



Res Integra

Lakeland Bar Association Newsletter



Volume 1, Number 3

Jan/ Feb 2007

Two More Free CLE Seminars

February 2, 2007

Reminder!

E-Discovery and Electronic Reports

Judge Ralph Artigliere will present a 2hr CLE credit seminar on E-Discovery. This course focuses upon the cutting-edge subject of E-Discovery and electronic records. It has tremendous ethical and practical implications. The impending change to electronic record-keeping of court files is going to change the way lawyers file documents. E-discovery is also going to change the way we exchange data during discovery. **Reserve your spot today for this seminar by emailing us at lakelandbarassoc@tampabay.rr.com.**

March 2, 2007

Computer Forensics



A one hour CLE credit seminar on Computer Forensics by Craig Luallen of SGC Computer Forensics LLC.
(see page 5)

Dr. Susan A. MacManus will be our LBA February Guest Speaker



Join us on February 2, 2007 at Grasslands Golf and Country Club as we welcome Dr. Susan A. MacManus, the Distinguished University Professor of Public Administration and Political Science in the Department of Government

and International Affairs at the University of South Florida.

She is nationally renowned for her expert and incisive commentary on public opinion and intergenerational politics and has appeared on ABC, NBC, CBS, FOX, CNN, Fox News Channel, MSNBC, PBS, BBC, NHK (Tokyo), Australian Television, C-SPAN, National Public Radio, and in various print media.

During the 2000 election season, she served as the political analyst for WFLA News Channel 8, the Florida News Channel, and WFLA News Radio. (WFLA News Channel 8 won the national USC Annenberg Walter Cronkite Award for Excellence in Broadcast TV Political Journalism for Medium Market Stations for its coverage of Election 2000.) The *St. Petersburg Times* identified her as the most quoted political scientist in Florida during Election 2000. In Election 2002, Dr. MacManus again served as political analyst for WFLA News Channel 8 and WFLA News Radio.

Her book, *Young v. Old: Generational Combat in the 21st Century* (Westview Press) was designated an Outstanding Academic Book by *Choice* magazine in 1996. She has co-authored a book with her mother titled *Citrus, Sawmills, Critters, and Crackers: Early Life in Lutz and Central Pasco County* for the University of Tampa Press. The two have also published a history of *The Lutz Depot*. Professor MacManus's book, *Targeting Senior Voters*, published in August 2000 by Rowman & Littlefield, predicted problems with punch card ballots among senior citizens before the election.

In 2002, MacManus edited a book titled *Mapping Florida's Political Landscape: The Changing Art & Politics of Reapportionment & Redistricting* published by the Florida Institute of Government to educate citizens, lawmakers, and the press about the redistricting process and its impacts

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President's Message

It is a new year, and all is well!

I hope everyone enjoyed a wonderful holiday season and is ready for the new challenges of 2007. Your Bar Association is geared up and ready to go.



First on the agenda is the LBA support of the Justice Teaching Program created by Chief Justice R. Fred Lewis. Last month about 90 lawyers, judges and court personnel met with Chief Lewis in the 1926 Courtroom of the Old Courthouse. The purpose was to train volunteers to go into classrooms in our schools throughout the state and help teach students about our justice system. The emphasis is on promoting justice and law, help students develop critical thinking and problem solving skills and to show the interaction of the courts in our students' lives.

This program was announced in June 2006, and has been a successful cooperative effort by the judges from all five District Courts of Appeal, the 20 Judicial Circuits, the Florida Bar, the Florida Association of District School Superintendents and the Florida Law Related Education Association. It is the LBA's request for every member to get aboard and be part of this very worthwhile program. For more details, visit the Justice Teaching website at: www.justiceteaching.org.

After such an enjoyable Judicial Appreciation Reception at the beautiful home of Judge and Mrs. Oliver L. & Mona Green this past fall, the LBA has decided to host a spring event. The Executive Board would like to partner up with a local community philanthropy to present a fun-filled evening with all the net proceeds benefiting the charity. We will need member volunteers to help with this project, so please call me or our Executive Director if you are interested.

