


# LAWYER

THE HILLSBOROUGH COUNTY BAR ASSOCIATION  
TAMPA, FLORIDA | SUMMER 2016 | VOL. 26, NO. 6







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# LAWYER

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This month we are highlighting University of Tampa athletics. UT Spartan teams have won 15 NCAA II championships and captured 92 Sunshine State Conference titles. Founded in 1933, the University of Tampa hosts more than 8,000 students from all 50 states and 140 countries, and is located in the heart of Tampa.

Photo credit: Todd Montgomery and Andy Meng.



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THE HILLSBOROUGH COUNTY BAR ASSOCIATION

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## The Price that it Costs to be Free

**“[T]he VTC is a stark reminder of the cost our service members pay to maintain our freedom here . . . .”**

**L**ike many of you, I celebrated the Fourth of July by spending the weekend at the beach, enjoying a cookout, fireworks, and the like. Although John Adams believed Independence Day ought to be celebrated, he did not want to be viewed as “transported with Enthusiasm,” as he explained in a letter to Abigail Adams, because he was “well aware of the Toil and Blood and Treasure, that it will cost Us to maintain” our freedom.

Recently, I had a chance to witness part of that cost firsthand when I took three bankruptcy court interns to watch Judge Gregory Holder preside over the Hillsborough County Veterans Treatment Court. The VTC is a highly structured treatment program for qualified veterans suffering from military service-related mental illness, traumatic brain injuries, substance abuse disorders, or psychological problems, who have been charged with misdemeanors or non-violent third degree felonies. I was completely unprepared for what I witnessed.

It was humbling to watch the first veteran who appeared before Judge Holder admit he was addicted to opiates, which had been prescribed during his military service. It was heartbreaking to watch a second veteran, who also had substance abuse issues, explain to Judge Holder that he was about to be homeless; he had been living with his mom, but her house was being sold after she passed away, and the closing was only days away. By the time a third veteran described how substance abuse, which started in the military while he was recovering from

combat injuries, led to homelessness and a life of crime, it was hard not to feel a sense of hopelessness.

Fortunately, there is a happy ending. The third veteran’s comments about his substance abuse and homelessness came during some brief remarks following his completion of the VTC program. During his remarks, he explained that he was recently able to buy his first home and a car, thanks to a new high-paying job. And it appeared

his substance abuse was (hopefully) a thing of the past. As for the second veteran, who was on the verge of becoming homeless, the VTC was able to find him housing. He likewise was on the road to recovery from his substance abuse and close to completing the VTC program. Perhaps the best news that day was that the first veteran I saw (and others) were accepted into the program, where thanks to the services available to

him, there is hope they will overcome their substance abuse and turn their lives around like the other two veterans.

In his patriotic hit song, *Where the Stars and Stripes and the Eagle Fly*, Aaron Tippin wrote of two prominent symbols of freedom:

*Yes, there’s a lady that stands in a harbor*

*For what we believe*

*And there’s a bell that still echoes the price*

*That it costs to be free.*

Watching the VTC is a stark reminder of the cost our service members pay to maintain our freedom here and to spread it abroad. As we celebrate our Independence, we should be thankful the VTC is able to repay part of the toil, blood, and treasure maintaining our freedom has cost.





## Expectations Versus Reality: Honored and Exhausted



**“In short, the job of HCBA President could not be done without the support of so many – and I appreciated that support immensely.”**

**N**ow that the 2015-2016 HCBA “Bar year” has come to a close and our Association has “traded up” with the installation of Kevin McLaughlin as our new President, I wanted to share my reflections on the differences between my expectations and reality as HCBA President.

*Expectation:* I expected to be honored to serve as HCBA President.

*Reality:* Honored is a gross understatement. I am absolutely humbled by the amazing daily efforts and contributions of so many of our members and the HCBA staff and the judges and people who make the

HCBA so great. To serve our 120-year-old association of almost 4,000 members and to follow in the footsteps of so many great lawyers was indeed a truly great honor. I cannot imagine a stronger bar association or a more collegial legal community than we have in Hillsborough

County, and you — our members — made it my great honor to serve!

*Expectation:* I expected to face leadership challenges.

*Reality:* I learned that the HCBA President’s true job is to serve. Asking questions, listening, observing, consulting, following, and maybe solving a few things are



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*Continued from page 4*

what I did the most this past year. If leadership was involved, it was only through giving my time and serving others that I was able to lead at all, and again, it was my great honor.

*Expectation:* I expected a lot of lunch and dinner meetings.

*Reality:* I never knew I could eat so much boiled chicken (as Jere Ross calls it)! Nor had I heard about the “presidential 15” — which was explained to me at the ABA Bar Leadership Institute, but after it was too late to save me. I welcome suggestions for a healthy eating plan and good exercise videos!

*Expectation:* I expected to be “busy” — to miss a few kids sporting events and a few family dinners and to have to juggle my practice with my HCBA duties.

*Reality:* The truth is I am exhausted. The Andersen family dined without me too often this year! I owe my wife Dana and our kids a whole lot of time and attention and appreciation. And while I did make it to some basketball and baseball games, and even helped coach the Tampa Bay Little League Minor A “Bombers” to our Park Championship (see picture on page 4), next year I am committed to arriving on time and staying off of my phone during all Andersen kids’ games!

*Expectation:* I expected to have some fun.

*Reality:* I had no idea my definition of fun would be to organize town hall meetings, to brainstorm the sports covers for the *Lawyer* magazine, and to introduce incredible speakers like Jeff Vinik, General Ann Dunwoody, Judge Steve Leifman, and Florida Bar President Ray Abadin. Our celebrations at the Pig Roast and 5K River Run, Judge Altenbernd’s retirement after 29 years on the Second DCA, and the Foundation’s Law & Liberty Dinner with Mark Halperin and John

Heilemann each brought our legal community together to have fun — and I had a blast at all of them!

*Expectation:* I expected to have the support of my fellow Board members.

*Reality:* At every HCBA event this year, I felt the overwhelming support of not only our Board, but also of our members, my predecessors, the judiciary, our sponsors, and that HCBA staff! There was not a single event all year without the attendance of at least one HCBA Past-President and at least one current HCBA Board member and at least one judge — their support was felt and appreciated! I cannot tell you how many people made little comments like “you’re doing a great job” or “keep up the good work” and how encouraging those comments were throughout the year. Our judiciary — both State and Federal — led by our Board member and Chief, Judge Ficarrota, who has been an absolute blessing to the HCBA — could not have been more supportive this past year. In short, the job of HCBA President could not be done without the support of so many, and I appreciated that support immensely.

*Expectation:* I expected to meet new people and build relationships.

*Reality:* Working with our section and committee chairs, and the leaders of the Young Lawyers Division, Judge Robbie Colton and Darlene Kelly at the Foundation, and so many leaders of other Tampa area voluntary bar associations, I got the opportunity to meet and build relationships with some of the hardest working, most genuine leaders in our legal community. I will treasure those relationships for the rest of my career.

In short, my reality this year so far exceeded my expectations in so many positive and meaningful ways. And while I am honored to have served, I also am exhausted. And I look forward to seeing you all at the next HCBA luncheon this Fall!



## Leadership Lessons from a Great Bar Year for YLD

**W**hile my year as president of the Young Lawyers Division flew by, the lesson about leadership I learned will always remain with me — the difference in being a leader and doing leadership.

*“The task of Leadership is NOT to put greatness into humanity, but to elicit it, for greatness is already there.”*  
— John Buchan (Scottish novelist, historian, and Governor General of Canada)

By applying this guidance on how to be a leader and keeping the focus on seeing, nurturing, and encouraging the potential of each individual in the organization, a leader can guarantee the greatest evolutionary success of the organization.

It is a fundamental Truth that everything changes; thus an organization is either expanding or dissolving. Living or dying. The greatest expansion for any group will come from the cooperation and collaboration of individuals who seek to actualize their own highest potential, while simultaneously encouraging the same for all other members. I thank the officers, directors, committee chairs, and participants for helping expand the Young Lawyers Division, encompassing over 900 members, to reach its highest potential.

*“Great leaders don’t set out to be a leader — they set out to make a difference. It’s never about the role — always about the goal.”* — Lisa Haisha (founder of The SoulBlazing Institute)



This second quote speaks more to the “doing” aspect of leadership. The focus here is more on what will be manifested in the world. In other words, are we really helping to create a world we truly want to live in? Certainly, the young lawyers have this year. We supported the local community during six different events, such as Cornhole for a Cause, hosted eleven events for the YLD members, including the inaugural Paddle Boarding CLE, and promoted pro bono activities.

I am confident this organization will flourish under its new leadership. This summer, all YLD members will have the opportunity to become involved in our various programs. Preference forms will be emailed soon, so keep an eye out for this information.

Lastly, a special thanks to Chief Judge Ficarrota and our Judiciary for their unending support and guidance to the young lawyers; to John Kynes, Laurie Rideout, and the staff at the HCBA for their dedication to making our bar association thrive; to the sponsors who supported our initiatives; and to the YLD Board who always displayed

leadership — Thank You. I am honored and grateful for this experience, and will hold in high regard the leadership lesson learned.



Dara Cooley, YLD President,  
with YLD Director Traci Koster



# YLD JUDICIAL APPRECIATION LUNCHEON

The Young Lawyers Division hosted a Judicial Appreciation Luncheon on May 4, where Judge Samantha Ward, Judge Herbert Baumann, Judge Nick Nazaretian, and Judge William Levens discussed the State of the Courts. As the last YLD luncheon of the Bar year, the YLD also thanked Dara Cooley for her service as president for the past year.

The YLD would like to thank the luncheon's sponsor:





## Miami-Dade Judge Steven Leifman Discusses the Criminalization of Mental Illness at Law Day Luncheon; Col. D.J. Reyes Wins Liberty Bell Award

**M**iami-Dade County Judge Steven Leifman says he had no idea when he became a judge he would become a “gatekeeper to the largest psychiatric facility in Florida.”

But he says he quickly learned about the harsh reality that existed in his hometown: Miami-Dade is home to the largest percentage of people with serious mental illnesses of any urban community in the United States.

And, on any given day, the county jail houses about 1,200 people with serious mental illnesses — representing about 17 percent of the total inmate population, and costing local taxpayers more than \$50 million annually.

Fortunately, Leifman says the situation is turning around in Miami-Dade because of the success of the Eleventh Judicial Circuit Criminal Mental Health Project — which he helped initiate in 2000, and for which he has received national recognition.

In May, Judge Leifman came to Tampa to share his experiences and lessons learned about mental health care and the criminal justice system as the keynote speaker at the HCBA's annual Law Day Luncheon, and at a special CLE afterward.

In his remarks to the nearly 600 luncheon attendees, Leifman talked about the significant increase of the

number of people being incarcerated in the United States in recent decades, and also the stunning economic costs associated with keeping them locked up.

Florida's counties are spending about \$70 billion a year to incarcerate people, he said.

He said the lack of access to quality mental health care for the serious mentally ill has exacerbated the problem.

Furthermore, the responsibility for caring for the mentally ill has largely been shifted from psychiatric hospitals to correctional facilities, he added.

In his remarks, Leifman described the legal and medical history that has led to the current mental health crisis in the United States and said the criminalization of mental illness has become “the silent epidemic of our time.”

“This is a shameful American tragedy, and one that can and must be reversed,” Leifman said.

Leifman also discussed some strategies that are being used in Miami-Dade to help improve the situation.

These strategies include increased crisis intervention training for law enforcement, and also increased use of diversion programs and community-based treatment for people with serious mental illness who do not pose significant safety risks to the community.



**“This is a shameful American tragedy,  
and one that can and must be reversed.”  
— Miami-Dade Judge Steven Leifman  
on the criminalization of mental illness**

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Concluding his remarks, Leifman said: “The bottom line is not one person, not one party, not one institution created this problem ... and it takes a community collaboratively to come together and address this very serious crisis.”

\* \* \*

**In addition to Judge Leifman’s keynote address at the luncheon, the 2016 Liberty Bell Award was presented to Col. D.J. Reyes.**

The Liberty Bell Award is presented annually to honor a citizen who does not practice law but who has worked tirelessly to preserve and strengthen our system of justice.

Reyes “is a friend to many, but a hero to all,” said Thirteenth Circuit Chief Judge Ron Ficarrota, who introduced Reyes.

Reyes served in the U.S. Army for 34 years and was awarded numerous commendations for his military service, including three Bronze Star Medals.

Calling Reyes the “heart and soul” of the Thirteenth Circuit’s Veterans Treatment Court, Ficarrota noted that Reyes was the *first* volunteer and now is the lead mentor for nearly 60 veteran mentors now involved in the program.

Ficarrota also highlighted Reyes’ volunteer work in the community on behalf of children with developmental disabilities, including with organizations such as Tampa Bay Autism Speaks.



In accepting the award, Reyes said he was “humbled” by the honor and felt fortunate to work with two outstanding groups of volunteers — mentors for the Veterans Treatment Court, and also special needs advocates in Hillsborough County.

“Both teams have similar missions,” Reyes said. “They fight for those who oftentimes can’t fight for themselves.”

\* \* \*

**Meantime, the Law Day Luncheon also marks the unofficial end to the 2015-16 Bar year.**

And under the outstanding leadership of HCBA President Carter Andersen, there’s no doubt that it has been an exciting and eventful year for sure.

From all the membership luncheons throughout the year; the annual Bench Bar Conference; the Holiday Open House; all the HCBA’s diversity events; the annual HCBA Pig Roast and 5K Pro Bono River Run; and the Bar Foundation’s Law & Liberty Dinner, there was something for everyone.

And that does not even include all the other outstanding CLE programs, as well as all the events sponsored by the HCBA’s superb Young Lawyers Division, which was ably led by President Dara Cooley.

Looking forward to next year, I’m confident incoming President Kevin McLaughlin will do an outstanding job leading the HCBA in 2016-17.

Here’s hoping everyone has a great summer.  
See you around the Chet.



## The Search for Answers in Cold Cases

**Advances in science have created new avenues in the investigation and prosecution of crimes.**

Unsolved murders are a popular theme on television and in the movies, but the reality is far from entertaining. An unsolved murder means a family without closure, a dangerous individual free in our community, and no opportunity for justice. While law enforcement carries the burden of solving these crimes, my office works to support and assist law enforcement in this difficult task.

