigan, Vice President of Major Gifts & Planned Giving for the Pinellas Education Foundation. The Foundation provides enhanced educational opportunities for students and educators in Pinellas County and provides focused opportunities for all community members to support quality public education.

An educator and fundraiser, Toni will share with bar members about the success of the numerous programs conducted by the Foundation that enhance, enrich and enliven education for the benefit of our school children.

The Foundation works closely with the community and Pinellas County Schools to create a wide variety of innovative programs to enhance the quality of public

See Membership Luncheon on page 3

December 16, 2002

Annual Holiday Party

Watch for details of the Clearwater Bar's Annual Holiday Party set for Monday, December 16, at Harborview Center. Admission to the event is new, unwrapped toys for families less fortunate in North Pinellas County. A visit from Santa, a boutique for last-minute gift buying, entertainment, fellowship and refreshments make this a fun evening for members and their families.

There is no charge for CBA members and their immediate families. Other guests are welcome at \$20 each. See the insert in this issue to make a reservation or to learn about sponsorship opportunities. ♣

November 14, 2002

½-Day Family Law Seminar for the Rest of Us

Stick around following lunch for a ½-day seminar presented by the Family Law Committee. Nearly every practice area can influence family law actions...for example, probate issues impinge when a divorce client dies before the final hearing; bankruptcy issues arise when the divorce client files for bankruptcy; or how about a real estate lawyer's involvement if the sale of the family home is pending?

This seminar could easily be titled *Family Law for the Rest of Us*; however, this seminar is entitled *50 Ways to Leave Your Lover and Still Screw Up: Malpractice Tips for the Unaware, Uninformed and Unassuming*. A terrific line up of practitioners experienced in a variety of practice areas will make the afternoon worthwhile. The seminar offers 4 CLE credits including one ethics credit. You'll want to bring your law office staff along as well.

Topics include:

- *Procedural & Evidentiary Mistakes*
- *Quit Claim Deeds and Title Insurance Problems*
- *What if Your Client Dies Before Final Hearing?*
- *Dischargeability of Fees and Support Court Orders*
- *When Your Client is Arrested: Domestic Violence & Wiretapping*
- *Child Care Credits, QDROs & Overlooked Deductions*
- *Mediation Mistakes*

See Family Law Seminar on page 3

President's Message

by Mike Faehner

You've Got to Believe!

One of my favorite parts of being a lawyer is telling a good story. I particularly enjoy sharing stories about our system with non-lawyers. My favorite audience is kids in elementary school. Recently, I had the pleasure of spending an entire day at Madeira Beach Elementary talking to all of the first graders. I have to admit it; I don't know how the teachers do it. Bundles of energy radiated from every corner of the classroom. Optimism and hope filled the air. The smiles on their faces and the desire to talk and learn (contrary to what the media tells us) overwhelmed me!

I used the tale of *Goldilocks and the Three Bears* to educate the kids about our system of justice. We started by reviewing the story and I began to act out every part. The tone got louder as I proclaimed several times, "SOMEBODY'S BEEN SITTING IN MY CHAIR." They knew every detail of the story, but what they didn't expect was what happened after Goldilocks was caught. I had the kids start playing the different roles in our system of justice. We had police officers, we had defense attorneys, we had the three bears, we had Goldilocks, we had prosecutors, we had jurors and of course a judge (played by me of course). The entire case of *State v. Goldilocks* unfolded right in front of their eyes. To no one's surprise, Goldilocks was found guilty!

So, why am I sharing this story? Simply because the kids really felt like they were part of a system that works and they believed in it. The innocence of youth can sometimes reveal what we often miss being so involved with the system. We as lawyers need to believe. If we don't believe, how do we expect our clients to believe?

On November 20th, schools celebrate the Great American Teach-In. I challenge all the members of the Bar, to volunteer one hour and go talk to a school on that day. Share your belief that the system works. Show the kids that you are proud to be a lawyer and how fortunate we all are. Trust me, by the end of that hour, not only will you change the way our kids view us and the system, but it might even give you a chance to remember what we often forget...THE SYSTEM WORKS...Just ask Goldilocks. ☺



Mike Faehner
President

RES IPSA LOQUITUR

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The *Res Ipsa Loquitur* supports participation of the membership in production of the publication. We encourage you to submit articles and letters. However, we reserve the right to edit any submission and to publish only those articles that we, in our sole discretion, deem appropriate.

NOTE: The comments, messages, statements and opinions, legal or otherwise, expressed in the articles herein are exclusively those of the author and shall not be considered to be those of the Clearwater Bar Association, its officers, directors, agents, this publication, its editors or staff. Additionally, the comments, statements and articles contained herein are general in nature and should not be relied upon as a basis for any legal opinion, action or conclusion on the part of the reader with respect to any particular set of facts or circumstances.

Editor's Comments

by Shelly M. Johnson

I can't believe that a year has passed since last September and that when you receive this issue we will be heading into another busy holiday season. Lucky for us that we have another holiday season to enjoy. As the wife, daughter and granddaughter of firefighters, I have always been keenly aware of how delicate and precious the gift of being able to live your life is, and my family, thankfully, never lets me forget this important fact. As the anniversary of September 11th came upon the world I thought about how important it was that I pass this lesson on to my children, which I honestly think I have already begun to do. It's funny how children pick up those subtle and sometimes not so subtle messages we try to instill in them. Already at three years old my son will sometimes go off into the complicated world of his little mind; and, when I ask him what he is thinking about, he simply sighs and tells me how much he loves his kitties, of course, and his life. Nevertheless, the days proceed on, do they not, and so here is another publication of the Clearwater Bar Association's *Res Ipsa Loquitur*. I hope you find it informative. ♪



Shelly M. Johnson
Editor

Thank You Bar Exam Proctors

The Florida Board of Bar Examiners wishes to acknowledge with appreciation the following volunteers for their assistance in proctoring the Bar Examination held July 30-31, 2002, at the Tampa Convention Center. The success of administering the examination was due in no small part to their able assistance.

Volunteers included Adam Alpert, Deanna Shullman, Hal Flowers, Judge Walter Fullerton, Harry Coe, Bryan Albers, Michael Mardis, Bethann Walz, Bret Feldman, Carl Brody, Jewel White Cole, Michael Faehner, Rep DeLoach, Po M. Chau, Brad Patrick, Sandy Rhodes, Belinda Barndollar, Phyllis Towzey, Keith Myer Jr., James B. Thompson, Jay Lechner, Laurel Moore, Krista Tucker, Louis Najmy, Michael Durham, Edward Carlstedt, Lisa Goetz, Brad Herndon, Vinnie Lynch, John Panzarella, Craig Epifanio, Jeannine Williams, Ryan Chandler, Michael McLaughlin, David Stephenson and Eric Adams.

The Board would also like to extend a special word of thanks to President Elect of the Hillsborough County Young Lawyers Dennis McClelland, President of the Clearwater Bar Young Lawyers Division Donald Crowell, Young Lawyers Section Chair of St. Petersburg Bar Belinda Barndollar and to Barbara Twine-Thomas, President of the George Edgecomb Bar Association for their assistance in recruiting volunteers to proctor the exam. ♪

Membership Luncheon

continued from the front

education. Among them are programs that benefit economically-disadvantaged youth, students at risk, minority youth, classroom teachers, college-bound seniors, high school dropouts looking for a second chance at success, and many others.

The luncheon is free to CBA members and \$20 for Judges, guests, and office staff. Reservations are required and can be made by phoning CBA at 727-461-4869, faxing the insert in this issue to 727-461-0063, or emailing office@clearwaterbar.org. ♪

Family Law Seminar

continued from the front

- *What to Do When (not if) You Get Your First Grievance*

Speakers confirmed at the time of this printing include Sally Foote, Steve Fishman, Joe Hobson, Linda Suzanne Griffin, Charles Castagna, and Lou Kwall. See the insert in this issue for registration information and a more detailed schedule. ♪

Notice

Effective September 1, 2002, the Clerk of the Circuit Court will only issue writs of execution in Small Claims cases *upon the request* of the prevailing party who is the judgment creditor or their attorney, pursuant to Small Claims Rule 7.200.

Due to a law change in October of 2001, the judgment creditor must first record a judgment lien certificate with the Department of State before an execution can be levied. To obtain information regarding how to collect a judgment under the Florida judgment lien law you may visit the Secretary of State's website at www.sunbiz.org or call their office at 1-850-245-6039. ♪



Legislative Update

by Judge John C. Lenderman

Action by the 2002 Florida Legislature is of particular interest to practitioners.

Changes to Florida Statute §57.105

The legislature once again amended F.S. §57.105. The new subsection (4) provides that if a party is seeking sanctions under F.S. §57.105 that party must serve but may not file or present the motion to the Court within 21 days after serving the motion if the challenged item is not withdrawn or appropriately corrected. In other words, the party seeking sanctions must give the opposing party 21 days written notice to withdraw a paper, claim, defense, contention, allegation or denial before filing or presenting the Motion for Sanctions to the Court. This amendment became effective July 1, 2002.

