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# G-Bar News



## PRESIDENT'S ARTICLE

**By: E. Grantland Burns**

“SERENITY NOW!” Wouldn’t it be great if Frank Costanza’s technique of yelling these words really worked to relieve stress? I could have used it at an out-of-state deposition I defended last month involving a contentious opposing attorney who is not subject to our new lawyer’s oath -- but ought to be. “SERENITY NOW! SERENITY NOW!” I also could have used it on Thanksgiving Day when I realized I was about a gallon short of oil for the turkey I was frying. It’s headless torso looked up at me, far from being submerged, getting the last laugh after all. “SERENITY NOW!”

The Tigers and Gamecocks could have used a dose of “SERENITY NOW!” on November 20<sup>th</sup>. Actually, if you watch the super slo-mo, which ESPN continues to show *ad nauseum*, you might even be able to catch Lou Holtz mouthing those very words, to no avail. Oh well, there’s no place like home for the holidays.

Congratulations to Stephen Henry on receiving the Tommy Thomason award recently. The luncheon in his honor, featuring comments from Judge Kittredge, was a special event. This followed the Court of Appeals visit, which was a big success for our Bar thanks to, among others, Lee Plumblee, Jennifer Johnson, Dave Edwards, and Paul Wickensimer. The Judicial Reception during the Court’s visit was extremely well-attended by our Bar members and well-received by the judges we honored.

I am excited to announce that a new slate of officers was elected at this month’s Annual Meeting. Congratulations and best wishes to Chip Price (President), Jeff Merriam (Vice President/President-Elect), Debra Gammons (Secretary), and Dave Edwards (Treasurer). This will be a strong leadership team for a year which will include, among other things, a Statewide Circuit Court Judicial Conference here in Greenville in May.

It has been an honor and a pleasure to serve as Bar President this year. I enjoyed every minute of it, while working with the best lawyers and judges our State has to offer. The Memorial Service was the perfect event to end the year on a positive note. Many thanks to Jack Griffeth for again chairing that special program. Thanks also to all the officers, committee chairs, and members of the Bar’s Executive Committee for their friendship and hard work this year. It’s one group I’ve worked with where I never felt the need to burst out with a “SERENITY NOW!”

Years from now, some historian may peruse the archives of *The G-Bar News* and find that in 2004, the President focused on good barbeque; the “green” in Greenville; wild underwear at depositions; dropping pants in court; a baby changing station; and “SERENITY NOW!” Thanks for the opportunity to leave such a legacy.

Best wishes for the holidays and a prosperous 2005!

175th edition

Nov./Dec. 2004

- May 11, 2005—reception with Circuit Court Judges for all of South Carolina. Watch for details.
- The Supreme Court has extended the deadline for taking the new oath. Watch our website and the S. C. Bar site for more information.

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## Verdicts

**Caption:** S. Blake Walker v. Lynn Kay, Classic Country Homes, Inc.; Branch Banking and Trust of S. C. f/k/a First Federal Bank

**Case No.:** 2003-CP-23-6431

**Attorney for Plaintiff(s):** T. Creech, Jr.; W. Daniel Yarborough

**Attorney for Defendant(s):** Larry Briggs; Thomas Coker, Jr.; Charles Groves

**Cause of Action:** Civil Conspiracy, Breach of Contract, Fraud

**Verdict:** As to Civil Conspiracy: For plaintiff against Lynn Kay and BB&T: \$53,529.19; as to Breach of Contract: for defendant Classic Country Homes

As to fraud: for defendant Lynn Kay. Punitive damages for plaintiff against Lynn Kay: none. Punitive damages for plaintiff against Classic Country Homes: none. Punitive damages for plaintiff against BB&T: \$100,000.

**Caption:** James N. Oshields v. Tony D. Styles

**Case No.:** 2003-CP-23-7793

**Attorney for Plaintiff(s):** Randall Chambers

**Attorney for Defendant(s):** Samuel Weldon

**Cause of Action:** Motor vehicle accident

**Verdict:** \$240 actual damages

**Caption:** James R. Oshields v. Tony D. Styles

**Case No.:** 2003-CP-23-7794

**Attorney for Plaintiff(s):** Randall Chambers

**Attorney for Defendant(s):** Samuel Weldon

**Cause of Action:** Motor vehicle accident

**Verdict:** For the Defendant

## Family Court Liaison Report

The next Family Court Liaison meeting will be **January 21, 2005 at 1:00 p.m.** in the **Conference Room in the Judge's Hallway.** Anyone who is unable to attend these meetings but has issues they would like addressed may contact the following lawyers: **Christine M. Howard** (282-8575); **Wallace A. Mullinax** (233-4351); **Robert M. Rosenfeld** (235-9613); or **Thomas W. Traxler** (242-3566).

