

The Florida Law Practice

LINK

For Florida Lawyers – By Florida Lawyers

A JOURNAL OF THE GENERAL PRACTICE, SOLO AND SMALL FIRM SECTION

Volume XXX, No. 1

The Florida Bar

Summer 2010

The Lawyer's ConsultantSM *Got a case outside your comfort zone? Don't refer it out; bring a consulting lawyer in!*

by Stephen N. Lipton and H. Hugh McConnell
McConnell Lipton LLP Consultants to LawyersSM

"Adhocracy". In his 1970 book *Future Shock*, futurist Alvin Toffler predicted that the hierarchical, static bureaucracy would become obsolete as the predominant organizational structure. Instead, the static organization would be replaced by an infinitely more flexible system that Toffler labeled "adhocracy", reflecting his premise that business would be more effectively conducted from a *changing platform of specialists* brought together on an *ad hoc* basis as needed for each project.

Complex Litigation is Unique. Complex litigation is particularly suited to a non-static, case-oriented approach to organization. Complex cases present unique challenges in size, issues, complexity, deadlines, and personnel requirements. *Uniqueness is the challenge.* General practice, solo practitioners and smaller law firms, or those attorneys not well-versed or experienced in a particular matter, especially may find themselves suddenly overwhelmed or under-staffed when asked to take on a unique, large or complex matter for a client. Moreover, because every complex case is unique, the personal skills of the lawyer or the in-house capabilities

of a firm may not be sufficient to conduct every phase of the litigation. For those lawyers and law firms able to employ a flexible organizational model, the advantages are immediately apparent, not the least of which is the ability to keep in-house large, lucrative litigation. And that's where The Lawyer's Consultant, providing litigation support and trial consulting services, comes in.

Flexible Team Building. The Lawyer's Consultant provides litigation support and trial consulting services that assist lawyers facing unique challenges in difficult cases. Complex litigation most often requires a team approach. The consultant focuses upon filling another firm's needs in large, complex litigation to form the proper team needed for that particular case, *providing the necessary skills that the firm may not possess sufficiently in-house.* Rather than undertaking the commitment of increasing staff permanently or referring the case elsewhere, it may be preferable to draw on outside resources to *assemble a team solely to meet the needs of a single case.* A consulting lawyer's ability to supplement a firm's forces on a *temporary, case-by-case, or even*

task-by-task basis allows the firm to take on new large cases without having to incur the cost of expanding staff permanently.

Expanding Capabilities. This flexible, *ad hoc* organizational approach is especially appropriate for litigation not within the lawyer's day-to-day comfort zone. The Lawyer's Consultant, well experienced in complex litigation, can provide litigation, trial and appellate consultation, support and assistance to law firms that may find themselves "in over their heads"

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Message from the Chair



Someone once said; We are only as good as the people we gather around us. The GPSSFS is only as good as its members and its leadership. I want to thank our energetic and effective past Chair, **Peggy Hoyt** for all her work and accomplishments for the past year. I want to thank our Bar staff liaison to the section, **Ricky Libbert** for all of her help, guidance and patience with me and all the other members of the executive council over the past year. I want to thank **Camille Iurillo** for her tireless work in obtaining so many sponsorships for last year's solo and Small firm conference. I want to thank **Teresa Morgan** for bringing us an innovative, information packed, and fun Solo and Small Firm conference. I want to thank **Kevin Johnson** for his leadership, time, and just plain old hard work in redesigning, updating, and bringing on line the section's new website. I want to thank all the other faithful members of the executive council for taking time from their busy schedules to attend and participate in our meetings over the past year.

We are all busy. Brevity is a virtue in our world. Here are a few thoughts for the day. I wish I had thought of all these myself, and lived by them from the beginning. Hopefully at least one of these will strike a chord with each one of you;

On keeping a good relationship with your clients:

"Make every client feel like she (or he) is your only client"

On choosing a profession, or specialty within the profession:

"Do what you enjoy doing"

On being kind to others:

"Always be kind and patient to children, old people, and those who are ill or infirm-because at some time in your life, you will be all of these"

On dealing with opposing counsel:

"Do not question or mess with someone's vacation or family emergency"

On weekends and living a balanced life:

"No matter how much money you make, you will never have enough to buy back the weekends lost working"

On friendship (from a Tim McGraw song):

"Be a friend a friend would like to have"

On your relationship with your children:

"Give your children roots and wings"

On fishing:

"Don't leave fish to find fish"

"Fish when they are biting"

On keeping things in perspective:

"Life is too short to worry about this"

On holding grudges, or being critical of past mistakes (yours or those of others):

"Get over it"


On saying thank you:

"You can never say thank you too often, or write too many thank you notes"

Please email me your thoughts, comments, or suggestions on this column or anything else which you would like to hear about, or see the section do in the future. Peace. Kirkconnellk@criminaldefense.law.com

Kirk Kirkconnell, Chair 2010-2011

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The Cheapskate's Guide to Computing

by John McLaughlin, M.S., and Jennifer Dietz, Esquire

Breathe new life into a moderately old computer with “enough” memory

Computer memory is a strange thing. Too little definitely hurts. Enough lets your computer operate properly. And a little memory to spare won't necessarily make your computer faster under light or regular use, but will make your computer capable of running several programs all at the same time.