The 1999 Legislative changes to this act abandoned the frivolous standard in favor of a standard that tests whether or not the position was supported by material facts or the application of the then-existing law to those material facts. Thus, if a party or a lawyer knew, or should have known, that a claim or defense when initially presented to the Court or anytime before trial was not supported by facts necessary to establish the claim or would not be supported by the application of the then-existing law to those material facts, the lawyer and party are equally responsible for the fees and costs for the prevailing party.

Now, for a party or lawyer to be held responsible for §57.105 fees and sanctions, the 2002 act provides that he or she must be given no less than 21 days notice before the motion can either be filed or presented to the Court. That way, the party has at least three weeks to "fix" the problem and withdraw that which might subject a party and lawyer to §57.105 sanctions.

Mode of Operation as a Cause of Action in Premises Liability Cases

The 2002 Florida Legislature enacted F.S. §768.0710, which provides for proof in claims of negligence involving transitory foreign objects or substances against business premises. In response to *Owens v. Publix Supermarkets, Inc.*, 802 So 2nd 315 (FL 2001), the Florida Legislature enacted a statutory duty of reasonable care to maintain premises and to keep premises free from transitory foreign objects. In



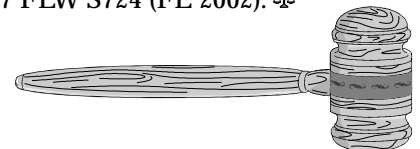
Hon. John Lenderman

addition, the statute provides three elements of proof where there is loss, injury, or damage to a business invitee as a result of transitory foreign objects on business premises.

This new statute provides that "actual or constructive notice of transitory foreign object or substance is **not** a required element of proof of this claim." This claim may be proved by "mode of operation of the business premises." For example, consider a dance area surrounded by tables containing drinks that could spill on the dance floor. Under this cause of action, the business does not have to have actual or constructive notice of the spillage and an opportunity to inspect or repair. The mere spilling of drinks on the dance floor, if a regular occurrence, may be sufficient to prove negligent "mode of operation" of the business if a dance patron slips on spilled drinks.

In a recent Florida Supreme Court case a business invitee in a nursing home slipped and fell on a grape. The accident occurred between the dining room and the elevator. There was evidence that the nursing home allowed residents to take fruit and other foods from the dining room to their rooms via the hallway where the accident occurred. The issue was not whether the nursing home had actual or constructive knowledge of the particular grape causing the accident, but rather was it negligent to allow frail residents to transport fruits and other foodstuffs through a public area. The Court allowed this negligence theory to stand without the requirement of prior proof of knowledge of the object on the floor. The Court also discusses "mode of operation" as a theory of liability and mentions the new statute.

For an interesting analysis of this cause of action and the suggestion that it must be specifically plead, see *Makowitz v. Helen Homes of Kendall Corporation*, 27 FLW S724 (FL 2002). ☞



New Members

Welcome to the following new and reinstated members:

- **Bartlett, Steve B.**, admitted to The Florida Bar 10/07/1994, Law Degree from University of Dayton 1987, Undergraduate Degree from University of Dayton, 2435 US Hwy. 19, Ste. 320, Holiday, FL 34691, telephone 727-942-1000, fax 727-942-1053, email defenselawyers@aol.com.
- **Biggs, Christie L.**, attending University of Maryland Baltimore School of Law 2004, Undergraduate Degree from Eckerd College, 11 S. Eutaw Street, Apt. 1509, Baltimore, MD 21201, telephone 410-752-7514, email cbigg001@umaryland.edu.
- **Brown, Charlie R.**, admitted to The Florida Bar 01/01/1985, Law Degree from University of North Carolina Chapel Hill 1971, Undergraduate Degree from University North Carolina School of Law, Charlie Brown Attorney at Law, 7 Fountain Square, Belleair, FL 33756, telephone 727-585-7695, fax 727-584-4196, email topoftherock@cs.com.
- **Ekonomides, Nickolas C.**, admitted to The Florida Bar 01/01/1994, Law Degree from University of Akron 1993, Undergraduate Degree from University of Toronto, Nickolas C. Ekonomides, P.A., 791 Bayway Blvd., Clearwater, FL 33767, telephone 727-447-1075, fax 727-447-1035, email nick@eko-law.com.
- **Gelep, Paul A.**, admitted to The Florida Bar 09/01/1981, Law Degree from Stetson University College of Law, Undergraduate Degree from Duke University, Paul A. Gelep, P.A. Attorney At Law, 7419 US Highway 19 N., New Port Richey, FL 34652, telephone 727-849-5591, fax 727-848-5042
- **Grusznski, Linda K.**, admitted to The Florida Bar 01/01/1994, Law Degree from Georgia State College of Law 1993, Undergraduate Degree from Emory University, 112 Marina Del Rey. Ct. N., Clearwater, FL 33767, telephone 727-593-0922, email skiesquire@hotmail.com.
- **Kelly, Sean P.**, admitted to The Florida Bar 09/01/1999, Law Degree from University of Florida College of Law 1999, Undergraduate Degree from University of Florida, Sean P. Kelly P.A., 605 Palm Blvd., Dunedin, Florida 34698, P.O. Box 1056, Dunedin, FL 34697-1056, telephone 727-733-0468, fax 727-733-0469, email seankelly@uberKelly.com.
- **Moyer, Cameron D.**, admitted to The Florida Bar 01/01/1998, Law Degree from University of Baltimore 1997, Undergraduate Degree from Temple University, Staack, Simms & Hernandez, P.A., 900 Drew Street, Clearwater, FL 33755, telephone 727-441-2635, fax 727-461-4836, email cameron@staack-firm.com
- **McCabe, Bernie J.**, admitted to The Florida Bar 10/06/1972, State Attorney's Office., PO Box 5028, Clearwater, FL 33758-5028, telephone 727-464-6221.
- **Peterson, Robert H.**, admitted to The Florida Bar 09/09/2000, Law Degree from Stetson University College of Law 2000, Undergraduate Degree from University of South Florida, Persante & McCormack 2555 Enterprise Rd., Clearwater, FL 33763, telephone 727-796-7666, fax 727-796-8099.
- **Petty, Vincent P.**, attending Stetson University College of Law, Undergraduate Degree from Muhlenberg College, PO Box #17-1401 61st. Street S., Gulfport, FL 33707-3246, telephone 727-302-9139, email VinDA'tuba@aol.com.
- **Rogosin, Stanley C.**, Law Degree from University of Baltimore 1974, Undergraduate Degree from Penn State University 1968, 101 S. Old. Coachman Road, #222, Clearwater, FL 33765, telephone 727-725-5129, email Rogi315@aol.com.
- **Sartes, Peter A.**, admitted to The Florida Bar 09/23/02, Law Degree from University of Toledo 1998, Undergraduate Degree from the University of Toledo, Law Offices of George E. Tragos, 600 Cleveland Street, Ste. 700, Clearwater, FL 33755, telephone 727-441-9030, fax 727-441-9254, email greek.law@verizon.net.
- **Taneja, Mandeep K.**, admitted to The Florida Bar 06/07/2000, Law Degree from Miami University School of Law 1999, Undergraduate Degree from University of Rochester, Dynamic Health Products Inc., 12399 Belcher Road, S., Ste. 160, Largo, FL 33773, telephone 727-326-6667, fax 727-324-6668.
- **Tucker, John V.**, admitted to The Florida Bar 10/02/1991, Law Degree from University of Florida 1991, Undergraduate Degree from University of Florida, Anderson & Tucker, 2101 Fifth Ave. N., St. Petersburg, Florida 33713, PO Box 360, St. Petersburg, FL 33731, telephone 727-323-8886, fax 727-323-3252, email erisa@andersontucker.com.
- **Visco, Lisa M.**, admitted to The Florida Bar 04/01/2002, Law Degree from Loyola University Law School 1999, Undergraduate Degree from University of South Florida, Michael C. Berry & Associates, 1006 N. Fort Harrison Ave., Clearwater, FL 33755, 100 Pierce Street, #907, Clearwater,

New Members

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Florida 33756, telephone 727-447-0533, fax 727-446-3033, email imvisco@yahoo.com.