## Bench/Bar Liaison Report

The next meeting of the Bench/Bar Liaison Report will be held after the new year. For more information, contact **Matt Johnson** at The Ogletree Firm.

The Poinsett Club invites you to their lecture series "Doorways to Understanding: A Tapestry of Topics." On Thursday, January 6, 2005, from 7–9 p.m. The Honorable Jean H. Toal, Chief Justice, S. C. Supreme Court and The Honorable David H. Wilkins, Speaker, S. C. House of Representatives will speak on the topic of "An Inside Look at the Legislative and Judicial System in South Carolina." Please contact Stacia Smith at Special Events Coordinator 242-3062 or by email at [Stacia@poinsettclub.org](mailto:Stacia@poinsettclub.org) or Claire Blake, Chair, Lecture Series at 288-0222 for reservations or more information. There is a \$20 charge for each program. For other program listings, please contact The Poinsett Club.

## From the Court

All attorneys and pro se litigants must now use the Motion for Protection Form when requesting protection on cases currently on the Greenville County Common Pleas Dockets. This form must be completed and e-mailed to the respective Court Coordinator depending upon the file type. Do not send copies via fax or mail to the Administrative Judge or the Clerk of Court.

When submitting the Motion, please copy all attorneys in the case. The respective Court Coordinator will notify you of the Judge's decision via e-mail. The form is posted on the Greenville County Court Support website at [www.greenvillecounty.org/courtsupport](http://www.greenvillecounty.org/courtsupport). Call Lyndall Coker at 467-8510 with any questions.

## Announcements

Ogletree, Deakins, Nash, Smoak and Stewart, P.A. is pleased to announce that Knox L. Haynsworth, Jr. was recently awarded the Order of the Palmetto Award.

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Covington, Patrick, Hagins, Stern & Lewis, P.A. is pleased to announce that three of its Shareholders have been selected for the recent edition of Best Lawyers in America: Eugene C. Covington, Jr., Douglas F. Patrick, and T. S. Stern, Jr. In addition, E. Benton Leinster, III has joined the firm as an associate.

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Thomas & Fisher, P.A. is pleased to announce that C. John Wentzell, Jr. has become an associate with the firm. In addition, John R. Thomas and Randy E. Fisher have been selected for the recent edition of Best Lawyers in America. Randy E. Fisher has been elected Chairperson of the Tax Section of the S. C. Bar for 2004-2005, and John R. Thomas has been appointed to the Taxation Specialization Advisory Board.

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The firm of Eppes & Plumblee, P.A. proudly announces that Jason J. (JJ) Andreghetti has become associated with the firm.

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Clarkson, Walsh, Rheney & Turner, P.A. is pleased to announce that Edward G. Smith has become Of Counsel to the firm. Mr. Smith was previously a partner with Butler, Means, Evins & Browne, P.A.

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Wyche Burgess Freeman & Parham, P.A. is pleased to announce that Hannah Rogers Metcalfe has joined the firm as an associate. Ms. Metcalfe served as Law Clerk to the Honorable William B. Traxler, Jr., U. S. Court of Appeals for the Fourth Circuit.

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The University of South Carolina has appointed Gene McCall as an Adjunct Professor of law. He will be teaching the water quality section of the South Carolina Environmental Law Seminar, Spring Semester 2005.

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Wimberly, Lawson, Daniels & Brandon, LLC announces that Joel S. Brandon has withdrawn from the firm and Stephen F. Fisher has joined the firm. The firm will now be known as Winberly, Lawson, Daniels & Fisher, LLC, located at 109 Laurens Road, Building 4, Suite A, Greenville, SC 29607. Phone: (864) 242-9484.

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Legal Staff Professionals of Greenville has been celebrating this holiday season with a Christmas membership party held on December 14, 2004. The Wyche firm graciously allowed us to use their office to host this meeting. We are most appreciative of the support the Wyche firm has provided to our organization. We missed all of you who were unable to come, and are planning on another evening meeting so others will have the opportunity to enjoy the warm fellowship, tasty food, and great fun we had.

At our regular December meeting, we welcomed representatives of HOPE, which was chosen as our charity this year. We learned how HOPE began and how they provide valuable emotional support and material resources to families of premature babies. These families have unique needs dealing with the pressures of long hospitalization, learning about medical procedures, and managing the needs of other children in the family.