How little is too little? That's easy: 256 Megabytes is far too little; 512 Megabytes is too little. 1 Gigabyte is probably enough for Windows XP and barely enough for Vista or Windows 7; 2 Gigabytes is enough for most normal uses for any of the versions of Windows.

How old is too old? If your computer already runs Windows XP, Windows Vista, or Windows 7, then your computer is new enough to potentially benefit from an upgrade to “enough” memory.

A number of websites will guide you every step of the way, including telling you what will fit, how much will fit, and how to proceed. The list of sites includes www.crucial.com, www.kingston.com, www.tigerdirect.com, and www.cdw.com. For most computers, the memory upgrade is somewhere in the region of \$40 to \$80, far less than a new computer. As a side-note, the most common scenario is that your computer has slots for two memory modules, that the computer contains two cheaper smaller capacity modules, and that the memory upgrade will involve discarding one or both of the old modules with larger capacity modules.

1-800-GOOG-411 – Free business directory assistance from your phone

Have you ever looked closely at your cell phone bill at how much they charge for Directory Assistance? It's \$1.75! For directory assistance (business directory only), completely free from your phone (cell phone included), use 800-GOOG-411.

- Stop whatever you are doing right now. Program it into your phone. Now.

- It's amazing – no advertising, fast, reliable, and they connect you to the number you're looking up too!

- And to top it all off, Google's famous sense of humor will make you snicker every time you use it.

OpenOffice.org

OpenOffice is a complete and robust office suite, a legitimate and completely free rival to Microsoft Office. The only drawback is perception: people know and are familiar with Microsoft Office, and they'd rather stick with what they are accustomed to. You'll notice I didn't say “stick with what they know”, because everyone who uses Microsoft Office already knows how to use Open Office too, Perception is the only issue with OpenOffice. Perceive this: \$160 per computer, compared to Microsoft Office.

PrimoPDF

Most people reach for their wallets when they realize they need to create PDF documents. Another way is to reach for PrimoPDF, a completely free solution: PrimoPDF is a “virtual printer,” so once installed, you click your Print button, choose PrimoPDF as the destination, and you're in the PDF creating business!

Turn It Off

This is an interesting case of “reversal.” In the old days of computing (10 or more years ago), conventional wisdom said “never turn your computer off” because electrical components tended to last longer the fewer times they were turned off and on. Now, we're in a new world with amazing advances not just in what electronics can do, but in how well electronics are built. So now you can stop worrying about leaving your computing equipment on all the time, and start worrying about saving electricity. Advanced tip: Your computer has Sleep, Suspend, or Hibernate modes, each of which let you pause and hibernate your computer without even having to close what you're doing. These modes save you time shutting down and starting up, and lead to your computer using hardly any electric-

ity at all (Sleep and Suspend) and no electricity whatsoever (Hibernate).

Microsoft Security Essentials

Microsoft Security Essentials is a completely free Antivirus program that is highly regarded and considered one of the top-tier programs on the market. Security Essentials is a rival to any competitor, whether paid or free, and is also devoid of advertising or nagging messages (people with experience with the other free antivirus programs will know what I'm talking about).

Dual Monitors – Two independent screens, one computer

One of the most addictive things you'll ever do for yourself is to set up dual monitors for your laptop or desktop PC. In general, all reasonably modern laptops can drive dual monitors, and so can most modern medium or top of the line business and gaming desktops. Entry level desktops are less likely to have the upgraded graphics card to drive dual monitors without modification. In case you're wondering, we're talking about \$50 or so to upgrade, if you do indeed have an entry level monitor.

We're not talking about two monitors showing the same thing: We're talking about doubling your available screen space so that each monitor can display different screens. For example, you can have your email program on one of your monitors, and the internet on the other. Once you try dual monitors, you'll have a hard time using just one ever again.

Why is something that costs money mentioned in a Cheapskate's guide? Admit it: You have an old CRT monitor under your desk or in a closet, don't you? Put it to good use! The other reason for inclusion is that lots of people are happier and significantly more productive with dual monitors than they are getting a new PC, and a dual monitor upgrade is cheaper than a new PC.

Have Laptop, Never Travel?

As you've probably noticed, laptop batteries eventually die permanently,

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usually after a few years. What if you could extend that from just a couple years to five or more? Here's a great trick for those of us who have laptops that never leave the desk: Remove the battery, and store it in a safe dry place. The battery will remain operational (where it can be recharged) for many more years to come, as a result of not being under constant recharging.

This particular tip works, but you must consider the following caveats:

- Although the battery's overall usable life will be extended, the charge in the battery at the time of going into storage will dwindle, so that if the battery is needed in a pinch later, there's a chance the battery will need to be charged first.