To that end, my office participates in a task force called Left for Dead: The Tampa Bay Cold Case Task Force. This is a joint task force involving local law enforcement agencies and the Florida Institute for Forensic Anthropology and Applied Sciences at the University of South Florida (USF FL-IFAAS). Along with other activities, USF FL-IFAAS provides “expert technical assistance and training to law enforcement and medico legal professionals in the areas of applied science.”<sup>1</sup>

The task force will select unsolved homicide cases that meet certain criteria, including some long-term missing person cases. While cold case detectives currently follow up on new leads on cold cases, the task force will seek to use additional methods to supplement these investigations. Scientific methods and modern investigative tools will be applied to these cases to attempt to identify unknown victims and solve cases. These techniques go beyond DNA testing and may include forensic imaging and visualization. Forensic imaging and visualization can be used to develop an image of a victim’s appearance prior

to death. Behavioral psychology and burial patterns may be applied to specific crime scenes through the use of mapping techniques or an analysis of stable isotopes. The analysis of stable isotopes involves analyzing the presence of stable isotopes in a victim’s tissue sample and comparing it to geographic locations that contain the same composition of stable isotopes. This information could help to narrow a victim’s birthplace and geographic

mobility, which could help identify unknown victims or lead to suspects. The task force also can compare missing person cases to homicide cases that fit the same patterns and compare unsolved cases to solved cases involving similar factors.

Over the years, advances in science have created new avenues in the investigation and prosecution of crimes.

These advances could

lead to the identification of a previously unidentified victim or the identification of a previously unknown murderer. The cooperative relationship that my office has with our local law enforcement agencies, as well as our other community partners, could lead to progress on many of these cases. My office embraces innovations in science that can aid us in our pursuit of justice and hopefully bring some level of closure for the victim’s families.

<sup>1</sup> University of South Florida Institute of Forensic Anthropology and Applied Sciences, <http://forensics.usf.edu/mission/about/> (last visited 5/10/2016).





## NEW ADMITTEE SWEARING-IN CEREMONY

The HCBA hosted a swearing-in ceremony for new admittees to The Florida Bar on April 15 at the George Edgecomb Courthouse. HCBA president Carter Anderson and YLD president Dara Cooley spoke to the new lawyers about the benefits of joining the HCBA, and Judge Claudia Isom discussed the importance of professionalism as they embark on their new careers. Congratulations to all that were sworn in! The HCBA would like to thank the ceremony's sponsor:



STETSON LAW



## HEALTH CARE LAW SECTION CLE

The Health Care Law Section met on May 25 to hear Don B. Weinbren of Trenam Law speak about the tax aspects of choosing a healthcare entity. The section would like to thank its luncheon sponsor: NorthStar Bank.





## Doing Business with the Clerk's Office in a Mobile World

**These changes are part of a longstanding goal of mine to create a paperless office.**

**A**s I write this, my staff is hard at work on two related technology projects that should make your professional life easier.

First, we are redesigning our website, [hillsclerk.com](http://hillsclerk.com), to make it easier to do business with my office. This is the first major update of our award-winning website in a decade. The new design will be mobile responsive, making it much easier to pay traffic fines, look up records, and conduct other business on a smart phone. I don't know about you, but I look forward to not having to pinch and zoom my iPhone!

Second, we are moving into the final phase of putting a large number of court records online, a project begun two years ago when the Florida Supreme Court lifted a moratorium it imposed more than a decade ago.

As I mentioned in the May-June issue of the *HCBA Lawyer*, court files have been accessible online for several months, but only for attorneys of record and self-represented litigants. This final phase of the project makes most court records publicly accessible on our site for everyone.

We call our system HOVER, for Hillsborough Online Viewing of Electronic Records. During July, August and September, HOVER will be live and we will be testing the system. We hope to have final approval from the Supreme Court in the fall.

As you know, the Court requires my office to redact court documents to prevent the release of more than 20 categories of confidential information, such as Social Security numbers, the identities of sexual abuse victims, and bank account numbers.

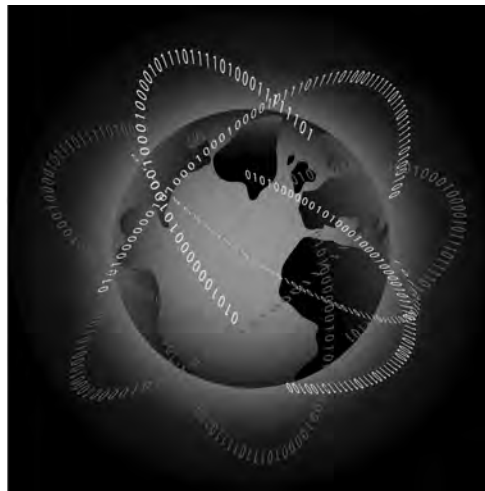
We are using scanning software to assist us in this task, but we also have employees who review each scanned document as an extra precaution. I encourage all members of the Bar to follow the Supreme Court's requirement of notifying my office whenever a court filing includes confidential information that must be redacted. Such notices are not only required, but they help speed redaction so that records can be released in a timely manner.

These changes are part of a longstanding goal of mine to create a paperless office. This is a fast-paced, digital world we live in, and we are responding to the demands of our digital citizens. Paying a traffic ticket online is the fastest, simplest way. Of course, you can also call my office to pay fines, fees and costs, or you can do so in person at one of our offices. We have been taking credit card payments by phone for more than a year, and the public has responded very favorably. Since offering the service in March 2015, more than \$6 million has been collected by phone.

Unfortunately, staffing shortages can mean long wait times – sometimes 45 minutes – so I ask for your patience.

I should note there is also a financial incentive for these changes. Because of a lack of funding, we must find ways to do more with less. We are faced with reducing our current court staff by 28 additional positions effective October 1, 2016, which is on top of the 20 positions we lost during fiscal year 2015-16. Conducting much of the public's business online helps reach that goal.

P.S. We now have a Facebook page for the office, so please follow us at [Facebook.com/hillsclerk](https://www.facebook.com/hillsclerk).





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## An Interview with the Honorable Steven D. Merryday

**“The prerequisite for accomplished writing is extensive and accomplished reading ... an unremarkable but absolutely true observation.”**

**T**he following is an edited excerpt of an interview with the Hon. Steven D. Merryday, Chief District Judge, United States District Court, conducted by Mike Hooker.

**Q.** Judge, you hail from Palatka, Florida. How did growing up in a small town shape you as a person and as a jurist?

**A.** I was raised in a community that was about sixty percent white and about forty percent black but in which, despite that difference, we had a lot in common because almost no one had any money, certainly not if measured by Tampa standards. Putnam County was both then and now one of the lowest *per capita* income counties in Florida. I suppose that a belief in the value and necessity of work and a belief in one's ability to overcome disadvantage through personal effort are essential to success for someone who starts at or near the lowest economic stratum of the state. Having the mother, the father, the brother, and the teachers that I had was much more of an advantage than living in Putnam County was a disadvantage.

**Q.** I understand that you worked in some pretty labor-intensive jobs as a youth, including working as a



pipefitter. Any lessons learned from those kinds of jobs that you still carry with you?

**A.** Build it plumb when it's supposed to be plumb, and build it level when it's supposed to be level, even when no one's looking and even if the foreman won't see the difference. And I discovered that I could learn something from every person on a job — from the general superintendent to a fellow on the labor crew. I worked at a number of construction sites in South and North Carolina and Tennessee, and I am very glad that I did. I met a lot of fine people — and a few others.

**Q.** You were a standout student as an undergrad — didn't you graduate as valedictorian at the University of Florida?

**A.** I did. I gave the speech at my undergraduate graduation in June 1972. I got the academic award,

*Continued on page 17*



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*Continued from page 16*

and Jack Youngblood, the great Gator and Los Angeles Rams football player now in the NFL Hall of Fame, got the athletic award. So, the most memorable thing for me was graduating with and meeting Jack Youngblood, shaking his hand, and standing next to him on the podium in front of about 15,000 people.

**Q.** You also were a Rhodes Scholarship finalist?

**A.** Yes, I was. The selection committee held the final interviews in the president's conference room at the University of South Florida. I finished second. I had a close friend from Palatka who was at Oxford at the time, and I was looking forward to joining him there. But that was not to be.

**Q.** You were also President of the student body at the University. Were you interested in politics in your youth?

**A.** I admit to some interest, then and now, in the subject of politics — I might prefer the term “public affairs” — but not in my practicing politics. My successful candidacy for the student presidency at UF impressed on me that I had no taste for campaigning. That campaign cured me of any desire for elective office.

**Q.** I happen to know that you tried a number of cases when you were in private practice. Any of those cases particularly stand out?

**A.** Several of them are still vivid in my memory. The school teacher that you and I defended, a permanently injured two-year-old child that Joe Varner and I represented in a medical malpractice action, and several other cases. As you know, cases stand out — stick with you — for different reasons, including a spectacular result, a memorable client, an unforgettable witness, an obnoxious adversary, unique facts, a disaster averted, and many other reasons. When all is said and done, trial practice among the better practitioners is a total-submersion activity and not a drive-by activity. So almost every case comes back to mind from time to time.

**Q.** You were appointed as a federal district judge in 1992. Those who knew you at the time were somewhat surprised that you aspired to the bench. Had that always been a dream of yours?

**A.** No. I am always suspect about anyone who claims to “dream” about the bench. I cannot think of a wholesome and balanced reason to “dream” about the bench. Service as a federal judge is a public trust

that carries a considerable burden and often requires a considerable financial and social sacrifice. I would say that I was willing to serve and that I thought I could serve well — in the sense that I knew how to litigate in federal court and knew that I was not in anybody's bag and not available at any price. I saw a lot of bad judges, and I thought I could do better. I saw some great judges, federal Judge Hodges in Tampa and federal Judge Higginbotham in Dallas always come first to mind, and I thought that I might in time achieve an acceptable level of accomplishment if I closely observed my betters, such as those two, and followed their lead.

**Q.** What has surprised you the most about being a judge?

**A.** Maybe two things: First, that I remain on the bench after nearly twenty-five years. I would not have thought that I would remain in one line of work for so long. Second, the extent to which I, formerly an almost exclusively civil practitioner, have focused on, and spoken and written about, the criminal law and criminal sentencing. It is a subject that grabs you every day and just won't let go and that challenges one's fundamental understanding about your fellow humans — about crime and punishment, about sin and redemption.

**Q.** What in your view is the most difficult aspect of being a judge?

**A.** Except for the fifteen years or so with no salary adjustment, I haven't found judging difficult; challenging, yes, at times, but not “difficult” in the sense that I think you intend. Someone who has an appointment during “good behavior” as a federal judge occupies a singularly favored status in life and can't really complain about much of anything. And, while serving as a federal judge and on assignments for the Judicial Conference of the United States, I have acquired a circle of splendid friends around the United States that I would otherwise not have acquired.

**Q.** You have a reputation of wielding a very eloquent pen.

**A.** I don't know about all this “eloquent pen” stuff. Over the years I have studied carefully the mechanics of writing and editing, have learned lessons from some good writers, and have benefitted from working in my early years for Wofford Stidham at Holland & Knight. He was a natural, energetic, and unforgiving editor, and he was a true believer in clean and precise prose. Later I worked with Julian Clarkson, a

*Continued on page 18*

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prominent and successful appellate lawyer, who had a journalism background and who insisted on tight legal writing. Somewhere along the way I started reading books by Jacques Barzun, David Mellinkoff, and others about writing and editing. And, after Bryan Garner burst on the legal writing scene, legal writing has improved steadily or, at least, the resources available to improve legal writing have improved steadily. I have gotten to know Bryan Garner a bit, and he is an extraordinary and delightful man. But, despite Garner's Herculean effort, the legal profession as a source of quality writing still has a long way to go.

**Q.** What advice would you give to lawyers who are interested in developing their legal writing skills?

**A.** The prerequisite for accomplished writing is extensive and accomplished reading. That is an unremarkable but absolutely true observation. If you want to play the guitar, you watch the greatest guitarists. If you want to learn to fish Tampa Bay, you watch the best charter captains. To develop the ability to write interesting, efficient, and convincing prose, you must read. People who say they want to write but don't want to read are not honest with themselves, and they are fooling only themselves.

**Q.** You also have been known to issue a few pretty funny opinions that seem to make the rounds among practitioners, including one involving a lawyer who was seeking a continuance a few years ago so that he could participate in an Ernest Hemingway lookalike contest. Do you enjoy bringing a little levity to the judicial process at times?

**A.** I think that most of the time, when the humor occurs to you, the best thing to do is write it out and have your smile, then delete your attempt at humor and go on about the serious business of judging. My observation is that most of the things that seem exquisitely witty at the time will seem painfully flat later. I don't think parties believe their case is funny, and they don't want flippancy from the judge.

**Q.** You are also known for being detailed and thorough during the jury selection process, taking longer to complete the *voir dire* than some other federal district judges.

**A.** As a practitioner I participated in jury selection on many occasions. I cannot say that I approve of all the techniques that are commonly deployed by lawyers during jury selection, especially in the state courts.

However, there are some things that a lawyer needs to know and should know about the prospective jurors. I try to elicit from the prospective jurors the things that a lawyer ought to know and to give the lawyers and the parties a chance to hear and watch the prospective jurors. And I want to hear and watch the prospective jurors myself; I want a good jury. So, I try to give the lawyers what they need. I have never had much in the way of complaints about jury selection. In point of fact, I almost always begin jury selection between 1:30 and 2:00 and end between 5:00 and 6:00.

**Q.** You succeeded Judge Conway as the Chief Judge of the Middle District last year. What do you consider to be your role as Chief Judge?

**A.** The Chief Judge is the principal administrative officer with oversight responsibility for the office of the Clerk of the Court, the Probation Office, and Pretrial Services. As Chief Judge, you are a member of the Judicial Council of the Eleventh Circuit, which governs the court of appeals and the federal district courts in Florida, Georgia, and Alabama. The Chief Judge must superintend expenditures, both personnel and capital. The Chief Judge appoints the district's committees, including search committees for magistrate judges and agency heads. The Chief Judge is the person to whom employee grievances are finally presented. The Chief Judge presides at most meetings of the district court. In fact, my duties as Chief Judge have taken more than half of my time since last August; I hope after my first year as chief judge that I am more efficient.

**Q.** What would you most like to accomplish as Chief Judge?

**A.** I think that someone who occupies this sort of office, to which you were not elected and which involves presiding over a group of colleagues, friends, and peers, wants to preside peacefully and in a manner that both is, and is perceived as, even-handed. In other words, you want to preside in a manner that justifies the trust of your colleagues. Without that, you don't have much of anything worth having.