Our luncheon programs start back up with the February 2, 2007 membership meeting at Grasslands Country Club. Our featured guest speaker will be Dr. Susan MacManus, PhD, political commentator and USF professor. With all the political happenings only two months removed, Dr. MacManus should be able to tell us what happened and what to expect. After the February 2 meeting, Judge Artigliere will present a free 2-hour CLE seminar on "E-Discovery; E-Filing," something we all need to become familiar with, as it is to be implemented in our circuit soon. (*You will have to make a reservation*).

Lastly, our membership luncheon meetings for March 2, April 13, and May 11 will feature Steve Scruggs, Economic Development Director for Lakeland, Chief Judge J. David Langford, Tenth Circuit Chief Judge and Henry M. Coxe III, President of The Florida Bar, respectively.

There will be another free 2-hour CLE seminar after the March meeting on "Computer Forensics."

Your Bar is continuing the new year with programs and information to assist all of us to become better lawyers. Your participation is welcomed and needed. Bring a new member with you each month so some other attorney can reap the benefits and be proud of the Lakeland Bar Association.

My special regards,
C. Richard Nail, President

Officers and Directors

The 2006-2007 LBA Board of Directors are:

PresidentC. Richard Nail
Vice President..... Jonn Hoppe
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Email : lakelandbarassoc@tampabay.rr.com
Phone: 619-7160



Vice President, Jonn Hoppe (left) and Secretary, Mark Fore, welcome Ms. Jennifer Leigh, anchor for WFLA channel 8 news to the December LBA luncheon.



A Brief Note on Evidence The Frye Challenge

By Robert D. Grode, II.

On occasion a party will decide that some scientific evidence will be helpful to the finder of fact and ask the Court to allow presentation of that scientific evidence. If the evidence is something new, or a novel way of applying the evidence, it may be subject to a Frye challenge. *Frye v. United States*, 293 F. 1013 (D C Cir. 1923). As a result, it is helpful for litigators to have a basic framework in place when discussing Frye to determine if the challenge is appropriate. The best approach is to look at the principle and the methodology, examining both for reliability and acceptance.

Frye has been the standard for years in Florida and requires very specific things from the proponent of the evidence. The party issuing the challenge (the opponent of the evidence) is simply required to inform the Court that there is some issue involving EITHER the underlying scientific principle or the testing procedures used to apply the principle in the instant case. On occasion the evidence may be such that the opponent to the science or methodology has no way of contesting its validity, as only the proponent has access to the science or methodology. This issue is addressed in great detail by the Florida Supreme Court in *Ramirez v. State* 810 So. 2d 836 (Florida 2001). If the court is in agreement then a Frye hearing will be conducted. In fact, although a particular type of evidence may have been accepted for years, if there has never been a Frye challenge to the evidence, it will still be subject to Frye.

The Court is the gate keeper of all evidence to be submitted to the finder of fact and must pay careful attention to the appropriate rule of evidence. In short, the Court must make the following findings of fact:

- 1) The scientific principle must have achieved general acceptance in the scientific community.
- 2) The application of the scientific principle in the way suggested by the proponent must also have achieved general acceptance in the scientific community.
- 3) The application of the scientific principle in the particular case must be reliable.

Failure on the part of the proponent to satisfy these requirements will prevent the introduction of the evidence, so the proponent should have highly credible sources and/or expert witness testimony to buttress the legal argument.

Bob Grode, a Polk County native, is a partner with the Kaylor Law Group. He is Board Certified in Civil Trial Law.

(MacManus continued from page 1)

A recently published book, co-authored with mentor Thomas R. Dye, *Politics in States and Communities*, 11th ed. (Prentice-Hall, 2003), is the nation's leading textbook on state and local politics.

MacManus was an editor and contributor to a book published in 2004 by the Florida Institute of Government titled *Florida Politics: Ten Media Markets, One Powerful State*.