- Under normal circumstances, laptops are immune to momentary power flickers because there is a battery inside. The battery removal method described here will take away this convenient safety net.

- Think through the risks and decide what's right for you.

The Library

Business databases at your fingertips. Reference materials at your fingertips. Periodicals at your fingertips. Oh yes, and books too.

Libraries were great enough even when you had to go in person: Now, with almost all their services online, Libraries are even better! Join your library today (online, of course), and explore not just the usual books, look at their business databases, reference materials, periodicals, and their Audio-Books, which are playable on your MP3/Music player.

Double-Sided Printing

There's at least a 50 percent chance that your printer is already capable of double-sided printing.

Every single time you print something, think to yourself: Can I print this double-sided and save paper?

Two-Pages-Per-Sheet Printing

Most modern printers can print multiple page images per sheet of paper, usually 2, 4, 6, 8, 9, and 16 virtual pages per sheet. If you have good eyes, or if you're just printing a

preview/draft copy, save some paper and ink. And of course, to really get fancy, you can do double-sided and Two-pages-per sheet at the same time.

Free or used on Craigslist

Before you pay full price for anything, see if there's a free one on Craigslist. And if what you're looking for isn't free, see if there's an inexpensive used one.

Particularly easy to find for free are old CRT monitors (remember our earlier conversation about dual monitors?). Lots of non-technology items are out there for free too. Don't overlook this great savings opportunity!

Free hauling on Craigslist

For almost any old bulky piece of electronics you might possibly have, there's someone out there who either fixes those items for fun, or needs an extra one for spare parts.

Remember that broken Laser Printer that weighs 200 pounds that's been in the back storage room for the past 3 years? The one that you'd have to PAY a recycler to haul away for you? Put it on Craigslist in the special "Free" section, and you'll be shocked at how quickly it disappears, for free.

Recruiting through Craigslist – Miami/South Florida: \$25. Everywhere else: Free

There's a whole hidden market of good internet-savvy candidates waiting for you on Craigslist. Craigslist job postings are free in all Florida markets except Miami/South Florida, where they are only \$25. Additionally, there is a resume bank on Craigslist, where you can search for resumes.

Your next Receptionist, Legal Assistant, Paralegal, IT person, or even Attorney may be right there for the hiring, free of charge, on Craigslist. And on top of it all, they'll be computer savvy too!

The Craigslist Sidebar – Due Diligence

Although Craigslist is an almost utopian free classified system with national presence, it is also a utopia for criminals too, so a few precautions are in order.

- Except possibly for job postings, never put anything that will identify you on Craigslist. This applies to

your free hauling and items that you advertise for sale. Instead, use Craigslist's anonymous email forwarding service, where your true email isn't revealed to anyone until you make the choice to send a reply.

- Never click links in an email sent to you by a Craigslist responder.

- The never-click rule also applies to any internet link that looks odd, in particular very short website addresses made up of a mixture of numbers and lower and upper case letters. This is called a "tiny URL", a super-short internet address that leads you to a conventional website. Just to be cautious, I never click on tiny URLs myself.

- Mentally prepare yourself for a certain amount of "get rich quick" and "work from home" and "get rich quick while you work from home" emails. All it takes is a quick click of the delete button. Never click on the link they send you.

- When a responder comes along to any of your posts, by all means be polite and courteous, but it never hurts to be a little skeptical too.

- And remember: Craigslist really has wonderful benefits. Don't miss out, just because of a few bad apples.

"Messaging Phones" instead of "Smart Phones"

For the record, "Smart Phones" are better and more convenient than "Messaging Phones", but Smart Phones cost more every month, usually as a \$30 dollar "Smart Phone data plan". Messaging Phones typically have a mandatory data plan that costs \$10 to \$20 per month instead of \$30, depending on your phone company and depending on what other options you have with your account.

Messaging Phones, by the way, CAN access the internet (assuming you purchased the data plan), and they CAN send pictures straight to FaceBook too. In the end, the decision is up to you: A slicker and sleeker but more expensive Smart Phone or a less expensive but still extremely useful Messaging Phone.

Phone GPS Units are Not Necessarily Free – Classic GPS Units are Free

Many of the GPS plans that are available with your cell phone service

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come with an extra monthly fee, usually about \$10. Although some are free, most are not.

Compare this with a “classic” stand-alone GPS unit, which have no monthly fees unless you buy extra frills such as real-time traffic or internet connectivity.

One final reason to consider a stand-alone GPS unit: You can share a stand-alone GPS with a trusted friend, family member, or colleague, whereas you probably wouldn’t be willing to part with your cell phone for any length of time.

Small Electronics – Always Check Amazon.com First

AC Adaptor for your new phone at the Cell Phone store: \$29.95. AC Adaptor for your new phone at Amazon: \$2.95 + \$3 shipping, for a total of \$5.95.

The moral is that you should always check prices on www.Amazon.com before buying anything. Almost anything can be bought through

Amazon and their network of small-business resellers, and both Amazon and the resellers are safe to buy from (although you should take the time to read the reseller’s reviews carefully).