**Q.** What do you think is the most pressing problem for the Middle District of Florida?

**A.** Matching our resources to our obligations. If we had all of our judges and staff in one building and all of our cases in the same county that building was in, we clearly have enough judges and staff to

*Continued on page 19*



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accomplish the work that is assigned to us. But we have five divisions and five courthouses stretched over four hundred miles from Nassau County to Collier County. The five divisions differ enormously. Our smallest division is Ocala, which is home to the largest federal prison in the United States, which means a flood of papers from prisoners. Florida is a death penalty state and Raiford and Florida State Prison are in our Jacksonville Division. Tampa is the nearest American port to the multi-ton cocaine interdictions conducted by the Navy and the Coast Guard in the Caribbean and in the eastern Pacific. In other words, rationally, efficiently, and fairly connecting our judges and staff, on the one hand, and our cases, on the other, is an ongoing problem. Trying to efficiently manage the work without unfairly treating a judge or a staffer or overloading a division is our biggest test. We are not uniformly successful.

**Q.** Is there anything that you miss most about the private practice of law?

**A.** If there is something, it is not the necessity to keep track of my time by the tenth of an hour (which my partner and friend Bob Rasmussen will claim that Mike Fogarty and I never did, anyway). I was and am fond of my former partners and my former associates; I was very lucky in that regard, although I imagine I tried their patience from time to time, maybe all the time; trial lawyers tend to do that.

**Q.** Looking back on it now, were there practice habits that you had as a lawyer, before becoming a judge, that you would now change in view of your experience on the other side of the bench?

**A.** Definitely. I was not given to drama, emotion, and the like as an advocate. I perhaps was prone occasionally in my youth to exasperation or frustration or even anger, provoked by the aggressive antics of some of the more devious opponents that I had. Now, on every occasion, I would get straight to the point in a workmanlike manner and talk directly to the judge in complete candor and explain how I proposed to resolve the controlling issue, how I resolved any ambiguities or contradictions during my thinking about the problem, and what I think works best in the circumstance. I can name you a couple of lawyers who do that and who are terrific, but I guess I had better not name names. They know who they are.

**Q.** I have heard that you're an avid reader. What kinds of things do you like to read?

**A.** The list of my reading interests is long and varied. Hey, I even read with interest Donald Trump's "The Art of the Deal" many years ago, and I remember it well, especially the episode about his fixing the Central Park ice skating rink in just a few months after the city government mangled the job for years and wasted millions of dollars. I think that my staying at the Grand Hyatt and eating at Tavern on the Green prompted my interest. But to the charge of being an avid reader, I gladly plead "guilty, very guilty."

**Q.** What are you currently reading?

**A.** Kenneth Stampp's "And the War Came." And I just finished his well-known book on the reconstruction era. I don't read much nineteenth century American history, but Stampp takes on the more interesting topics, such as why the North didn't let the South secede, let the South go its own way without war, and why reconstruction was mangled so badly, no matter the perspective from which it is viewed.

**Q.** I've seen in your office a chessboard. The pieces move constantly. Do you play chess regularly? With whom?

**A.** Since 1998, I think it was, I have played regularly with a small group of people, about fifteen to twenty, from around the world. We have played as a team against a series of grandmasters. We have beaten some quite famous players. I am certain that I am the least capable player on the team, but I have been useful for resolving disputes. The best player lives in London and has visited me in Tampa and at my home near St. Augustine Beach. He is from time to time the highest-rated correspondence chess player in the world. He is dizzyingly smart, makes his living in petroleum derivatives, and loves Mozart, another thing we have in common.

**Q.** What do you feel is your most significant accomplishment as a jurist?

**A.** In exactly the same sense that my most telling accomplishment as a practitioner was the associates that I trained, I think my most significant accomplishment as a jurist is perhaps the law clerks that I have trained.



*Author: Michael S. Hooker - Phelps Dunbar, LLP*

## SUBSTANCE OVER FORM: IDENTIFYING APPEALABLE FINAL ORDERS

### Appellate Practice Section

Chairs: Jared Krukar - Butler Weihmuller Katz Craig, LLP; and Mariko Outman - Florida Second DCA



Every experienced trial lawyer knows the sting of an adverse ruling and is confronted by the natural instinct to immediately correct a perceived trial court error by appealing the ruling. But the first question to ask before seeking review by an appellate court is whether the subject order is ripe for appeal. The most critical appeal to identify in any litigation is one from a final order, which must be sought within 30 days of rendition or will be forever waived.<sup>1</sup> But what makes an order final?

An order is final when it concludes the judicial labor in a case.<sup>2</sup> It must be written, and must contain “words of finality.”<sup>3</sup> The title of an order does not control whether it is final, so practitioners must carefully review the effect of an order in addition to the written words.

Orders granting a motion for summary judgment or a motion to dismiss do not become final until they are memorialized in a final

judgment.<sup>4</sup> Other orders that would not be immediately apparent as final are made final by operation of law. For instance, an order that disposes of a case entirely as to one party is final and must be appealed, even though the rest of the case remains pending.<sup>5</sup> And while an order dismissing without prejudice to amend is not final, an order dismissing without prejudice to file a new lawsuit is final.<sup>6</sup> Judgments that reserve jurisdiction to enter an award of attorney fees also are final because attorney fee claims are considered collateral.<sup>7</sup>

Once there is a final order, certain authorized postjudgment motions will toll the rendition of judgment, and thus the time to file an appeal.<sup>8</sup> An appeal filed before such motions have been disposed will be held in abeyance until the trial court rules on the motion.<sup>9</sup> Other premature notices are subject to dismissal, but if the trial court enters the final judgment before dismissal of the appeal, the appeal



**The most critical appeal to identify in any litigation is one from a final order.**

shall be considered effective to vest jurisdiction in the appellate court.<sup>10</sup>

<sup>1</sup> Fla. R. App. P. 9.110(b).

<sup>2</sup> Fla. R. App. P. 9.030(b)(1)(A); *SCI, Inc. v. Aneco Co.*, 410 So. 2d 531, 532 (Fla. 2d DCA 1982).

<sup>3</sup> *Better Gov't Ass'n of Sarasota Cnty, Inc. v. State*, 802 So. 2d 414, 414 (Fla. 2d DCA 2001).

<sup>4</sup> *Ball v. Genesis Outsourcing Solutions, LLC*, 174 So. 3d 498, 499 (Fla. 3d DCA 2015); *Rollins Fruit Co., Inc. v. Wilson*, 923 So. 2d 516, 520 (Fla. 2d DCA 2005).

<sup>5</sup> Fla. R. App. P. 9.110(k).

<sup>6</sup> *Al-Hakim v. Big Lots Stores, Inc.*, 161 So. 3d 568, 569-70 (Fla. 2d DCA 2014).

<sup>7</sup> *Morand v. Stoneburner*, 516 So. 2d 270, 271 (Fla. 5th DCA 1987).

<sup>8</sup> Fla. R. App. P. 9.020(i).

<sup>9</sup> Fla. R. App. P. 9.020(i)(3).

<sup>10</sup> Fla. R. App. P. 9.020(l).



*Author: Heidi J. Bassett - Bassett Law Firm, P.A.*



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## APPELLATE SECTION LUNCHEON AND CLE

The Appellate Section held a two-part luncheon and CLE on May 11. Thomas Newcomb Hyde spoke on professionalism and the legal practice at the luncheon, which was followed by a CLE on the topic of “What’s Appealing to Appellate Courts: Procedures, Practices & Professionalism.” Speakers included Judge Anthony Black, Judge Edward LaRose, Judge Matthew Lucas, Judge Daniel Sleet, Nick Brown with Carlton Fields, Tom Elligett, Jr. and Amy Farrior with Buell & Elligett, P.A., and Dineen Pashoukos Wasyluk with DPW Legal.

The section thanks C1 Bank for sponsoring this event.



## BARRISTERS FROM ENGLAND VISIT HILLSBOROUGH BAR

Five English barristers who were participating in the Advanced Trial Advocacy program at the University of Florida College of Law were hosted by Judge Claudia Isom and Woody Isom in Tampa in May to meet local lawyers and judges and observe court in action. As part of the visit, the group had lunch at the Chester Ferguson Law Center with members of the Young Lawyers Division and discussed differences in day-to-day practice between barristers and Florida lawyers.





## NO “FUN” IN DYSFUNCTION

Collaborative Law Section

Chairs: Jeremy Gluckman - Jeremy Gluckman, P.A.; and Christine Hearn - Himes & Hearn



**B**y the time this article goes to press, the team of Caroline Black Sikorske, Alice Boullosa, David Harper, and myself will have spoken at the Florida Academy of Collaborative Professionals Fourth Annual Statewide Conference in Tampa about Four Dysfunctions of Collaborative Teams, a title that derives from Patrick Lencioni’s *New York Times* bestseller, “The Five Dysfunctions of a Team.”

Although Lencioni’s book illustrates the importance of team play in the corporate setting, synergy of team performance is evident in all teams, with sports being one of the obvious comparisons. While great teams often have great players, many great players never make it to the Super Bowl, World Series, or Stanley Cup because of a lack of team synergy, defined as the enhancement in performance that occurs when a team works well together to achieve better results than any one team member could achieve alone.

Our statewide conference theme was “Synergy of the Team,” meaning the enhancement of performance and results when collaborative team members work well together to accomplish the desired collaborative outcome,

commonly referred to as a “win-win” result. This synergy is important for cases such as a couple ending what once was a loving relationship.

Our mission to facilitate a soft landing for people in situations such as those who want to co-parent effectively after divorce, and to treat and be treated with respect, is often difficult because our duty to zealously represent our client has been viewed too narrowly as getting “not a penny less than what the law provides.”

The paradigm shift occurs because, rather than directing clients, we are challenged to empower our clients to develop their own win-win options, since they know their financial landscape and family’s emotional needs better than we do or judges do. Unfortunately, teams do not always function well together, and that dysfunction can impede, obstruct, and prevent — rather than facilitate — a healthy, self-determined result.

These dysfunctions are the challenges we must identify before, during, and after our process. In the collaborative context, we discuss the following common dysfunctions: (1) absence of trust; (2) fear of open conflict; (3) lack of commitment; and (4) lack of shared interests.



**All team members must invite and accept coaching from the team, be open to feedback, and modify dysfunctional behavior.**

Dysfunctions often can be anticipated early, avoided, or mitigated, but the challenge to recognize them and invite team input to modify dysfunctional behavior is *essential*.

Team dysfunctions are many, but to name a few, attorneys may bring a

“history” where relational baggage from past litigation makes trusting the other lawyer difficult. We may revert to directing our clients and the outcome, or we may become uncomfortable in our own conflict style and avoid open, difficult discussions between clients that need to occur in order to achieve constructive client-driven results. Neutral professionals also are not immune and can forget to be — and project their neutrality — to lawyers and clients, while keeping their personal opinions in check. All team members must invite and accept coaching from the team, be open to feedback, and modify dysfunctional behavior. Remember, there is no “fun” in dysfunction, especially from your own team.



*Author: John Fraser Himes – Himes & Hearn, P.A.*

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## MAKING A DIFFERENCE THROUGH THE COMMUNITY SERVICES COMMITTEE

### Community Services Committee

Chairs: Sacha Dyson - Thompson, Sizemore Gonzalez & Hearing, P.A.; and Lara LaVoie - LaVoie & Kaizer, P.A



**T**he Community Services Committee (CSC) had another amazing year due to the support and generosity of our wonderful volunteers and donors. It started with the success of the Adopt-a-Veteran event (led by Mary Snyder at Hill Ward & Henderson and co-chaired by Lara LaVoie of LaVoie & Kaizer, P.A.) in October, where volunteers gave their time and donations so generously to fulfill the wish lists of veterans in need.

Following in December, countless volunteers and donors stepped up once again to support the CSC's Elves for Elders event (led by Tom Curran of Shumaker, Loop & Kendrick, LLP and co-chaired by Lara LaVoie) to help make the holidays brighter for these inspiring seniors. In March, the CSC hosted Dining with Dignity Week (chaired by Amy Badow of Cooley Law School), where volunteers, including members of the Thirteenth Judicial Circuit, spent quality time at Trinity Café, serving sit-down, three-course meals to Hillsborough County's homeless, hungry, and working poor. It was a rewarding experience for all!

Our most recent event took place in June at A Kid's Place in Brandon, which is an incredible nonprofit center for abused, neglected, and abandoned children.

To help these amazing children feel like kids for a day, the CSC threw them another Pirate Party. Once again, it was a resounding success thanks to all who donated or came out to help! We had some fun activities, and everyone had a blast — the kids and the CSC volunteers included. We played pirate games and allowed every little scallywag to pick prizes out of our treasure chest. We dressed the little buccaneers as pirates and let them make their very own pirate treasure chests. The kids also enjoyed face painting and tattoos (courtesy of Stingray Chevrolet and Glitter Bug Face Painting). South Tampa Dermatology and Sonny's BBQ (on Adamo Drive) donated the yummy grub; Petite Madelyn's Bakery in Brandon donated delicious cookies; Colin Barnley donated the awesome pirate cupcakes; and Steven and Emily Kundrat donated drinks.

Due to the generosity of anonymous donors and Tonya and Rob Byford, the kids also were able to enjoy a bounce house, as well as snow cones and popcorn. Camping World RV Sales and Celestar Corporation donated the funds, so that each little pirate received a gift card to AMC movies, while donations from the Law Offices of Lisa Esposito, P.A., General Flooring Corp., Maria Maranda/Maranda Insurance Agency/State Farm, and General RV Center allowed CSC to purchase tons of loot for the little buccaneers to win for each pirate game they played! Stingray

**"To know even one life  
has breathed easier  
because you have  
lived. This is to have  
succeeded." — Ralph  
Waldo Emerson**

Chevrolet's donation also allowed CSC to provide a new comforter and sheet set for each little buccaneer at A Kid's Place.

