Lex and Verum

The National Association of Workers' Compensation Judiciary

Number XXXII, April 2012

President's Message

By Hon. Ellen Lorenzen, President, NAWCJ

Those of you who attended last year's college may recall Kimberly Papillon's presentation on the effect the internal structures of our brain may have on judicial decision making. I was and remain intrigued and a little horrified at the thought that what I believe to be well-made, well-thought out decisions might be influenced by knee jerk reactions of my brain. So I was highly interested in an opinion piece written by Britt Peterson published in the Boston Globe in 2012 and reprinted in the *Tampa Bay Times* (the St. Petersburg, Fla. newspaper) on 3/4/12. The article was concerned with whether a wealthy political candidate could really empathize with the problems of the poor. The focus of the article was not relevant to me as a judge and is not why I am writing this column.

What was important to me was the research referenced in the article and what it showed about what affect a person's economic status had on a person's interest in the emotions of others and accuracy in assessing those emotions. In the process of reading the research, I learned about some intriguing (to me) research results. A moment of confession: I skipped all the mathematical computations and results in the articles. If you're interested, ask me and I'll share my one, woeful experience in the field of statistics.

Here's what I learned: individuals in the lower class (as measured by wealth and material possessions) tend to explain what has happened to them (such as getting a failing grade) by referring to external features of their environments whereas upper class individuals (as measured by income and educational level) tend to emphasize their own choices and preferences in explaining the outcomes they experience. So my empirical observation that some people always blame their problems (getting fired, not getting a raise, still being in pain) on others (the boss hated them, the supervisor hated them, the carrier would not authorize a doctor who would do surgery) on

Continued, Page 2.

NAWCJ Judiciary College is an unprecedented opportunity for adjudicator-specific education and collegiality.

Adjudicators from across the country enjoy the opening luncheon in preparation for their role in the Earle Zehmer National Moot Court Competition.

President's Message, from Page1.

others while others accept personal responsibility (they were absent a lot because of personal problems, they were defensive about comments about job performance, they have not really tried to stop smoking so that the surgeon would agree to perform surgery) might actually be an observation about those individuals' class status and not their personality or values.

The next piece of information: people from the lower class are more likely to empathize with the plight of others. Empathy was defined as the ability to infer the emotions of others. Why should it matter to me whether I am empathetic or try to infer the emotional state of a party or witnesses' mind? My job is to determine the facts (remember Joe Friday?) and apply the law to them. The problem is that sometimes the "facts" are not numbers or statistics or a medical opinion that I can easily determine. The facts include such things as what did someone perceive about the return to work job offer and the manner in which it was given or what did a doctor perceive about injured employee's meaning when (s)he said, "I can't go back to work because my back hurts and my job won't accommodate the restrictions you have assigned." I think I frequently base my conclusions on what the "facts" were, in part, on my perception of the emotional content of those "facts" and the emotional state of the person testifying about the "facts." Am I less likely to be interested in tuning into that emotional part of the "facts" because I have a high income and a lot of education? Third piece of information: people from the lower class do not just "tune into" others but are more accurate in their assessment of the emotions of others. Upper class folks tend to believe they have a lot of control over their lives and over others, perhaps more than they actually do. As a result of that belief, they explain the outcome of things based on what they did or what they perceived without paying much attention to the external events/factors that might more accurately explain the outcome. For that reason, someone who is richer or better educated might not understand her/his own emotions or the emotions of others as well as someone who is less wealthy, less educated, thinks (s)he does not have much control over events and focuses on the outside world to explain what has happened.

Judges Torrey (NAWCJ President-Elect), Kuker, and Sturgis preside over the preliminary round of the Earle Zehmer National Moot Court Competition at NAWCJ Judiciary College 2011.

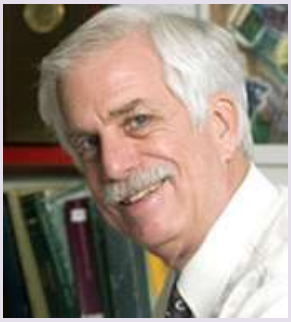
Football legend Larry Cszonka, Judy Ehrhardt, and NAWCJ Evidence Speaker Charles W. Ehrhardt at the Workers' Compensation Educational Conference VIP Reception

I am still trying to decide whether these newly acquired pieces of information will alter the way in which I make my decisions. But I hope that I will not be as quick to think that I am better at understanding what really happened because I am better educated and have more money that the witness who is testifying before me, because that may simply not be the case.

In case you have nothing else to read, see *Social Class, Contextualism, and Empathic Accuracy* by Kraus, Cote, and Dacher Keltner, published in APS (Association for Psychological Science), 21(11) 1716-1723 (2010). I found it at Harvard Libraries on the Internet.

As always, you may contact me at Ellen_Lorenzen@DOAH.state.fl.us.

Using Leading Questions During Direct Examination



By: Charles W. Ehrhardt* and Stephanie J. Young**

I. INTRODUCTION

Historically, limitations upon a party's impeaching its own witness[1] and upon using leading questions during direct examination[2] have been intertwined. This interplay continued longer in Florida than in most jurisdictions because Florida was slow to abandon the general rule against impeachment of a party's own witness. Underlying policies created confusion concerning the permissible use of leading questions during direct examination. Adding to the terms, similar terms defined impeachment and the exceptions to prohibitions on leading questions.

Clarification of this area began in 1990, when the Florida Legislature amended section 90.608, *Florida Statutes*, to adopt the *Federal Rules of Evidence* view, permitting impeachment of a party's own witness.[3] In 1995, the Florida Legislature amended section 90.612(3), *Florida Statutes*, to adopt Federal Rule of Evidence 611(c) providing for the use of leading questions during direct examination.[4] The Legislature thereby completed the clarification process.

This Article traces the development of the *Florida Rules of Civil Procedure* and the *Florida Statutes* from before the adoption of the *Florida Evidence Code* to the present as they affect the use of leading questions. The Article focuses particularly on the significance of the 1995 action of the Florida Legislature in amending section 90.612(3), *Florida Statutes*.

II. BEFORE ADOPTION OF FLORIDA'S EVIDENCE CODE

A. An Exception for Leading Questions on Direct Examination

Traditionally, questions asked a witness during direct examination cannot be in a form suggesting the answer to the witness. The rationale is that witnesses called by a party are presumed to give testimony favorable to that party,[5] and, therefore, leading questions are not necessary. Courts have barred leading questions on direct examination because a witness should testify to relevant facts personally known by the witness, without counsel's suggesting the desired answer.[6] If courts permitted the wide use of leading questions on direct examination, the jury could hear the lawyer's testimony instead of the witness's.[7] Courts do permit leading questions on cross-examination, on the assumption that the cross-examiner needs to suggest answers to the witness in order to explore adequately the reliability of the direct examination and the credibility of the witness.[8]

In 1967, the Florida Supreme Court adopted rule 1.450(a), *Florida Rules of Civil Procedure*, which recognizes an exception permitting a party to examine a hostile or unwilling witness with leading questions during direct examination.[9] When the witness demonstrates hostility or unwillingness to answer on the witness stand, the witness also demonstrates the need for leading questions.[10] Additionally, the rule permits a party to call an adverse party as a witness and "interrogate that person by leading questions."[11] When the adverse party is not a natural person or legal entity, rule 1.450(a) permits an examining party to use leading questions during the direct examination of an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party.[12] Historically, courts presumed the necessity of using leading questions when examining an adverse party with a stake in the outcome.[13] Florida courts disagreed as to whether an adverse party under rule 1.450(a) must be a person named as a party to the suit. One view was that the rule means that only those who are named as a party to the action may be examined as an adverse party.[14] The broader view was that an adverse party was one who "occupied an adverse position toward the party seeking to call him . . . and could have been named as a party."[15]

Continued, Page 4.

NAWCJ
National Association of Worker's Compensation Judiciary
P.O. Box 200, Tallahassee, FL 32302; 850.425.8156 Fax 850.521-0222

"*Leading Questions,"* from Page 3.

B. Voucher Rule Barred Impeaching a Party's Own Witness

Prior to Florida's adoption of the Evidence Code in 1976, Florida recognized the "voucher rule," whereby a party could not impeach or attack the credibility of a witness called by that party.[16] This rule resulted primarily from a belief that the party who called a witness to testify guaranteed that witness's credibility to the court.[17] However, opposing counsel could attack or impeach the credibility of a witness.[18]

Two exceptions permitted a party to impeach a witness called by that party. Section 90.09, *Florida Statutes*, now repealed, created a limited exception to the voucher rule by permitting a party to attack the credibility of a witness called by that party when the witness proved adverse.[19] Judicial decisions supplied a two-part test of adversariness: the witness's testimony must have surprised the party calling the witness, and the witness's testimony must have been prejudicial from the jury's perspective. [20]
If counsel calling the witness learned of the testimony before the witness took the stand, the necessary surprise was not present.[21]

Section 90.09 restricted permissible impeachment to prior inconsistent statements and contradictions.[22] The statute specifically prohibited impeachment by "general evidence of bad character."[23]

Rule 1.450(a), *Florida Rules of Civil Procedure*, created a second exception to the voucher rule.[24] It allowed a party to call an adverse party as a witness and "contradict and impeach that person in all respects as if that person had been called by the adverse party."[25] The rule did not limit a party's impeachment of an adverse party to prior inconsistent statements. [26] A party could use any method permitted under the Evidence Code. This exception to the voucher rule was in addition to other language in rule 1.450(a), which permitted a party to use leading questions during the direct examination of a hostile or evasive witness or an adverse party.[27]

Confusion centered around the significance of labeling a witness a hostile witness, an adverse witness, or an adverse party.[28] A party could ask leading questions during the direct examination of a hostile witness or an adverse party, but usually not during direct examination of an adverse witness.[29] On the other hand, the party calling the witness could not impeach a hostile witness unless the witness was an adverse witness or an adverse party. A court might determine a single witness to fit any, or all, of the above definitions.

Continued, Page 6.

Did you know?

Facebook has 133 million users in the U.S.

Facebook has 845 million worldwide.

That 845 million users represents 54% of the global online population.

The average Facebook member spends 423 minutes (7 hours) per month on the site.

Twitter has 24 million active users in the U.S.

That social media has impacted the discovery of evidence in workers' compensation cases.

NAWCJ Judicial College 2012

August 19 through 22, 2012

Up to Twenty-one Hours of Judicial Education available for only $200.00!

The 2012 Judicial College Tuition:

NAWCJ Members

$200.00 if paid on or before July 31, 2012
$225.00 if paid on or after August 1, 2012

Non-NAWCJ Members

$240.00 if paid on or before July 31, 2012
$265.00 if paid on or after August 1, 2012

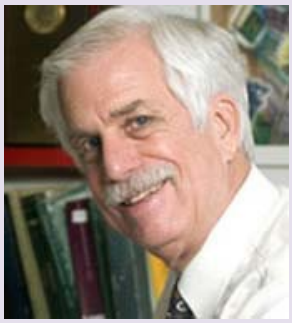
More Information At:

www.NAWCJ.org

www.FWCIweb.org

Judge Lazzara JJL@NAWCJ.org

Professor Ehrhardt Returns!



He wrote the book (literally)! Professor Ehrhardt has been cited as an authority by appellate courts more than 500 times. He is an exceptionally gifted teacher with an ability to make the subject come alive. His energetic and dynamic presentations never cease to be simply amazing. He will present two hours of evidence for adjudicators this summer.

As Seen on CNN, MSNBC, ACB, CBS, and HLN:

Susan Constantine!

Susan Constantine is a leading body language expert, renowned speaker and trainer specializing in "deception detection" through verbal and non-verbal communication. She conducts seminars and workshops for corporate clients, lawyers, investigators, government agencies, and individuals sharing her body language expertise in easy to grasp formats. Her expertise focuses on understanding and predicting human behavior thru the hidden "Secrets of Reading Body Language.

Multistate Comparative Law Panel

Our distinguished panel of Judges from Florida, Kentucky, Mississippi, Texas, and will describe and discuss similarities and differences among the states' workers' compensation laws and procedures. This highly interactive program will provide insight, perspective and analysis of the variety found in workers' compensation systems around the country. Attendees will come away from this with perspective and ideas. Each year a different jurisdiction contributes a moderator for this program and in 2012 it is the Honorable Jennifer Hopens of Texas. Judge Hopens is also a NAWCJ Board member.

"*Leading Questions,"* from Page 4.