Dr. MacManus headed up the Health Services Policy Transition Team for Florida Governor Jeb Bush and was appointed chair of the Florida Elections Commission by the Governor (1999-2003). Governor Bush also appointed her to his Council of Economic Advisors. MacManus served as a research adviser to the late Governor Lawton Chiles' Government Accountability to the People Commission and has moderated programs on prescription drug policy and long-term health care for U.S. Senator Bob Graham. She also served on the Secretary of State's Select Committee overseeing the upgrading of the political history section of the Museum of Florida History and helped write Florida's election reform plan required by Congress to qualify for federal funding under the Help America Vote Act.

Dr. MacManus routinely designs and analyzes surveys of public opinion on a wide range of issues for various local governments, think tanks, and the media.



The Honorable George W. Greer was LBA's featured guest speaker at our November luncheon. (Above) Judge Greer with 2nd DCA Judge Craig Valenti and Chief Judge Carolyn Fulmer. (Below) Rick Nail, LBA President and Judge George W. Greer.



Judicial Appreciation Reception October 19th at the Greens' Residence



Defending Our Rights

By David R. Carmichael

The biggest and certainly most substantive change is the repeal of Florida Rule of Criminal Procedure 3.250 relating to Closing Arguments. The creation of Florida Statute §918.19 dictates that the closing arguments in criminal cases will begin with the state's closing, followed by the defense, then state's rebuttal. *Everytime. Always.* Regardless of whether the defense put on a case, the "sandwich" as it has been referred to since as long as I've heard of, now permanently belongs on the plate of the Prosecution. But there is hope, the legislative language of the bill states that this new method will control, unless the Supreme Court determines that it is a procedural matter, and issues a substitute rule of Criminal Procedure.

House Bill 1291 revises the definition of weapons in Chapter 790 to include plastic knives and blunt table knives and states they cannot be exhibited within 1000 feet of a school or, get this, a school sponsored event. I guess this means cafeteria food will be reduced in variety to soups and other finger foods.

House Bill 5019 abolished Boot camps, and replaced them with moderate risk "Sheriff's training and respect Programs" which have significant prohibitions against "harmful psychological intimidation techniques." It also implements regular physical exams and immediate treatment for medical needs. It also requires the officers to provide "immediate access, upon request by the detainee, to telephones to call the abuse registry." Sounds like they're going to need call waiting on that line.

House Bill 1167 makes it a misdemeanor for a registered sexual predator to possess a prescription for a drug whose purpose is to treat erectile dysfunction. There are just so many possible quips here, I will just let you figure out and insert your own.

That's just a few of the legislative highlights for you to review, there are others worth reading relating to a failed attempt to require all law enforcement interviews to be recorded, allowing firearms now into national forests, and disallowing judges from giving "blanket" bonds.

LBA Supports the George Jenkins High School Academy of Legal Studies

The Lakeland Bar Association is proud to donate \$100 for each guest judge who speaks at our monthly luncheons to the Academy of Legal Studies. To date, donations have been made in the name of:

Judge Ralph Artigliere
2nd DCA Judges
Judge George W. Greer



George Jenkins Academy of Legal Studies Update



The Academy of Legal Studies is making great progress toward our scheduled opening in August, 2007. Thanks to a "SUCCEED Florida!" career academy grant we have begun to acquire the computers and equipment necessary to provide leading edge, technology-based instruction. The grant also provides for a subscription to an online legal research service for our legal research and writing course.

One area of need we have at the Academy is stocking our law library. Please do not toss out old editions of your reference materials! Email Steven Wilder at steven.wilder@polk-fl.net to see if your "trash" could be our "treasure." If it is something we can use, we will pick it up from your office.

Thanks to everyone at the Lakeland Bar Association for all of your continued support.

March 2nd Seminar: Computer Forensics – Turning Electronic Data into Electronic Evidence



The Lakeland Bar Association will be providing a free seminar to all lawyers in the Tenth Judicial Circuit on computer forensics after our membership luncheon meeting on Friday, March 2, 2007, at Grasslands Country Club. One (1) hour of CLE credit will be available, and you must pre-register by either emailing or calling the LBA office.