About Amazon reseller ratings: I recommend buying only from resellers with a solid rating of 4 stars or higher on Amazon’s 5 star scale, and only from resellers who have been around long enough to have been rated by at least 20 people.

Refilled Ink via Amazon.com

Refilled ink cartridges and toner costs a quarter of what they cost new. If you take a moment to carefully read the seller reviews before buying, you will open up a new world of cost savings for yourself. And keep in mind that you might have the occasional bad refilled cartridge, but the bigger picture will be that you’re still saving lots of money.

Refilling your own Ink Cartridges

If a purchased refilled inkjet cartridges costs a quarter of what a new one costs, a cartridge that you refill yourself costs one tenth! This isn’t

for everyone, but if you’re the handy type and if you get mad every time you have to spend crazy amounts of money on ink cartridges, you can save a bundle.

The Magic Jack

In spite of the cheesy commercials, it actually does work. Give it a try for your extra line at home or for your outbound long distance calls. Although I’m not quite ready to suggest abandoning your conventional phone line, I’m happy to say that you should carefully consider the Magic Jack.

John McLaughlin, M.S., is a Computer Professional and a Cheapskate, with experience in Network Security, Internet Security, Software, Hardware, and Networking.

Attorney Dietz graduated from the University of Florida College of Law in 1991. She is a solo practitioner in Tampa and teaches Animal Law at Stetson University College of Law. Her primary area of practice is Animal Law. Attorney Dietz can be reached at jdietz@jenniferdietz.com.

An Overview of the Enforceability of Dragnet Clauses in Foreclosure Litigation

by Camille J. Iurillo and Sabrina C. Beavens

With the economic crisis of recent years and resulting loan defaults, the enforceability of dragnet clauses has become a frequent issue in our practice. Under Florida law, unless the lender has carefully addressed the issue during the negotiation of the loan, it could have an uphill battle to enforce the provision. Still, borrowers may find themselves losing more than they anticipated if they did not consider the implications of signing loan documents with a dragnet clause.

What is a dragnet clause? A dragnet clause attempts to extend a mortgage lien to all existing and future debt between the parties. *Boyette v. Cardin*, 347 So.2d 759 (Fla. 1st DCA 1977). It has also been referred to as an “anaconda clause” (our favor-

ite synonym when we are wearing out defense hat). *United National Bank v. Tellam, III*, 644 So.2d 97, 98 (Fla. 3d DCA 1994), citing *Berger v. Fuller*, 21 S.W.2d 419, 421 (Ark. 1929). An example of a boilerplate dragnet clause is:

In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, ab-

solute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amount may be or hereafter may become barred by any statute of limitations, and whether the obligations to repay such amounts may be or hereafter may become otherwise unenforceable.

How are dragnet clauses viewed under Florida law? At first blush, this language appears to cast a very broad net securing all past, present, and future obligations under the mortgage. For instance, a pre-existing unsecured loan would arguably now be secured by the mortgage. However,

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DRAGNET CLAUSES

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prior to filing a foreclosure action, the practitioner must consider that dragnet clauses are generally disfavored under Florida law and will be strictly construed against the drafter. *St. Lucie County Bank & Trust v. Aylin*, 114 So. 438, 440 (1927); *United States v. American Nat'l Bank*, 255 F.2d 504, 507 (5th Cir.), cert. denied, 358 U.S. 835 (1958). As the Third District Court of Appeal explained, dragnet clauses have a "propensity to 'enwrap the unsuspecting debtor in the folds of indebtedness embraced and secured in the mortgage which he did not contemplate.'" *United National Bank v. Tellam, III*, 644 So.2d 97, 98 (Fla. 3d DCA 1994), citing *Berger v. Fuller*, 21 S.W.2d 419, 421 (Ark. 1929). Although there is not a volume of Florida case law on this issue, the analysis that has developed certainly points to exercising caution before filing a foreclosure suit based on enforcing a dragnet clause. Moreover, practitioners drafting documents with such clauses must consider the existing case law in the event that the borrower defaults.

What "tests" have Florida courts developed? Generally speaking, a dragnet clause will cover future debts "only if the subsequent note specifically refers back to the mortgage's dragnet clause as providing security for that advance; or when the obligations relate to the same transaction or are of the same kind or class." *Gar-*

rote v. Ocean Bank, 713 So.2d 1095, 1096 (Fla. 3d DCA 1998) (citation omitted); see also *Cabot, Cabot and Forbes Land Trust v. First National Bank of Ft. Walton Beach, Ft. Walton Beach, Florida*, 369 So.2d 89 (Fla. 1st DCA 1979); *Uransky v. First Federal Savings & Loan Association of Fort Myers*, 684 F.2d 750 (11th Cir. 1982); *In re Continental Country Club, Inc.*, 108 B.R. 327 (Bankr. M.D. Fla. 1989) ("A mortgage does not secure future notes where the notes do not refer to the prior mortgage nor specifically identify the real property covered by the prior mortgage as collateral") (citation omitted).