We are still gathering information from folks who are interested in the study group for the ALS (basic certification), PLS (advanced certification), or PP (professional paralegal) exams and plan to get started early in 2005. For additional details, contact Fran Powell at 250-2288 or [fran.powell@nelsonmullins.com](mailto:fran.powell@nelsonmullins.com).

LSPG extends an initiation to all legal staff to join us on the third Wednesday of each month at 12:30 at the Poinsett Club. Reservations may be made by contacting Tara Prevatte at 271-7940 or by email to [Tara@davidgreeneattorney.com](mailto:Tara@davidgreeneattorney.com).

## Job Openings

The firm of Turner Padgett is seeking highly qualified associates with three to eight years experience in the areas of commercial real estate, lending and general business transactions for employment in the Greenville office. Please send resume to Drew Williams, P. O. Box 1473, Columbia, SC 29202. All inquiries will be kept in strict confidence.

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National health law firm seeks partner/associate with 2+ years experience, strong communication skills, creative thinking, self-motivated/entrepreneurial. Reimbursement/payment issues; fraud/abuse; compliance; physician issues; HME/homecare; mergers/acquisitions; litigation; managed care; networks, alliances; hospital-physician issues; joint ventures; business contracting; and employment issues. Our focus is clear practical insight. Send resumes to Administrator, The Health Law Center, 1200 Woodruff Road, Building A-3, Greenville, SC 29607; phone (864) 676-9075; fax: (864) 297-8725; email: [info@healthlawcenter.com](mailto:info@healthlawcenter.com).

or her and this amount can be paid on any day of the month chosen by the taxpayer. In the Installment Agreement the entire tax, interest and penalties must be paid; however, if the taxpayer has a reasonable cause for being delinquent on the taxes, many times we can negotiate with the IRS to abate the penalties involved.

Sometimes an Offer is not a viable solution for a taxpayer, and neither is an Installment Agreement. In this case many times the IRS will agree to put the taxpayer in "Currently Uncollectible Status". This simply means that the IRS will take no collection action against the individual for an undetermined period of time. This can be any length of time from a year to never. In fact I have had clients who were placed in uncollectible status and simply waited for the statute of limitations to run in collecting the tax. Of course, after the statute of limitations runs, the tax is no longer collectible. The statute of limitations to collect tax is ten years from the date of assessment; however, there are several events which can toll the statute, such as filing bankruptcy, filing appeals, filing an Offer in Compromise and other events. Thus, in calculating the statute of limitations, one has to know the complete history of the client during the period involved.

Other solutions to resolving unpaid taxes are Innocent Spouse Relief and bankruptcy. Both of these work very well in the right circumstances.

Many times in my practice the taxpayer's Offer in Compromise is denied at the initial stage. If that happens, an administrative appeal can be filed, if warranted. The appeals division has somewhat more leeway in negotiating an Offer in Compromise. If the Offer is denied after an administrative appeal the only remaining avenue open is to file a petition in tax court.

As you can see there are many ways in which an individual or a company can become delinquent in paying taxes, but there are also many ways in which to attack the problem and successfully resolve it on behalf of the taxpayer.

Submitted by David B. Greene, Attorney at Law  
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[Attorneys desiring to submit articles should send them to gbarnews@aol.com. The editorial staff will review them for value to the Greenville County Bar Association. Publication of any articles shall not be deemed an endorsement by the Greenville County Bar Association of any of the opinions expressed in such articles.](mailto:gbarnews@aol.com)

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## Guest article—RESOLVING TAX ISSUES WITH THE IRS (And giving your client back his or her life)

Upon reading the title to this article you may ask yourself “Why do I need to read this? I don’t deal with the IRS on behalf of clients.” I submit to you that a percentage of your clients do have problems and do owe delinquent taxes to the IRS.

I will further submit to you that a percentage of the attorneys reading this article need help in dealing with the IRS themselves. Why do I make this assertion? As attorneys we are in an occupation that is prone to becoming delinquent in paying taxes, whether payroll taxes, estimated taxes, or taxes due on April 15th. The reason we are so prone to becoming delinquent is that, as self-employed persons, our incomes fluctuate and many times when taxes are due the current income is low and we have not saved from the good times to pay the tax due. Of course this does not apply directly to those attorneys who work for salaries. Other general groups that are very prone to delinquent taxes for the same reason are realtors, doctors, builders and most sales people who work on commission.