III. ADOPTION OF FLORIDA'S EVIDENCE CODE

A. Section 90.608: Impeaching an Adverse Witness

When Florida adopted its Evidence Code, the drafters and the Legislature chose to reject the modern view of the *Federal Rules of Evidence*, which permits a party to impeach its own witness,[30] and to retain, in section 90.608(1), the pre-Code statutory provision prohibiting a party from impeaching its own witness.[31] However, section 90.608(2) continued to permit a party to impeach that party's own witness, by using prior inconsistent statements or evidence that contradicted the witness's testimony, when the witness proved adverse.[32]

The subsection provided that surprise at the trial during a witness's testimony was no longer a prerequisite for applying the adverse witness rule.[33] Before a witness was adverse under section 90.608(2), the witness had to have given testimony that was affirmatively harmful or prejudicial to the party calling the witness.[34] The fact that the witness failed to give the testimony that counsel expected and that the testimony was not so beneficial as a witness's prior statement was not sufficient to label a witness adverse.[35] The party's testimony before the jury actually had to have harmed the case of the party calling the witness.

Defining an adverse witness was a complex task. An adverse witness could be friendly to the party calling the witness.[36] On the other hand, a witness who was hostile or unwilling or who had a relationship with one of the parties was not necessarily adverse.[37] Under section 90.608(2), if the witness did not remember a fact when testifying, the witness was not adverse and a party could not impeach the witness.[38] In the eyes of the jury, such testimony had not affirmatively harmed the case of the party calling the witness.

B. Section 90.612(3): Use of Leading Questions

Because of Florida's constitutional vesting of exclusive jurisdiction of procedural matters in the Florida Supreme Court and substantive matters in the Florida Legislature,[39] the drafters of the Evidence Code determined that the Legislature should not amend or recodify, within the Evidence Code, then-existing rule 1.450(a), *Florida Rules of Civil Procedure*. Rather, the Florida Legislature adopted section 90.6 12(3), which generally prohibited the use of leading questions on direct and redirect examination but permitted a party's use of them on cross-examination.[40] The provision in its introductory phrase, "[e]xcept as provided by rule of court," recognized rule 1.450(a), which permitted a party's use of leading questions during the direct examination of a hostile or unwilling witness or an adverse party.[41]

The remainder of subsection 90.612(3) provided the general rule concerning the use of leading questions:

> [Except] when the interests of justice otherwise require:
>
> (a) A party may not ask a witness a leading question on direct or redirect examination.
>
> (b) A party may ask a witness a leading question on cross-examination or recross-examination.[42]

The phrase "when the interests of justice otherwise require" recognized that the trial court possesses the discretion to permit leading questions as an exception to the provision's general principles.[43] For example, when the question is preliminary,[44] a child is a witness or the witness is ignorant,[45] or when the witness's memory is exhausted[46] are all situations in which courts have suggested that leading questions are necessary and appropriate for a party to develop the testimony of a witness on direct examination.[47]

In addition, the last sentence of section 90.608(2), which permitted a party to impeach its own witness when the witness was adverse, provided that a party could use leading questions while impeaching such an adverse witness.[48] However, the subsection did not provide for the general use of leading questions throughout the direct examination of an adverse witness.

Thus, the policy decisions of the drafters and the Legislature in adopting the Evidence Code compounded the confusion concerning the significance of whether a witness was a hostile witness, an adverse party, or an adverse witness.

C. 1990 Amendment to Section 90.608

In 1990, the Florida Legislature amended section 90.608(1) and adopted Federal Rule of Evidence 607, which permits any party, including the party calling the witness, to impeach the credibility of a witness.[49] At the same time, the Legislature removed section 90.608(2), which permitted the calling party to impeach an "adverse witness" with a prior inconsistent statement.[50] Thus, the party calling a witness can impeach the credibility of the witness without regard to whether the witness is an "adverse witness."[51]

Continued, Page 7.

"*Leading Questions," from P.6*

D. Evidence Code Amendments Make Rule Unnecessary

The Legislature has amended section 90.608 to permit the general impeachment of a party's own witness.[52] However, the Florida Supreme Court did not change the portion of Rule of Civil Procedure 1.450(a) that permitted a party to call the adverse party as a witness and impeach the witness. Section 90.608 now broadly permits that which rule 1.450(a) permitted only as a narrow exception. Therefore, portions of the rule permitting impeachment of an adverse party are now redundant and unnecessary.

To avoid confusion, the Florida Bar's Code and Rules of Evidence Committee voted unanimously to propose to legislators an amendment to section 90.612(3) adopting the language of Federal Rule of Evidence 611(c), and to recommend to the Bar's Civil Procedure Rules Committee that rule 1.450(a) be deleted from the *Florida Rules of Civil Procedure*.[53] Although some members of the Civil Procedure Rules Committee favored removing 1.450(a), the consensus of that committee was to make no recommendation on the rule until after the amendment of section 90.612(3).[54] The Civil Procedure Rules Committee indicated that, after amendment of the statute containing the Evidence Code, it would consider recommending to the Florida Supreme Court the removal of rule 1.450(a).[55]

Thereupon the Code and Rules of Evidence Committee recommended the following amendment, which was passed by the 1995 Florida Legislature:

> (3) Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness'[s] testimony. Ordinarily, leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.[56]

Because of the committee's concern that adopting the amendment might indicate an intention to alter the law as stated in section 90.612(3), the committee drafted and approved the following committee note and forwarded it to the Board of Governors of The Florida Bar and to the Florida Legislature:

Commentary on the 1995 Amendment

> Subsection (3). This subsection was amended by adopting the language in Federal Rule of Evidence 611(c). The purpose of this amendment is to clarify the rule pertaining to leading questions by specifically authorizing leading questions when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party. There is no intent to negate the effect of the prior rule that prohibited leading questions on direct or redirect examination and permitted leading questions on cross-examination and recross-examination 'except as provided by rule of court or when the interests of justice otherwise r equire.'[57]

Both the accompanying Committee Note and the Code and Rules of Evidence Committee Report indicate the committee's intent to clarify, but not change, Florida law relating to a party's use of leading questions.[58] An analysis of the amended statute and Florida law relating to statutory construction bears out that intent.

Continued, Page 8.

"Second Fridays", Free Educational Programs from the NAWCJ

Make plans today to tune-in

April 13, 2012, Identifying Cultural Diversity, David Dreszer, Esq. This program will provide insight to issues of cultural diversity, and how people perceive each other. Mr. Dreszer has lectured on this topic many times, and has a way with bringing his topic alive.

May 11, 2012, Ethics Issues for State Mediators in Workers' Compensation, Judge Gerardo Castiello and Florida Mediator Eduardo Almyeda. May 11, 2012 Course number pending

September 14, 2012, The Medicare Secondary Payer Act, Mark Popolizio, Esquire will kick of the new "second Fridays" calendar next fall with his thoughts on this developing area of the law.

All Second Fridays presentations are free. To join at 12:00 Eastern time, dial in to 888.808.6959, conference code 889675

Your 2012 NAWCJ Board of Directors

"Leading Questions," from P.7

1. Federal Rule 611(c): Leading Questions on Direct Examination

Amended section 90.612(3) adopts the language of Federal Rule of Evidence 611(c). Determining the significance of amended section 90.612(3) requires examination of judicial decisions interpreting the federal rule upon which the Florida statute is based. Florida courts will construe these federal decisions as providing "persuasive guidelines" for the interpretation of this amendment to the Evidence Code.[59]

The first sentence of Federal Rule of Evidence 611(c) codifies the well-established general rule that a party should not use leading questions on direct examination.[60] The words "should not" are words of suggestion, not command;[61] application of the prohibition is within the court's discretion.[62] Hence, despite the rule's implicit admonishment against a party's use of leading questions on direct examination, the rule nonetheless maintains the trial court's discretion to permit them.[63]

Subsumed in the rule and stated in decisional law is the premise that courts determine, on a case-by-case basis, whether parties may ask leading questions during direct examination. Adopting the wisdom of courts before it, the United States Supreme Court recognized that "in each particular case there must be some discretion in the presiding judge as to the mode in which the examination shall be conducted in order best to answer the purposes of justice."[64] Moreover, the trial court may, on its own initiative, instruct counsel to ask leading questions on direct examination.[65]

The language of rule 611 recognizes that a party may use leading questions on direct examination where they are "necessary to develop the witness'[s] testimony."[66] Generally, the necessity exception has been applied where the witness is very young, timid, ignorant, unresponsive, or infirm.[67] In *United States v. Nabors*,[68] a twelve-year-old boy with key testimony connecting the defendants to a bank robbery was hesitant to repeat a "naughty" word in a statement implicating the defendant declarant.[69] Noting the long-recognized exception permitting a party to use leading questions to develop the testimony of a child witness, the Eighth Circuit held that the district court's decision to allow the questioning deserved deference because the "court was in the best position to evaluate the emotional condition of the child witness and his hesitancy to testify."[70] Other circumstances that may require a party to use leading questions to develop witness testimony include, for example, when a witness is an adult with communication problems,[71] when the witness's memory is exhausted,[72] or when the witness is testifying to undisputed preliminary matters.[73]

2. Federal Rule 611(c): Leading Questions on Cross-Examination

The second sentence of Federal Rule of Evidence 611(c) provides that "[o]rdinarily leading questions should be permitted on cross-examination."[74] Although tradition has long supported a party's use of leading questions on cross-examination as a matter of right,[75] that right is not absolute. The operative word "ordinarily" furnishes a basis for a court to deny a party's use of leading questions when the cross-examination is in form only.[76] If the witness is actually friendly to counsel, there is no need for a party to ask suggestive questions during such a cross-examination. Consequently, the trial court has the discretion to limit counsel's use of leading questions during cross examination.[77]

Continued, Page.9.

"*Leading Questions," from P.8*

3. Federal Rule 611(c): Witnesses Subject to Leading Questions

The final sentence of rule 611(c) deals with categories of witnesses who can be automatically subject to leading questions during direct examination. [78] When a party examines a witness who is hostile, that party may ask leading questions because they are necessary to control the witness. [79] A court will not presume that the witness is hostile but will determine whether a witness is hostile at the time of the testimony.[80] A party is not entitled to examine a witness as hostile simply because the examiner expects the witness to give testimony favorable to the opposing party. [81] If the witness becomes hostile during testimony, a court may permit leading questions.[82]

Courts automatically consider some witnesses hostile and, therefore, permit a party to ask leading questions during direct examination without a showing that the form of the question is necessary to develop the testimony of the witness.[83] A party may examine an adverse party with leading questions because, however cooperative, the adverse party has a built-in incentive to provide self-serving testimony by sliding away from the question or slanting the answer.[84] Rule 611(c) also provides that a party may ask leading questions during the direct examination of a "witness identified with an adverse party."[85] Where the witness is a present or former employee of the party, a co-worker of the party, a relative of the party, or has a romantic interest with a party, sufficient commonality may exist to allow a court to decide that the witness identifies with the adverse party and therefore is automatically subject to examination by leading questions.[86]

IV. CONCLUSION

As Florida law recognizes, Federal Rule of Evidence 611(c) permits a party to use leading questions during direct examination when necessary, that is, when a question is preliminary, when the witness is a child, or when the witness's memory is exhausted.[87] The 1995 amendment to Florida's section 90.612 restates and clarifies the circumstances where a party may use leading questions. Section 90.612(3) now clearly identifies the witnesses a court will automatically consider hostile, and, therefore, subject to leading questions. A court should consider a witness to be hostile if he or she is an officer, director or managing agent of a corporation, partnership, or association that is an adverse party. That category of witness is included within the phrase "witness identified with an adverse party" in the amended section 90.612(3).[88] The phrase also removes uncertainty as to whether a witness must be a named party in the action to be deemed an adverse party. In adopting the phrase "witness identified with an adverse party," the amendment recognizes that allowing leading questions on direct examination of these witnesses is desirable because of the underlying relationship between the witness and the adverse party.[89] The legislative adoption of Federal Rule 611(c) completed Florida's statutory codification of provisions of the *Federal Rules of Evidence* dealing with impeachment of a party's own witness and the use of leading questions. These actions eliminate confusion and bring Florida in line with the modern view of the majority of states. However, the application of rule 1.450(a) remains confusing because the rule does not reflect recent legislative action permitting impeachment of a party's own witness. In fact, the rule is no longer necessary, and the Florida Supreme Court should delete it. The only matter remaining in rule 1.450(a) that is not covered more broadly in the Evidence Code is the use of leading questions during direct examination, a matter more properly addressed within the Evidence Code than in the Rules of Civil Procedure. Legislators did address the matter of leading questions on direct examination by adopting, in the 1995 amendment to section 90.612(3), language that restates circumstances where leading questions are appropriate. If the Florida Supreme Court chooses to amend rule 1.450(a) by using different language to describe circumstances where leading questions are permitted during direct examination, the difference in wording will only create further confusion. The Civil Procedure Rules Committee of The Florida Bar has continued the clarification effort by voting to recommend the deletion of rule 1.450(a).[90] The Florida Supreme Court's adoption of this recommendation will eliminate confusion and clarify Florida law.