The seminar will be conducted by Mr. Craig Luallen of SCG Computer Forensics, LLC, which is a company out of Hillsborough County that has an extensive team of experts with over 35 years of experience in the computer technology industry, as well as 10 years of certified paralegal experience and litigation support. Their staff has experience working with such companies as City of Dallas, August International Corporation, Neiman Marcus, IBM, GTE and Eckerd Corporation.

The focus will be in the fields of data retrieval and computer forensics, including electronic discovery, email tracing, internet activity tracing and other data recovery. The technology of using forensically sound tools and methods provides an invaluable tool in litigation to prevent the loss, corruption or alteration of critical electronic evidence.

We hope you can attend our membership meeting and the seminar, as both will be very informative and enhance your practice. Email us at lakelandbarassoc@tampabay.rr.com or calling us at 619-7160.

COLLABORATIVE LAW

The Future of Divorce Proceedings

Collaborative Law is a process whereby both parties retain separate lawyers to resolve their disputes in a Dissolution of Marriage action, with the lawyers acting to help the parties settle the disagreements. It is dependent upon the principles of open communication between the parties and their respective lawyers and an agreement to work together in a collaborative manner. All participants must be honest and enter into a good faith agreement that is directed to meet the parties' and families' interests.

The lawyers and the parties enter into a Collaborative Law Agreement which provides for disengagement of a lawyer who seeks relief through a court proceeding in the divorce case. The Agreement, of course, does not preclude spouses from accessing the courts, if the collaborative efforts break down. Unlike your normal litigation divorce model, the risk of failure to achieve settlement out of court is distributed not only to the parties themselves, but also the lawyers. This distribution of risk has a powerful impact on the collaborative process in that it lessens the threat that lawyers may go to court as part of the negotiation process in a litigation based divorce.

The collaborative law process normally involves 4-way conferences between parties and lawyers who are committed to resolving domestic issues justly and equitably without court involvement. Normally, the voluntary exchange of documents is utilized, and many times neutral experts may be employed. The lawyers must determine what information is necessary to address each party's questions and concerns in a reasonable and dignified atmosphere.

The use of problem solving negotiations is the basis of collaborative law and not adversarial techniques or tactics. Lawyers and other experts must be trained in interest-based negotiations, whereby the parties' express goals, needs and desires are the focus. There must be no posturing, threatening or deception, even though each lawyer still advocates for his client, but in a manner that encourages an understanding of the other party's interests and concerns. It is not uncommon for the services of a third party professional, i.e. financial adviser, CPA, family therapist, mediator or arbitrator to be employed for single or multiple issues where the parties reach impasse.

The collaborative law process affords the parties an opportunity to become cognizant of the interest-based negotiating techniques that will allow an opportunity to model more creative property and custodial arrangements than the normal litigation based divorce. It also prepares the parties for ongoing resolution of disputes post-divorce, without court intervention, and minimizes the possibility of future conflicts.

Although there are many positive aspects of collaborative law, one is that the process can be conducted in private, wherein the parties are free to discuss and resolve the issues of their family without announcing in the public courtroom.

This has been proven, generally, to lead to better settlements for all involved, lessen the stress between parties, afford protection for minor children of the marriage and create a positive atmosphere for communication efforts in the future.

There are four models for collaborative law: Attorney only model, attorney referral model, full team model, and collaborative divorce model. All of these processes have distinguishing features which may apply to the particular circumstances of divorce from case to case. While there are many groups throughout the United States that have collaborative law groups, Minnesota, California and Texas have actually created protocols for lawyers, mental health professionals and financial professionals to guide through the collaborative process. The State of Texas has statutory authority for its collaborative law process.

Our area has made great strides in advocating collaborative law by the creation of the Tampa Bay Collaborative Group. Interdisciplinary collaborative law training has been conducted in a 2 day, 14-hour seminar in November 2006, and there are currently over 25 attorneys, and approximately the same number of mental health professionals and financial professionals involved in this group in our area. If anyone is interested in applying to join our Tampa Bay Collaborative Group, please contact me for further information.