As to pre-existing debts, the Third DCA requires that the debts be specifically identified in the dragnet clause in order to fall within its reach. This bright-line test "prevents mortgages from being extended to secure debts that were not contemplated by the debtor, and thus not within the intention of the parties." *Tellam* at 99. Essentially, the argument is that it is easy to specifically reference the then existing debts in the dragnet clause. In contrast, the Fourth DCA has held that dragnet clauses are enforceable even when the pre-existing debt is not specifically referenced, provided that the language of the clause is clear and unambiguous as to the parties' intent to secure the pre-existing and future debts. *Robert C. Roy Agency, Inc. v. Sun First National Bank of Palm Beach*, 468 So.2d 399, 402 (Fla. 4th DCA 1985).

Another interesting question is whether a dragnet clause may be enforced against a third party. The

Fourth DCA addressed this issue in *Starlines International Corp. v. Union Planters Bank, N.A.*, 976 So.2d 1172 (Fla. 4th DCA 2008). Starlines purchased an interest in real estate encumbered by a recorded mortgage with a generic dragnet clause. At the time of the purchase, Starlines asked whether there was any pre-existing debt subject to the dragnet clause and the seller indicated that there was not. Two years later, the seller defaulted on an earlier unrecorded note with the same lender that held the real estate mortgage. The bank filed a foreclosure action, naming Starlines as a non-obligor co-defendant. Interestingly, as to third parties, the Fourth DCA adopted the *Tellam* rule (with one exception) and held that "a dragnet clause will not be enforced against someone other than the borrower unless the dragnet clause specially identifies the pre-existing debt to be included within its terms or unless it can be shown that the third party otherwise had notice that the specific pre-existing debt at issue was to be included within the grasp of the dragnet clause." *Id.* at 1176.

Briefly, are dragnet clauses enforceable? Yes, but there are several traps for those unfamiliar with Florida law. Generic clauses without any further evidence of intent to negotiate a dragnet clause favor borrowers, whereas clauses which specifically reference the related debt rest on the opposite end of the continuum and favor lenders. Prior to foreclosing based on a dragnet clause, the practitioner should review the applicable case law, discuss the loan histories with the client and advise the client as to the potential challenges to the foreclosure. Of course, when representing defendants, the same steps must be undertaken to analyze whether there may be an argument to narrow the attempted reach for collateral by the lender.

Iurillo & Associates, P.A., located in downtown St. Petersburg, is comprised of **Camille J. Iurillo**, Shareholder, **Gina M. Pellegrino**, Associate, **Sabrina C. Beavens**, Associate, and **J'Aimee Crockett**, Law Clerk. The primary areas of practice of **Iurillo & Associates, P.A.** are Commercial and Bankruptcy Litigation, Debtors' and Creditors' Rights, and Foreclosures/Workouts.

The Florida Law Practice LINK is prepared and published by The Florida Bar General Practice, Solo & Small Firm Section.

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2010 Annual Meeting



2009-2010 Chair Peggy Hoyt passes the gavel to 2010-2011 Chair Kirk Kirkconnell



Immediate Past Chair Ana Veliz, presents the Tradition of Excellence award to John V. Quinlan



Jerry Curington, presenting Pro Bono award to Donald Isaac and Carolyn Fabrizio of Florida Rural Legal Services, Inc.



Michael Cavendish, left, receiving the Walter S. Crumbley Award presented by Damon Glisson and Judge Walter S. Crumbley



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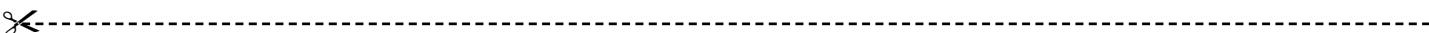
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Go to our Seminar website: <<http://www.GoingSolo.pro>> to get more info.

LOCATION (CHECK ONE):

Tampa, October 22, 2010
 (049) Tampa Airport Marriott

Live Webcast / Virtual Seminar*
October 22, 2010
 (317) Online

*Registrants who participate in the live webcast will receive an email with a web-link and log-in credentials two days prior to the seminar to include access to the course materials. Call The Florida Bar Order Entry Department at (800) 342-8060, ext. 5831 with any questions.

REGISTRATION FEE (CHECK ONE):

Member of the General Practice, Solo & Small Firm Section: \$115 \$115
 Non-section member: \$150 \$150
 Law students and graduates of any law school within last year: \$50
 Persons attending under the policy of fee waivers: \$0

Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court-appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice; are eligible upon written request and for personal use only, complimentary admission to any live CLE Committee sponsored course. (We reserve the right to verify employment.)

METHOD OF PAYMENT (CHECK ONE):

Check enclosed made payable to The Florida Bar
 Credit Card (Advance registration only. Fax to 850/561-5816.)
 MASTERCARD VISA DISCOVER AMEX Exp. Date: ___/___(MO./YR.)

Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

Signature: _____
 Name on Card: _____
 Billing Zip Code: _____ Card No. _____

COURSE BOOK — AUDIO CD — ON-LINE — PUBLICATIONS

Private recording of this program is not permitted. **Delivery time is 4 to 6 weeks after 10/22/10. TO ORDER AUDIO CD OR COURSE BOOKS**, fill out the order form above, including a street address for delivery. **Please add sales tax. Tax exempt entities must pay the non-section member price.** Those eligible for the above mentioned fee waiver may order a complimentary audio CD in lieu of live attendance upon written request and for personal use only.

Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida. If this order is to be purchased by a tax-exempt organization, the media must be mailed to that organization and not to a person. Include tax-exempt number beside organization's name on the order form.

<input type="checkbox"/> COURSE BOOK ONLY (1223M) Cost \$60 plus tax (Certification/CLER credit is not awarded for the purchase of the course book only.) TOTAL \$ _____	<input type="checkbox"/> AUDIO CD (1223C) (includes Electronic Course Material) \$160 plus tax (section member) \$195 plus tax (non-section member) TOTAL \$ _____
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Related Florida Bar Publications can be found at <http://www.lexisnexis.com/flabar/>





THE
FLORIDA
BAR
CLE

The Florida Bar Continuing Legal Education Committee and the
CLE Committee and the General Practice, Solo & Small Firm present

Ethics Today and The Florida Bar ... A Primer

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Presentation and Webcast: Friday, October 22, 1010
Tampa Airport Marriott • 4200 George J. Bean Parkway
Tampa International Airport, 33607 • 813-879-5151



Course No. 1140R

7:30 a.m. – 8:00 a.m.

Late Registration

8:00 a.m. – 8:10 a.m.

Opening Remarks

Eugene Shuey — Program Chair

8:10 a.m. – 9:00 a.m.

Play Fair and Don't Hit Anyone - Ethical Practice in the Real World

Eugene Shuey, Gainesville

9:00 a.m. – 9:10 a.m.

Break

9:10 a.m. – 10:00 a.m.

Play Fair and Don't Hit Anyone - Ethical Practice in the Real World (continuation)

Eugene Shuey, Gainesville

10:00 a.m. – 10:50 a.m.

Ethical Assistance Available to Florida Bar Members

Sheila Tuma, The Florida Bar, Orlando Branch Office

10:50 a.m. – 11:00 a.m.

Break

11:00 a.m. – 11:50 a.m.

Florida Ethics - The Bar's Grievance Process, Tips on How to Avoid and Respond to Inquiry/Complaints

Jodi Thompson, The Florida Bar, Tampa Branch Office

GENERAL PRACTICE, SOLO & SMALL FIRM SECTION

Kirk Kirkconnell, Winter Park — Chair
Frank E. Maloney, Jr., Macclenny — Chair-elect
Teresa Byrd Morgan, Lake City — CLE Chair

CLE COMMITTEE

Candace S. Preston, Wauchula, Chair
Terry L. Hill, Director, Programs Division

FACULTY & STEERING COMMITTEE

Eugene E. Shuey, Gainesville — Program Chair
Jodi Thompson, Tampa
Sheila Tuma, Orlando

CLE CREDITS

CLER PROGRAM

(Max. Credit: 4.0 hours)

General: 4.0 hours

Ethics: 4.0 hours

Seminar credit may be applied to satisfy CLER / Certification requirements in the amounts specified above, not to exceed the maximum credit. See the CLE link at www.floridabar.org for more information.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News or available in your CLE record on-line) you will be sent a Reporting Affidavit if you have not completed your required hours (must be returned by your CLER reporting date).

WEBCAST CONNECTION:

Registrants will receive webcast connection instructions two days prior to the scheduled course date via e-mail. If The Florida Bar does not have your e-mail address, contact the Order Entry Department at 850-561-5831, two days prior to the event for the instructions.

ELECTRONIC COURSE MATERIAL NOTICE: Effective July 1, 2010, every CLE course will feature an electronic course book in lieu of a printed book for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable, downloadable, printable material will be available via e-mail several days in advance of the live course presentation or immediately for products purchased thereafter. We strongly encourage you to purchase the book separately if you prefer your material printed but do not want to print it yourself.

TO REGISTER**ON-LINE:**
www.floridabar.org/CLE**MAIL:**
Completed form with check**FAX:**
Completed form to 850/561-5816

REFUND POLICY: Requests for refund or credit toward the purchase of the audio CD / DVD or course books for this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferable, unless transferred to a colleague registering at the same price paid. A \$25 service fee applies to refund requests.