---

* Mason Ladd Professor of Evidence, Florida State University College of Law; reporter and drafter of the *Florida Evidence Code* B.S., 1962, Iowa State University; J.D., 1964, Un iversity of Iowa.

** Associate, Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Tampa, Florida. B.A., 1981, University of South Florida; J.D., 1991, Florida State University College of Law.

The authors would like to thank Kym Johnson and the Florida State University College of Law for providing research support.

1. See 3 JOHN H. WIGMORE, EVIDENCE §§ 896-905 (3d ed. 1940) [hereinafter 3 WIGMORE 1940]; CHARLES T. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE § 38 (1954).
2. See 3 WIGMORE 1940, supra note 1, §§ 769-79.
3. 1990, Fla. Laws ch. 90-174, § 1, 742-43 (codified as amended at FLA. STAT. § 90.608 (1995)).
4. 1995, Fla. Laws ch. 95-179, § 1, 1647 (codified as amended at FLA. STAT. §90.612(3) (1995)).

Continued, Page.10.

"*Leading Questions," from P.9*

5. Erp v. Carroll, 438 So. 2d 31, 36 (Fla. 5th DCA 1983).
6. Id.
7. See United States v. Bryant, 461 F.2d 912, 918 (6th Cir. 1972); Kembro v. State, 346 So. 2d 1083 (Fla. 1st DCA 1977).
8. Erp, 438 So. 2d at 36.
9. In re Florida Rules of Civil Procedure 1967 Revision, 187 So. 2d 598, 625 (Fla. 1966). Rule 1.450(a) of the Florida Rules of Civil Procedure provides: A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party and interrogate that person by leading questions and contradict and impeach that person in all respects as if that person had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also and may be cross-examined by the adverse party only upon the subject matter of that witness's examination in chief. FLA. R. CIV. P. 1.450(a).
10. Foremost Dairies, Inc. v. Cutler, 212 So. 2d 37, 40 (Fla. 4th DCA 1968); see Erp, 438 So. 2d at 31, 36.
11. FLA. R. CIV. P. 1.450(a).
12. Id. Rule 1.450 was based on former FED. R. CIV. P. 43(b) (1974).
13. 3 JOHN H. WIGMORE, EVIDENCE § 774 (Chadbourn rev. 1970) [hereinafter 3 WIGMORE 1970]; 3 JACK B. WEINSTEIN & MARGARET A. BERGER, WEINSTEIN'S EVIDENCE § 611[05] (1987) [hereinafter WEINSTEIN].
14. Foremost Dairies, Inc., 212 So. 2d at 40 ("An adverse party would by simple definition simply be a party to the litigation who had an adverse interest in its outcome.").
15. Smith v. Fortune Ins. Co., 404 So. 2d 821, 823 (Fla. 1st DCA 1981); see also Botte v. Pomeroy, 497 So. 2d 1275, 1277 (Fla. 4th DCA 1986), rev. denied, 508 So. 2d 15 (Fla. 1987) (stating that employee of an adverse party who could have been named in the suit as an adverse party could be examined as an adverse party).
16. Poitier v. State, 303 So. 2d 409, 410 -11 (Fla. 3d DCA 1974); Johnson v. State, 178 So. 2d 724, 727 (Fla. 2d DCA 1965).
17. 3A JOHN H. WIGMORE, EVIDENCE § 898 (1970 Chadbourn rev.) [hereinafter 3A WIGMORE 1970]; WEINSTEIN, supra note 13, § 607[01].
18. Nelson v. State, 128 So. 1, 1 (Fla. 1930).
19. Section 90.09 of the Florida Statutes (1975) provided: A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness proves adverse, contradict him by other evidence, or prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement. FLA. STAT. § 90.09 (1975) (repealed 1976). This statute was apparently based on a similar English statute enacted in the mid-1800s. 3A WIGMORE 1970, supra note 17, § 905.
20. Hernandez v. State, 22 So. 2d 781 (Fla. 1945); Foremost Dairies, Inc. v. Cutler, 212 So. 2d 37, 40 (Fla. 4th DCA 1968).
21. Okey v. Monarch Ins. Co. of Ohio, 392 So. 2d 57, 58 (Fla. 5th DCA 1981); Foremost Dairies Inc. v. Cutler, 212 So. 2d 37, 40 (Fla. 4th DCA 1968).
22. FLA. STAT. § 90.09 (1975).
23. Id.
24. FLA. R. CIV. P. 1.450(a).
25. Id.
26. Id.
27. In re Florida Rules of Civil Procedure 1967 Revision, 187 So. 2d 598, 625 (Fla. 1966). See text of Rule 1.450(a) of the Florida Rules of Civil Procedure , supra note 9.
28. Erp v. Carroll, 438 So. 2d 31, 36 (Fla. 5th DCA 1983).
29. Id. at 35.
30. FED. R. EVID. 607.
31. 1978, Fla. Laws ch. 78-361, § 14, 988-99 (codified as amended at FLA. STAT. §90.608(2) (1995)). A technical amendment to section 90.608(2) provided that "a party calling a witness" could impeach a witness under certain circumstances. Id. The substitution of the word "calling" for the word "producing" was made to provide consistency between subsections (1) and (2). Id. In addition, subsection (2) was amended to provide that, if an adverse witness could be impeached pursuant to the subsection, leading questions could be used during that impeachment. Id.
32. Section 90.608(2) of the Florida Statutes (1977) provided: A party producing a witness shall not be allowed to impeach his character as provided in section 90.609 or section 90.610, but, if the witness proves adverse, such party may contradict the witness by other evidence or may prove that the witness has made an inconsistent statement at another time, without regard to whether the party was surprised by the testimony of the witness. FLA. STAT. § 90.608(2) (1977) (amended 1990).
33. Id.
34. Shere v. State, 579 So. 2d 86, 91(Fla. 1991); Adams v. State, 34 Fla. 185, 15 So. 905, 908 (1894); Pitts v. State, 333 So. 2d 109, 111 (Fla. 1st DCA 1976).
35. Jackson v. State, 451 So. 2d 458, 462 (Fla. 1984), appeal after remand, 522 So. 2d 802 (Fla.), cert. denied, 488 U.S. 871 (1988); Mazzara v. State, 437 So. 2d 716 (Fla. 1st DCA 1983), rev. denied, 444 So. 2d 417 (Fla. 1984); Smith v. State, 547 So. 2d 281, 282 (Fla. 5th DCA 1989).
36. Erp v. Carroll, 438 So. 2d 31, 37 (Fla. 5th DCA 1983).
37. Shere, 579 So. 2d at 94; Austin v. State, 461 So. 2d 1380, 1383 (Fla. 1st DCA 1984).
38. Parnell v. State, 500 So. 2d 558, 56 1 (Fla. 4th DCA 1986), rev. denied, 509 So. 2d 1119 (Fla. 1987).
39. FLA. CONST. art. V, § 2(a); see Benyard v. Wainwright, 322 So. 2d 473 (Fla. 1975) (explaining the difference between procedural and substantive matters).
40. FLA. STAT. § 90.612(3) (1976 supp.) (amended 1995).
41. *Id*.
42. *Id*.
43. CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 612.1 (1995).
44. Shultz v. Rice, 809 F.2d 643, 655 (10th Cir. 1986) (finding the physician-witness's billing procedures and the date he sent his records to another doctor to be preliminary matters).
45. Rotolo v. United States, 404 F.2d 316, 317 (5th Cir. 1968); Begley v. State, 483 So.
2d 70, 72 (Fla. 4th DCA 1986) (leading questions appropriate where witness is too young and frightened to understand questions).
46. Roberson v. United States, 249 F.2d 737, 742 (5th Cir. 1957), cert. denied, 356 U.S. 919 (1958).
47. See EHRHARDT, supra note 43, § 612.1; see generally 3 WIGMORE 1970, supra note 13, § 776; WEINSTEIN, supra note 13, § 612; MCCORMICK ON EVIDENCE § 6 (John W. Strong ed., 4th ed. 1992).
48. 1978, Fla. Laws ch. 78-361, § 14, 998-99 (codified as amended at FLA. STAT. §90.608(2) (1995)).
49. 1990, Fla. Laws ch. 90-174, § 1, 743 (codified as amended at FLA. STAT. § 90.608(1)(1995)).
50. Id.
51. EHRHARDT, supra note 43, § 608.2.
52. 1990, Fla. Laws ch. 90-174, § 1, 742-43 (codified as amended at FLA. STAT. § 90.608 (1995)).
53. Minutes from The Florida Bar Code and Rules of Evidence Committee Meeting 1 (June 24, 1994) (on file with author); letter from Keith H. Park, member of the Florida Bar Code and Rules of Evidence Committee and committee liaison to the Civil Procedure Rules Committee, to Charles W. Ehrhardt, reporter and drafter of the Florida Evidence Code(June 6, 1995) (on file with author) [hereinafter Park Letter]. The suggestion to adopt Federal Rule 611(c) in Florida was first made in Erp v. Carroll, 438 So. 2d 31, 36 (Fla. 5th DCA 1983).
54. See Park Letter, supra note 53.
55. Minutes from the Florida Bar Code and Rules of Evidence Committee Meeting 2 (Jan. 13, 1995) (on file with author); John A. Frusciante, 1995 Report of the Code and Rules of Evidence Committee, FLA. B.J., June 1995, at 57, 60.
56. 1995, Fla. Laws, ch. 95-179, § 1, 1647 (codified as amended at § 90.612(3) (1995)).
57. Minutes from the Florida Bar Code and Rules of Evidence Committee Meeting 1 (Sept. 9, 1994) (on file with author).
58. Frusciante, supra note 55, at 57-60.
59. Dinter v. Brewer, 420 So. 2d 932, 934 (Fla. 3d DCA 1982); see Hall v. Oakley, 409 So. 2d 93, 97 (Fla. 1st DCA), rev. denied, 419 So. 2d 1200 (Fla. 1982); Rivers v. State, 423 So. 2d 444 (Fla. 4th DCA 1982), op. quashed on other grounds, 456 So. 2d 462 (Fla. 1984).
60. Federal Rule of Evidence 611(c) provides in relevant part: "Leading questions should not be used on direct examination of a witness except as may be necessary to develop the witness'[s] testimony." FED. R. EVID. 611(c).

"*Leading Questions,"* from Page 9.