The CSC is humbled and overwhelmed by the amount of donations and

volunteer support that we received for this event. The CSC would like to thank all of our volunteers and the Hillsborough County Bar Association, as well as the following donors: Law Offices of Lisa Esposito, P.A.; Lara M. LaVoie, Esq., P.A.; Hill Ward Henderson (especially Attorney Mary Snyder); General Flooring Corporation; Western Michigan University - Cooley Law School; Cathi and Kevin Schmidt; Ron Christaldi and Shumaker Loop & Kendrick LLP; Anton Castro Law, LLC (especially Christina Anton-Garcia and her husband, Gary Garcia); Black Rock Trial Lawyers; Olsen Law Firm, PA; USA Spine (Dr. Colleen Maxcy); Petite Madelyn's Bakery; AJ's Bikes & Boards, LLC; Publix in Valrico; Burger Monger; Fernando Llop and PLSS Paving; South Tampa Dermatology; Campbell's Dairyland; Arielle W. Williams, Esquire; The Barefoot Pirate; Mary W. Simmons, CPA, PA; Maria Maranda / Maranda Insurance Agency/State Farm; Steven and Emily Kundrat; Lee Everett; Pam Olsen; Linda Hutchins; Cindy and Martin Urban; Tracie Fraher; Abdoney Orthodontics; Camping World RV Sales; Peg Leg Pirates; General RV Center; Stingray Chevrolet (and

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## MAKING A DIFFERENCE THROUGH THE COMMUNITY SERVICES COMMITTEE

Community Services Committee



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amazing manager John Whaley); Nita Hospel; Steve Bennett/Bolter & Carr Investigations; Kouwenhoven & Associates; Dr. Gary Selby, DDS PA; Liz & Rick Tomlin; Steve & Gayle Ratcliff; Migdalia Figueroa; Jan Brown; Jason Cohen; Joel & Wilhemina Cochrane; Gigi Pelosi; General RV Center; and Celestar Corporation. We sure hope that we didn't forget anyone!

Finally, the CSC would like to give a special thank you to Emily Kundrat and Lisa Esposito for spearheading this Pirate Party and making it the best one ever! As one child best summed it up: "Why are these people doing this, when they don't even know us?" When told, "Because they want to see you have fun," he responded, "I never heard anything like that before!" YES, the CSC and all of our volunteers and donors made a difference, and that is all that matters. Thank you!!

For more information about joining the CSC, please contact chairs Sacha Dyson, (813) 273-0050 / [sdyson@tsghlaw.com](mailto:sdyson@tsghlaw.com) or and /or Lara LaVoie, (813) 898-6786 / [lara@flinjuryadvocates.com](mailto:lara@flinjuryadvocates.com).

*Author: Lara M. LaVoie - LaVoie & Kaizer, P.A.*



## ARBITRATION OF §553.84 CLAIMS UNDER HOME WARRANTIES

Construction Law Section

Chairs: Erik Raines - Hill Ward Henderson; and Edward J. Kuchinski - Sivyier, Barlow & Watson, P.A.



One of the most common statutory claims in construction defect litigation arises under section 553.84, Florida Statutes, for failure to comply with the Florida Building Code. Many homeowner warranties require arbitration, but how do such provisions affect 553.84 claims, subsequent purchasers, and homeowners associations?

Because section 553.84 does not expressly prohibit arbitration, homeowners are required to arbitrate such claims if their home warranty so requires. *See Reeves v. Ace Cash Express, Inc.*, 937 So. 2d 1136, 1137 (Fla. 2d DCA 2006) (courts examine the relevant statute and arbitration provision for an intent to preclude arbitration in determining arbitrability). Section 553.84's language creating a cause of action "in any court of competent jurisdiction" is likely insufficient to preclude arbitration. *See Aztec Med. Servs., Inc. v. Burger*, 792 So. 2d 617, 621 (Fla. 4th DCA 2001) (legislative intent to preclude arbitration must be unambiguously stated in the statute); *see also Sharpe v. Lytal & Reiter, Clark, Shapre, Roca, Fountain, Williams*, 702 So. 2d 622, 624 (Fla. 4th DCA 1997) (the phrase "the court shall adjudge a dissolution" in § 620.715(1) of Florida Partnership Act did not preclude arbitration).

Subsequent purchasers, who are third-party beneficiaries of a home's limited warranty, can be bound by its arbitration provision. In *Pulte Home Corp. v. Bay at Cypress Creek Homeowners' Association, Inc.*, 118 So. 3d 957, 958 (Fla. 2d DCA 2013), a warranty's arbitration provision

compelled a homeowners association to arbitrate claims against the homebuilder for building code violations under section 553.84 despite the association's decision not to sue for breach of warranty. The court held that the arbitration agreement applied to statutory claims and breach of warranty claims and that subsequent purchasers were bound to the arbitration agreement, because "the subsequent purchasers are permitted to assume [the warranty] in favor of the initial purchasers," and are therefore third-party beneficiaries to the warranty who can be compelled to arbitrate. *Id.* Thus, the court reversed the trial court's denial of the builder's motion to compel arbitration.

Similar logic applies when the homeowners association brings a claim on behalf of individual homeowners. In *Pulte Home Corp. v. Vermillion Homeowners Association, Inc.*, 109 So. 3d 233, 235 (Fla. 2d



**Subsequent purchasers and homeowners associations can be required to arbitrate §553.84 claims under the initial purchaser's warranty.**

DCA 2013), the court held that any claims for damages to roofs and home exteriors that the plaintiff-homeowners association brought on behalf of individual homeowners were subject to the arbitration provision contained in the homebuilder's limited warranty, even though the association had

not signed a purchase agreement or limited warranty. The limited warranty required the homeowners to arbitrate these claims. Thus, the association, proceeding on behalf of those homeowners, should also be required to arbitrate its defect claims, because the association's rights are not superior to those of the individual homeowners. *Id.* However, the court held that the association could allege claims involving its own property. Those claims would not be subject to arbitration.

In sum, Florida law suggests that homeowners, subsequent purchasers, and even homeowners associations can be compelled to arbitrate building code violations

pursuant to the initial purchaser's home warranty.



*Author:*  
**Michael G. Rothfeldt**  
— Carlton Fields



## CONSTRUCTION LAW CLE

The Construction Law Section held the last of a two-part CLE on April 21, which provided an insurance overview for construction law attorneys. Topics covered included the “your work” exclusion and subcontractor exception; defendants’ demands for defense and indemnity; reservation of rights; and mediation and settlements. Speaking at the luncheon were Bruce G. Alexander of Ciklin Lubitz & O’Connell; Rebecca C. Appelbaum of Butler Weihmuller Katz Craig LLP; and Debbie Sines Crockett and David A. Zulian of Cheffy Passidomo, P.A.

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## RIGHT TO (UNKNOWN) REPRESENTATION

Criminal Law Section

Chairs: Matt Luka - Trombley & Hanes; and Justin Petredis - The Law Office of Justin Petredis, P.A.



While reading the recent Florida Supreme court criminal law updates, I came across a familiar and interesting case: *State v. McAdams*, 2016 WL 1592710 (Apr. 21, 2016). I was an assistant state attorney in the Sixth Circuit's Dade City office when this case was originally tried. This recent decision affirms the reversal of a trial court order denying a motion to suppress and establishes a bright-line rule that law enforcement, when questioning an individual in a non-public area, must inform the individual when an attorney retained on his or her behalf arrives.

In that case, Michael McAdams was the suspect in a double homicide in Pasco County. Although no bodies were found, evidence of blood stains and a possible bullet hole were found in McAdams' estranged wife's home. Blood was found in McAdams' home, as well. This led police to believe McAdams was involved in foul play.

McAdams agreed to come to the police station to assist in the investigation. The police began their interview at 11:55 a.m. At 2:27 p.m., McAdams confessed to shooting his estranged wife and her boyfriend. Shortly before McAdams confessed, an attorney hired by his parents arrived at the station and

attempted to speak to him. An officer told the attorney that he could not speak to McAdams. The attorney informed the officers that he wanted all questioning to stop: "I don't want anymore [sic] questioning to go on without my presence." The officers ignored this demand, and the attorney left the station.

During a motion to suppress hearing, a detective who interviewed McAdams stated she knew of the attorney's presence and that the attorney wanted police questioning to stop. The detective also confirmed her decision that the attorney was not going to be allowed access to McAdams and that she was not going to inform McAdams of the attorney's presence because she "didn't have to."

The Second District Court of Appeal reversed the denial of the motion and certified the issue as one of great public importance. The Supreme Court phrased the question/issue as: *Under the Due Process Clause of the Florida Constitution, when must a person who is being questioned by law enforcement in a non-public location be notified that an attorney retained on his or her behalf is at the location available to speak with him or her?*

The Court held a bright-line rule was required to avoid



**The ruling in *McAdams* establishes due process protections to clients without the individual having to specifically request or even understand this protection.**

"outrageousness" and case-by-case reviews. The Court stated a person must be given the "critical information" that an attorney is available, regardless of whether the police believe the person is not in custody. They also held that the police must interrupt questioning to relay that information, taking that decision-making out of law

enforcement hands.

The Court found that the police violated McAdams' right to due process when they declined to inform him an attorney hired on his behalf was present at the station. They went on to discuss McAdams' custody status, but held custodial status is irrelevant to an individual's right under the Florida Constitution to know an attorney is present on his/her behalf. The decision in *McAdams* makes it clear that due process requires access to an attorney, regardless of the client's knowledge of the presence of the attorney or the fact the attorney was even hired.

While this scenario may not be an everyday occurrence, it is interesting to see the Court extend the right to representation in this manner. Many of my clients complain they were not aware of

*Continued on page 29*

## RIGHT TO (UNKNOWN) REPRESENTATION

Criminal Law Section

*Continued from page 28*

all of their rights before or during questioning by the police, even after Miranda warnings are read. Others claim, even in a non-custodial interview, that they did not feel they had the right to end

questioning or leave. The ruling in *McAdams* establishes due process protections to clients without the individual having to specifically request or even understand this protection. Furthermore, this ruling makes it clear that while police can misrepresent or

withhold information, those actions have a limit and do not extend to information regarding the suspect's attorney. This decision is a victory for the attorney-client relationship.

*Author: Justin Petredis - The Law Office of Justin Petredis, P.A.*



## CRIMINAL LAW SECTION RECOGNIZES KATHERINE YANES

The HCBA Criminal Law Section awarded Katherine Yanes, of Kynes, Markman & Felman, P.A., its annual Marcelino "Bubba" Huerta III Award for Professionalism and Pro Bono Service at its luncheon on April 6. Yanes completed more than 430 hours of pro bono work in 2015, primarily with The Clemency Project. Yanes and former Huerta Award winners also gathered with Terri Huerta, Mr. Huerta's widow, for a photo following the luncheon.

The section would like to their luncheon's sponsor: Bank of Tampa.



## CMS PROPOSES NEW VALUE AND QUALITY PAY CRITERIA FOR CLINICIANS

Health Care Law Section

Chairs: T.J. Ferrante - Foley & Lardner LLP; and Sara Younger Seifried - BayCare Health Systems



**O**n April 27, 2016, the Centers for Medicare and Medicaid Services (CMS) issued a Notice of Proposed Rulemaking (NPR) to implement portions of the Medicare Access and CHIP Reauthorization Act of 2015, which combined portions of existing value and quality-based reimbursement programs into the Merit-Based

Incentive Payment System (MIPS). The NPR establishes the Quality Payment Program (QPP). If enacted, it will impact payment to clinicians beginning in 2019. Key aspects of the NPR are summarized in this article.

The QPP includes two paths that clinicians can participate in: 1) MIPS, or 2) Advanced Alternative Payment Models (APMs).



**Proposed rules begin the transition from fee-for-service to value- and quality-based payment.**

### MIPS

With certain exclusions, MIPS applies to Medicare Part B clinicians, including physicians, physician assistants, and advanced practice registered nurses. Under MIPS, clinicians would be measured in four categories:

1. **Quality** (50% in Year 1) – as with the Physician Quality

*Continued on page 31*

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*Continued from page 30*

Reporting System, clinicians choose six measures to report from among a range of options that accommodate differences among specialties and practices.

## 2. Advancing Care

**Information** (25% in Year 1) – clinicians choose customizable measures that reflect how they use technology. Unlike the Meaningful Use program, this category does not require all-or-nothing EHR measurement.

## 3. Clinical Practice

**Improvement Activities** (15% in Year 1) – clinicians are rewarded for clinical

practice improvements.

Clinicians may select activities that match their practices' goals from more than 90 options.

4. **Cost** (10% in Year 1) – the score is based on Medicare claims. This category will use 40 episode-specific measures to account for differences among specialties.

Based on their score in the four categories, clinicians will receive positive, negative, or neutral adjustments to Part B reimbursement. Potential negative adjustments would increase from -4% in 2019 to -9% in 2022 and after, with corresponding positive adjustments. The NPR proposes the first performance period will be January 1 through December 31, 2017, for payments adjusted in 2019.

## APMs

Clinicians who participate in certain APMs (Advanced APMs) are not subject to MIPS. From 2019 through 2024, clinicians who “substantially participate” in Advanced APMs would receive a lump sum payment equal to five percent of their prior year’s Part B payments. Beginning in 2026, they will receive a higher Medicare Physician Fee Schedule update than non-qualifying clinicians. Under CMS’ proposed criteria, only five APMs qualify as Advanced APMs. Medicare Shared Savings Program Track 1 and bundled payment programs do not qualify.

To satisfy the requirement for “substantially participating,” clinicians must satisfy either payment or patient criteria as shown in the chart on the left.



*Authors:*

*Erin Smith Aebel  
and Kelly A. Leahy  
– Shumaker, Loop  
& Kendrick, LLP*

Year	2019	2020	2021	2022	2023	2024 and later
Payments through an Advanced APM	25%	25%	50%	50%	75%	75%
Patients through an Advanced APM	20%	20%	35%	35%	50%	50%



## HOT OFF THE PRESSES

(Left:) Recently retired Judge Altenbernd takes a first look at the feature written about him by Tom Elligett and Amy Farrior in the May/June issue of the *Lawyer* magazine. He is joined by (left to right): Tom Elligett, Judge Daniel Sleet, Judge Anthony Black and Judge Nelly Khouzam.

## OUR IMMIGRATION POLICY SHOULDN'T BE LEFT TO CHANCE

Immigration & Nationality Section

Chair: Maria del Carmen Ramos - Shumaker, Loop & Kendrick, LLP



**S**ummer is here, and most business immigration practitioners are breathing a sigh of relief that the H-1B season is over. At the same, however, many are scrambling to find a visa alternative for employers whose H-1B petitions were not chosen.