- **Welsh, Kathryn M.**, admitted to The Florida Bar 01/01/1998, Law Degree from Stetson University College of Law 1987, Undergraduate Degree from Wake Forest University, 2861 Executive Drive, Clearwater, FL 33762, telephone 727-573-1609, fax 727-572-1936. ♣

Address Changes

- **Castagna, Charles N.**, Mediation Center of Tampa Bay, 611 Druid Rd. E., Suite 512, Clearwater FL 33756, phone 727-446-4221, fax 727-461-2433, mediators.mediate@verizon.net.
- **Frey, Christopher**, Carlson Meissner, 7614 Massachusetts Ave., New Port Richey FL 34653, phone 727-847-2737, fax 727-859-9727.
- **LeRoux, John M.**, Policastro & LeRoux, 28050 U.S. Highway 19 N., Suite 500, Clearwater, FL 33761, telephone 727-712-1137, fax 727-712-9465.
- **Policastro, Anthony V.**, Policastro & LeRoux, 28050 U.S. Highway 19 N., Suite 500, Clearwater, FL 33761, telephone 727-712-1137, fax 727-712-9465.
- **Westine, Lauralee**, Figurski & Harrill, 2435 US Hwy 19 N Ste 350, Holiday FL 34691, telephone 727-942-0733, fax 727-944-3711. ♣

Court Opens Info Center

A third Courts Information and Resource Center has been opened by the 6th Judicial Circuit in the Criminal Justice Center on 49th Street, offering procedural assistance for those persons who represent themselves (or will represent themselves) in family law cases. All three centers offer forms and information on how to handle various *pro se* filings in family law matters.

"Legal advice is not offered at any of the three Resource Centers," said Cathy Fullerton, the 6th Circuit's manager of Alternative Dispute Resolution. The centers are for use by persons in family cases involving issues such as dissolution of marriage, child support, paternity, visitation and custody.

In addition to the newly opened Information and Resource Center in the Law Library of the Criminal Justice Center, forms and procedural assistance also are available in Room 729 of the 501 Building, adjacent to the South County Courthouse on First Avenue North in St. Petersburg, and in Room 111 of the Historic Old Courthouse on Fort Harrison Avenue in Clearwater.

Hours at the mid-county center are 8 a.m. until noon, Monday through Friday. In addition to those hours, the north and south county centers operate 1-5 p.m. All three centers have approved forms for family law cases and offer basic procedural information for filing those forms. Although the circuit clerk's office does not have a civil division at the Criminal Justice Center, it does accept such paperwork for transfer to the appropriate civil office, where it will be filed.

Emphasizing that the centers are not for the purpose of providing legal advice, Ms. Fullerton said lists of legal clinics offering services in north and south county are available at all three centers. In addition to the resource center, state-approved family law forms can be downloaded 24 hours a day from Internet sites maintained by the 6th Circuit (<http://www.jud6.org/>) and by the Florida Supreme Court (<http://www.flcourts.org/>).

During the 8 a.m. until noon period, the new center can be contacted at 727-453-7355. Phone numbers for the other two centers are north Pinellas: 727-464-3288; south Pinellas: 727-464-3288. ♣

Foundation Footnotes

by Jane Helms

New Team at the Foundation

New officers were elected in September for the Clearwater Bar Foundation as follows: Douglas deVlaming, president; Elizabeth Weimer, secretary; and Donna Rose, treasurer. Continuing their service as directors are Robert Dickinson, Warren LaFray, Garry Moore, Gregory Showers, and Kinnear Smith. New energy is flowing and many changes will occur during the next year. President deVlaming has started off with many ideas about fundraising (see STAR Night below) and improving the direct services to low income members of our community. Watch your Foundation grow.

Spend a Night with the STARS

Get ready for **STAR Night**, otherwise known as **Super Talented Attorneys Revue Night**, scheduled for Saturday, February 22, 2003, in the beautiful Starlight Room at the Belleview Biltmore. The event is a black tie optional evening that will include reception style dining, a variety show with performances from members of the Clearwater Bar, art work produced by members of the Clearwater Bar, and a silent auction. Tickets are a low, low price of \$35 per person if purchased by December 31, 2002 (effective Jan. 1 the price is \$50). Attendance is limited so ticket sales are capped at 250. After the initial announcement by Carnac at the September CBA luncheon, commitments have already been received for 126 tickets.

Sponsorship opportunities also exist that include admission to the event.

Sponsorship categories include:

- **Star Sponsors** @ \$250 receive two free tickets
- **SuperStar Sponsors** @ \$500 receive four free tickets
- **MegaStar Sponsors** @ \$1,000 receive eight free tickets.

Ticket and sponsorship prices will increase after December 31, 2002. For tickets or silent auction donations contact Foundation Executive Director Jane Helms at the Clearwater Bar Foundation at 727-461-5450 or fax 727-461-0063. Reserve your tickets or sponsorship now and have until December 31 to make your payment. (See flyer inserted in this issue.)

If you have a performing or non-performing talent, such as painting, sculpture, woodworking, etc., to offer for the event, please contact Chuck de Vlaming at 727-461-0525. A number of acts have already committed, and it promises to be a star-studded evening.

Help the Clearwater Bar Foundation Make a Difference

Members of the Clearwater Bar Association can help disadvantaged persons with legal problems obtain access to justice in many different ways. Some of the pro bono service opportunities that are available include:

- **Legal Assistance Project**—Volunteer attorneys provide legal advice on civil matters for 2 hours at the Clearwater Court House.
- **Intake Panel**—Volunteer attorneys assist with intake and case evaluation at the Clearwater Bar Foundation office.
- **Pro Bono Mentor Panel**—Volunteer attorneys provide assistance to new attorneys working on pro bono cases.

There are many other ways you can help the nonprofit Clearwater Bar Foundation serve the upper Pinellas County area, and your ideas are welcome. Please call Executive Director Jane Helms at 727-461-5450 with your offers to help strengthen the services of your foundation.

You made a difference!

Thank you to Hamden H. Baskin III, Stephen O. Cole, Henry L. Dicus, Jack Helinger, Larry Sandefer, the law firm of Johnson Blakely et al., and the law firm of McFarland, Gould et al.

Thanks to these attorneys and law firms, the Clearwater Bar Foundation finally has upgraded its computers. They donated money, computer equipment and time. Henry Dicus used his extensive computer knowledge to turn it all into a two-computer network with a backup system. What a huge difference these attorneys made in the day-to-day work of the Foundation. ♣

Sixth Judicial Circuit Professionalism Standards

by Andrew B. Sasso

Pursuant to a request of the Florida Supreme Court, the Sixth Judicial Circuit Professionalism Committee was established on or about January 14, 1998. The Standards of Professional Courtesy for the Sixth Judicial Circuit and Professionalism Implementation Procedures were enacted by Administrative Order No. PA/PI-CIR-99-46 to "maintain, protect, and preserve" a "high level of professionalism and civility" and applies to all attorneys practicing law in the Sixth Judicial Circuit and to all judges sitting in the Sixth Judicial Circuit.

The Standards of Professional Courtesy for the Sixth Judicial Circuit address general concerns of professionalism and the following specific areas:

- Scheduling, Continuances, and Extensions of Time
- Service of Papers
- Written Submissions to the Court
- Communications with Adversaries
- Discovery
- Motion Practice
- Ex Parte Communications with the Court and Others
- Settlement and Alternative Dispute Resolution
- Trial Conduct and Courtroom Decorum
- Transactional Practice

The Professional Implementation Procedures provide for the establishment of a Professional Implementation Panel to handle complaints about professionalism. Practically, any professionalism complaints can be directed to one of the Contact Attorneys appointed by the Chief Judge. Currently, the following Contact Attorneys have been appointed by the Court:

Pinellas County - North Division

The Honorable Robert Dillinger
Public Defender
14250 49th Street North
Clearwater, Florida 33762

Mr. Andrew Sasso, Esquire
2600 McCormick Drive, Suite 240
Clearwater, Florida 33759
727-725-4829

Pinellas County - South Division

Mr. Jack Helinger, Esquire
150 2nd Avenue North, #840
St. Petersburg, Florida 33701
727-896-2147

Ms. Pamela Campbell, Esquire
111 2nd Avenue NE, Suite 1404
St. Petersburg, Florida 33701
727-894-7000

Pasco County - West Division

Mr. Larry Hart, Esquire
7614 Massachusetts Avenue
New Port Richey, Florida 34653
727-896-2147
727-464-6516

Pasco County - East Division

Mr. Chip Mander, Esquire
14217 3rd Street
Dade City, Florida 33523
352-567-0411

It is anticipated that a copy of the Standards of Professional Courtesy for the Sixth Judicial Circuit and Professionalism Implementation Procedures will be mailed to every attorney in the

Andrew B. Sasso

Sixth Judicial Circuit; however, they can be found on the Sixth Judicial Circuit's web site at www.jud6.org/LegalPractice/legalpractice.htm. Chief Judge David A. Demers has stated that "the Court expects all members of the Bar to enthusiastically embrace these standards and to assist in their enforcement." By following the Court's directive, all members of the Bar will achieve the goal to "maintain, protect, and preserve" a "high level of professionalism and civility" in the Sixth Judicial Circuit. ♠

Judicial Profile

Honorable Dee Anna Farnell

Judge Dee Anna Farnell's foremost ambition is to be a knowledgeable and pro-active Circuit Court Judge. She hopes to achieve this goal by being well versed in the law and fair in the Court's treatment to all who come before her. Her career has been dedicated to identifying and solving problems faced by people from all walks of life involving a variety of issues. She strongly believes that we should all work together to identify the problems and challenges facing our community and that we all share an equal responsibility for finding solutions to ensure a bright and prosperous future for our community.