61. United States v. De Fiore, 720 F.2d 757, 764 (2d Cir. 1983), cert. denied, 466 U.S. 906, and cert. denied, 467 U.S 1241 (1984).
62. Ellis v. Chicago, 667 F.2d 606, 613 (7th Cir. 1981) (leading case construing rule 611(c)); Rodriguez v. Banco Cent. Corp., 990 F.2d 7, 12 (1st Cir. 1993) (trial judge's decisions concerning use of leading questions and similar matters of trial management are given the widest possible latitude).
63. See, e.g., Ellis, 667 F.2d at 613; United States v. Hewes, 729 F.2d 1302, 1325 (11th Cir.) (use of leading questions is well within the court's discretion afforded by rule 611(c)), cert. denied, 469 U.S. 1110 (1985); Caldwell v. United States, 469 U.S. 1110 (1985) (same); United States v. Auten, 570 F.2d 1284, 1286 (5th Cir.) (same), cert. denied, 439 U.S. 899 (1978); United States v. Brown, 603 F.2d 1022, 1025 (1st Cir. 1979) (same); United States v. Shoupe, 548 F.2d 636, 641 (6th Cir. 1977) (same); St. Clair v. United States, 154 U.S. 134, 150 (1894) (holding that, in deciding whether leading questions may be used on direct examination, "much must be left to the sound discretion of the trial judge, who sees the witness, and can therefore determine, in the interest of truth and justice, whether the circumstances justify leading questions to be propounded to a witness by the party producing him").
64. St. Clair, 154 U.S. at 150.
65. See, e.g., Brown, 603 F.2d at 1026 (finding no abuse of discretion in the trial court's instruction to prosecutor to use leading questions on direct examination after the witness's alcohol- and drug-induced memory lapses demonstrated his failure to understand his own prior oral and written statements, as well as the questions asked). For the standard of review in rule 611(c) decisions, see Rodriguez, 990 F.2d at 13; see also WEINSTEIN, supra note 13, § 611[05]; Haney v. Mizell Memorial Hosp., 744 F.2d 1467, 1478 (11th Cir. 1984) (requiring a clear showing of prejudice to the complaining party); Ellis, 667 F.2d at 613; Miller v. Fairchild Indus., Inc., 885 F.2d 498, 514 (9th Cir. 1989) (holding that the reversal of a decision on 611(c) will result only if the court's action amounts to the denial of a fair trial), cert. denied, 494 U.S. 1056 (1990); Shoupe, 548 F.2d at 641 (finding that abuse of discretion under rule 611(c) will not be found absent a showing of prejudice or clear injustice to defendant). But cf. De Fiore, 720 F.2d at 764 (stating that the words "leading questions should not be used" are words of suggestion, not command); Miller, 885 F.2d at 514 (refusing to reverse the lower court's decision based on a violation of 611(c) where the testimony that was wrongfully elicited did not substantially expand or alter earlier testimony); Brown, 603 F.2d at 1026 ("Reversals on the basis of non -compliance with rule 611(c) will be exceedingly rare."); FED. R. EVID. 611(c) advisory committee's note ("An almost total unwillingness to reverse for infractions has been manifested by appellate courts.").
66. FED. R. EVID. 611(c).
67. Miller, 885 F.2d at 514 (citing 3 DAVID W. LOUISELL & CHRISTOPHER B. MUELLER, FEDERAL EVIDENCE § 339, at 462-63 (1979)); see, e.g., United States v. Littlewind, 551 F.2d 244, 245 (8th Cir. 1977) (involving two young girls, alleged rape victims, who each responded hesitantly to questions; one of the girls was understandably reticent).
68. 762 F.2d 642, 651 (8th Cir. 1985).
69. Id.
70. Id.
71. United States v. Grey Bear, 883 F.2d 1382, 1393 (8th Cir. 1989) (leading questions necessary to develop, in murder trial, testimony of female witness who was unusually soft spoken and frightened), cert. denied, 493 U.S. 1047 (1990); FED. R. EVID. 611(c) advisory committee's note.
72. FED. R. EVID. 611(c) advisory committee's note.
73. Stine v. Marathon Oil Co., 976 F.2d 254, 266 (5th Cir. 1992) (leading questions allowed to speed examination of witnesses); Shultz v. Rice, 809 F.2d 643, 655 (10th Cir. 1986)(leading questions allowed to develop testimony and expedite entry into evidence of time consuming foundational information); FED. R. EVID. 611(c) advisory committee's note.
74. FED. R. EVID. 611(c).
75. Id. advisory committee's note.
76. Oberlin v. Marline Am. Corp., 596 F.2d 1322, 1328 (7th Cir. 1979); Shultz v. Rice, 809 F.2d at 643, 654 (10th Cir. 1986)holding that mere calling of witness to stand does not "automatically open the door" to use of leading questions on cross-examination when witness is friendly with counsel, and leading questions should not have been allowed as a matter of right); see also Ardoin v. J. Ray McDermott & Co., 684 F.2d 335, 336 (5th Cir. 1982) (holding that district court has power to require party cross-examining friendly witness to use nonleading questions; rule 611(c) not intended to be blanket endorsement of leading questions on cross-examination); Alpha Display Paging, Inc. v. Motorola Communications & Elecs., Inc., 867 F.2d 1168, 1171 (8th Cir. 1989) (explicitly acknowledging that roles of parties are reversed when witness identified with an adverse party is called, hence making leading questions inappropriate on cross-examination).
77. Morvant v. Construction Aggregates Corp., 570 F.2d 626, 635 n.12 (6th Cir.)(explaining court's finding of no abuse of discretion in permitting use of leading questions in cross-examination of defense's own employee), cert. dismissed, 439 U.S. 801 (1978).
78. Rule 611(c) of the Federal Rules of Evidence provides in relevant part: "When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. FED. R. EVID. 611(c); see also Rodriguez v. Banco Cent. Corp., 990 F.2d 7, 13 (1st Cir. 1993) (dicta).
79. Rodriguez, v. Banco Cent. Corp., 990 F.2d 7,13 (1st Cir. 1993); Michael H. Graham, Examination of a Party's Own Witness Under the Federal Rules of Evidence: A Promise Unfulfilled, 54 TEX. L. REV. 917, 962 (1976). Rule 611(c) does not give a party the "unfettered right" to call an adverse party and conduct a broad, lengthy examination. The trial court retains the power to limit the mode and order of questioning to make the presentation of evidence more effective and to avoid the needless consumption of time. See Elgabri v. Luekas, 964 F.2d 1255, 1260 (1st Cir. 1992); Rodriguez, 990 F.2d at 13.
80. MICHAEL H. GRAHAM, HANDBOOK ON FEDERAL EVIDENCE § 611.8 (3rd ed. 1991); Suarez Matos v. Ashford Presbyterian Community Hosp., Inc., 4 F.3d 47, 50 (1st Cir. 1993)(distinguishing two categories of witnesses under application of rule 611(c): "hostile in fact"and "hostile in law"); United States v. Bryant, 461 F.2d 912, 916 (6th Cir. 1972).
81. Suarez Matos, 4 F.3d at 50 (holding that trial court erred in automatically allowing expert to be treated as hostile, but refusing to find plain error affecting substantial rights where defendants did not object to cross-examination).
82. Id.; see United States v. Brown, 603 F.2d 1022, 1026 (1st Cir. 1979) (explaining that court declared witness hostile, not because witness was contemptuous or surly, but because he was evasive to government).
83. These witnesses are sometimes called "hostile in law." See Graham, supra note 79, at 964.
84. Rodriguez v. Banco Cent. Corp., 990 F.2d 7, 13 (1st Cir. 1993).
85. FED. R. EVID. 611(c).
86. Haney v. Mizell Memorial Hosp., 744 F.2d 1467, 1477-78 (11th Cir. 1984); Perkins v. Volkswagen of Am., Inc., 596 F.2d 681, 682 (5th Cir. 1979) (stating that employee of a party is clearly identified with the party); Stahl v. Sun Microsystems, Inc., 775 F. Supp. 1397, 1398 (D. Colo. 1991) (allowing plaintiff to ask leading questions of defendant's former administrative secretary); Ellis v. Chicago, 667 F.2d 606, 613 (7th Cir. 1981) (allowing plaintiff to lead police officers who worked closely with defendant police officer); United States v. Hicks, 748 F.2d 854, 859 (4th Cir. 1984) (allowing plaintiff to lead defendant's girlfriend); Brown, 603 F.2d at 1026 (allowing prosecutor to lead witness who was close friend of defendant and a participant in crime).
87. See supra notes 67-73 and accompanying text.
88. FLA. STAT. § 90.612(3) (1995).
89. See supra note 86 and accompanying text.
90. Civil Procedure Rules Committee, The Florida Bar, meeting in Orland o, Fla. (Jan. 12, 1996) (minutes on file with the author).

The Southern Association of Workers' Compensation Administrators Announces their 64th Annual Convention

July 9 – 13, 2012; The Homestead, Hot Springs, VA

Monday July 9, 2012
Executive Committee Meeting 2:00 pm - 5:00 pm ,
Executive Committee Dinner 7:00 pm- 9:00 pm

Tuesday July 10, 2012
Commissioner's Lunch 12:00 pm - 1:45 pm
Regulators Roundtable 2:00 pm - 5:00 pm
New Member Reception 6:00 pm - 6:45 pm
President's Reception 6:30 pm - 8:00 pm

Wednesday July 11, 2012
Welcome & Opening Ceremony 8:30 am - 8:45 am

Honorable Dwight T. Lovan, Commissioner of the Kentucky DWC & SAWCA President
General Session 1: 8:45 am -10:00 am

Keynote Speaker:
Committee Announcements 10:00 am - 10:15 am

General Session 2: 10:30 am - 12:15 pm

Guest Speaker: Honorable Karen Michael / Richmond, VA (invited)
Join Karen Michael, for an interactive presentation on the impact of Social Networking in the Workers' Compensation Environment… where "legal" & "practical" meet.

Guest Speaker: Larry White (Louisiana WCC)
"Apps For Dummies"
Bring your smart phones, iPads, and other tech gadgets and learn how to do more than play "Angry Birds"…Discover Useful Apps…Paper Handouts Available!

Convention Lunch For All Attendees 12:15 pm - 1:30 pm

Committee Meetings 1:30 pm - 3:30 pm
Self-Insurance / Insurance
Adjudication

Afternoon Break 2:15 pm

Thursday July 12, 2012
General Session 3: 8:30 am - 8:45 am
Welcome & General Announcements
Special Surprise Guest Speaker 8:45 am - 10:00 am
Mid Morning Break 10:15 am - 10:30 am

General Session 4: 10:30 am - Noon Regency East
Special Guest Panel: "Doc's Drugs & Dollars"
Bring Your Questions & Your Answers…Your Stories & Your Worries…and share them with our distinguished panelists including…Dr. Kathryn Mueller (Colorado), Greg Gilbert (Concentra), Kevin Tribout (PMSI), plus NCCI and State Regulators.
Lunch On Your Own

Committee Meetings 1:30 - 3:30 pm
Administration & Procedures & Claims Administration - Blue Ridge
Medical Rehab - Piedmont Room

Afternoon Break 2:15 pm Regency West

Friday July 13, 2012
Friday "Farewell" Breakfast 7:30 am - 9:00 am
General Session 5: 9:00 am–11:00 am Regency East
Committee Reports & Announcements
ISO's "iPad" Drawing Exhibitors & SAWCA Give-A-Ways SAWCA All Committee Conference Preview…November in New Orleans!

Do Not Miss the SAWCA Regulator's Roundtable at the National Workers' Compensation Institute Education Conference

August 18-23, 2012 Marriott World Center, Orlando

Technology Developing

The Pew Institute recently released "the State of the News Media 2012." Their report notes that "more than four in ten American adults now own a smartphone." Another source, PRWeb, predicts that the smartphone market "is projected to reach 1.6 billion units by the year 2017. Growth will be primarily driven by declining handset prices, rising 3G penetrations, falling data plan rates, and growing number of convenience-enhancing apps." Some pundits argue not only will the smartphone be the predominant mobile phone option by the end of the decade, but that they may be the only option offered.

Pew's report concludes that the movement to mobile devices is enhancing "people's news consumption, strengthening the lure of traditional news brands and providing a boost to long-form journalism." They note that the ease of access to news through these devices is a factor in their decisions to consume news.

The report analyzes the shifts in consumer preferences, and the impact this is having on the suppliers of news and data. They note that non-traditional news providers are gathering customers through the availability of multiple services, including social media. They note that Facebook's growth in advertisement placement leads to the prediction that by "2015, Facebook is expected to account for one out of every five digital display ads sold."

The implication suggested by the researchers is simply this, news outlets that focus on reporting and presentation may become targets for takeover by the technology companies who are competing for your attention and your time. They note that a trend may already be developing, noting that "with the launch of its Social Reader, Facebook has created partnerships with The Washington Post, The Wall Street Journal, The Guardian and others." They question whether the transition from buying content may lead to more simply buying the producer of the content, asking "Does there come a point, to ensure the much smaller media company's survival, for instance, where Facebook considers buying a legacy media partner such as The Washington Post?"

Pew concludes that the implications for printed newspapers seem to indicate further decline. The report draws multiple conclusions about the potential effects on society that may flow should the print media "operations continue to shrivel or disappear."

They note that the evidence therefore suggests, two trends. First that "news is becoming a more important and pervasive part of people's lives," attributable in some degree to the ever increasing mobile access, and second that the news industry has recently continued to lose "more ground to rivals in the technology industry"

Upcoming Conferences:

These programs are not sponsored or endorsed by the NAWCJ, but are noted here for information.

The State Bar of California Workers' Compensation Section, 2012 Spring Conference: March 17 Concord Hilton; April 21 Marina del Rey Marriott; May 5 The Cliffs Resort at Pismo Beach, $225.00 to $300.00, for 6 hours MCLE.
http://workerscomp.calbar.ca.gov/Education/SpringEducationProgram.aspx

SEAK 32nd Annual National Workers' Compensation and Occupational Medicine Conference, July 17-19, 2012, Hyannis, Cape Cod, Massachusetts, $975.00 for 20 hours.
http://www.seak.com/shopping/Seminars/32nd_Annual_National_Workers_apos__Compensation_and_Occupational_Medicine_Conference_comma__July_17_dash_19_comma__2012/index.html

Pennsylvania's 11th Annual Workers' Compensation Conference, Hershey Lodge & Convention Center, Hershey, PA, June 11-12, 2012, $200.00 for 16 hours.
http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552351&mode=2

The Lex and Verum is published monthly by the National Association of Workers' Compensation Judiciary, P.O. Box 200, Tallahassee, FL 32302; 850.425.8156 Fax 850.521-0222

Oklahoma House and Senate Pass Workers' Compensation 'Opt-Out' Bills

Legislation that would make Oklahoma only the second state in the nation to allow employers to opt out of the workers' compensation system has cleared both houses of the state Legislature, but the final language hasn't been determined as lawmakers work out differences in two versions.

Both the House of Representatives and the Senate approved the "Oklahoma Employee Injury Benefit Act" but in separate measures.

Senate Bill 1378 by Senate President Pro Tempore Brian Bingman, R-Sapulpa, passed Wednesday by a 27 to 17 margin in the Senate and was moved to the House.