**Register me for the "Ethics Today and The Florida Bar ... A Primer"****ONE LOCATION: (049) TAMPA AIRPORT MARRIOTT (OCTOBER 22, 2010)**

TO REGISTER OR ORDER AUDIO CD / DVD OR COURSE BOOKS BY MAIL, SEND THIS FORM TO: The Florida Bar, Order Entry Department, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD \$25.00. **On-site registration is by check only.**

Name _____ Florida Bar # _____

Address _____ Phone: () _____

City/State/Zip _____ E-mail* _____

E-mail address required to transmit electronic course materials and is only used for this order.*RTL: Course No. 1140R****LOCATION (CHECK ONE):**

- Tampa, October 22, 2010**
(049) Tampa Airport Marriott
- Live Webcast / Virtual Seminar***
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REGISTRATION FEE (CHECK ONE):

- Member of the General Practice, Solo & Small Firm Section: \$160
- Non-section member: \$195
- Full-time law college faculty or full-time law student: \$98
- Persons attending under the policy of fee waivers: \$0

Includes Supreme Court, DCA, Circuit and County Judges, Magistrates, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. (We reserve the right to verify employment.) Fee Waivers are only applicable for in-person attendees.

WEBCAST:

- \$165
- \$200

METHOD OF PAYMENT (CHECK ONE):

- Check enclosed made payable to The Florida Bar
- Credit Card (Advance registration only. Fax to 850/561-5816.)
- MASTERCARD VISA DISCOVER AMEX

Exp. Date: ____/____ (MO./YR.)

Signature: _____

Name on Card: _____

Billing Zip Code: _____

Card No. _____



Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

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Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida. If this order is to be purchased by a tax-exempt organization, the media must be mailed to that organization and not to a person. Include tax-exempt number beside organization's name on the order form.

COURSE BOOK ONLY (1140M)
Cost \$60 plus tax
(Certification/CLER credit is not awarded for the purchase of the course book only.)

TOTAL \$ _____

AUDIO CD (1140C)
(includes electronic course material)
\$160 plus tax (section member)
\$195 plus tax (non-section member)

TOTAL \$ _____Related Florida Bar Publications can be found at <http://www.lexisnexis.com/flabar/>

THE LAWYER'S CONSULTANT

from page 1

in an otherwise difficult yet rewarding undertaking. A consultant can work with a lawyer to complement the firm's resources, in order to *amplify its capabilities and scope of services*. From the standpoint of *productivity*, each project can be staffed by the precisely appropriate skill sets to carry out the work. *Economically*, a firm can focus resources strategically on projects immediately before it, reducing fixed costs of permanent staffing. Rather than trying to anticipate the requirements of possible future cases, a law firm can more *efficiently* staff each case as presented, drawing on resources available to it through the consulting relationship. Each case may be treated like a joint venture with a limited scope of work allocated among team-members brought together for that case alone. At the conclusion of the case, the firm can disassemble the team until the next matter, when a new team can be

formed with personnel and skill-sets then appropriate.

Lawyers are the Clients. Generally speaking, *lawyers are the consultant's clients*. The Lawyer's Consultant may enter into engagements either as independent contractors, as "of counsel" or jointly with their client firms and the firm's clients. At no time, however, should the consulting lawyer accept direct engagements from clients of the firms to which the consultant provides its services. A firm seeking a consultant should look for lawyers who are experienced in all phases of complex litigation, from initial case planning through motion practice, discovery and depositions, trial planning, witness preparation, jury selection, trial presentation, and appeal. The goal should be to supplement the efforts of a law firm in all areas of the case where the lawyer feels the need for support.

Consultant's Services. Through its litigation support and trial consulting service, McConnell Lipton LLP Consultants to LawyersSM provides

lawyers with consulting support in a number of activities central to a complex lawsuit:

- Case plan;
- Discovery plan;
- Discovery motions;
- Depositions;
- Summary judgment and other dispositive pre-trial motions and hearings;
- Motions in *limine*;
- Evidentiary hearings;
- Trial plan for jury trial, bench trial and arbitration;
- Jury selection plan and *voir dire* examinations;
- Opening statement;
- Direct examinations;
- Cross-examinations;
- Jury instructions and presentation at charge conference;
- Proposed findings and conclusions at bench trials;
- Closing argument;
- Preserving the record for appeal and assisting in post-trial proceedings.

The Lawyer's Consultant from McConnell Lipton provides a fresh and critical look at the entire case and then works with the lawyer to develop: (1) a comprehensive story built around a succinct theory that explains why factually and legally the client is *entitled* to a verdict; (2) a theme that headlines the story and shows the judge or jury why it should *want* to return its verdict for the client; and (3) a trial plan that ties the evidence together into a *persuasive* presentation. The services may include, if desired, Development of a Case Theory, Preparation of a Trial Plan, and Support at Trial.

Development of a Case Theory. From a base of practical experience, The Lawyer's Consultant works with the lawyer in shaping the case for trial to assure that all phases of the case are fully integrated into the intended trial plan. The consultant reviews and challenges the lawyer on the perceived issues and the evidence thought to support or refute each issue. McConnell Lipton LLP Consultants to LawyersSM work on the premise that trial preparation begins early in the case, with the

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Immediate past BLSE Chair Joni Armstrong Coffey of Miami visited the Parque Nacional Chiloé, a national park of Chile. Coffey is board certified in city, county and local government law. Former BLSE Chair Michael G. Tanner of Jacksonville, who is board certified in business litigation and civil trial, traveled to Cyprus, the third largest island in the Mediterranean. Robert Sugarman of Coral Gables, who is board certified in labor and employment law, journeyed to Badwater Basin, the lowest elevation point in the Western Hemisphere, in Death Valley National Park, Death Valley, CA.