Hon. Dee Anna Farnell

Dee Anna Farnell was elected to serve as Circuit Court Judge for Pinellas County in November of 1994 and was re-elected for a second term of six years beginning in January 2001. She is currently serving as a judge on the felony criminal bench.

Judge Farnell graduated from Florida State University with a Bachelors Degree. She received her Juris Doctor from Stetson University College of Law in 1983, and she began her career in the legal field at that time. Judge Farnell worked as Assistant Public Defender in Pinellas County for five years and as a Litigation Manager for Bankers Insurance Company for two years before she ran her own active private law firm specializing in mediating circuit court cases for five years.

Judge Farnell was appointed in 1992 by the Florida Supreme Court to serve on the Mediator Qualifications Board and was recently re-appointed to serve a second term. Judge Farnell has been a Certified Circuit and County Court Mediator since 1989.

Judge Farnell previously served as a member of the Board of Directors for the YWCA Tampa Bay, the Police Athletic League, Inc., the Pinellas PACE (Practical, Academic, Cultural Education) program for girls, and the Juvenile Welfare Board. She was a previous member of the Rotary Club and is a 1996 graduate of Leadership Pinellas. Judge Farnell has also participated as a presenter for the Advanced Judicial College, specifically focusing on juvenile issues. Judge Farnell is also an honored member of The Silver Chiefs Society of Florida State University.

Judge Dee Anna Farnell is married to Circuit Court Judge Crockett Farnell and she has one son who is a senior in high school. An active runner, she has been a member of the Forerunners Track Club since 1987 and a member of the Mad Dog Triathlon Group since 1994. Judge Farnell has proudly participated in the

Gasparilla Distance Classic, the Marine Corps Marathon, the Boston Marathon, and the Leadville Trail 100 Mile Running Race.

The *Res Ipsa Loquitur* editor asked Judge Farnell these specific questions:

What is your most memorable courtroom experience?

I would have to say my most memorable day in court was held in an unconventional court. That day, court was held on a court – the basketball court. I felt like I was the Line Judge and Judge Frank Quesada was the Umpire. During our Juvenile court assignment, we presided over Spring Break "Contempt Court." For the kids, it was either go to camp or go to jail. Of course, we provided lunch and the Department of Juvenile Justice provided the supervision. Camp entailed painting, pulling palmetto scrubs and other forms of community service. Basketball was an afternoon highlight. One kid decided to challenge the rules of the "game" by stealing from the program and was slam-dunked back to the Juvenile Detention Center. So much for his Spring "Break," but justice was sure and swift.

What advice would you give to young lawyers?

Be prepared, be honest and speak up!

What is the most common mistake attorneys make when practicing before you?

The most common mistake that attorneys make when they practice in front of me, is to say, "Yes, sir."

What is your measure of success?

I am blessed to be growing each day in the job. Everyday, I learn something new. As in all things, when you stop learning, you stop growing. When you stop growing, you retire. Or should.

What, if anything, would you change about the judicial process?

If I could change anything about the

Hearing Officers Sought for Pinellas County Schools

The Pinellas County School Board is accepting applications for attorneys willing to act as hearing officers in student expulsion cases on a volunteer basis during the 2002-2003 school year. Applicants must be members of The Florida Bar in good standing with at least three years litigation experience and must be familiar with the Administrative Procedure Act and rules of evidence. They must also be able to maintain order during the hearings and render recommended orders in an expeditious fashion.

To maintain impartiality, hearing officers cannot have represented the school board, or any party opponent of the school board, in any legal or administrative proceedings or disputes within the last five years. The attorney is expected to notify the school board attorney of any changes in that status. Hearing officers may resign at any time by notifying the school board attorney, in writing.

If interested, or if you wish more information, please contact John Bowen, School Board Attorney, P.O. Box 2942, Largo, FL 33779-2942, (727) 588-6220, no later than November 15, 2002. ☎

My First Few Months as a Family Law Attorney (Or...How to Drive Your Law Firm Crazy Without Even Trying!)

I joined Boyer and Schiltz, P.A., as an associate in May of this year. Prior to joining the firm, I was a prosecutor for the Pinellas County State Attorney's Office for five years. Can you say COM-LETE-LY DIFF-ER-ENT WORLD!!

Obviously, I knew private practice was drastically different from government employment, but the law's the law right? NOT!! Family law is about as different from criminal law as you can get. In its simplest form, pretty much everything with criminal law is black and white. There is the law of Florida with elements the State has to prove to establish guilt. Either the State has met their burden of proof or they haven't. Either the accused is guilty or not—a relatively easy concept to grasp. Then there is family law.

As I am sure everyone who practices family law knows, this area is anything but black and white. There are no elements to prove, only nebulous concepts like "substantial change of circumstances," "best interests of the child," "liberal visitation." And can someone please explain to me what "undifferentiated child support" means? If I've asked the partners once, I've asked a hundred times, "What exactly am I trying to prove?" My attempt to grasp for some semblance of definable elements rather than the things like those previously mentioned which are about as easy for me to conceptualize as the Rule against Perpetuities.

Additionally, not only is family law considered civil law (talk about an antithesis), which is completely different than criminal, but there are also two different sets of rules to follow. The Family Law Rules often refer you to the Rules of Civil Procedure. As if that weren't complicated enough, once you figure out what the rules are telling you to do, there is, at a minimum, one pleading and usually more that must be filed to achieve your desired goals. What's with all the paper? Over the past few months, a most unusual concept has often occurred to me. The concept that I could take a family law case from beginning to end, literally never



Cheryl V. Smith-Khan

enter a courtroom, and entering a judge's chamber only once, for someone who constantly lived in the courtroom, this concept is reeeaaally strange!

Then there are the clients. I get it, being in private practice we love them because they are our bread and butter. But, do they really have to save some of their less than nice behavior for after they hire an attorney? Wouldn't you think they would have gotten it out of their system before they get to us, which is the reason they came to us in the first place? There is one thing that is familiar to me as a former prosecutor. Just like asking that one question too many of a witness, I believe when you are initially interviewing a client you can ask that one question too many that leads you to a place you really didn't want to go. I caught on with that one pretty quick. All in all, though, I am starting to really enjoy the clients.

Another challenge for me over the past few months, which is not unique to family attorneys but adds to the fun nonetheless, has been having to keep track of what I've done and for how long, a/k/a billables. I am getting better, but there are still times when I'll stop someone who comes into to my office talking about something different than what I am working on so that I can actually shift gears and time tracking. (This was a kinder, gentler method than throwing things and besides that I was running out of desk accessories).

see Avocate de Famille on page 13

Judicial Profile

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judicial process, it would be to make it more convenient, I want everyone who has contact with the justice system to walk away feeling that it is an efficient process with open communication. I don't want people to feel like the justice system is a burden and that they did not have an opportunity to be heard. ☺

Bits & Briefs

- **Elita D. Cobbs** of Zimmet Unice Salzman & Feldman, P.A., was recently elected to the Board of Directors of the Girl Scouts of Suncoast Council.
- **The Pinellas County Law Libraries**, including Clearwater Law Library, St. Petersburg Law Library and Criminal Court Law Library, have joined the SunLine Libraries and are available online at <http://suncat.tbhc.org>.
- **Michael J. Faehner** has been appointed to the Judicial Facility Planning & Management Committee.
- **The Pinellas County Legislative Delegation** will hold a public hearing on November 14 at 9:00 a.m. at the Florida Holocaust Museum, 55 Fifth Street S., St. Petersburg. A public hearing will also be held on January 16, 2003, at 9:00 a.m., in Tarpon Springs at the St. Petersburg College Campus. For more information contact the Delegation Office at 727-464-3592.
- **Pinellas County Paralegals** will meet November 11 at 6:15 p.m. at Holiday Inn, 3535 Ulmerton Road. **Donald E. Scholl** will speak on mortgage law. For more details or to make a reservation contact Patricia Weaver at 727-586-4224.
- The law firm of Boyer and Schiltz, P.A., is pleased to announce the association of **Cheryl Smith-Khan** with the firm.
- **John R. Bonner, Sr.**, has joined the firm of Johnson Blakely Pope Bokor Ruppel & Burns, P.A. as Of-Counsel, and shareholder **Bruce H. Bokor** has been appointed to the University of Florida Law Center Association Board of Trustees.
- **Charles N. Castagna** was sworn in as President of the Florida Academy of Professional Mediators in September.
- **Jan Majewski**, assistant dean of part-time studies and continuing legal education at Stetson University College of Law, was recently elected president of the Association for Continuing Legal Education. The organization has an international membership representing nearly 300 legal education providers.
- As part of the **Friendship Force of Florida Suncoast**, under the leadership of former Clearwater Mayor **Rita Garvey** and with assistance from **Elise K. Winters**, 12 Russian attorneys along with their interpreters and facilitators attended the Wild Wild West Bench & Bar-B-Que sponsored by Clearwater Bar and St. Pete Bar on September 20 at Stetson. ♣

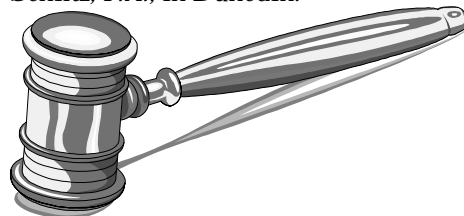
Avocat de Famile

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One of the nicer things about my introduction to family law is my law firm. My incessant questions on just about everything over the past few months have always been met with patience and willingness to help. Of course, I have no idea what they do once I leave the room, but they do present a common front of wanting to help while I'm there. From the legal assistants to the partners, you couldn't ask for more professional, talented, and just plain nice group of people to work with.