House Bill 2155 by Speaker of the House Kris Steele, R-Shawnee, passed on Tuesday with bipartisan support on a 70 to 22 vote in the House and was moved to the Senate. Both bills began as identical measures but supporters of the bills say possible changes to them are being discussed by lawmakers. The bills were passed to meet a legislative deadline for considering measures. Ultimately, one revised bill is expected to be drafted and sent to each chamber for a final vote.

The measures would allow qualifying employers to offer benefit plans regulated by the federal government under the Employee Retirement Income Security Act (ERISA) to provide medical and indemnity benefits to injured workers, as an alternative to workers' compensation. The bills state that the Legislature "finds that certain employers, by virtue of the number of employees employed by the employers or the nature and type of the work undertaken by their employees, are experiencing significant costs associated with claims for occupational injuries subject to the Workers' Compensation Code."

"The Legislature has determined that the inability on the part of those employers to effectively and efficiently manage these claims has contributed to the increased costs associated with such claims and has resulted in reduced efficiency in the treatment of injured employees," the bills say. Both versions of the legislation would allow an employer to opt out of the state's otherwise mandatory workers' compensation system if certain conditions are met. In order to qualify, an employer must:

-- Have employed at least 50 workers during the preceding calendar year.

-- Have a workers' compensation experience modifier, as reported by the National Council of Compensation Insurance (NCCI), "greater than one (1.00) for the preceding Oklahoma workers' policy year."

-- Have total annual incurred claims, "as reflected in an NCCI experience modifier worksheet or their workers' compensation carrier loss runs," greater than $50,000 in at least one of the three preceding Oklahoma workers' compensation insurance policy years.

Qualifying employers, who adopt alternative plans, would have the same exclusive remedy protection as employers under the workers' compensation law. The Oklahoma Injury Benefit Coalition (OIBC) and the Oklahoma State Chamber, both employer groups, support the legislation. Insurers, however, are opposed.

Joe Woods, vice president and regional manager of Property Casualty Insurers Association of America (PCI) in Austin, said benefits under the opt-out plan for injured workers would be more limited than those provided through workers' compensation. What's more, the legislation does not include an effective dispute resolution system, Woods said. "Everything would be done through arbitration," and the arbitrator could be a company employee, he said. Woods said PCI also worries that allowing some businesses to set up alternative plans would damage future efforts to reform the system.

Under HB 2155, Oklahoma's larger employers could leave the system and lose their motivation for changing it -- while the smaller employers left in the system might "lack the political juice" needed to force changes, Woods said.

Continued, page 15

"Oklahoma," from p. 13

Bill Minick, president of PartnerSource, a Dallas-based provider of services to Texas nonsubscribers, who has worked with OBIC on the legislation, said passage of the opt-out measure "will be a game-changer for workers' compensation … not just in Oklahoma but nationally," by encouraging other states to consider similar plans. Asked by WorkCompCentral why the OIBC proposal has been limited to larger employers with high loss histories, Minick said the provisions were to "deal with insurance carrier concerns" over "protecting their turf.

The opt-out plan also has come in for criticism by OklahomaWorks.org, which describes itself as "a coalition of stakeholders and interested parties committed to protecting and preserving the newly reformed Oklahoma state workers' compensation laws." On its website, OklahomaWorks.org argues that the opt-out plan would weaken the workers' compensation system, pass costs on to taxpayers, and isn't necessary given last year's workers' compensation reforms under Senate Bill 878. "Oklahoma businesses will see substantial reductions in workers' compensation premiums over the next few years" due to the changes, the website reported. WorkCompCentral did not receive a response Wednesday from the organization regarding its membership.

Tulsa attorney Steve Edwards, who has represented OIBC in its legislative efforts, told WorkCompCentral that the "final language" for the opt-out bills hasn't been completed. Edwards didn't specify what the possible changes might be, but Minick said "a lot of people" have been asking that the criteria for participating in the program be expanded to more employers.

Other provisions of HB 2155 include requiring that qualifying employers obtain a minimum of $300,000 coverage, in the form of a bond or insurance policy (from an insurer with an A.M. Best rating of A- or better) to be filed with the Oklahoma commissioner of insurance. The $300,000 insurance is intended to cover an employee's medical expenses for least 156 weeks, 80% of an employee's pre-injury pay for at least 156 weeks and $100,000 for accidental death and dismemberment. Qualifying employers would notify the insurance commissioner of their decision to opt out of workers' compensation, and pay a $2,500 annual fee to the Insurance Department. The commissioner would monitor and collect information on the employers' compliance.

Meanwhile, employers in Texas -- so far the only state where subscription to the workers' compensation system is optional -- are keeping a close eye on their neighbor to the north. Bernie Hauder, a Dallas attorney who defends nonsubscribing employers in workplace injury suits, said some of his clients are worried that pressure to repeal Texas' voluntary system will build if Oklahoma's experiment fails.

Hauder, a shareholder in the Adkerson, Hauder & Bezney law firm, said Wednesday he thinks those worries are overblown because Oklahoma's proposed ERISA-based alternative system is fundamentally different than Texas'. For one thing, Texas employers who choose not to participate in the workers' compensation system are not required to provide an ERISA benefits plan. For another, Texas employers who don't subscribe but do offer an ERISA benefits plan are not protected against negligence suits. Oklahoma's plan, in contrast, would require employers to offer an ERISA plan if they choose not to participate in the workers' compensation system. Hauder said he's studied the Oklahoma legislation and at first blush it appears to offer more protection, at least long-term, to self-insured employers than insured employers. He said self-insured employers that opt out of workers' comp will likely include provisions in their ERISA benefit plans that give the claims administrator "discretionary control" over claims management.

Case law in the U.S. 10th Circuit Court, which includes Oklahoma, has established that if discretionary control is given, federal judges can overturn decisions by ERISA plan administrators only if their actions are arbitrary and capricious. A federal judge may disagree that a claims administrator made the right decision, but cannot overturn a decision that is reasonable. If a provision for discretionary control is not provided in a benefit plan, then federal judges will review the plan administrator's decision "de novo," which means the judge can overturn the decision even if it is reasonable if the judge believes a better course of action is warranted.

Hauder said insurance companies will likely adopt ERISA benefit plans that give the plan administrator discretionary control, but there's a chance such plans could later be overturned by state legislation or the Oklahoma insurance commissioner. ERISA generally prevents state legislatures or regulators from tinkering with the makeup of employee benefit plans, Hauder said. However, the federal courts have generally held that state regulators can exercise control over insurance regulation, which creates a chance that alternative comp plans sold by insurance companies won't include discretionary control.

Hauder said nothing in current law or policy would stop insurers from putting discretionary control in their alternative comp plans and most likely will include a provision to do so. However, he said it is possible that at some point the future

Continued, page 16

"Oklahoma," from p. 14

of the Oklahoma Legislature could pass a low or the state insurance commissioner could adopt a regulation to prohibit discretionary control in alternative comp plans. The state would not, however, be allowed under the ERISA law itself to tinker with the structure of alternative comp plans set up by self-insured employers because no insurance regulation is involved.

Hauder said that concern is relatively minor compared to the benefits that an alternative workers' compensation coverage plan would provide to Oklahoma employers. However, he has one more concern with the bill as now drafted. The Oklahoma legislation would allow only insurers with an experience modification greater than 100% to opt out of workers' compensation, Hauder noted.

Hauder said he imagines that provision was added to the bill because lawmakers intend to allow nonsubscription as an alternative for employers who have been priced out of the workers' compensation system because of their poor safety records. But Hauder said allowing only employers with poor experience modifications to nonsubscribe creates an odd incentive for employers who don't qualify because of their good safety records. "If you like this (alternative ERISA plan) and you're sitting there with a .95 experience modifier, what are you going to do? Do you go out and hurt someone?" Hauder said he doesn't believe any employer would actually choose to cause or allow a workplace accident in an effort to nonsubscribe, but he still is concerned that the bill creates a misguided incentive for lax safety.

Survey Shows Drug Costs Declined in 2010

Some of the nation's largest payers in the workers' compensation system are indicating drug costs declined slightly in 2010, despite growing concerns over the use of opioids by injured workers, according to a survey posted by pharmacy benefit management consortium CompPharma.

Joe Paduda, president of CompPharma, said he conducted a telephone survey of 20 large payers and state regulatory agencies in November and December of 2011 and found drug spending had declined for the first time in the eight years the survey has been conducted. Paduda reported that two-thirds of those surveyed reported declines in the amount of money spent on drugs in workers' compensation claims. The survey showed a negative trend rate of 0.9% in drug spending.

Asked to rank their concerns over the use of opioid painkillers to treat injured workers on a scale of 1 to 5, respondents ranked their concern at an average of 4.8. "This is the highest score for any survey question in the history of the survey," Paduda said – a clear indicator of the level of the industry's anxiety over a problem it has yet to fully understand, much less address," Paduda said in the survey.

Respondents ranked their concerns over addiction or dependency among claimants taking opioids at 4.4, or "very significant." The survey included 40 questions. The final question asked respondents to list their biggest single problem related to pharmacy benefit management in workers' compensation. Paduda said a quarter of respondents specifically mentioned opioids or narcotics.

The companies surveyed included: the Accident Fund of Michigan, Broadspire Services, Chartis, Cincinnati Insurance Co., CNA, Employers Insurance, Employers Mutual Co., The Hartford, the Maryland-based Self-Insured Workers' Insurance Fund, the JI Companies, Liberty Mutual, Louisiana Workers' Compensation Corp., the Montana State Fund, North Dakota Workforce Safety & Insurance, the Ohio Bureau of Workers' Compensation, One Beacon Insurance Group, PMA Insurance Group, United Heartland Insurance, the Washington State Department of Labor and Industry, and the Connecticut-based Workers' Compensation Trust.

The Foregoing was reprinted with the permission of WorkCompCentral.com.

The NAWCJ acknowledges and thanks WorkCompCentral for their support of this newsletter and the ideal of promoting professionalism and collegiality among the nation's workers' compensation adjudicators.

In the Arkansas Court of Appeals, a Dispute over Admission of Facebook Photos

The Court of Appeals of Arkansas published Zackery Clement v. Johnson;s Warehouse Showroom Inc., 2012 Ark.App. 17, in January 2012. There is a detailed recitation of the medical evidence, essentially regarding a hernia suffered in 2009. This injury led the injured worker to seek additional medical care in 2010. Notably, in Arkansas, the appellate court views "the evidence and all reasonable inferences deducible there from in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence." Citation omitted.

The employer/carrier in this instance sought to introduce pictures of the injured worker, which had previously "appeared on Facebook and MySpace." The injured worker objected to the admission of these photographs, arguing that the pictures were "a disgrace to the dignity of the workers' compensation proceedings and the legal system and have nothing to do with his medical treatment." Essentially objecting to the relevance of the evidence, arguing these photos had no relevance, or arguing that despite relevance, the photographs were more prejudicial than probative.

The states are widely varied in the process applied to workers' compensation litigation. The Arkansas court noted that state's Commission is afforded "broad discretion with reference to admission of evidence, and its decision will not be reversed absent a showing of abuse of discretion." Citation omitted. The Court further noted that Arkansas law specifically provides that their commission "shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure." This procedural note is stressed because it is possible that the outcome might different in a jurisdiction with more strictly applied evidentiary codes or procedural parameters.

The Court concluded that the Commission did not err in admitting these photographs, which showed the injured worker "drinking and partying." The Court noted the injured worker's contention that he was in "excruciating pain," and that the "pictures could have a bearing on Clement's credibility, albeit a negative effect that Clement might not wish to be demonstrated to the ALJ or the Commission."

This is not the first time that Facebook, YouTube or other social media has been in the news. In May 2011, in the Court of Common Pleas of Pennsylvania, an automobile accident case involved social media implications. Zimmerman v. Weis Markets, Inc. 2011WL 2065410 (Pa.Com.Pl). The defendant there sought to have the plaintiff produce the "non-public portions" of his Facebook and MySpace accounts. They sought a court order to compel discovery and preservation of the information. The essential reading in the court's analysis centers on the plaintiffs argument that "his privacy interests outweigh the need to obtain the discovery material." The Court followed an earlier Pennsylvania case, McMillen v. Hummingbird Speedway Inc., 2010 Pa. Dist. & Cnty. Dec. LEXIS 270 (Jefferson Co. Com.Pl. 2010), which they noted was the only published Pennsylvania decision on the issue, and granted the motion to compel. In doing so, they noted a conflicting decision in Picolo v. Paterson, in which they noted that a judge addressed a motion to compel and "denied the motion, without amplification."