Every year, United States Citizenship & Immigration Services (“USCIS”) issues H-1B visas to foreign workers serving in “specialty occupations at a professional level.” A specialty occupation requires theoretical and practical application of a body of highly specialized knowledge to be performed by a worker with at least the equivalent of bachelor’s degree in the field. Both the position to be filled and the foreign worker’s qualifications must meet the criteria for a specialty occupation.

Federal law provides for an annual quota of 65,000 new H-1B visas that can be issued in any given fiscal year, which runs from October 1 to September 30. There also is a separate quota of 20,000 H-1B visas per fiscal year for graduates of U.S. advanced degree

programs, for a total of 85,000 H-1B visas. If USCIS determines at any time during the first five business days of the filing period that it has received more than enough petitions to meet the numerical limits, the agency uses a computer-generated random selection process — i.e., a

“lottery” — to select a sufficient number of H-1B petitions that may proceed to adjudication. Petitions that are not selected are returned to the petitioning employer. This year, USCIS received over 236,000 H-1B petitions within the first week of filing.

Interestingly, USCIS’s lottery system remains a mystery because the agency has been very reticent to describe its selection process. There appears to be very little accountability in how the lottery system works, whether it’s operating fairly, and whether all the available H-1B visas allotted in any given fiscal year are being used. In light of this lack of transparency, the American Immigration Council and the American Immigration Lawyers Association have sued the U.S. Department of Homeland Security



**This year, USCIS  
received over 236,000  
H-1B petitions within  
the first week of filing.**

and USCIS under the Freedom of Information Act on the grounds that USCIS failed to properly respond to a FOIA request seeking records describing how USCIS tracks and counts unused H-1B visas for each fiscal year and how the electronic selection process

actually works. Until that lawsuit is resolved, the H-1B visa lottery will remain a mystery to us all, but in particular to employers.

Because the demand for highly skilled workers far exceeds the H-1B visas available in a given fiscal year, it is important that we have a system in place that fairly selects the petitions submitted and completely allocates the H-1B visas. Leaving the selection of our highly skilled workforce to chance can’t be the long term solution. Employers shouldn’t be forced to gamble, and there must be more certainty in the process. We must take steps to modernize our antiquated immigration system by implementing much needed reform.

*Author: Maria del Carmen Ramos –  
Shumaker, Loop & Kendrick, LLP*

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# LAW & LIBERTY DINNER

The 11th Annual Law & Liberty Dinner featured political commentators Mark Halperin and John Heileman, who provided a non-partisan, entertaining look at the presidential race. Halperin and Heileman, co-hosts of MSNBC's *With All Due Respect* and managing editors of *Bloomberg Politics*, entertained the audience as part of the Hillsborough County Bar Foundation's annual fundraising event on May 19.

Local news anchor Keith Cate of New Channel 8 hosted the evening's ceremonies.

Money raised at the Law & Liberty Dinner will benefit Crossroads for Florida Kids, Inc.; Gift of Adoption Florida (Tampa); Mary Lee's House; L. David Shear Children's Law Center of Bay Area Legal Services, Inc.; The Spring of Tampa Bay; and Voices for Children of Tampa Bay.

The Foundation would like to especially thank the event's Marquee Sponsor, The Centers; Premier Sponsors, The Bank of Tampa and The Yerrid Foundation; and Platinum Sponsor, Holland & Knight.







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Visit [Facebook.com/HCBATampaBay](https://Facebook.com/HCBATampaBay) to view additional photos from the Law & Liberty Dinner.







# *The* **Law & Liberty** *Dinner*

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## TRIAL & LITIGATION AWARDS CEREMONY

The HCBA Trial & Litigation Section honored several outstanding legal professionals at its annual awards luncheon on May 26.

The award recipients were:

- Michael A. Fogarty "In the Trenches" Award:  
Tom Scarritt
- James H. Kynes Memorial "In the Trenches"  
Award: Paul Sisco
- Herbert G. Goldburg Memorial Award: Leonard Gilbert
- Court Family Award: Dana Caranante
- The section also awarded a \$1,000 scholarship to Caroline Pritchett for her winning essay.



The section would like to thank the luncheon's sponsor:







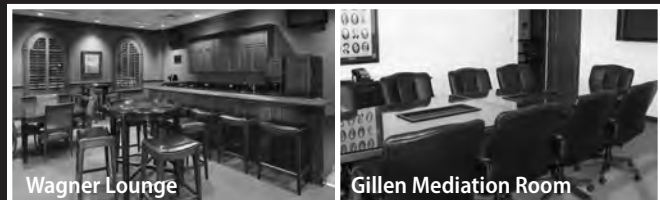
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## 2016 LAW DAY MEMBERSHIP LUNCHEON

Judge Steven Leifman of the Miami-Dade County Court, Eleventh Judicial Circuit, spoke about the distressing state of mental illness in the criminal justice system at the Law Day Luncheon on May 24. Also at the luncheon, HCBA presented its annual Liberty Bell Award to Col. D. J. Reyes (Ret.) for his role in the Thirteenth Judicial Circuit Veterans Treatment Court. In addition, two outstanding members of our local law enforcement were recognized with HCBA's Law Enforcement Officers of the Year Awards: Deputy Michael Bucciarelli of the Hillsborough County Sheriff's Office and Officer Harry Augello of the Tampa Police Department. The Law Week Committee also celebrated the great work of local students who competed in its Law Week art and essay contests.



The HCBA would like to thank the luncheon's sponsor:



Visit [Facebook.com/HCBATampaBay](https://www.facebook.com/HCBATampaBay) to view additional photos from the Law Day Membership Luncheon.



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# Law Week Competition Award Winners

## ■ PEER MEDIATOR OF THE YEAR

Mykail Robinson (Wharton High School)

## ■ PEER MEDIATION ESSAY CONTEST WINNER

Recheyla Caldwell (Wharton High School)

## ■ ART AWARD WINNERS

### MIDDLE SCHOOL

First prize winner: Jocy Rivera, Wilson Middle School

Second prize winner: Annabelle Tjio and Christine Kang, Williams Middle Magnet School

Third prize winner: Olivia DeJesus, Progress Village Middle School

### HIGH SCHOOL

First prize winner: Pierre Francois Mont, Blake High School

Second prize winner: Ross Stoneburner, Blake High School

Third prize winner: Daiana Gonzalez-Videla, Blake High School

## PEER MEDIATOR OF THE YEAR

Essay by Mykail Robinson, 12th grade

School Peer Mediator: Martha Scholl

During my senior year at Wharton High School, I became a Peer Mediator. Peer pressure can be hard to deal with and can influence any students to make the wrong decision. I believe having peers as mediators sometimes makes it easier for students to express themselves. When you have someone your own age group explain what you may have done wrong or something you may need advice on, they are more willing to listen and accept the advice that is offered. When you review and read the Miranda Rights, I feel there is some relevance between the Miranda Rights and being a mediator. Miranda Rights were put in place to protect your rights, make sure you are treated fairly and equally. When I help mediate with my peers, we make sure that both people are also treated in the same manner. Even though we do not read our peers their rights as described in the Miranda Rights, we do make it very clear on how things work and what is expected of those involved. The following expectations are expected to be upheld and implemented at every mediation. Both parties are told these three main rules:

1. What happens in this room stays in this room.
2. Any and all words are permitted during meeting.
3. When mediation is over, there is no expectation of the parties being friends, but a mutual level of respect (or civility is expected) towards one another.

The Miranda Rights state "Anything you say can and will be used against you in the court of law." We as peer mediators do not mention this specific one in our expectation speech. During my mediations there have been no situations that have required notification of authority. However, I think in order to protect ourselves as mediators and students involved, we should add information along that same content. An example of that could be: If at any time during our mediation the information you provide may place someone or something in danger, the situation must be reported. As I stated earlier all information is not shared outside the room but I reflect on situations that have happened



**PEER MEDIATOR OF THE YEAR**  
Mykail Robinson (Wharton High School)



**PEER MEDIATION  
ESSAY CONTEST WINNER**  
Recheyla Caldwell (Wharton High School)



**ART AWARD WINNER: HIGH SCHOOL**  
First prize winner  
Pierre Francois Mont, Blake High School

*Continued on page 43*



as a learning tool. I work hard and take my mediations very serious. This is how I continuously try to help my fellow peers before they end up in peer mediation.

## PEER MEDIATION ESSAY CONTEST WINNER

**Recheyla Caldwell, 12th grade**

**School Peer Mediator: Martha Scholl**

If you ever watched any of the plethora of crime shows on TV you know as an American citizen you have many rights. One of the most commonly known rights is referred to as the Miranda Right. The Miranda Right is more of a warning. Before an officer arrests you and attempts to elicit a statement from you he or she must read the Miranda warning to you. It informs you that you the have the right to remain silent. That anything you say can and will be used against you in a court of law. That you have the right to an attorney and if you cannot afford an attorney one would be appointed to you. This is so important that if an officer neglects to read this warning to you then the evidence in a case against you can be thrown out.

My work as a peer mediator is both similar and different from the Miranda warning. It's similar in that they both attempt to create an environment where people are free to talk about issues and resolve problems. A prime example is that as a mediator, before we mediate our peers we read off a speech. This speech explains that you do not have to walk out the room being friends but must be respectful to everyone in the room and make an attempt to find a solution to the problem. However, if the mediation is unable to be run correctly due to the lack of participation, the students will be turned over to their Assistant Principal and suspended for the remainder of the week.

The big difference is that when law enforcement gives the Miranda warning and someone waives that right the goal is not to mediate but to arrest a suspect and prove his or her guilt. Mediation is about compromising and coming to a solution that works for everyone involved. Recently we had two young girls having conflict over a boy. The two young ladies started off as friends but had a falling out because they found out they were dating the same gentleman. Two furious girls ready to throw low blows, turned into two understanding young women that know fighting over a boy was complete nonsense by the time the mediation was over. What could have turned into a brutal scene ended with understanding, hugs and smiles because of a successful mediation.

It is very important that Miranda Rights are read to those in trouble with the law. The officer will say "you have the right to remain silent, anything you say or do can and will be used against you in a court of law, you have the right to an attorney, if you cannot afford an attorney, one will be appointed for you." All this does is assures the officer that the person in custody understands his or her rights before being questioned by authorities. The same goes for peer mediation. Of course it's not as serious but it does state that you must be respectful during the mediation, what is said during mediation stays in that room and does not exit, if the problem cannot be worked out we will take it a step forward and get AP's involved. This is advising the student that this is the last ditch effort to resolve the issue and if that cannot be done, they will go before the principal for discipline.



### ART AWARD WINNER: HIGH SCHOOL

Second prize winner

Ross Stoneburner, Blake High School



### ART AWARD WINNER: HIGH SCHOOL

Third prize winner

Daiana Gonzaleiz-Videla, Blake High School



### ART AWARD WINNER: MIDDLE SCHOOL

Second prize winner: Annabelle Tjio and

Christine Kang, Williams Middle Magnet School



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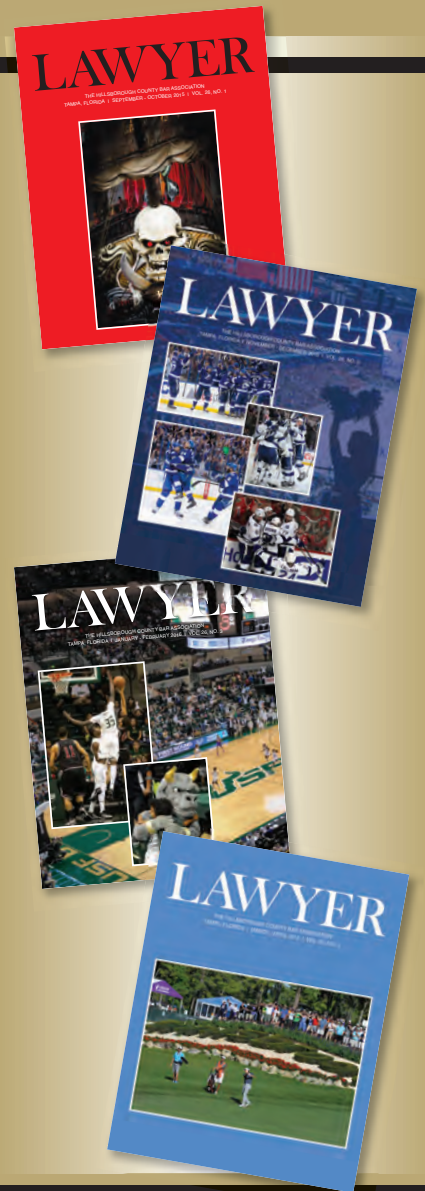
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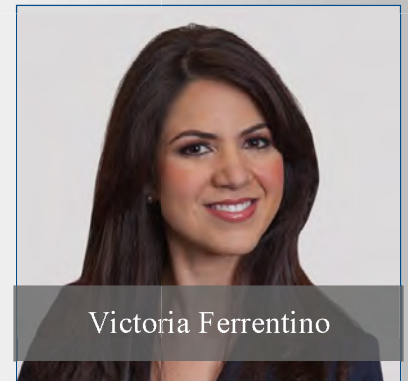
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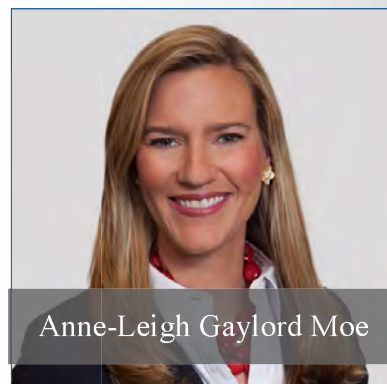
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## CLARITY THROUGH THE WEEDS: MARIJUANA INDUSTRY TRADEMARKS

Intellectual Property Section

Chairs: Jeff Fabian - Shumaker, Loop & Kendrick, LLP; and Kathy Wade - Fee Jeffries



Possession of small quantities of marijuana is now decriminalized in the City of Tampa after Mayor Bob Buckhorn signed into law an ordinance that allows police officers to fine, rather than arrest, individuals found with up to 20 grams. And Amendment 2 will be on the ballot for a second time this November, as Florida voters will be asked to vote on the initiative that would remove criminal and civil liability under Florida law for the use of marijuana to treat certain ailments. Given that Amendment 2 narrowly missed passing in 2014 — it garnered 58 percent of the 60 percent of voter support needed for approval — there is a real possibility that the medical marijuana industry may soon be coming to Florida. Undoubtedly, the industry would bring a host of new businesses to the Sunshine State.