The flag is available to any certified lawyer who will carry it proudly and send us photos for posting on our Web page. Please contact BLSE consultant Lisa Tipton for more information: 850/561-5769.



development of a succinct theory based on a story that contains all the elements of the case focused on a central theme. We assist the client lawyer in developing the case story, determining the theory of the case based upon that story, and providing a theme to justify the moral basis for the theory. We endeavor to help the lawyer maintain that theme consistently from pleadings and discovery, pre-trial motions, legal argument, voir dire, opening statement and witness examinations through final argument. Support of our law firm clients in developing the case theory can include analysis of legal remedies and strategies supporting claims and defenses, preparation of pleadings and motions, and argument of motions at all stages of the litigation.

Preparation of a Trial Plan – Beginning at the End.

After the theory of the case has been developed, we believe the most effective case preparation begins at the end and works backwards to the beginning. Consequently, we often recommend developing early on the legal issues and preparing a preliminary trial brief with clearly defined legal support and jury instructions or requested findings where applicable to establish the rules of the case and provide the framework in which the evidence should be presented. Because final argument is the last thing the judge or jury will hear that ties together the proofs with the theory of the case and validates the theme, we also recommend developing final argument as soon as possible so that everything presented in the case will support that argument.

Handling Discovery & Evidence.

With the legal issues developed and final submissions to the court and jury preliminarily established, we assist the lawyer in planning effectively how to conduct discovery. Here we can work directly with lay and expert witnesses and are able to assist with or even conduct key depositions. We help the lawyer organize the presentation of evidence to support the final argument and the jury charge, including how to present the direct case and to con-

front the evidence expected to be presented by the opposition.

A Fully Integrated Trial Plan.

We work with the lawyer to create a trial plan that integrates each of the stages at which the lawyer is speaking directly to the judge or jury – pre-trial motion argument, voir dire, opening statement, charge conference and closing argument – with the presentation or refutation of evidence on direct and cross-examination, with consistency and repetition as goals. We work directly on witness preparation, trial exhibits, mock trials and courtroom observation, and engage outside firms as needed to provide personnel for focus groups, jury simulations and shadow jurors, and to produce trial exhibits and such other trial materials as the case scope and budget dictate.

Ending at the Beginning.

Having determined what available evidence fits the legal framework and supports final argument, we work with trial counsel to prepare the final version of the case story in the form of the opening statement, comfortable that evidence fitting the theory will in fact be presented. Throughout this process, we encourage the lawyer not to be distracted by the opponent's case but to "try his own case", concentrating on a well-crafted story that takes into account all the facts from whatever source presented.

Support at Trial and Beyond.

As The Lawyer's ConsultantSM, McConnell Lipton LLP Consultants to LawyersSM are able to assist in the actual conduct of the trial by providing advice and counsel or even assuming responsibility for one or more aspects of the presentation to the court or jury. For example, we will help to prepare and argue pre-trial motions, evaluate prospective jurors and conduct *voir dire* of the jury, prepare jury instructions and attend jury charge conferences, or prepare and conduct the examination or cross-examination of key witnesses. In addition, we will prepare and present substantive motions and argue legal issues that may arise in the course of trial, as well as prepare written closings and proposed findings in bench trials. Finally, we work

throughout the case so that points in contention at trial are properly preserved in the record for purposes of appeal.

Conclusion. A Lawyer's Consultant in effect partners with other firms to assist in handling cases where the firm needs support in particular areas. The consultant enables the lawyer to take on cases he or she would not otherwise be able to handle. The Lawyers' Consultant can be a "silent" partner (consulting on specific aspects of a case), a "ghost" partner (researching and authoring filings for court), a "limited" partner (assuming responsibility for a part of the case), or a "full" partner (appearing as co-counsel with the client firm). What a consultant should not do is take over a case from a client firm or, later, take on cases from its client's clients. That is because lawyers are the consultant's clients, and the consultant ought not to be in competition with its clients.

Stephen N. Lipton and H. Hugh McConnell provide consulting services to lawyers through McConnell LLP Consultants to Lawyers . Mr. Lipton received his LL.B. from the University of Pennsylvania Law School in 1966. He has more than 40 years of practice as a trial attorney and consultant in complex litigation and trials in state and federal courts in cases involving construction and land development projects, building products liability, business transactions and trade practices, and major crimes, as well as construction contracting in major public works projects.

Mr. McConnell has practiced civil litigation in the state and federal courts of Florida for more than 30 years, concentrating in civil appeals and commercial litigation support. He received degrees from Yale University (B.A.), University of North Carolina at Chapel Hill (M.R.P.), and Northeastern University (J.D.). He has served as an adjunct professor in law and ethics at the University of Miami, Department of Civil and Architectural Engineering, and is a regular guest lecturer in construction law at the University of Miami School of Law.