In compelling the Zimmerman court production, the court noted that "no privilege exists in Pennsylvania for information posted in the non-public sections of social websites, liberal discovery is generally allowable, and the pursuit of truth as to alleged claims is a paramount ideal." An interesting aside by the Court discusses Mr. Zimmerman's argument that the Court should have conducted an in-camera inspection of the material. The Court concluded that this "argument is flatly rejected as an unfair burden to place on the Court, which would not only require the time and resources necessary to complete a thorough search of these sites, but also would require the Court to guess as to what is germane to defenses which may be raised at trial."

The Court's analysis in Zimmerman is thorough. There are discussions of two Facebook or social media disputes in other jurisdictions: Romano v. Steelcase, Inc., 907 N.Y.S.2d 650 (Suffolk Co. 2010), Ledbetter v. Wal-Mart Stores, Inc., 2009 WL 1067018 (D.Colo. 2009). The analyses cited from these decisions may be helpful to the adjudicator struggling with whether to compel such production in a particular case, whether that decision is in a jurisdiction with a relaxed or rigid evidentiary code and procedural process. It appears likely that disputes over social media will continue to be part of at least the discovery process in workers' compensation disputes.

THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY
APPLICATION FOR MEMBERSHIP

THE NAWCJ MEMBERSHIP YEAR IS A FOR 12 MONTHS FROM YOUR APPLICATION MONTH. MEMBERSHIP DUES ARE $75 PER YEAR OR $195 FOR 3 YEARS. IF 5 OR MORE APPLICANTS FROM THE SAME ORGANIZATION, AGENCY OR TRIBUNAL JOIN AT THE SAME TIME, ANNUAL DUES ARE REDUCED TO $60 PER YEAR PER APPLICANT.

NAME: _____ **DATE:** ____/____/____

OFFICIAL TITLE: _____

Organization: _____

PROFESSIONAL ADDRESS: _____

_____

PROFESSIONAL E-MAIL: _____

ALTERNATE E-MAIL: _____

PROFESSIONAL TELEPHONE: _____Fax:_____

YEAR FIRST APPOINTED OR ELECTED? _____

CURRENT TERM EXPIRES: _____

HOW DID YOU LEARN ABOUT NAWCJ? _____

_____

DESCRIPTION OF JOB DUTIES / QUALIFICATIONS FOR MEMBERSHIP:

_____

_____

IN WHAT WAY WOULD YOU BE MOST INTERESTED IN SERVING THE NAWCJ:

_____

_____

_____

Mail your application and check to:

Kathy Shelton
P.O. Box 200
Tallahassee, FL 32302
850.425.8156
Email: kathy@fwciweb.org

THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY
APPLICATION FOR ASSOCIATE MEMBERSHIP

THE NAWCJ ASSOCIATE MEMBERSHIP YEAR IS A FOR 12 MONTHS FROM YOUR APPLICATION MONTH. ASSOCIATE MEMBERSHIP DUES ARE $250 PER YEAR.

NAME: _____ **DATE:** ____/____/____

Firm or Business: _____

PROFESSIONAL ADDRESS: _____

_____

PROFESSIONAL E-MAIL: _____

ALTERNATE E-MAIL: _____

PROFESSIONAL TELEPHONE: _____Fax:_____

HOW DID YOU LEARN ABOUT NAWCJ? _____

Mail your application and check to:

Kathy Shelton
P.O. Box 200
Tallahassee, FL 32302
850.425.8156
Email: kathy@fwciweb.org

THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY

There are opportunities for sponsorship of the 2012 NAWCJ Judicial College August 21 through 24, 2011, in Orlando, Florida. If you are interested in sponsoring any of the following:

WELCOME LUNCHEON PRIME SPONSOR

JUDICIAL RECEPTION PRIME SPONSOR

JUDICIAL ATTENDANCE SCHOLARSHIP

Please Contact

Cathy Bauman
P.O. Box 200
Tallahassee, FL 32302
850.425.8186
Email: cathy@fwciweb.org

NAWCJ SCHOLARSHIP 2012 OFFER

The National Association of Workers' Compensation Judiciary is offering limited scholarship opportunities to adjudicators attending the 2012 Judicial College in Orlando, Florida, August 10-23, 2012!

Scholarship may be awarded to any currently presiding workers' compensation adjudicator, who is also a member of NAWCJ. Scholarships may include hotel accommodations, and/or waiver of the conference registration fee and/or one-half of travel expenses to and from the college. No scholarship funds are available for meals, although there are two lunches and two receptions with heavy appetizers included in the registration. The evaluation of scholarship applications will include whether the agency for whom the applicant works will or will not provide funding. Preference will be given to adjudicators who have not previously attended the college and who are interested in becoming more actively involved in NAWCJ and helping recruit members and future attendees at the college.

The scholarship program is made possible through a grant from the Florida Workers' Compensation Institute as well as annual dues from associate members of NAWCJ who are attorneys and other individuals or companies interested in supporting the education of members of the workers' compensation judiciary.

Each interested adjudicator must complete an application for the scholarship and submit by e-mail to NAWCJscholarship@gmail.com on or before May 15, 2012. The successful scholarship recipients will be informed of their selection on June 15, 2012, and will be asked to make their travel arrangements soon after selection to help minimize airfares.

College attendees will have an opportunity to meet members of the workers' compensation judiciary from around the country, as well as practitioners and industry leaders in the field. The judicial college is an excellent opportunity to receive continuing education credit in a variety of areas including evidence, medical issues, and other matters that routinely come before members of the workers' compensation judiciary.

I encourage you to apply for a scholarship to the 2012 judicial conference and look forward to meeting you when the college convenes in August.

Sincerely,

Ellen Lorenzen, President

Application for Scholarship, NAWCJ College, August 19-23, 2012

Name: _____

Address: _____

E-mail: _____

Phone #: _____Fax #: _____

Agency Name and Address: _____

_____

NAWCJ member since _____ (year)

Have you ever attended a NAWCJ Judicial College or FWCI Annual Meeting and Conference? ___YES ___NO

If so, what year(s)? _____ Did you receive a scholarship? _____

Have you participated on a NAWCJ panel or committee in the past or would you be willing to do so in the future? ___YES ___NO

Explain how you would like to participate in the NAWCJ: _____

Will you receive any support from your employer to attend the college? (leave time, payment of expenses beyond registration waiver and partial reimbursement of travel expenses): ___YES ___NO If yes, explain support offered by employer:

_____

_____

_____

Please estimate your travel expenses for attending the college: _____

Current adjudicatory position, dates held and brief description of duties: _____

_____

_____

_____

Past experience in workers' compensation law (may attach resume): _____

_____

_____

_____

Please attach a brief statement specifically describing how you believe attending the 2012 NAWCJ Judicial College and FWCI Conference will benefit you in the performance of your job:

_____

_____

_____

Would you be willing to write a brief article for the NAWCJ newsletter about the 2012 NAWCJ Judicial College and FWCI Conference and its benefits? ___YES ___NO

NAWCJ Judiciary College 2012!

August 19 through 22, 2012, in Orlando, Florida

Sunday, August 19, 2012

2:30 PM – 5:00 PM E. Earle Zehmer Moot Court Competition, Preliminary Rounds

Celebrating 25 years in 2012, the E. Earle Zehmer Competition will include sixteen teams. The competition is co-sponsored by the NAWCJ and the preliminary rounds are judged by members of the NAWCJ. The final rounds on Monday are judged by a panel of the Florida First District Court of Appeal. The competition is outstanding, the participants are exceptional, and this opportunity to contribute to the student's development is both exciting and gratifying.

Monday, August 20, 2012

9:00 AM - 11:50 AM EFFECTIVE JUDICIAL WRITING (150 MINUTES, 3 CREDIT HOURS)

Honorable Sheral Kellar, Louisiana, introduction of speakers

Professor Timothy Terrel
Atlanta, GA
Emory University

The ability to write well, with clarity, is critical in the legal profession. Judicial writing is unique though. Adjudicator clarity is critical to the lawyers' and parties' clear understanding of both the trial outcome and the reasons for it. Effective judicial writing is a service to the parties, and facilitates an effective appellate review process. Professor Terrel is a nationally-recognized expert in judicial writing, and brings his wealth of knowledge back to the NAWCJ in 2012.

11:50 AM - 12:00 PM BREAK AND TRANSITION TO GRAND BALLROOM 4

12:00 PM - 12:30 PM WELCOME LUNCH (PROVIDED)

Honorable Ellen Lorenzen, NAWCJ President, welcoming remarks

12:30 PM - 1:45 PM MULTI-JURISDICTION COMPARATIVE LAW PANEL (75 MINUTES, 1.5 CREDIT HOURS)

Moderator,
Honorable Jennifer Hopens
Austin, TX
Texas Department of Insurance, Division of Worker's Compensation

This panel discussion will bring perspective on how our statutes are different, and how they are similar. Dealing with statutory interpretation is part of our daily routine. Despite the diversity of our particular statutes, we share a multitude of concordant issues and challenges, which this program illuminates.

12:30 PM - 1:45 PM **MULTI-JURISDICTION COMPARATIVE LAW PANEL (CONT.)**

Speakers,

Honorable Michael Alvey
Frankfort, KY
Kentucky Workers' Compensation Commission

Honorable Melba Dixon
Jackson, MS
Mississippi Workers' Compensation Commission

Honorable *Sylvia Medina Shore*
Miami, Florida
Florida Office of Judges of Compensation Claims

Honorable James Szablewicz
Richmond, Virginia
Virginia Workers' Compensation Commission

1:45 PM - 2:00 PM **BREAK AND TRANSITION TO GRAND BALLROOM 1.**

2:00 PM - 2:50 PM **DETERMINING CREDIBILITY OF MEDICAL OPINIONS** (50 MINUTES, 1 CREDIT HOUR)

Honorable James Szablewicz, Virginia, introduction of speakers

Moderator:

Nat Levine
Broward Orthopedic Specialists
Ft. Lauderdale, FL

Speaker:

James McCluskey, M.D., MPH, PhD.
University of South Florida
Tampa, FL

Adjudicator's decisions are often founded upon the expert opinions of physicians. Issues of compensability, the need for specific medical care, and entitlement to indemnity benefits usually hinges upon the conflicting opinions of various experts. How does an adjudicator determine the credibility of those opinions, particularly when they are presented by deposition or affidavit, and the expert is not present in trial to be observed and assessed through the course of rendering those opinions? Dr. McClusky will provide methods for analyzing the experts' medical records and the other expert opinions to make these critical credibility determinations.

Monday, August 20, 2012, Cont.

2:50 PM - 3:00 PM **BREAK**

3:00 PM - 4:50 PM **EVIDENCE FOR ADJUDICATORS** (100 MINUTES, 2 CREDIT HOUR)

Honorable John J. Lazzara, Florida, introduction of speaker

Professor Charles Ehrhardt
Florida State University
Tallahassee, FL

Workers' Compensation adjudicators across the country are bound by evidence codes to varying degrees, sometimes depending upon the type of hearing they are then presiding over. Professor Ehrhardt brings over forty years of experience teaching evidence. This program will provide insight into specific challenges of trial evidence, effective consideration of and ruling upon evidentiary objections, and interpretation of specific evidentiary issues common to evidence codes.

4:50 PM - 5:00 PM **BREAK**

5:00 PM - 5:30 PM **NAWCJ ANNUAL BUSINESS MEETING**

7:00 PM - 11:00 PM **RECEPTION AND ENTERTAINMENT**

Tuesday August 21, 2012

8:45 AM - 9:45 AM **LIVE SURGERY** (60 MINUTES, 1 CREDIT HOUR)

Moderator:

Randy Schwartzberg, M.D.
From Orlando Orthopaedic Center, Orlando, FL

Surgeon

Steven E. Weber, D.O.
From Orlando Orthopaedic Center, Orlando, FL

Don't miss the opportunity to observe a renowned and highly respected surgeon in both the medical and sports communities Dr. Randy Schwartzberg, perform this year's ***LIVE SURGERY***…an Arthroscopic Dr. Randy Schwartzberg is board certified in orthopaedic surgery, fellowship trained and board certified in sports medicine and specializes in knee and shoulder injuries. ACL Reconstruction! Dr. Steven Weber, a fellow orthopaedic surgeon at Orlando Orthopaedic Center will be moderating this event.

10:00 AM - 11:50 AM — **TO TELL THE TRUTH** (100 MINUTES, 2 CREDIT HOURS)

Honorable David Imahara, Georgia, introduction of speaker

Speaker:

Susan Constantine – As seen on CNN, MSNBC, ACB, CBS, and HLN.
Orlando, FL

Adjudicators are constantly called upon to make credibility determinations. Susan Constantine is an expert in reading people, with extensive training and experience in understanding the evaluation of truthfulness. Susan has consulted for major news outlets in conjunction with their reporting and evaluating testimony in high profile cases. This program will bring the old game show "To Tell The Truth" to the stage with three live panelists, each claiming to be the same person. The moderator will question the panelists in an attempt to glean the truth, and Susan will instruct the audience on the signs and indicators that she perceives as they respond. The audience will vote for whom they believe is telling the truth and then "the real" person will stand up!