Overall, the past few months have been frustrating but also exciting. I have learned a great deal and continue to learn more every day. As my confidence increases, so does my love of family law practice, and best of all, I don't remember a time I've grown more as a lawyer and a person. ♣

The author practices with Boyer & Schiltz, P.A., in Dunedin.



Attorney Spotlight

James A. Baxter

What is your essential person philosophy?

It embarrasses me to answer this question because it makes me sound so egotistical. I guess I'm an old school optimist and idealist, but I truly believe that if each of us gives a little bit of themselves to help others we can make this world a better place in which to live.

What do you believe is the best way to balance your professional and private life?

I remember in law school I thought it was a bunch of bologna when the professors and older lawyers kept repeating, "The law is a jealous mistress." Now I realize the quote is a truism. Nevertheless, we all need time with our families, we all need time for some fun and enjoyment and we all need quiet time. You just have to have the self discipline to close the office door.

What do you consider as your best decision?

One spring morning I was walking across the Plaza of the Americas at the University of Florida when I ran into Dr. Manning J. Dower, Head of the Political Science Department. He asked if I was going to accept the fellowship there for graduate studies or pursue a Root Tilden Scholarship at NYU Law School. I told him I would accept the fellowship. He then said he had always regretted not going to law school and that if I went and didn't like it, I could come back and get my fellowship. I realized that was the most unbiased advice possible and successfully continued to pursue the scholarship.

What do you consider your worst decision?

I should have more strongly pursued a judgeship. I only made one application to the JNC and didn't make the cut. I regret not applying again or seeking election to a judgeship.

What is the most important lesson you have learned?

To treat people with respect. Sometimes this is very difficult with your opponents, but if you do you often end up securing their respect. Also, it's good to lighten up. I've always had a good relationship with my employees because I've always tried to be friendly with them and to inject a little humor into our relationship.



James A. Baxter

What do you like best about practicing law?

I really enjoy solving complex legal problems. The more complex and challenging, the better I like it. Consequently, I really enjoy appellate practice and wish I had even more of it through the years.

What do you like least about practicing law?

It used to be that with a few well known exceptions, you could trust your fellow lawyers and their word was their bond. It also used to be true that lawyers didn't raise unnecessary objections and issues or personalize the adversarial procedures unless it was essential to their client's cause. Nowadays lawyers use the "scorched earth" to raise every possible issue or objection and to make litigation as irritating as possible so as to make it as expensive and painful as possible. Being a forceful advocate is one thing, being a pain is another.

What is your measure of success?

We all like a good measure of material reward. It certainly makes your life more enjoyable. I still believe however that the true measure of success of a lawyer is the esteem in which he is held by his fellow practitioners and the members of the public who come to know that lawyer.

What goals would you still like to achieve?

I'm beginning to slow down and so my goals are somewhat different than they were ten or twenty years ago. I now want to do some of the things I never had time to do before. I started doing a family genealogy some years ago, but I always keep getting side tracked. I would like to work on that now. A number of people have been intrigued by my memory of Pinellas County over a half a century ago and they have urged me to create some kind of oral history. Finally, if the opportunity presented itself, I might like to do a little teaching.

The Clearwater Bar — Now and Then

by John R. Bonner Sr.

Editor's Note: Res Ipsa Loquitur has asked Mr. Bonner to share some of his recollections of the early history of the Clearwater Bar Association

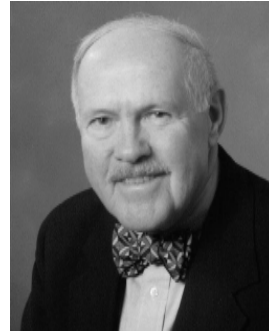
In 1950 the Clearwater Bar Association was a voluntary unincorporated group whose membership consisted of 43 attorneys practicing in Pinellas and Pasco Counties. Only one member was female.

While often discussed, nothing was done to incorporate until Bill Goza became President in 1960 and spearheaded the effort to approve by-laws and become legally organized.

Before then the Clearwater Bar was held together by a spirit of cooperation and courtesy among its members recognizing the mutuality of their ideals and responsibility to their clients. This spirit was substantially encouraged by the oyster roasts hosted by Circuit Judge John U. Bird on his grove

each year (a tradition which continues) as well as his *fatherly* advice and assistance to each crop of new lawyers to arrive at the bar. Lawyers were always welcome in his Chambers or Court Room to observe and learn not only the principals and strategy of law but the professionalism expected of a lawyer.

During my first year of practice I was sitting in Judge Bird's chambers to observe and learn and he inquired as to whom I was representing. When I told him I was there as *Amicus Curiae* he laughed vigorously (all of his chins



John R. Bonner, Sr.

shaking) and thereafter always called me "Amicus."

In its early days, the back room at Morrison's Cafeteria served as a forum for monthly meetings of the Clearwater Bar Association but was soon outgrown as its membership grew; and the monthly meetings were moved to the Fort

Harrison Hotel (later the Jack Tar Harrison and now headquarters for the Church of Scientology).

However, the *real* meetings of lawyers (in addition to Judge Bird's Grove and Chambers) occurred in the

see The Clearwater Bar on page 18

Attorney Spotlight

by John C. Locke

James A. Baxter

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Kenneth A. Sunne

Kenneth A. Sunne has been practicing law in Florida since he was admitted to practice on June 21, 1960. Ken graduated from Boston University with a degree in political science on June 4, 1951. He graduated from Vanderbilt University with a law degree on June 2, 1957.

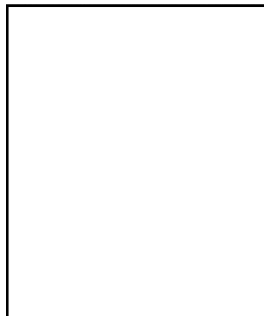
He served the City of Safety Harbor as Municipal Judge for eleven years according to the plaque on his wall dated October 1976. He also served as Municipal Judge in Clearwater for two years before the Court was phased out.

Ken served in the U.S. Army Infantry from 1951-54 holding the rank of First Lieutenant.

He did personal injury litigation in Tampa for two years and would later practice with Bill O'Malley and Vernon Keiser. He used to know everybody in the Clearwater Bar Association, but with 800 members, he only knows the *old timers*.

He married his wife, Una on January 25, 1968, and they have three children and three grandchildren by daughter, Ann. Daughter Celia practices law in Atlanta.

Ken and the author have been practicing together at Sunne & Locke, P.A., since 1975, primarily in Wills, Trusts, Probate, Real Estate, Family Law and Corporation Law. It has been a pleasure to practice with Ken who has a keen sense of humor. ☞



Kenneth A. Sunne

If you could start over again, what would be your first choice in a career?

When I first started in practice, the term "general practice" really meant that. I've handled legal proceedings from Tallahassee to Miami and all points in between and transactional matters throughout the country and overseas. Today the practice is more specialized and the practice I knew years ago is no longer available. I would still choose to be a lawyer and believe I would probably specialize in corporate or securities litigation.

What person would you be the most interested in meeting?

I am a history buff and so many of the persons I would enjoy meeting are long since gone. Two such persons are George Washington and Winston Churchill. In the world of the living, I suppose I would select Jimmy Carter because he certainly epitomizes the ideal of public service. ☞

Jim Baxter is partner in the law firm of Baxter, Strohauser & Mannion, P.A., and was president of the Clearwater Bar in 1978.

Administrative Orders

by Heather Presti

Administrative orders for the Sixth Judicial Circuit can be accessed from the circuit's website at www.jud6.org.

AO PA/PI CIR 02-36, Child Custody Investigators, increases the fee for a child custody investigation to \$750 pursuant to 61.20, Fla. Stat.