C. Richard Nail
Executive Committee
Tampa Bay Collaborative Group



Attorneys Sam Crosby and Kent Lily enjoy some casual conversation at a recent Lakeland Bar Association luncheon.



Past Presidents Still Needed

The Lakeland Bar Association is still compiling a chronological list of all its past presidents, in order to memorialize the terms of those who have served as our leaders. If you have any records reflecting the names and dates of any past president, please contact Lisa Oliver, Executive Director, at 619-7160 or Rick Nail, President, at 284-2280.

True Character: Setting the Standard for Professionalism By Judge Ralph Artigliere



By now virtually all lawyers in Polk, Highlands, and Hardee Counties know that the Tenth Judicial Circuit professes its commitment to professionalism through our slogan, *Florida's Tenth Judicial Circuit: Where Professionalism is a Priority*. Now we are challenged to live up to the standard of the highest ideals of professionalism. This means behaving honestly and with civility among each other and those who come to our courts to work or seek justice. How do we handle situations in which our colleagues, our bosses, our peers, and parties we come into contact with are not behaving with the same high level of professionalism? That's where **character** comes to play.

Few of us can entirely control the behavior of others. Just ask judges faced with lack of professionalism and respect from lawyers appearing in their courts. Knowing there is a problem and eliminating the problem are two very different things. If some judges do not have the power to control the behavior of others, how can a lawyer make inroads when they encounter lack of professionalism among peers and parties? The solution is maintaining consistent character and professionalism. The one thing you know you can control is YOUR OWN behavior and your response to bad conduct by others. If you respond in kind with lack of professionalism, is that going to help or hurt the situation? Good conduct begets good conduct or at least it does not worsen the situation. Plus, those observing the situation will get a positive impression of you, and in turn, our court system, if you handle the situation well. Bad reactions frequently make things worse, they make you and the court look bad, and they produce unneeded stress for you and others around you. The worse others behave, the more impressive you will be for remaining cool, calm, and professional.

The Oath taken by every Florida Lawyer binds us to “(a)bstain from all offensive personality.” This requirement is not alleviated just because the other inside is rude or offensive. Further, displaying civil behavior in the face of challenging circumstances is a true sign of character and professionalism. Taking the high road is often a challenging path, but can result in admiration, esteem, respect, and positive behavior from others. Granted, you may never know and cannot really measure the positive influence you have on those with whom you interact. But staying the consistent course on character and professionalism is *always* a better alternative for lawyers.

So, whether you are dealing with a rude attorney or an obnoxious opposing party, take a deep breath, decide to be a leader in professionalism, and do your best to stay on the high road. Many of you do that already with good results. Let's get everyone on board as leaders in character and professionalism.

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“Ethics Minute” Professionalism Series, a program of 10th Judicial Circuit, *where professionalism is a priority*

Do Not Miss Our LBA Monthly Meetings

Guest Speaker

Feb. 2, 2007 Susan MacManus, Ph.D.
Political Commentator /USF Professor
CLE E-Discovery Seminar

Mar. 2, 2007 Steve Scruggs
Economic Development Director
CLE Computer Forensics Seminar

Apr. 13, 2007 Hon. J. David Langford
Incoming 10th Circuit Chief Judge
Judicial Assistant Guest Luncheon

May 11, 2007 Henry M. Coxe, III
Law Day Florida Bar President

NOTES AND ANNOUNCEMENTS

Judicial Assistants Host Convention

Beginning Thursday, January 25th, the 10th Judicial Circuit JA's will host a Judicial Assistant State Convention in Lakeland. The Lakeland Bar Association has donated \$500 in support of this endeavor.

LBA Board Members



The Lakeland Bar Association is looking for new faces to serve on our Board of Directors. If you are interested in being on the 2007-2008 board, please contact Rick Nail at 284-2280.

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"A whole thing; a new or unopened thing. The term is applied to those points of law which have not been decided, which are untouched by dictum or decision.

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Lakeland Bar Association
PO Box 2883
Lakeland, FL 33806

Happy New Year