For many new businesses, establishing trademark protection is essential for building a brand and setting the business's goods and services apart from others in the industry. Additionally, it is no secret that marijuana is historically associated with the type of creativity and artwork that can lead to strong trademark protection. Businesses entering the marijuana industry,

however, may face unique challenges in seeking federal trademark registration.

Even without registration, businesses may acquire common-law trademark rights by using a mark in commerce. But federal registration carries important benefits. Unlike common-law rights, federal registration is not limited to the geographic area where a mark is being used. And federal registration opens up certain rights and remedies not available under common law, including a presumption of validity that can reduce the expense of litigation.

Federal law enforcement has traditionally deferred to state and local governments to regulate marijuana activity — a policy formalized by the Obama administration.<sup>1</sup> Notwithstanding these policies, applicants seeking to register marijuana-themed trademarks may find their applications rejected by the U.S. Patent & Trademark Office.

The trademark office has interpreted the Lanham Act as requiring that the “use of a mark in commerce must be lawful.” As a result, applicants for marijuana-themed marks may face inquiries from the trademark office regarding whether the applicant's goods and



**Businesses entering the marijuana industry may face unique challenges in seeking federal trademark registration.**

services comply with the federal Controlled Substances Act (“CSA”). For a business that does not manufacture or distribute marijuana, trademark registration may be obtained by explaining to the trademark office that the business does not engage in activities prohibited by the CSA.

Unfortunately, the options can

be more limited for businesses that do manufacture or distribute marijuana. In that case, a business might be well advised to expand its geographic operations and trademark use as quickly as possible to broaden its common-law trademark rights. The business also should consider filing state registrations in those states that have legalized marijuana and where the business operates. The current tension between federal and state law creates some uncertainty with trademark registration, but businesses can still take steps to maximize protection for marijuana-themed marks.

<sup>1</sup> See, e.g., U.S. Dep’t of Justice, Memorandum Regarding Marijuana Enforcement (Aug. 29, 2013).

*Author: Jeff Fabian - Shumaker, Loop & Kendrick, LLP*

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## GET READY FOR A RAISE! WAGE AND HOUR UPDATE

Labor & Employment Section

Chairs: DeeAnna Hays - Ogletree, Deakins, Nash, Smoak & Stewart, P.C.; and Jamie Marcario - Greenberg Traurig, P.A.



**W**age & Hour litigation under the Fair Labor Standards Act (FLSA) continues to be one of the most prevalent employment law trends, with Florida remaining an epicenter for FLSA litigation. Upcoming regulatory changes to the FLSA will undoubtedly serve as a catalyst for increased litigation.

Workers covered under the FLSA must receive overtime pay of at least 1.5 times their hourly rate for hours worked in excess of 40 per week, unless otherwise exempted. To be “exempt,” an employee must be paid on a “salary basis” — i.e., the employee must receive a guaranteed salary for any week in which she performs work. 29 C.F.R. § 541.602(a). Currently, unless an individual earns at least \$455 per week (\$23,660 per year), she is not exempt from the FLSA overtime provisions.

In addition to this salary threshold, to be exempt from the overtime regulations the employee also must hold a position that falls within specific classifications of “white collar” jobs, namely executive, administrative, and professional positions. To fall within a white collar exemption, an employee must meet the “duties

test” for one of the white collar categories. Put simply, the duties test requires an employee’s primary duty to be office or non-manual work directly related to the employer’s management policies or general business operations (or the employer’s customers) that requires the employee to exercise discretion and independent judgment.

Under the current regulations, highly compensated employees (HCEs) also may be exempt from overtime payments if they: (1) earn over \$100,000 per year; and (2) “customarily and regularly” perform the duties of a white collar position, as defined in the FLSA.

In 2015, the DOL revealed its proposed rules to broaden the overtime pay regulations under the FLSA Part 541 regulations (Final Rule), which focus primarily on the salary thresholds for white collar exemptions, by:

- resetting the salary from \$455 per week to approximately \$921 per week, which equates to an approximate yearly salary of \$47,892;
- increasing the total yearly compensation needed to exempt HCEs to \$122,148; and
- establishing a mechanism to automatically update the salary/compensation levels



**Regulatory changes to the Fair Labor Standards Act expected to expand overtime coverage to millions of workers.**

going forward to assure they accurately reflect economic reality.

The DOL has targeted July 2016 as the release date for the Final Rule. This target is well-calculated to ensure implementation before the November presidential election. Exempt employees who do not meet the

new salary threshold will need to be paid a higher salary to remain exempt; if these employees are not paid a higher salary, they will need to be paid on an hourly basis, making them eligible for overtime.

In addition to the noted revisions, there are many important nuances to the Final Rule. Attorneys representing employees and/or employers must learn the final rules’ intricacies and determine its effect on their respective clients. Despite the uncertainty regarding the scope of the anticipated revisions, one thing is certain: the FLSA will continue to be one of the most commonly litigated employment laws in Florida and throughout the country.



*Author:  
Donna Griffin –  
Ogletree, Deakins,  
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## BAR LEADERSHIP INSTITUTE WRAPS UP YEAR WITH TWO TOURS

The members of the Leadership Institute visited MacDill Air Force Base and the Orient Road Jail in April and May.



The HCBA would like to thank this year's BLI sponsor:



## VOLUNTARY BAR LEADER MEETING

The leadership of more than a half dozen local voluntary bar associations met on May 20 at the offices of Bush Ross, P.A. to discuss how to better partner in support of the local legal community. The HCBA looks forward to working with its fellow associations on future projects!



## SOLO / SMALL FIRM SECTION CLE

Kristen Foltz from the University of Tampa and section chair Amanda Uliano with the Law Office of Amanda Uliano, P.A. spoke about the importance of non-verbal communication at the Solo/Small Firm Section's last CLE of the Bar year on May 17. Attendees learned how non-verbal communication can affect outcomes in mediation, depositions, meetings, and in court.

The section would like to thank the luncheon's sponsor: C1 Bank.



## LAW WEEK TEACHES STUDENTS MIRANDA'S MEANING

Law Week Committee

Chairs: Amy Nath – Shriners Hospitals for Children; Maja Lacevic – Trenam Law; and Alexandra Haddad Palermo – Burr & Forman



**M**iranda Warnings feature some of the most easily-recognized phrases in the canons of legal rhetoric. “You have the right to remain silent.” “Anything you say may be used against you in a court of law.” “If you cannot afford an attorney, one will be appointed for you.” These lines are recited so often in Hollywood blockbusters and guilty-pleasure law TV shows that most Americans are familiar with them by the time they reach middle school. The perfect compendium of complex legal rights, they lend themselves to dramatic climaxes, cathartic resolutions, and even the occasional punch-line. But what do they *really* mean? What rights do they *really* afford? These were the questions the YLD Law Week Committee set out to answer during this year’s Law Week, aptly themed *Miranda: More than Words*.

For those unfamiliar with Law Week, it is a series of events organized by the Young Lawyers Division that celebrate the role of law in our society and aim to cultivate a deeper understanding of the legal profession. Each year, a committee of YLD members team up with the Hillsborough County School Board to bring to life a series of volunteer outreach activities for the benefit of local elementary, middle, and high school

students. Activities include courthouse tours, mock trials, and speaking engagements across the county. This year alone, the YLD was able to recruit nearly 100 volunteer lawyers and judges to reach more than 3,500 students countywide. Additionally, the YLD hosted an art contest and peer mediator essay contest to honor those students who were inspired by the law in their work.

This year’s theme allowed volunteers to discuss and expound upon the famous synopsis of our most important constitutional rights. The discussion was especially poignant for me, as I spoke to a group of students who were in custody in the Hillsborough County Juvenile Detention Center. I explained some of their Fifth and Sixth Amendment rights, what those meant to their current predicament, and how they should guide interactions with law enforcement in the future. I was just one of several volunteer-speakers who served classrooms countywide.



Other volunteers showed students how constitutional rights are exercised in a courtroom setting by performing the mock trial of *State of Italia vs. Geppetto*. Dozens more walked the halls of justice with elementary schoolers, touring the courthouse and speaking with judges about the protections afforded by the famous case *Miranda v. Arizona*. Finally, participants in the art contest incorporated *Miranda* principles into their chosen medium and put their pieces on display for all to see at the Law Day Luncheon.

The annual success of this program rests heavily on the shoulders of its co-chairs, Maja Lacevic, Amy Nath, and Alexandra Haddad Palermo, who dedicate countless hours to the program

*Continued on page 55*

*Continued from page 54*

every year. These co-chairs, and the Law Week Committee as a whole, also would like to offer a special thank you to Doretha Edgecomb of the Hillsborough County School Board, who, along with her staff, have been unrelenting supporters of the program over the years.

**The HCBA would like to thank all the volunteers that participated in Law Week 2016:**

## ***Classroom Speakers***

Laura Bare  
Erica Gooden Bartimmo  
Heidi Bassett  
Robyn Bonivich  
Patrick Chidnese  
Cameron Frye  
Kenneth Grace  
Gina Giacusa  
Alma Gonzalez  
Tami-Lyn Gry  
Dane Heptner  
Thomas Hyde  
Daniel Johns  
Marc Makhholm  
Drew McCulloch  
Paul McDermott  
Carlos Morales  
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Christopher Tuite  
Melaina Tryon  
Jennifer Wallace  
Christina Wenk  
Judge Michael Williams  
Brian Wright



*Author:  
Dane Heptner –  
Perenich Caulfield  
Avril Noyes*



## OVERCOMING THE LANGUAGE BARRIER

Marital & Family Law Section

Chair: Seth Nelson - Nelson Law Group



In 2006, the Florida Supreme Court adopted the Florida Rules for Certification and Regulation of Court Interpreters. Those rules, among other things, created a Court Interpreter Certification Board and established a court interpreter certification program. The original rules set forth two levels of expertise for foreign language interpreters: “certified” interpreters and “duly qualified” interpreters. Over the last several years, the Florida Supreme Court adopted extensive amendments to and renamed the original rules.

In March 2014, the Florida Supreme Court adopted amendments that “established and set the qualifications for three designations of court interpreters: “certified,” “language-skilled,” and “provisionally approved.”

The “certified” court interpreter designation represents the highest qualified state-level interpreter designation and is mandated to be the preferred designation in the selection, appointment, staffing, or private retention of court interpreters. To be designated a

“certified court interpreter,” an individual must attend a two-day orientation program, pass a written examination, which includes an ethics component, complete 20 hours of courtroom observation, take an oath to uphold a code of professional conduct, pass a background check, comply with continuing education requirements, pay an application fee, and pass a board-approved full oral performance exam.

The “language-skilled” designation represents the highest qualified state-level interpreter designation for languages for which there is currently no state-certifying examination. The requirements are the same as those for the “certified” court interpreter designation except for the examination component. “Language-skilled” designated interpreters must pass an oral proficiency interview in English and a non-English language and attain set minimum scores.

The 2014 amendments also subjected undesignated interpreters working in the court system by court appointment on a regular or



**It is good practice to be aware of the court interpreter rules and confirm your interpreter's qualifications.**

recurring basis to the court interpreters’ Code of Professional Conduct and, to a limited extent, disciplinary procedures.

In March 2015, the Supreme Court broadened the application of the rules with the goal of elevating the quality of court interpreter services throughout the court system.

The most recent amendments include a more inclusive definition of the term “court interpreter.” “Court interpreter” is defined to include all persons providing spoken language interpreting services in all court and court-related proceedings. “Court-related proceedings” also is defined to include not only proceedings presided over by a judge, magistrate, or hearing officer, but also ancillary activities such as depositions, mediations, and other similar proceedings.

These amendments to the now renamed Florida Rules for Certification and Regulation of Spoken Language Court Interpreters

*Continued on page 57*

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## OVERCOMING THE LANGUAGE BARRIER

Marital & Family Law Section

*Continued from page 56*

promote the use of more highly qualified interpreters, whether privately retained or court-appointed, and ensure that the standards of the court interpreter certification program are more broadly applied throughout the court system.

Family law litigants are already experiencing an overwhelming and emotionally trying time when faced with a court proceeding. Fear, uncertainty, and stress are further compounded when they are unable to understand the language being spoken around them. The use of a qualified interpreter can eliminate that hurdle. It is good practice

to be aware of the court interpreter rules and confirm your interpreter's qualifications before relying on them to assist your client in court.



*Author: Vivian Cortes Hodz – Cortes Hodz Family Law & Mediation, P.A.*



## FAMILY LAW SECTION HOLDS JUDICIAL ROUNDTABLE

On May 13, the Marital & Family Law Section held its annual Judicial Roundtable Discussion and had the opportunity to ask questions of several judges from the Thirteenth Judicial Circuit. Judge Nazaretien also thanked the Section for its support of the Circuit's Family Court.

The section thanks Roche Monitoring Services for sponsoring the luncheon.





## MILITARY & VETERANS LEGISLATIVE UPDATE

Military & Veterans Affairs Committee

Chairs: Matthew F. Hall - Hill Ward Henderson; and Colleen O'Brien, Thirteenth Judicial Circuit



**T**he Florida Legislature passed numerous bills this past session affecting service members, veterans, and their families. Some of the new and amended laws, effective July 1, 2016 unless noted, are as follows:

**Veterans Treatment Court Programs.** Amended section 394.47891, Florida Statutes, expands eligibility for veterans treatment courts to include veterans discharged under a general discharge. Previously, eligibility was limited to active service members or those discharged under honorable conditions or who later received an upgraded discharge under honorable conditions.

**Education.** Amended section 1009.26 requires state universities, Florida College System institutions, career centers operated by a school district, and charter technical career centers to waive out-of-state fees for active duty members of the Armed Forces residing in or stationed outside of Florida. This expands the C. W. "Bill" Young Veteran Tuition Waiver Program, which waives out-of-state fees for honorably discharged veterans residing in Florida while enrolled. *See* § 1009.26(13), Fla. Stat. Additionally, section 1009.26(8) is amended to ease the tuition waiver residency requirements for recipients of Purple Hearts and

other specific decorations. The recipient need only be a Florida resident now *or* at the time of the military action resulting in the decoration. Previously, residency during both times was required for the tuition waiver.

**Employment.** Effective October 1, 2016, amended section 295.07 requires state agencies, and authorizes political subdivisions of the state, to develop and implement veterans' recruitment plans that establish annual goals for ensuring the full use of veterans in the agency's or political subdivision's workforce. Agencies and political subdivisions also will be required to report on the number of persons hired through veterans' preference programs and as a result of the recruitment plans.