AO PA/PI CIR 02-37, AO PA/PI CIR 02-38, and AO PI/CIR 02-39, provide general updates to administrative orders concerning compensation of mediators for indigent litigants in family law cases, dependency cases and the pilot mediation project. The pilot mediation project provides for automatic referral to mediation in post judgment matters for section 12 (Judge McGrady) and for temporary relief matters in section 17 (Judge Ulmer). These were updated because the court solicited new mediators to contract with the court for indigent cases.

AO PI CTY 02-06, makes minor changes in the schedule for section P, a county criminal section.

AO PA/PI CIR 02-40, establishes cost saving measures for Jimmy Ryce cases. These provisions are similar to those already established in criminal cases.

AO PA/PI CIR 02-44, implements the requirement in Rule of Judicial Administration 2.050(b)(4), which requires the chief judge to assign capital post conviction matters.

AO PA/PI CIR 02-45, specifies the procedures that will be followed if a court reporter fails to respond to requests to produce transcripts.

AO PA/PI CIR 02-46, modifies the fee schedule for attorneys representing parents in dependency cases. The \$50 fee for appearance in shelter hearings was eliminated and all other fees remained the same. ☞

The author is a legal assistant to the 6th Judicial Circuit Court Counsel.

The Clearwater Bar

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rear of the Town House Restaurant on Cleveland Street (near the present AmSouth Bank building) where a large round table was maintained on a *Dutch* basis for Clearwater's busy professionals seeking a prompt lunch and contact with their peers. Mostly these were lawyers (who would welcome the occasional Doctor, Dentist or other discipline) who gathered to exchange ideas and research on pending matters. Luncheon dates were often made by merely saying "see you at the round table."

In the truest sense of Professionalism aspired to by all lawyers, it was here that younger and newer lawyers could seek the experience and assistance of the elder members of the Bar that was always freely and generously extended. The Clearwater Bar was known throughout Florida for the competence and ability of its attorneys as well as the courtesy and cooperation among them. Much of this rapport was established in the atmosphere of the daily lunch meetings at the *Round Table*. It is to the credit of the Clearwater Bar that this professionalism has continued among most, if not all, of its members despite the rapid growth of its membership in recent years. ♣

Mr. Bonner has been an active member of the Clearwater Bar Association since 1950 serving as President in 1959. He is presently Of Counsel with the law firm of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A.

Insights to Legal Nurse Consulting

by Meredith Chiarelli, RN, ARNP, CLNC

Whether your specialty is medical malpractice, toxic torts, workers compensation or even product liability, attorneys in the 21st century are spending valuable time and effort on medical issues. Your field is law, and research is second nature to you; however, you may ask yourself: Am I confident that I have accurately deciphered these records and that they are complete and intact? Is there evidence of tampering? Is there adherence to or deviation from standards of care? A legal nurse consultant (LNC) can help you answer these questions in a timely and efficient manner.

Your initial reaction may be that your paralegal conducts research and assimilates medical records. Your paralegal is specifically trained to work with legal issues. Legal Nurse Consultants are specifically trained and clinically experienced in the medical field. Their expertise allows them to focus knowledgeably on the medical records, freeing your paralegal to focus on legal research of the case at hand. Thus, the use of an LNC provides a more efficient and cost effective analysis of the case.

Legal Nurse Consultants provide research assistance from beginning to end of a case. We focus on the theme of the case and identify relevant topics for further investigation. During client interviews, LNCs can serve as a conduit between you and the client. They may help to clarify issues and formulate additional questions based upon information provided. They may also help identify key players in a case and identify questions regarding their role in the matter at hand.

A Legal Nurse Consultant's value doesn't end with research and review of records. Should the need arise, Legal Nurse Consultants can help you identify and retain expert witnesses. With contacts throughout the community and region, an LNC can locate experts quickly and review their qualifications, saving you valuable time in the search process.

Each medically related case requires close scrutiny of the facts and issues. A Legal Nurse Consultant can become a key player for your team in these matters. Through strong clinical backgrounds, experience in the review and interpretation of medical documents, and contacts in the community and region, Legal Nurse Consultants are a valuable resource to you and your practice. ♣

Meredith Chiarelli, RN, ARNP, CLNC, President, Medical Legal Insights, Inc., 727-796-2356.

Young Lawyers

by Christy Donovan Pemberton

Young Lawyers Donate Filled Backpacks to “Needy” Children and Receive More Than They Give

The Clearwater Bar Association’s Young Lawyers Division donated 125 backpacks filled with school supplies to the elementary school children in Rainbow Village and the greater Ridgecrest area in Largo on August 6, 2002. Deputy Lindell S. Bright, the Community Police Officer in Rainbow Village, then answered the call to assist students in the French Villas Housing Complex and donated 25 of those backpacks to that community.

Deputy Bright and the community coalition previously handed out backpacks to children in Rainbow village, but had to turn some children away because the demand was greater than the supply. Thankfully, Young Lawyer and CBA Secretary Jewel White Cole was able to put me in touch with Deputy Bright who was in touch with his community to know exactly what the need was, and who went an extra step to put me in touch with Somebody Cares Tampa Bay, which allowed us to make a donation to Somebody Cares Tampa Bay in exchange for filled backpacks. During the National Night Out Against Crime events in Rainbow village, the children previously turned away and additional children from the Ridgecrest area were given high quality backpacks, filled with two pencils, two two-pocket folders, twenty-four crayons, an eraser, a glue stick, a ruler and a spiral notebook. What the Young Lawyers received in return, however, was much more valuable.

What the children in Rainbow Village are lacking financially and possibly in security, they are more than compensated for in love, support and community. While outwardly, Rainbow Village appears to be safe, there are reportedly problems with drugs. In fact, when YLD President Don Crowell stopped to ask deputies for directions, the deputies later confessed that they suspected he was trying to buy cocaine. Additionally, it was evident from the looks on the children’s faces when they saw and later received backpacks, that the financial need was great. Never before have I seen children so excited about receiving a school supply—they were so happy with the backpacks that no one looked to see if there was anything inside. We were informed that many families accept clothes, shoes and toys which are donated at the Sheriff’s substation and accept food from the food pantry across the street. We saw a small girl walking around in cleets before noticing the shelf filled with identical ones. However, it is my opinion that the sense of community these children know is greater than any need they may have.

I live in a nice neighborhood, but it is not a community. I only know one neighbor because he is my doctor. The citizens of the Rainbow Village community know everyone. Maybe it is because they live in apartments, but I think not. I have lived in my share of apartments and the only person who ever cared about me or what I was doing was the Peeping Tom I had for at least a week before a neighbor informed me of my daily visitor. The citizens of Rainbow Village live in a community not because of the design of their homes, but because of the people they live with and the people who work within the community. They live in the type of community that we will likely never be blessed enough to know.

Deputy Bright knows all of the 300 plus children in his community and their parents. He informed me that he often makes morning house calls to make sure that children are up, dressed, and out the door to school. Alvina Loving from the Urban League introduced me to two single fathers, both raising four children. I met a middle school aged girl who was disappointed to hear that a grant application was being prepared so the community could hopefully hire two teachers for their after school program. She was afraid that she would no longer be able to



Christy Pemberton

volunteer. This girl told me that she spent the summer in the Urban League office watching, working with, and playing with smaller children; now that school is in session, she hopes to spend her afternoons the same way until 8:00 p.m. when the center closes and she will go home and do her homework. A middle school boy jumped to the head of the line to lead the march through the village in support of the Night Out Against Crime.

This is a community where all the children know each other and parents help to look after other parents’ children. This is a community where children see male and female leaders on a near daily basis. This is a community filled with the hope of a bright future; a community where neighbors and people who work in the community are quick to lend a helping hand to lift someone up.

The Young Lawyers may have left 100 backpacks filled with school supplies in Rainbow Village, but we left with the sense of belonging to a real community, even if just for one night. In my assessment, the Rainbow Village Community gave us something much more valuable than we gave them.

If you are interested in donating clothes, food, time, and legal expertise to the Rainbow Village, please either contact Deputy Bright at 727-580-3161 or the Rainbow Village Urban League Office and inquire how you can lend a hand to and become a part of this wonderful community. ♪



Risky Business: A Malpractice Insurance Underwriting Primer

by Jeff Albinson

Insurance follows a basic formula. A premium is charged at a rate predicated on the theory that the overall group of insureds will suffer a certain number of claims resulting in the payment of damages and defense costs. For the carrier to profit, the total premium collected plus interest earned must exceed all amounts paid on the claims plus all administrative costs.

The Underwriting Process

The underwriting process is equal parts mystery, science and art. The underwriter reviews the application and determines whether the carrier will offer coverage and, if so, how much the coverage will cost.