11:50 AM - 12:00 PM — **BREAK**

12:00 PM -1:00 PM — **FLORIDA BAR WORKERS' COMPENSATION SECTION JUDICIAL LUNCHEON (GRAND BALLROOM 4)**

The Workers' Compensation Section of The Florida Bar hosts this annual luncheon. The event is focused on building bridges between the litigators and the adjudicators. Since 2009, the Section has graciously welcomed all NAWCJ attendees to this event, providing an exceptional opportunity for establishing collegiality and maintaining professionalism.

1:00 PM - 1:10 PM — **BREAK**

1:10 PM – 2:00 PM — **KEEPING THE CASE ON TRACK TO TRIAL** (50 MINUTES, 1 CREDIT HOUR)

Honorable Melodie Belcher, Georgia, introduction of speakers

Honorable Melissa Jones
Washington, D.C.
District of Columbia Department of Employment Services

Keeping a case on track can be a challenge, particularly with unrepresented litigants. Adjudicators can and should provide leadership throughout the litigation process, to assist the parties in navigating the process to reach the trial. Judge Jones will provide insight and tips on utilizing the pretrial process to move the case to trial and to assure the due process and fair hearing rights of the parties.

2:00 PM - 5:00 PM ROUNDTABLE BREAKOUTS

2:00 - 2:50 CHOICE OF "INTRO TO SOCIAL MEDIA" OR "APPELLATE REVIEW OVERVIEW"

INTRO TO SOCIAL MEDIA

Honorable David Torrey, Pennsylvania, introduction of speakers

Elizabeth Rissman
Orlando, FL

William Wieland, Esq.
Orlando, FL

Social media is pervasive in American society and its influence seems to expand every day. Facebook, Linkedin, Twitter, and others consume hours and days of peoples' lives. Judges need to understand what social media is and why people are engaged in it. Elizabeth Rissman will bring that introduction to the subject. The Judge's interest may then turn to how social media interaction will come before the bench, as evidence, and as admissions against interest. William Wieland will provide this "so what" of social media.

APPELLATE REVIEW OVERVIEW

Honorable Robert Cohen, Florida, introduction of speakers

Honorable Michael Alvey
Frankfort, KY

Honorable Nikki Clark
Tallahassee, FL

Honorable Melissa Jones
Washington, D.C.

Honorable Stephen Farrow,
Atlanta, GA

How does the appellate process works in a various jurisdictions? What suggestions do appellate judges have for drafting an effective order? How does the collegial groups/panels/commission process differ from the trial judge process? How do appellate judges divide appellate workload and produce decisions? These insights and more will be discussed by our distinguished panel and the attendees. This is a must-attend for any trial adjudicator.

Tuesday August 21, 2012, Cont.

2:50 - 3:00 BREAK

3:00 - 3:50 CHOICE OF "APPELLATE REVIEW OVERVIEW" OR "JUDICIAL TECHNOLOGY"

APPELLATE REVIEW OVERVIEW

Honorable Robert Cohen, Florida, introduction of speakers

Repeat of 2:00 Roundtable, see above.

JUDICIAL TECHNOLOGY

Honorable Karl Aumann, Maryland, introduction of speakers

Honorable Steven Rosen
St. Petersburg, FL

Electronic filing, paperless offices, videoteleconference, dictation software, electronic calendars and reminders, smartphones, and more have invaded the process of adjudication and the practice of law. Judge Rosen will lead a roundtable discussion about how States are leveraging technology to deliver customer service to their citizens in an ever challenging budgetary environment.

4:00 PM – 4:50 PM CHOICE OF "JUDICIAL TECHNOLOGY" OR "INTRO TO SOCIAL MEDIA"

JUDICIAL TECHNOLOGY

Honorable Karl Aumann, Maryland, introduction of speakers

Repeat of 3:00 Roundtable, see above.

INTRO TO SOCIAL MEDIA

Honorable David Torrey, Pennsylvania, introduction of speakers

Repeat of 2:00 Roundtable, see above.

5:15 PM - 6:15 PM RECEPTION

Non-judicial (Associate) and members of NAWCJ are cordially invited to attend this reception in honor of the Judges.

Wednesday August 23, 2011

Registration for the NAWCJ entitles attendees to participate in any combination of three programs conducted on Wednesday. These include a full day mediation program, a full day Multi-State Program and a full-day Medicare Set Aside Program. Details on these schedules will be forthcoming in future editions.

NAWCJ Judiciary College 2012 Faculty

Honorable Mike Alvey – Chair Kentucky Workers' Compensation Commission

Chairman Michael W. Alvey received his Bachelor's degree from Western Kentucky University, and his J.D. from the University of Kentucky College of Law. Admitted to the Kentucky Bar in 1988, Chairman Alvey practiced primarily defending workers' compensation, federal black lung and personal injury claims. On November 13, 2009 Chairman Alvey was appointed to serve as Chairman of the Kentucky Workers' Compensation Board effective January 5, 2010. Chairman Alvey was recently appointed to the board of directors of the National Association of Workers' Compensation Judiciary, Inc.

Chairman Alvey retired from the Kentucky Army National Guard in 2000 where he served nearly 21 years as an armor officer and is a graduate of the Armor Officer Basic Course and Armor Office Advanced Course.

Chairman Alvey resides in Owensboro, Kentucky where he has been involved in various church and civic activities as well as working with youth sports including both coaching and officiating.

Honorable Nikki Clark

Judge Clark serves on the Florida First District Court of Appeal. She was appointed by Governor Charlie Crist in 2009. She previously served on the
Circuit Judge, Second Judicial Circuit of Florida, 1993 – 2009. She presided in Felony, Civil, Family, and Juvenile Divisions, 1993 - 2009; Administrative Judge, Family Law Division, 2005 – 2009; Designed and implemented Independent Living Court to address needs of foster children after age 18; Designed and implemented Unified Family Court for management of families' cases in multiple Divisions.

Judge Clark served as a Chief Cabinet Aide, Office of the Governor, 1993; Legislation and Policy Development Director, Florida Department of Environmental Regulation, 1991 – 1993; Assistant Attorney General, Office of the Florida Attorney General, 1981 – 1991; Attorney, Legal Services of North Florida, 1979 - 1981.

She received her Juris Doctorate from Florida State University College of Law in 1977 and her Bachelor of Arts from Wayne State University in 1974. Judge Clark is an instructor, Continuing Legal Education Courses on mortgage foreclosure, ethics, procedures for high-profile cases, and creation of the trial record, 1995 – present. She serve as the Committee Chair, Florida Supreme Court Committee on Families & Children in the Court, 2006 – present. Judge Clark was an Adjunct Professor of Trial Practice, Florida State University College of Law, 1998 – 2009. She served as a Foreign Elections Consultant in Nigeria and Liberia, 2005 – 2008, and was a member of the Florida Supreme Court Committee on Fairness & Diversity, 2004 – 2006.

Judge Clark is a member of the William H. Stafford Inn of Court, the Tallahassee Women Lawyers Association, the Tallahassee Barristers Association, and is a former member of the Florida Conference of Circuit Judges.

She is the recipient of the Florida Supreme Court Chief Justice's Distinguished Judicial Service Award, 2010, the Rosa L. Parks Servant Leadership Award, (Florida State University), the Rosemary Barkett Outstanding Achievement Award, 2009 (Tallahassee Women Lawyers); the Sojourner Truth Award (National Coalition of 100 Black Women), the Judge of the Year (Florida Law Related Education Association), the Administration of Justice Award, Florida (American Board of Trial Advocacy); Distinguished Service Award (Florida Council on Crime & Delinquency), the Children's Advocate Award (Legal Services of North Florida), and the Judicial Appreciation Award (Florida Conference of Circuit Judges).

Susan Constantine

Susan Constantine is a leading body language expert / Jury Consultant / Florida Supreme Court County Mediator and President of Silent Messages. She has appeared on CNN, MSNBC, ACB, CBS, and HLN. She established herself as a leading body language expert, renowned speaker and trainer specializing in "deception detection" through verbal and non-verbal communication. She conducts seminars and workshops for corporate clients, lawyers, investigators, government agencies, and individuals sharing her body language expertise in easy to grasp formats. Her expertise focuses on understanding and predicting human behavior thru the hidden "Secrets of Reading Body Language.

Susan's skills have allowed her to serve as a Jury Consultant and trainer for Jury Quest LLC, and a core trainer for the south east region of the U.S. for Analytic Interviewing. As a Florida jury consultant, she provides scientific jury selection (objective) and reading people (subjective) during vior dire including witness preparation in high profile cases in Florida. Additionally, she conducts continuing education programs for lawyers, mediators and business.

Susan is a regular contributor on *CNN "In Session" Court TV.* She has been featured in trade journals, newspapers, and television, including the Orlando Sentinel, Miami Herald and the New York Times Journal. She appears frequently on *Fox 35, Fox News, and WESH, as well as channels 6, 9 and 13.* Susan analyzes body language, word content, and voice tone of witnesses, suspects, presidential candidates and discusses reading people's body language.

In 2008, she became a Florida Supreme Court County Mediator, and volunteers for the Orange County Courts. Sharing her conflict resolution experience and professional/personal life experiences, her communication skills have gained the interest of Fortune 500 companies and small business owners. She has taught sales executives, mangers, sales professionals and CEO's how to overcome adversity through excellent communication skills in the workplace using "The Four Secret Languages of Communication." As leading body language expert, Susan provides seminars on reading/interpreting body language, deception detection, and voice analysis.

Though the development of these customized training programs, participants will be equipped to make better judgments. These body language skills aid in assessing credibly, truth and deceptive behavior in the field. Research has proven that verbal and nonverbal cues can reveal ones true intentions. This research is scientifically validated and has been implemented by the FBI, CIA, homeland security and other governmental agencies to heighten the subjective skills of its investigators, judges, attorneys, social workers in reading the true intention of others' hidden agendas.

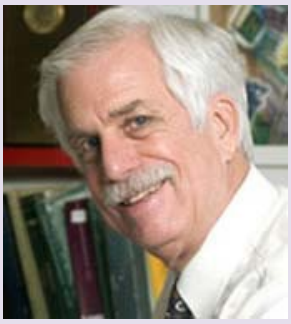
Honorable Melba Dixon

Judge Melba Dixon graduated from Linwood Elementary School and Benton High School (valedictorian) in Yazoo County, Mississippi. She has a Bachelor of Arts degree (Magna cum Laude) in Economics with a minor in Business Administration from Tougaloo College, an MBA degree from Jackson State University, and a Juris Doctorate from Mississippi College School of Law. She has completed course work at the National Judicial College.

Judge Dixon currently serves as one of eight administrative law judges with the Mississippi Workers' Compensation Commission. She is the first African American female to serve in this capacity. Prior to joining the Commission in 1997, she served as Special Assistant Attorney General with the Office of the Attorney General for the State of. Mississippi. She served as key advisor to the State Personnel Board and state government agencies in the area of labor and employment law. She has also worked as a staff attorney for Central Mississippi Legal Services, where she provided comprehensive legal services to indigent clients in civil cases. She was employed in the area of Personnel and Human Resource Management with the Mississippi State Personnel Board and the Mississippi Library Commission for approximately ten (10) years prior to entering the legal profession.

Judge Dixon is a member of the Mississippi Bar, the Magnolia Bar Association, the Capital Area Bar Association, and the Mississippi Women Lawyers' Association. She is also a member of Beta Delta Omega Chapter of Alpha Kappa Alpha Sorority Inc., a local / international community service organization. She formerly served as Secretary / Treasurer for the Association of State Personnel Administrators, was on the Board of Directors of the Mississippi Association of State Personnel Administrators, and was a member of the Charles Clark Inn of Court. She has also served on the Board of Directors of the Middle Mississippi Girl Scout Council. Judge Dixon is among those featured in *The 2010 Inaugural Edition of Who's Who in Black Mississippi.*

Professor Charles Ehrhardt – Florida State University



Author of Florida Evidence (West 2011), the leading treatise on the topic, and Florida Trial Objections (West 4th ed. 2007), Professor Ehrhardt has been cited as an authority by appellate courts more than 500 times. He taught Torts, Evidence, Trial Practice and Trial Evidence Seminar, and was named Outstanding Professor seven times. After serving as the Ladd Professor of Evidence for 35 years, he earned emeritus status in 2007. He continues to teach Evidence at the law school.