**Business License and Registration Fees.** Amended section 472.015 waives certain Department of Agriculture and Consumer Services licensing fees (such as the land surveying and mapping fee, health studio registration fee, and motor vehicle repair shop fee, among others) for eligible veterans, spouses, or for entities having majority ownership held by such veterans or spouses. Amended section 493.6105 waives



**The Florida Legislature passed numerous bills this past session affecting service members, veterans, and their families.**

initial application fees for veterans seeking certain private investigative, security, and repossession service licenses, among other licenses.

**Park Entrance and Public Transportation Fees.** Newly enacted sections 125.029 and 166.0447 require counties and municipalities to provide discounts on park entrance fees to certain residents, including military members, honorably

discharged veterans, and surviving spouses and parents of service members who died in the line of duty under combat-related conditions. Newly enacted section 166.0447 requires regional transportation authorities to provide discounts on fares to certain disabled veterans for the use of fixed-route transportation systems.

**Gold Star License Plates.** Amended section 320.0894 broadens the class of family members qualifying for Gold Star license plates — the special plate honoring family members of those killed while serving in the Armed Forces. Previously, the tags were limited to spouses, parents, and stepparents currently married to a

*Continued on page 59*

*Continued from page 58*

parent. Now, adoptive parents, foster parents, grandparents, children, stepchildren, adopted children, siblings, and half siblings of the fallen service member qualify for the plates.

For brevity, I have not mentioned all the new and amended Florida laws affecting service members and veterans. You also may wish to review the following House and Senate bills, which recently became, or will soon become, law: House bills 821, 941, 1157, 7023, and 7099 ([www.myfloridahouse.gov/Sections/Bills/bills.aspx](http://www.myfloridahouse.gov/Sections/Bills/bills.aspx)); and Senate bills 12, 158, 184, 222, 626, 666, 772, and 7016 ([www.flsenate.gov/Session/Bills/2016](http://www.flsenate.gov/Session/Bills/2016)).

Federally, the National Defense Authorization Act for Fiscal Year 2016 brought some interesting changes to the military retirement system, as well as restricting government funds for “paid patriotism” in sports leagues, and requiring U.S. retirement of military dogs with adoption preference to their handlers and families. Also pending is a law requiring VA fertility treatments and counseling coverage for veterans and spouses dealing with infertility as a result of wartime injuries. Perhaps a future installment will provide information in the federal arena!

*Author: Colleen O’Brien –  
Thirteenth Judicial Circuit*



## HCBA WELCOMES NEW MEMBERS

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## NEW LEGISLATION IMPOSES REPORTING REQUIREMENTS ON FIDUCIARIES

Real Property, Probate & Trust Law Section

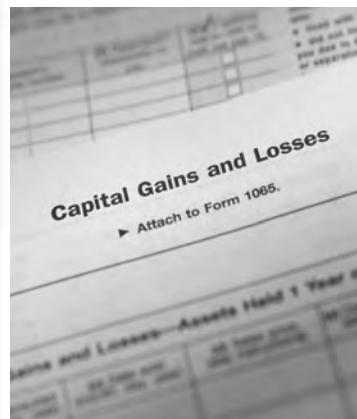
Chairs: Mike Kangas - Philip A. Baumann, P.A.; Kristin Morris - Shutts & Bowen



“Act”), signed into law July 31, 2015.

New section 6035 of the Code requires “Executors”<sup>1</sup> of estates required to file an estate tax return to file a statement specifying the value of property reported on the return, as well as other information required by the Secretary. Estates with returns filed solely for protective purposes or to

**T**o address the IRS’ concern that some taxpayers paid less capital gains tax because of inconsistent basis reporting on inherited property, two new sections were added to the Internal Revenue Code (“Code”) by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the



**The Act imposed the new reporting requirements on any estates with Form 706 due since July 31 of last year.**

file an estate tax or GST election are not affected.

The IRS published Form 8971 and its attached Schedule A for fiduciaries to complete in satisfaction of their reporting requirements. Form 8971 requires disclosure of information regarding the fiduciary, the decedent, and each beneficiary.

*Continued on page 61*

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## NEW LEGISLATION IMPOSES REPORTING REQUIREMENTS ON FIDUCIARIES

Real Property, Probate & Trust Law Section

*Continued from page 60*

Schedule A lists each asset being transferred, the value of the asset as reported on Form 706, where each asset was reported on Form 706, and whether each asset increased estate tax liability.<sup>2</sup> A separate Schedule A must be prepared for each beneficiary, and each beneficiary must receive his or her own Schedule A.<sup>3</sup> Proposed regulations published on March 4, 2016, specify that, with a few exceptions, any property reported on Form 706 also must be reported on Form 8971.<sup>4</sup>

The Act took effect immediately and imposed the new reporting requirements on any estates with a Form 706 due since July 31 of last year. Through a series of notices, the IRS has extended the due date

to June 30, 2016.<sup>5</sup> After the June 30 extension expires, Form 8971 will be due 30 days after the Form 706 is filed or the date the Form 706 is due (including extensions), whichever is earlier. If a supplementary Form 8971 is required (i.e., when an asset's value is determined for estate tax purposes), it is due 30 days after the value change.

If a fiduciary fails to meet his or her reporting requirements, penalties apply.

<sup>1</sup> "Executor" is defined broadly to include not only court-appointed representatives of the estate, but others who have authority or possession of the decedent's property.

<sup>2</sup> Any property increasing the estate's tax liability becomes subject to the basis consistency requirements of section 1014(f),

which the Act also added to the Code. This section requires that, upon disposition of an inherited asset, the beneficiary's basis is the value as determined for estate tax purposes, or if the value was not determined, the value reported on Form 8971.

<sup>3</sup> Each beneficiary's Schedule A must include every asset that may be used to fulfill his or her bequest.

<sup>4</sup> The Proposed Regulations specify that four classes of assets do not need to be reported: 1) cash; 2) IRD assets; 3) tangible personal property for which no appraisal is required; and 4) property sold by the estate prior to filing the Form 8971. Prop. Reg. §1.6035-1(b)(1).

<sup>5</sup> Notice 2016-27.

*Author: Teresa Rajala  
– Allen Dell, P.A.*



## RPPTL LUNCHEON/CLE

The Real Property, Probate & Trust Section held a luncheon on April 14 to learn more about navigating the pitfalls of commercial landlord/tenant law. Speakers Adam S. Woodruff and Eric E. Page of Shutts & Bowen, LLP discussed the importance of a good written lease in a commercial setting; handling a breach, both monetary and non-monetary; and how the legal process works for evictions and other claims.

The section would like to thank its luncheon sponsor: NorthStar Bank.





## WEIGHTED SCALES OF JUSTICE IN SEC ADMINISTRATIVE PROCEEDINGS?

Securities Law Section

Chairs: Dominique Heller - Wiand Guerra King; and Daniel P. Dietrich - Burr & Forman



Since the 2010 passage of the Dodd-Frank Act, the U.S. Securities and Exchange Commission (“SEC”) has been the subject of growing criticism regarding its increased use of administrative proceedings. By enacting Dodd-Frank, Congress vastly expanded the enforcement powers afforded to the SEC by allowing it to address potential violations, such as insider trading, in its internal administrative courts rather than in federal court.

While the SEC attributes its increased use of administrative proceedings to the significant benefits the administrative proceedings provide, critics argue that these benefits only favor the SEC. For starters, SEC administrative proceedings are governed by judges hired and employed by the SEC. As such, critics argue that the administrative proceedings lack important protections afforded to litigants in federal court, such as juries, discovery, and the application of the Federal Rules of Evidence and Civil Procedure. Additionally, the increased use of its in-house courts has raised concern that the SEC is unfairly tipping the scales in its favor, especially given that the SEC wins an average of 90% of the actions it brings before its in-house courts, as opposed to only 69% in federal court.

In light of this criticism, federal courts have seen an influx of cases challenging the constitutionality of the SEC’s administrative courts, which has produced inconsistent outcomes. In *Bebo v. SEC*, Laurie Bebo challenged the SEC’s constitutional authority to impose penalties after an SEC administrative law judge ordered her to

pay \$4.2 million for violating certain securities laws.<sup>1</sup> The district court dismissed Bebo’s case for lack of subject-matter jurisdiction and held that Bebo was required to complete the proceedings in the SEC’s in-house court before appealing to federal court. The Seventh Circuit affirmed the decision, and in February 2016, Bebo filed a petition for certiorari review before the Supreme Court.

Following the decision in *Bebo*, some federal courts have dismissed similar cases for lack of jurisdiction, requiring parties to defend a possibly unconstitutional prosecution in the SEC’s courts before seeking relief in federal courts. In contrast, other courts have exercised jurisdiction to rule on the merits of a constitutional challenge, including issuing a preliminary injunction to halt the administrative proceedings. Despite these inconsistent rulings



**The SEC wins an average of 90 percent of the actions it brings before its in-house courts.**

and a persuasive amicus brief filed by businessman Mark Cuban, the Supreme Court recently declined to address the issue and denied Bebo’s petition for certiorari review.

Most recently, the Eleventh Circuit decided to weigh in on the issue and heard oral argument in *Hill v. SEC*<sup>2</sup>

and *Gray Financial Group, Inc. v. SEC*<sup>3</sup> to determine if federal courts have jurisdiction to review constitutional challenges to the SEC’s use of administrative proceedings. Depending on the outcome, a split by the Eleventh Circuit could lead the Supreme Court to grant certiorari and provide a highly sought-after review of the SEC’s expanded powers under Dodd-Frank.

<sup>1</sup> *Bebo v. SEC*, 2015 WL 905349 (E.D. Wis. Mar. 3, 2015).

<sup>2</sup> *Charles Hill, Jr. v. SEC*, Case No. 15-12831.

<sup>3</sup> *Gray Financial Group, Inc. v. SEC*, Case No. 15-13738.



*Author:*  
*Justin Bennett –*  
*Burr &*  
*Forman LLP*



## SECURITIES LAW SECTION CLE

On May 2, the Securities Law Section held a CLE on "The Ins and Outs of Securities Arbitration and Mediation." The distinguished panel members for the luncheon were Manly Ray, Southeast Regional Director, Financial Industry Regulatory Authority (FINRA); Leon M. de Leon, National Mediation Administrator, FINRA; John P. Cullem, Esq., a member of the FINRA Board of Arbitrators since 1987; and Brian G. Mooney, Esq., an arbitrator for FINRA and its predecessors since 1991. Marc L. Abramson, Esq. of the Tampa Bay Securities Compliance Group moderated the panel.

The section would like to thank its luncheon sponsor:



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## A GREAT YEAR IN THE SENIOR COUNSEL SECTION

Senior Counsel Section

Chair: Thomas Newcomb Hyde, Attorney at Law



**T**hanks to all of the attorneys who attended the Senior Counsel Section luncheons during the 2015 - 2016 Bar year. The attendance this year was exceptional. Thanks also to the many federal and state court judges who came to our luncheons (even though some were not old enough to be in the Senior Counsel Section!). Finally, a special thank you to Thirteenth Judicial Circuit Court Chief Judge Ronald Ficarrota for his counsel and enthusiastic support.

At our first luncheon we were honored to have Second District Court of Appeal Judge Edward C. LaRose give a powerful presentation entitled “The Nuremberg Justice Ministry Trial of 1947.” Judge LaRose told the chilling tale of 76-year-old Leo Katzenberg, a prominent Jewish businessman in Nuremberg, Germany, who was wrongly convicted and sentenced to death by Judge Oswald Rothaug in a trial without due process in a Nuremberg Special Court. The Special Courts were not legitimate courts at all, but rather vehicles for suppressing expression whose victims included Poles, Jews, and Gypsies. In the end, Judge LaRose asked the thought-provoking question: “What does the Justice Ministry Trial say to us as lawyers

and judges in a diverse, pluralistic, and ever shrinking world beset by violence, prejudice and inequality?”

Our January luncheon featured a presentation on “Resolving Professionalism Complaints” led by Circuit Court Judge Herbert J. Bauman, Jr. and his team from the Ferguson-White Inns of Court. The presenters included Erica T. Healey, James B. Murphy, Jr., Carly Self, Tiffany Fanelli, Michael C. Addison, and myself. Using a video of an obnoxious lawyer at a deposition, a dramatic demonstration of misconduct in the courtroom and a panel discussion, we highlighted what behavior to avoid and the critical importance of legal ethics and professionalism in the practice of law.

At our March luncheon, it was back to the future with attorney Richard “Rick” Georges, who spoke on “Wearable Tech, Tablet Computers, the Internet of Things and the Modern Lawyer.” Rick brought us up-to-date on smartwatches, Google glasses, the current state of online research, legal software, and other tools to help attorneys use technology in their 21st century law practice.



Attorney and historian Ronald L. Weaver was the speaker at our final luncheon in May. Ron took us on a tour through “503 Years of the Spiciest Florida History.” Ron’s entertaining presentation narrated tales and scandals of our state’s earliest history, from Ponce de Leon’s travesties until his death by arrows in 1521, to 1565 when the Spanish martyred the French at Matanzas because they would not renounce their Protestant faith. He also recounted the more recent deal to bring Henry B. Plant’s railroad to Tampa, and how when Edward Ball of the St. Joe Paper Company told Walt Disney that he did not “deal with carnies,” Disney World ended up going to Kissimmee.

Finally, I would like to give a special thanks to W. Donald Cox for volunteering to serve as the Senior Counsel Section’s representative to the Thirteenth Judicial Circuit Pro Bono Committee and Bill Wagner for volunteering as the Senior Counsel Section’s representative to the Thirteenth Judicial Circuit Professionalism Committee.

*Author: Thomas Newcomb Hyde - Attorney at Law*

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## LAWYERS AND THE LOST ART OF NON-VERBAL COMMUNICATION

Solo & Small Firm Section

Chair: Amanda M. Uliano - Law Office of Amanda M. Uliano, P.A.



**L**aw school primarily teaches attorneys how to analyze issues, think critically, and construct arguments. While verbal communication skills are honed and polished early on in legal education, many people fail to recognize the importance of non-verbal communication. Non-verbal communication plays a huge part in impacting how others react to you and to the overall impression you give to others. Non-verbal messaging is so critical that according to Section 44.403, Florida Statutes, a mediation communication even includes “nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation.” This article will discuss some important reminders to help attorneys everywhere improve their non-verbal communication skills.