The underwriter takes the basic information from the application and inputs it into a computerized underwriting program that generally captures data about liability limits, deductibles, area of practice, prior acts exposure (both claim history and length of time to be covered), experience, location (in Florida some areas of the state are seen as more litigious than others and those resident in those locations pay more for their coverage), practice management processes in place and some miscellaneous data. The underwriting formula assigns a value to each piece of data and a *starting point* premium is set. The underwriter then uses discretion to assign various debits or credits to the applicant based on wide-ranging criteria. This portion of the process can have dramatic results in changing the premium rate.

Discretionary Credits and Debits

There is an old adage in the underwriting profession that says, "No one ever got fired for saying no or raising the rate." Underwriters play a critical role for the carrier. If they set rates too high, sales figures will drop and the company will lose out on a certain percentage of sales. On the other hand, if the underwriter does not charge enough, the carrier will not make sufficient income to establish sufficient reserves to be profitable when it comes time to pay

claims. If the underwriter can successfully spot those applicants that are more likely to have claims and either decline them or charge sufficiently higher premiums, than the carrier will be far more profitable. Even better for the competitive side of the business is to decline a higher percentage of those applicants who will have claims so that they end up as clients of a competing carrier thereby increasing the *loss ratio* of the competition.

A good way to illustrate this point is as follows: Statistically, it is a given that slightly more than one in 19 lawyers in Florida will face a claim each year. Therefore, out of a pool of 100, at least five should have claims. If there were five competing carriers and each got a fair share of the business then, statistically at least, each could expect one claim. Hence, if they were to charge sufficient premium to cover that one claim, they could all be profitable. However, if a carrier chooses to be more selective than the competition then, theoretically, they could face fewer claims. Imagine a carrier whose underwriting team could ferret out just ten of the applicants who will not face a claim. The carrier would not have to pay any claims and would have a zero *loss ratio* and end up far more profitable than if they just took an equal share of the market. To truly understand the business dynamics at work,

imagine that another carrier accepts those ten applicants that were rejected by the first carrier. Statistically, we know that one of those applicants will also face a claim. That carrier will now have thirty clients but will have to pay two claims. Because the premium charged was set by the market at an amount sufficient to cover only one claim in twenty, that carrier will have losses that exceed the level for them to be profitable.

Using this Knowledge

A lawyer can work with an agent that knows the market to target carriers that match up best with their area of practice to help minimize rates. Then, by making an excellent presentation to the carrier they can try to obtain as many discretionary credits as are possible. Next, by setting limits, deductibles and the like properly they can optimize the coverage. Make sure that when you buy coverage you understand exactly what you are buying and why because all of the coverage forms are different. ♣

The author is a member of the Clearwater Bar and is president of Raincross Insurance, Inc., Florida's Statewide Professional Liability Insurance Solution. Jeff can be reached at 800-882-4402.

Judge Khouzam Named Florida Jurist of the Year

Sixth Circuit Judge, Hon. Nelly Khouzam, was named by the American Board of Trial Advocates (ABOTA) as its Florida Jurist of the Year. The prestigious statewide award was presented during ABOTA's Florida Convention.

Judge Khouzam, who is chair-elect of the Florida Conference of Circuit Judges, was nominated by the Tampa ABOTA chapter, which covers the entire Bay Area. Her selection by representatives of the 11 Florida chapters was unanimous. Selection is based on an understanding of issues and the handling of complex litigation.

Since being appointed to the Sixth Judicial Circuit bench in 1994, Judge Khouzam has served in the Civil, Criminal and Family Divisions. In the Criminal Division, where she sits now, she has served as judge for the career criminal/habitual offenders cases and as criminal administrative judge. ♣



Court Holds That Trial Judges Have Authority to Require Attorneys to Pay Fees for Bad Faith Conduct

It is well established that a court may award attorneys' fees if expressly permitted by statute, rule or contract. Also, an attorney may be required to personally pay attorneys' fees as a sanction under §57.101 Fla. Statutes and under various other state and federal rules and statutes. An issue that has resulted in conflict between the district courts of appeal is whether the trial court has inherent authority to sanction an attorney and require the attorney to personally pay fees for bad faith conduct in litigation. The Supreme Court of Florida in *Moakley v. Smallwood*, 2002 WL 276466 (Fla. February 28, 2002), recently decided the issue in the affirmative, while imposing certain requirements upon the court prior to imposing the sanctions personally upon the attorney. The Supreme Court opinion noted that the Third District Court of Appeal opinion in *Moakley* conflicted with the opinions of the Second District Court of Appeal in *Israel v. Lee*, 470 So. 2nd 861 (Fla. 2d DCA 1985) and the First District Court of Appeal in *Miller v. Colonial Baking Co.*, 402 So. 2d 1365 (Fla. 1st DCA 1981).

The *Moakley* case arose out of post-dissolution proceedings after the appeal court affirmed the imposition of attorneys' fees against both Moakley, the former wife, and her attorney. The facts as found by the trial court were that Moakley's attorney issued subpoenas for the former husband and two of his former attorneys in an attempt to compel production of an original note that had been awarded to the former wife in the final judgment of dissolution. In the motion to compel production, Moakley's attorney conceded that one of the former husband's attorneys, Smallwood, did not have the note and Smallwood testified to this under oath. Because of short notice, Smallwood was unable to attend the hearing on the motion to compel, which was held in a courthouse fifty miles from her office. The trial court subsequently ordered sanctions including attorneys' fees against Moakley and her attorney. After finding that there was no reasonable explanation for the issuance of a subpoena to attorney Smallwood, the court's order assessed attorney's fees against both Moakley and her attorney as compensation for the time Smallwood spent responding to the subpoena. On appeal, the Third District affirmed the order finding that the trial court retained inherent authority to impose the sanctions against both Moakley and her attorney under those circumstances.

The *Moakley* opinion noted that an attorney is not only a representative of the client, but also an officer of the court and subject to monetary sanctions personally for such bad faith conduct. (*Moakley* @ p. 3). (citing Preamble to Rules of Professional Conduct, Regulating Fla. Bar "A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.") Although the opinion affirms the inherent power of the trial judge to order attorneys' fees for bad faith conduct, it also states that the power must be used "sparingly and cautiously" and must balance the punishment of the attorney for engaging in unprofessional and unethical litigation tactics solely for bad faith purposes to ensure that attorneys are not deterred from pursuing legitimate purposes for their clients.

The opinion requires that the imposition of attorneys' fees for bad faith conduct in litigation be based on an express finding of bad faith conduct and supported by detailed factual findings describing the specific acts that resulted in the unnecessary incurrence of attorneys' fees. The factual findings must be highly specific and the award of attorneys' fees must be directly related to the attorneys' fees and costs that were incurred because of the conduct. Finally, the trial court must afford the attorney an opportunity to be heard and present evidence and the court should rely on a specific statute or rule, if same applies, rather than its inherent authority. In quashing the trial court's order assessing attorneys' fees against Moakley's attorney the opinion noted that the trial court made no express

finding of bad faith conduct and did not provide the attorney with notice and an opportunity to be heard before imposing the sanction.

It has now been clearly settled by the Florida Supreme Court in *Moakley* that a trial court has inherent authority to control the courtroom and impose attorneys' fees and costs as a sanction against an attorney for bad faith conduct in litigation; however, the trial court is required to base the sanction on an express finding of bad faith conduct supported by highly specific and detailed factual findings describing the specific acts of bad faith conduct, the award must be directly related to the attorneys' fees and costs expended by the opposing party due to the conduct, the court must give the attorney an opportunity to be heard and present evidence and witnesses, and if a specific statute or rule applies, the court must rely on it rather than its inherent authority. ⚖️

The author practices Bar and Professional admission/disciplinary defense, workers' compensation and labor law with the Clearwater law firm of Tew, Barnes and Atkinson, L.L.P.

Bankruptcy

by Steven M. Fishman

The Relief from Stay Gets Relief from Congress

A “bankruptcy reform” bill, teetering for 4 years on the brink of passage and enactment, is apparently being held back by, of all things, rank and file abortion opponents. That’s right, abortion opponents.

The bill, which benefits from considerable bipartisan support, would prompt the biggest change to the Bankruptcy Code in decades. To date, several forms of the bill have passed. President Clinton vetoed one such version. The latest form passed the House and Senate in February 2001 with just minor differences. It was expected to go to conference committee and sail on to passage in both chambers. The first formal meeting of the conference committee was scheduled for September 11, 2001.

Of course, for obvious reasons “bankruptcy reform” was put on the back burner. It finally came out of committee this past July and was expected to be signed into law by the August recess. But, then came the abortion clinic protest language.

Essentially the clinic protest language makes certain debts incurred by anti-abortion protesters non-dischargeable. This worries several dozen House Members who envision little old ladies who sit on sidewalks and pray writing “checks to Planned Parenthood for the rest of their lives.”