Professor Ehrhardt served as a commissioner to the National Conference of Commissioners on Uniform State Laws from 1996-2005. He was a member of the faculties of both the National Judicial College in Reno, Nevada, and the Federal Judicial Center in Washington, D.C. He has been a visiting professor at University of Georgia and Wake Forest. Professor Ehrhardt received the Selig I. Goldin Award from the Criminal Law Section of The Florida Bar and the President's Award from the Florida Board of Trial Advocates. He clerked for the Honorable M.D. Oosterhout of the U.S. Court of Appeals for the Eighth Circuit and joined Florida State University College of Law's faculty in 1967.

For almost 20 years, he served as the university's representative to the NCAA and the ACC. In 2007, he was inducted into the Florida State Sports Hall of Fame. Education: J.D., University of Iowa, 1964; B.S., Iowa State University, 1962.

Stephen B. Farrow

Stephen Farrow is a Director with Appellate Division of the State Board of Workers' Compensation. He assumed his duties on October 1, 2009, having engaged in a general litigation practice for 27 years in the northwest Georgia area prior to that time. He is a 1982 graduate of the University of Georgia School of Law. In addition to his active law practice, he served in the Georgia State Senate for two terms. Subsequent to that public service, he also served terms on the State Ethics Commission and the State Transportation Board.

Honorable Jennifer Hopens - Texas

Jennifer Hopens received her undergraduate and law degrees from the University of Texas at Austin. She was licensed to practice law in Texas in 2002. In 2007, she joined the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) as a Hearing Officer. She has traveled extensively for the Division, holding contested case hearings in workers' compensation matters in the Austin, Beaumont, Bryan/College Station, Corpus Christi, Dallas, Fort Worth, Lufkin, Missouri City, Houston East, Houston West, San Antonio, Uvalde, Victoria, and El Paso Field Offices of TDI-DWC. She attended the Judicial College of the National Association of Workers' Compensation Judiciary (NAWCJ) in Orlando, Florida in 2009, 2010, and 2011. In 2010, she was chosen to serve on the NAWCJ Board of Directors. She was previously a Hearing Officer for the Texas Workforce Commission. In her free time, Jennifer enjoys reading, traveling, genealogy, and photography.

Honorable Melissa Jones – District of Columbia

Melissa Jones is an Administrative Appeals Judge with the Government of the District of Columbia, Department of Employment Services (DOES). She formerly served as an administrative law judge presiding over workers' compensation claims between 2006 and 2010. Prior to joining the DOES, she practiced workers' compensation defense both in private practice and as staff counsel at The Hartford. Her legal experience also includes acquisitions and real estate litigation.

Judge Jones is a graduate of St. Bonaventure University, where she authored a thesis on "The Influence of Modern Technology on the Right to Refuse Medical Treatment: The Nancy Cruzan Case." She received her Juris Doctor at the University of Buffalo School of Law in 1994.

Judge Jones serves on the faculty of the National Judicial College in Nevada, and has lectured as an adjunct professor at the University of Maryland University College. She has also lectured for National Business Institute and at the National Association of Administrative Law Judiciary.

James McCluskey, M.D. – Univeristy of South Florida

Dr. James McCluskey is a Board Certified Occupational Medicine Physician and a PhD-trained Toxicologist. He is the Medical Director of the Center for Environmental/Occupational Risk Analysis and Management at the University of South Florida, Tampa, Florida. In addition, he is an assistant professor at the USF College of Medicine in the Department of Internal Medicine, and a research assistant professor at the USF College of Public Health in the Department of Environmental and Occupational Health. Dr. McCluskey completed an advanced subspecialty residency in Occupational Medicine in which the program curriculum and clinical experiences were extensively weighted towards the recognition and evaluation of complex occupation-related diseases. In addition, he has a PhD in Toxicology and Risk Assessment. Dr. McCluskey is actively involved with a research team investigating the human health effects of chemical exposure(s). His publications include articles on chemical exposures and various pulmonary conditions, as well as co-authorship of a chapter on occupational asthma. He is a frequent lecturer for public, private and academic groups. His medical practice is focused on the evaluation of medical cases involving environmental/occupational chemical, respiratory, infectious and allergen exposures.

Honorable Sylvia Medina-Shore

Judge Medina-Shore began her legal career as in-house counsel for the Florida Department of Insurance Insolvency Division. After serving one year as in-house counsel, Judge Medina-Shore joined the law firm of Almeyda & Hill and represented injured workers, employers and insurance carriers in workers' compensation and health insurance cases. Judge Medina-Shore was an associate and partner of same Miami law firm for 5 years. For the following 5 years, Judge Medina-Shore worked at the law firm of Conroy, Simberg, Ganon & Abel in West Palm Beach, Florida representing employer and insurance carriers.

In March of 2000, Governor Bush appointed Judge Medina-Shore to the Miami-Dade and Monroe County District. She was re-appointed by Governor Bush in March of 2004 and by Governor Crist on 2008. To that extent, Judge Medina-Shore has volunteered to accept college and law school students as interns for numerous Miami-Dade County and Broward colleges. For the past four years, Judge Medina-Shore has served in the executive committee of the Conference of Judges of Workers' Compensation. In March of 2006, Judge Medina-Shore was named Administrative Judge for the Miami- Dade and Monroe Counties. Judge Medina-Shore has lectured at numerous workers' compensation seminars and Miami-Dade County bench and bar conferences.

Elizabeth Rissman

Elizabeth is the Director of Social Media at Blueorb, Inc. in Orlando, Florida. She provides leadership and development strategies for companies with the goal of increasing brand exposure, customer acquisition, and sales. This involves creating and maintaining social media platforms with intriguing content, using platforms such as Facebook advertising campaigns and page promotion, blog posts, video blogs, LinkedIn updates, and Twitter engagement. Ms. Rissman provides business entities with expertise on developing and deploying web content, optimizing search engine recognition, and maximizing the exposure and advertising benefits of the vast array of Internet options including social media, e-mail, and web presence. Her responsibilities include composing and editing diverse forms of internal and external communication, including email campaigns, cover letters, press releases, and other forms of correspondence as an integrated effort with social media. She attends industry events to discuss social media and market promotion. She has previously worked in the media as a radio host, staff writer and copywriter. Elizabeth earned her Bachelor of Arts in Communication Studies from Vanderbilt University in 2007.

Only 140 Days Until Judiciary College 2012!

Honorable Steve Rosen

Since being admitted to the Florida Bar in 1974, Judge Rosen has spent his entire legal career in the area of workers' compensation law. He began his practice in the Tampa office of Marlow, Mitzel & Ortmayer and will leave Stephen L. Rosen, P.A. to serve his term as Judge of Compensation Claims. He has represented insurance carriers in the past, but since 1976 has represented the rights of injured and uninsured employer. Judge Rosen was a member of the initial Florida Bar Workers' Compensation Board Certification Committee, and has been Chair of The Florida Bar Workers' Compensation Section. From 1990 to 1993, he had the honor of acting as Chair of the Statewide Judicial Nominating Committee for Judges of Compensation Claims. He is also a founding member of the Florida Workers Advocates. In 2005, Judge Rosen was honored to have been nominated to the Governor for the position of Deputy Chief Judge for workers compensation. He has been a frequent lecturer and author on workers' compensation issues. He has appeared before the Florida legislature to propose amendments to the workers' compensation laws and has served on legislative advisory committees. He been continuously listed in The Best Lawyers in America since 1995, "AV" rated by Martindale-Hubbell, "Superlawyers" in Florida since 2005, and is the recipient of the W. L. "Bud" Adams Award for excellence in the field of workers' compensation, 1991.

Honorable James Szablewicz – Virginia

Jim Szablewicz is the Chief Deputy Commissioner of the Virginia Workers' Compensation Commission and has been in that position since April 2004. In this capacity, he supervises the Judicial Division of the Commission, including the functions of the Commission's Clerk's Office, six Regional Offices and all of the Deputy Commissioners state-wide. Prior to becoming Chief Deputy Commissioner, Jim served as a Deputy Commissioner for two years, and was engaged in the private practice of law on Virginia's Eastern Shore for eleven years, primarily representing injured workers. Jim received his B.A. in Political Science from Yale University in 1984 and his J.D. from the University of Virginia School of Law in 1987.

Professor Timothy Terrel – Emory University

Timothy P. Terrell, a former Fulbright Scholar, received another Fulbright grant-in-aid for scholarly research and teaching in England. Before coming to Emory, he practiced with the Atlanta law firm of Kilpatrick & Cody. His works include "Rethinking Professionalism" and "When Duty Calls" both published in the Emory Law Journal (1992); Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing (Clark Boardman Company, 1992); "Transsovereignty: Separating Human Rights from Traditional Sovereignty and the Implications for the Ethics of International Law Practice," Fordham International Law Journal (1994); "A Tour of the Whine Country: The Challenge of Extending the Tenets of Lawyer Professionalism to Law Professors and Law Students," Washburn Law Journal (1994); "Ethics with an Attitude," Law and Contemporary Problems (1996); "Professionalism as Trust: The Unique Internal Legal Role of the Corporate General Counsel," Emory Law Journal (1997) and several articles on legal writing and editing for West Publishing Company's Perspective periodical.

Professor Terrell has organized conferences on topics such as "Rethinking Liberalism" and "Human Rights and Human Wrongs: Investigating the Jurisprudential Foundations for a Right to Violence." He is director of the Hugh M. Dorsey Jr. Fund for Professionalism and also has been active in continuing legal education for practicing lawyers, presenting programs around the country for the American Law Institute and the National Practice Institute on legal writing and legal ethics. He served part-time as the director of professional development for the Atlanta law firm of King & Spalding, assisting that firm in developing its associate training program. He also helped produce two videotape-based educational programs on legal ethics, one for prosecutors and criminal defense lawyers, the other involving representation of clients in the healthcare industry.

Education: BA, University of Maryland, 1971; JD, Yale University, 1974; Diploma in Law, Oxford University, 1980.

William Wieland

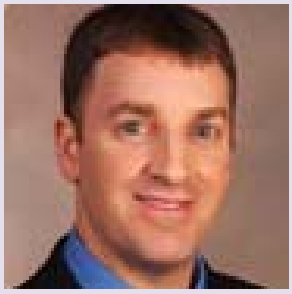
Billy received his Bachelor of Business Administration Magna Cum Laude with a minor in business law from Stetson University in 2007. Billy received his Juris Doctor Cum Laude from Stetson University College of Law in 2010 and was admitted to practice law in Florida in 2010. During law school, he worked as a research assistant coordinating the National Conference on Law and Higher Education and was a founding Member of the Defense Research Institute student chapter at Stetson University College of Law. He also served as clerk to the Honorable Circuit Judge Stan Strickland of the 9th Circuit Court in Orange County, Florida. Billy was fortunate enough to be published in the Florida Bar Workers' Compensation Section: News and 440 Report in 2010. Billy volunteers at the Orange County Teen Court as a Jury Advisor and Bailiff supervising and supporting at risk teens.

Steven E. Weber, D.O.

Board Certified in orthopaedic surgery, specializing in adult spinal reconstruction cervical and lumbar spine surgery. A native of Michigan, Dr. Weber attended the University of Michigan in Ann Arbor, MI, where he received a B.S. degree in Biology. He earned his medical degree from Michigan State University, College of Osteopathic Medicine in East Lansing, MI. He remained there to complete his internship and Orthopaedic Residency at Michigan State University.

Following his residency, Dr. Weber completed a Reconstructive Spinal Surgery Fellowship with the University of Florida, in Gainesville, Florida. He has been published within the field of Orthopaedics and has presented his research at several national Orthopaedic meetings, including the American Osteopathic Academy of Orthopaedics. Dr. Weber specializes in Spinal Reconstruction and General Orthopaedic Surgery.

Randy S. Schwartzberg, M.D.



Board Certified in Orthopaedic Surgery and Board Certified in Sports Medicine. After growing up in South Florida, Dr. Schwartzberg attended the University of Michigan for his undergraduate education. He earned his medical degree from the University of Florida College of Medicine. After medical school, Dr. Schwartzberg completed his orthopaedic surgery residency in Orlando.

Following his residency program, Dr. Schwartzberg pursued his subspecialty interests in sports medicine and engaged in sports medicine training at the esteemed American Sports Medicine Institute in Birmingham, Alabama. His extensive training served as a strong platform to infuse his sports medicine enthusiasm and skills into the Central Florida area.

A Great Bargain and a Great Benefit!

There are many seminars and programs that provide Continuing Legal Education Credit; many of those are even specific to workers' compensation. Those programs cost as much as $50.00 per hour, and none are focused on the educational needs of adjudicators. The NAWCJ Judiciary College is specifically directed to the workers' compensation adjudicator, and is presented by the NAWCJ at less than half the price of the more generic workers' compensation CLE opportunities. Make plans today to attend this unique educational opportunity, and enjoy the collegiality of other judges, commissioners, deputies, administrators and more.