In this article I will discuss some of the methods for dealing with delinquent taxes on behalf of clients. It is a very satisfying practice in that in almost all cases I am able to resolve the tax situation for the client and relieve his or her fears about the IRS. Many of my clients come in initially very afraid and worried about whether they will lose their home, car and other possession and whether they might go to jail. I try to put the client’s mind at ease immediately about going to jail, because the only time incarceration is a possibility is when the taxpayer has been accused of fraudulently evading taxes. In 99% of the cases this is not a concern. I assure the client that simply failing to pay the tax is not criminal, only negligence.

### Types of Tax Problems

There are three primary types of tax problems with which I deal. The first is unpaid taxes. These can be individual taxes, payroll taxes, corporate taxes, federal unemployment taxes and excise taxes. These can arise from filing the return on time, but simply not paying; late filings with no payment; and even unfilled taxes. Once a tax becomes delinquent, interest and penalties are added to that tax, and can very quickly add up to more than the tax itself. Many of my clients owe the IRS three to five times more than the original tax.

Another type of tax problem, which is often misunderstood, is the trust fund penalty. Although it is called a penalty, it is really not a penalty as meant by other IRS penalties. The trust fund penalty only applies to employment taxes and only applies in the corporate setting. These arise when a corporation does not or cannot pay the payroll taxes due. The trust fund penalty usually arises after the corporation has dissolved or gone bankrupt. It is defined as the portion of the payroll taxes that are withheld from the employees’ paycheck; therefore, it does not include the matching FICA paid by the employer. The IRS can assess the trust fund penalty against anyone it considers a responsible person; i.e. one who can direct the flow of money in a corporation. If that person is determined to be a responsible person, the trust fund penalty will be assessed against him or her and that taxpayer will personally owe the payroll tax that the corporation did not pay.

The third type of IRS problem arises with the taxpayer who intentionally and fraudulently fails to report income, fails to pay or refuses to pay his income tax. Criminal prosecution will then follow.

### Methods of Dealing With The IRS

Once you know what kind of problem your client is facing, you can determine which kind of solution will be most helpful. Many clients come in with the threat of a levy or after a levy has been issued on their wages or

bank account. If a levy has not been issued, a Collection Due Process Hearing can be requested, which will stop collection activity until the hearing is held. This hearing, as with most hearings with the IRS, is usually by telephone. At the hearing you must propose a method of resolving the tax issues. If the levy has already been issued, about the only way to get the levy released is to propose a temporary voluntary payment plan. The IRS will usually cooperate in this.

The most common solution for resolving tax problems in the Offer In Compromise. There are three primary kinds of Offers in Compromise: Doubt as to Liability, Doubt as to Collectibility and Effective Tax Administration. In basic terms an Offer based on Doubt as to Liability is one in which the taxpayer claims that he does not owe the tax; whereas, an Offer in Compromise based on Doubt as to Collectibility is based on the taxpayer not having sufficient assets and current disposable income to pay the total amount due. The final type of Offer is available when the taxpayer clearly has enough assets and/or disposable income to pay the tax in full; however, for other social or policy reasons the IRS elects not to collect the tax. One example of when I might use this approach is for the elderly person who has paid off his mortgage, but can no longer borrow money against the equity and the home is his only place to live. Another example is a client who is terminally ill. All such cases have to be examined very carefully for each unique situation.

By far the most frequently filed Offer is one based on Doubt as to Collectibility. This process can be rather complicated and one has to know all of the rules to be able to successfully conclude the Offer. To approve an Offer the IRS wants to collect the “net realizable equity” in a taxpayer’s assets plus collect an amount equal to his monthly “disposable income” multiplied by a factor of forty-eight. In determining net realizable equity in assets certain discounts are allowed. In determining net disposable income many expenses are not allowed and in most cases the initial Offer Specialist will not allow expenses greater than the national standard tables for housing, utilities, transportation, etc. There is no set percentage or rule of thumb for determining an Offer in Compromise. Each individual’s situation is unique. It is misleading to state that you can compromise “delinquent taxes for pennies on the dollar” as a general rule although I have done exactly that in several cases.

Once the amount of the Offer is determined, the next step is to determine how to pay the Offer. A cash Offer may be paid in full at any time within ninety days of acceptance of the Offer, whereas a short term deferred Offer may be paid over a period of twenty-four months after the Offer is accepted. In the case of a short term deferred Offer, the IRS collects a larger amount of monthly disposable income. Since the average time for negotiating an Offer to conclusion after it has been submitted is eight to twelve months, a taxpayer has plenty of time to be saving the amount needed to pay his Offer.

If a taxpayer is not eligible for an Offer in Compromise we then attempt to set up an Installment Agreement with the IRS. In this situation the taxpayer will pay a monthly amount suitable to him

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