Apparently, as to not anger these members, even though passage is almost assured without them, the House leadership is not pushing the matter to a vote. Instead it was “indefinitely” postponed, where “indefinitely” being a Congressional term of art. The vote could well come up anytime, particularly after the November election if Congress has a lame-duck session.

So, as of this date, September 17, 2002, we may or may not have a new Bankruptcy Code by the end of the year. We may or may not see drastic changes to the way business and individuals reorganize or liquidate. We may or may not see this bill resurrect itself in the next term or disappear in the procedural cracks and crevices of Congress simply out of sheer exhaustion.

Should passage and enactment come about, we on the Bankruptcy Committee of the Clearwater Bar will quickly address, through articles and seminars, those significant changes that affect members of the general bar, particularly tax, family and real estate law. ♪

This column is provided by the Clearwater Bar Association Bankruptcy Committee. The author is chair of the committee and practices in Safety Harbor.

Technology

by Greg Bray

Lock Out Viruses and Keep Them Out

Everybody who uses email or accesses the internet is at risk of suffering a debilitating virus attack! If you have not taken preventative measures, it is really just a matter of time before your firm is exposed to such an attack, which could leave your firm with expensive repair bills or worse!

Just like securing your home with deadlocks and alarm systems, you can secure your network and workstations to deter would be intruders, or the execution of malicious code. The key is to be proactive.

1. Ensure your Windows operating system has been patched or updated to close security loopholes.
2. Make sure you have installed anti-virus software at every workstation.
3. Always check that your anti-virus software is regularly updated with new virus definitions from the manufacturer.
4. Make sure your email program is patched with the latest security updates.
5. Be skeptical about opening email attachments...even from people you know!
6. Turn off any preview panes inside your email program.
7. If you do not have a router or hardware firewall between you and the internet, install a software firewall (Zone Alarm is a good entry level firewall and is available as a free download from <http://www.zonelabs.com>).
8. Check to see how exposed your network is to hackers by visiting <http://www.grc.com/> and running a Shields Up test.



9. Visit http://www.eicar.org/anti_virus_test_file.htm and try to download and execute the simulated viruses. Your anti-virus software should prevent you!
10. Make sure you are backing up all firm data and documents everyday. ♪

This column is provided by the CBA Technology Committee which meets every other month on the second Wednesday to learn how to protect and best use that costly investment—your law office technology. The next meeting is November 13 at Alfano’s. Call CBA or Chair Len Vincenti at 727-725-9767 for more details.

The author is with InTouch Business Consultants and can be reached at Greg@intouchbc.com or by phone 727-319-8281.

Community Outreach

by Linda Amidei and Pam Ora

The Most Important Hour of Your Week May Be The One You Give Away

Exciting opportunities for Pinellas County students are happening every day, thanks to the efforts of concerned community members. According to *Money* magazine, the quality of local schools is one of the most important criteria considered by potential employees when deciding whether to accept a job offer in a different city. With such a vested interest in the quality of education, corporate leaders are uniquely positioned to meet this challenge by donating an hour a week at a Pinellas County school as a mentor or tutor.

Students should be able to read well and independently by the end of the third grade. They should see college as an option. Classrooms should be connected to the Internet. Teachers should be well-trained in using technology and parents should be involved in their children's education in school, at home and in the community. Nevertheless, this is not always the situation for many students in Pinellas County. This is why the Community Involvement Department offers opportunities for struggling students by recruiting and placing local citizens as mentors and tutors in our schools. Thousands of corporate employees throughout the county are already a Part of the program and are really enjoying their experiences as school volunteers. Volunteers consistently say that spending an hour a week with a young person is one of the most fulfilling things they've ever done.

Sometimes all a student needs is friendship and encouragement to motivate them to do well in school. One hour a week will make all the difference to a student, and you will discover that you get back more than you give. Your influence can impact the life of a student. Tutors work with students who need assistance in academic subjects to reinforce basic skills. Mentors work with discouraged students, serve as role models, and provide encouragement to students who need to build self esteem. Mentors also work with students in the Doorways Program* which guarantees a child a college education if they keep up their grades and keep out of trouble.

The Community Involvement Department has designed a menu of opportunities that impact a student's academic success, through direct, highly targeted results-oriented volunteer placements. Two-hour training sessions are available throughout the county on a monthly basis for those interested in becoming a mentor or tutor. A volunteer investment of just *one hour per week* can yield

photo
crop to fit

Heather Harrison, right, a freshman at Countryside High School, has been in the Doorways Program since fifth grade. Her mentor is CBA Executive Director Karen France (left).

substantial positive results for students.

Take action! Call Pinellas County Schools Community Involvement, at 588-6405, or call a school near you, to give up an hour of your week. ♪

**Learn more about the Doorways Program at the CBA November 14 Membership Luncheon which will feature Pinellas County Educational Foundation Vice President, Toni Jernigan.*

Florida Bar Certifies Attorneys

Congratulations to eight Pinellas County attorneys who were among the 133 Florida attorneys recently Board Certified by The Florida Bar as having special knowledge, skills and proficiency in various areas of law. A little over 5 percent of Florida Bar attorneys are Board Certified. Only attorneys who have achieved certification can identify themselves as *Florida Bar Board Certified* in telephone books or other forms of advertising. Clearwater attorneys certified include: Travis Dean Finchum in Elder Law, James Frederick Gulecas in Tax Law, Christy Donovan Pemberton in City, County & Local Government Law, Stacey Marie Schroeder in Criminal Trial Law, and Peter Kyres in Real Estate Law. Largo attorney Jodi Lynn Corrigan was certified in Appellate Practice Law, and St. Petersburg attorneys Jaime Beth Eagan in Civil Trial Law, and E. Lynn Gibbons, in Workers' Compensation Law.

Florida's Supreme Court approved the Bar's certification program in 1982. The Florida Bar offers certification in 19 specialties. For more information, call the Bar's Department of Legal Specialization and Education at 850-561-5842, or write The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300. General information about the certification process as well as the requirements and definitions for each area of specialization can be found on the Bar's web site at the following link: <http://www.flabar.org/Membership.nsf/Certifications?OpenForm>. 

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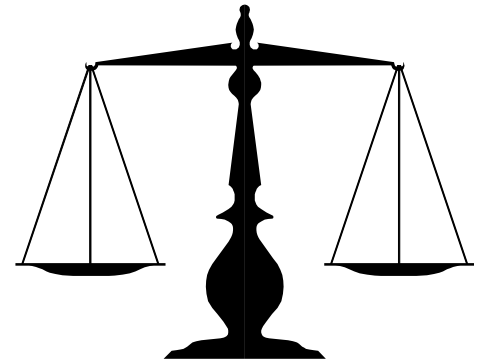
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Send letters to:

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November 2002 · Calendar of Events

DATE	GROUP AND EVENT	TIME AND PLACE	RESERVATIONS
11-08	Civil Practice Committee	12:00 noon - Capogna's, Gulf to Bay	RSVP - Mike Berry 447-0533
11-11	Paralegals	6:15 p.m. - Holiday Inn, Ulmerton Rd.	RSVP - Patricia Weaver 586-4224
11-13	Technology Committee	12:00 noon - Alfano's	RSVP - Bar Office 461-4869
11-14	Bankruptcy Committee	7:30 a.m. - Bob Evans, US 19 North	RSVP - Steven Fishman 724-9044
11-14	Member Luncheon	12:00 noon - Harborview Center	RSVP - Bar Office 461-4869
11-14	Family Law (½ day CLE)	1:30 p.m. - Harborview Center	RSVP - Bar Office 461-4869
11-15	<i>Res Ipsa Loquitur</i> copy deadline		office@clearwaterbar.org
11-19	Elder Law	12:00 noon - Tio Pepe's, Gulf to Bay	RSVP - John Von Staden 726-5777
11-21	Probate Committee	11:45 a.m. - Harborview Center	RSVP - Bar Office 461-4869
11-21	Young Lawyers Division	5:30 p.m. - Chili's - Tri-City	RSVP - Don Crowell 464-3354

December 2002 · Calendar of Events

DATE	GROUP AND EVENT	TIME AND PLACE	RESERVATIONS
12-12	Bankruptcy Committee	7:30 a.m. - Bob Evans, US 19 North	RSVP - Steven Fishman 724-9044
12-13	Civil Practice Committee	12:00 noon - Capogna's, Gulf to Bay	RSVP - Mike Berry 447-0533
12-16	Holiday Party	5:30 p.m. - 7:30 p.m. - Harborview Center	RSVP - Bar Office 461-4869
12-17	Elder Law	12:00 noon - Tio Pepe's, Gulf to Bay	RSVP - John Von Staden 726-5777
12-19	Probate Committee	12:00 noon - Harborview Center	RSVP - Bar Office 461-4869
12-19	Young Lawyers Division	5:30 p.m. - Thirsty Marlin	RSVP - Don Crowell 464-3354