Like it or not, non-verbal messages are powerful. Unfortunately, they can be interpreted in many ways. Thus, in a number of legal settings, you have to be mindful of what messages you are sending. For example, you may be taking

detailed notes at a deposition; however, to the participants it may look like you are not engaged in the process or not really listening. Further, even though an attorney may primarily be concerned with the record being transcribed at a deposition, one’s body language can set a different tone. Remember, non-verbal communication is ambiguous, so be mindful at all times of what you could be sending with regard to your eye contact.

Body language is the first non-verbal message most people go to. Trial lawyers probably know the best of any lawyer how to monitor and adjust their body language in trial. For example, crossed arms signals being closed off. Being more relaxed with your body language will make people more likely to open up to you. But not many people realize the tone of voice or volume also sends powerful signals. Attorneys have gotten into trouble for raising their voice in court. (See *The Florida Bar v. Norkin*, 132 So. 3d 77, 93 (Fla. 2013), suspending a lawyer for two years for raising his voice and acting unprofessionally in court). Volume, tempo, and even pacing of one’s voice can be used to add emphasis



**Be aware of the  
non-verbal messages  
being sent at all times.**

to certain subjects, but it could also be interpreted as aggressive.

Mediators are trained to facilitate conversation. In fact, Rule 10.220 of the Florida Rules for Certified and Court Appointed Mediators says, “The role of the mediator is to reduce obstacles to communication,

assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute.” Part of this includes helping mediation participants feel comfortable and listened to. One of the best ways to show others you are listening to them is by non-verbal communication, such as head nodding and eye contact.

Realistically, there are many more types of non-verbal messaging than those mentioned above. Attorneys are expected to be good communicators, both verbally and non-verbally. Thus,

be mindful of all your non-verbal messages moving forward.



*Author:*  
**Kirsten Foltz** – *The University of Tampa*

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## CAUTION: DISMISS WITH CARE

Trial & Litigation Section

Chair: John Schifino - Burr & Forman



**B**y some estimates, up to 97% of civil cases are resolved through settlement. But that is often not the end of a dispute. A settlement agreement may require obligations or restrictions that continue after the case is dismissed. As one litigant recently learned the hard way, the language of the notice of dismissal may be especially important if judicial enforcement of the settlement is needed.

The Second District Court of Appeal recently issued an opinion in which it reversed a trial court's order enforcing a settlement agreement and awarding \$1,068,156.50 in attorney's fees and costs, in addition to postjudgment interest that had been accruing for five years. *See Dandar v. Church of Scientology Flag Service Org., Inc.*, 2016 WL 802016 (Fla. 2d DCA Mar. 2, 2016). The Second DCA found that the parties failed to preserve the trial court's jurisdiction over the matter, when they filed a stipulation of dismissal with prejudice under Rule 1.420(a), Florida Rules of Civil Procedure.

Rule 1.420(a) allows parties to voluntarily dismiss an action without approval from the court. As such, the "voluntary dismissal serves to terminate the litigation, to instantaneously divest the court of its jurisdiction to enter or entertain

further orders that would otherwise dispose of the case on the merits, and to preclude revival of the original action." *Id.* at \*2. The court held that jurisdiction is divested even if the parties acquiesce or agree to have the trial court retain jurisdiction over the

enforcement proceedings – and even if an agreement to retain jurisdiction is expressed in the settlement agreement itself. The bottom line: once jurisdiction is divested, it is lost.

To avoid this result, the parties could have either (i) presented the settlement agreement to the trial court and requested that the court incorporate or rely upon the settlement agreement in entering an order of dismissal; or (ii) requested that the court enter an order dismissing the action while expressly retaining jurisdiction to enforce the terms of a settlement. Otherwise, without a judgment or order of dismissal, litigants are required to institute a new lawsuit for breach of contract if they seek to enforce terms of a settlement.

While not fatal, the drawbacks of having to institute a new action to enforce a settlement agreement are fairly obvious. At the outset, the enforcing party will have to pay filing fees, prepare pleadings, and effectuate service of process. The



**The bottom line:  
Once jurisdiction is  
divested, it is lost.**

waiting periods relating to summary judgment also will apply, delaying potential relief. Notably, the case may be assigned to a different judge, thereby resulting in the loss of the court's familiarity

with the case, facts, and parties, absent a transfer. Further, the record would have to be recreated (particularly for appeals), in order for the parties to rely on pleadings or filings from the original action. In short, it is a hassle.

For these reasons, attorneys should be cautious and dismiss

litigation with care. If a settlement imposes obligations or restrictions on the parties that continue after the dismissal of a lawsuit, the parties should consider obtaining an appropriate order of dismissal from the Court.



*Authors:  
Brandon Faulkner,  
Brad Kimbro and  
Kendyl Tash –  
Holland &  
Knight LLP*

## THIRTEENTH JUDICIAL CIRCUIT PRO BONO SERVICE AWARDS

The Thirteenth Judicial Circuit honored those who are dedicated to giving back in the community during the Ninth Annual Pro Bono Service Awards on April 21 at the Chester H. Ferguson Law Center. Congratulations to those that were honored: Stephen Todd, Hillsborough County Bar Association's Jimmy Kynes Pro Bono Service Award; WMU Cooley Law School Debt Relief Clinic, Special Recognition Award; Harley Herman, Outstanding Pro Bono Service by a Lawyer; Traci Koster, Outstanding Pro Bono Service by a Young Lawyer; Kynes, Markman & Felman, P.A., Outstanding Pro Bono Service by a Law Firm; HCBA's Marital and Family Law Section, Outstanding Pro Bono Service by an Organization; and Joyce Parrish, Outstanding Pro Bono Service by a Paralegal.





## CASTELLANOS: THE RIGHT TO AN ATTORNEY IN A WORKERS' COMPENSATION CASE

Workers' Compensation Section

Chairs: Anthony V. Cortese - Anthony V. Cortese, Attorney at Law; and Irene M. Rodriguez - Irene M. Rodriguez, PA



In *Castellanos v. Next Door Co.*, 2016 WL 1700521 (Apr. 28, 2011), the Florida Supreme Court ruled that it is unconstitutional for the Florida Legislature to preclude the right of an injured worker to pay a reasonable fee to an attorney for representation. Earlier, the First District Court of Appeal held similar provisions of the law unconstitutional on other grounds. *Id.* at \*13 n.4 (citing *Miles v. City of Edgewater*, 1D15-0165 (Apr. 20, 2016)). While additional legislation on the issue is possible, courts have shown an appropriate willingness to uphold the right to counsel. As in *Murray v. Mariner Health*, 994 So. 2d 1051 (Fla. 2008), this decision has effect retroactively to the date of the legislation, and it brings us back to the rule that a claimant's attorney may request the Judge of Compensation Claims to approve a reasonable fee under *Lee Engineering & Construction Co. v. Fellows*, 209 So. 2d 454, 456 (Fla. 1968).

*Castellanos* involved a man who retained an attorney to litigate a complicated workers compensation claim for various benefits under the Act. He won, but under provisions

of statutes enacted by the legislature in 2009, the maximum fee his attorney could be awarded for 107.2 hours of work in a successful contest was \$1.53 per hour. The facts of the case are fairly typical and thus compelling. After his work injury, Castellanos went to the doctor selected for him by his employer. The employer then refused to authorize the care recommended by the doctor it had chosen. Castellanos retained an attorney for these medical benefits, as well as temporary total or partial indemnity benefits during treatment. The employer raised 12 defenses, including allegations of fraud, and basically denied the claim. The Judge of Compensation Claims recognized that Castellanos's attorney was exceptionally skilled, that it was highly unlikely that Castellanos could have succeeded without competent counsel in overcoming the numerous defenses raised by the employer, and that attorneys can't work for \$1.53 per hour, but ultimately ruled that



**A claimant in a Florida workers compensation case has the right to retain an attorney and have that attorney paid a reasonable hourly rate for successful claims and litigation.**

the statute required this result. The Florida Supreme Court reversed the ruling by the Judge of Compensation Claims, and as a consequence, *Lee Engineering* again appears to be the guiding law regarding awards of attorney's fees to claimant's counsel.

There is much more to be said

in interpreting the decision itself; predicting what, if anything, the legislature will do next; and predicting how this decision will or will not affect the decision in *Miles v. City of Edgewater*. But due to space limitations there is not enough room here for answers or predictions. For the time being, under *Castellanos*, a claimant in a Florida workers compensation case has the right to retain an attorney and have that attorney paid a reasonable hourly rate for successful claims and litigation.

*Author: Anthony V. Cortese - Attorney at Law*

**SAVE THE DATE! Join us at the 20th Annual Bench Bar Conference & Judicial Reception on Nov. 10th.**



## JUDICIAL LUNCHEON HOSTS CIRCUIT CIVIL DIVISION PANEL

Attendees to the Judicial Luncheon on April 13 heard from a panel of judges from the Circuit Civil Division on current trends in litigation, case management and professionalism. The panel included Judge Rex Barbas, Judge Lamar Battles, Judge Robert Foster, Judge Claudia Isom, Judge Mark Kiser, Judge Richard Nielsen, Judge Elizabeth Rice, Judge Michelle Sisco, Judge Scott Stephens, and Judge Mark Wolfe. Dara Cooley, the YLD president, moderated the discussion.



## CONSTRUCTION LAW SECTION GETS CASE UPDATE

Brian Stayton of the Stayton Law Group, P.A. gave the Construction Law Section an overview of current case law in construction litigation matters at its final Bar year luncheon on May 19.

The section would like to thank its luncheon sponsor:







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**Erin Smith Aebel** - The law firm of Shumaker, Loop & Kendrick, LLP, is pleased to announce that Tampa partner **Erin Smith Aebel**, co-chair of its Tampa Health Law Department, presented “The Future of Healthcare: Challenges for Physicians and Innovations in Patient Care” at the Academy of Senior Professionals Eckerd College (“ASPEC”) program at Eckerd College on April 4. Aebel also was a panelist at the 20th Annual Compliance Institute on April 17-20 in Las Vegas.

**John J. Agliano**, a shareholder of **Bajo Cuva Cohen Turkel, P.A.**, has been elected president of the University Club of Tampa for 2016-2017.

**Chris W. Altenbernd - Carlton Fields** is pleased to announce that Chris W. Altenbernd, a former judge of Florida’s Second District Court of Appeal, has joined the firm’s Tampa office as a shareholder in its National Appellate Practice and Trial Support group. He also will practice in its National Trial Practice and White Collar Crime and Government Investigations groups.

**Steven M Berman - Shumaker, Loop & Kendrick, LLP’s** Tampa partner Steven M. Berman spoke on “Bankruptcy Without Borders: Chapter 15” at the 2016 Bankruptcy Battleground Southwest in Los Angeles.

**Bradley Arant Boulton Cummings LLP** has rebranded and is now known as **Bradley**. While the firm will be referred to as Bradley, its legal name will remain Bradley Arant Boulton Cummings LLP.

**David Caldevilla** has been appointed to serve as vice chair of The Florida Bar Appellate Practice Certification Committee for the 2016-2017 term. David is a shareholder at **de la Parte & Gilbert, P.A.** and has practiced with the firm since 1989.

**Roberta Colton - Trenam Law’s** Roberta Colton has been selected to fill a vacant judgeship in the U.S. Court of Appeals for the Eighth Circuit as a federal bankruptcy judge. She will be “on loan” to the Eleventh Circuit and stationed in Orlando.

**Victoria Cruz-Garcia - Givens Givens Sparks** is proud to announce that attorney Victoria Cruz-Garcia has been named a 2016 “Leader in the Law” by the Florida Association for Women Lawyers (FAWL).

**Ellen Hirsch de Haan - Wetherington Hamilton** attorney Ellen Hirsch de Haan has once again been recognized by the National Community Associations Institute for her exceptional service to the community association industry. At the CAI National conference in Orlando, de Haan was awarded the Outstanding Volunteer Service Award for the third time in her career.

**Theresa L. Donovan** - The law firm of **Shumaker, Loop & Kendrick, LLP**, is pleased to announce that Theresa L. Donovan has joined the Tampa office as a staff attorney in the Community Associations practice.

**Givens Givens Sparks** is proud to announce that their legal intern, Elizabeth Devolder, a law

student at WMU-Cooley, has been chosen as “Law Student of the Year” by *The National Jurist*.

**David E. Harvey** has been named a partner with the law firm of **Ogden & Sullivan, P.A.** Harvey joined the firm in 2011.

**Marilyn Mullen Healy - Adams and Reese** partner Marilyn Mullen Healy has been appointed legal counsel for the Greater Tampa Chamber of Commerce. In her new role, Healy provides legal counsel to the Chamber, advising on national, state and local issues as well as in special interest situations.

**Leonard H. Johnson - Barnett Bolt Kirkwood Long Koche** announces the appointment of partner Leonard H. Johnson to the University of Florida’s Board of Trustees.

**Suzette M. Marteny** - The law firm of **Shumaker, Loop & Kendrick, LLP**, is pleased to announce that Tampa partner Suzette M. Marteny has been selected as a Fellow of the Litigation Counsel of America.

**Laura Mauldin - Lieser Skaff Alexander** recently expanded the firm through the hire of associate Laura Mauldin. She is a graduate of the University of Virginia School of Law and clerked for the Hon. Virginia M. Hernandez Covington, U.S. District Court (M.D. Fla.).

**Kevin McCoy**, an attorney with **Carlton Fields**, has been elected

*Continued on page 78*



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*Continued from page 76*

to serve as chairperson of **Bay Area Legal Services' (BALS)** Board of Directors. BALS' Board consists of 21 attorneys and former clients dedicated to the preservation and support of free civil legal aid in our community.

**Kathleen Schin McLeroy** - Tampa attorney Kathleen Schin McLeroy has been selected to receive The Florida Bar Foundation's 2016 Medal of Honor Award, the Foundation's highest honor.

**Ogletree, Deakins, Nash, Smoak & Stewart, P.C.** is expanding its national Immigration Practice Group with the hiring of **Jennifer Roeper** and **Natalie McEwan** in **Ogletree Deakins'** Tampa office, bringing more than 15 years of dedicated immigration law experience. They are joined by **Robin Todd**, an immigration paralegal.

**Rhett Parker** has joined **Phelps Dunbar's** Tampa office as an associate and will practice in the area of litigation, focusing on premises liability defense and general negligence defense.

**Jeff Paskert** was elected president of **Mills Paskert**

**Divers.** The firm's practices areas include commercial, construction, and surety litigation, with offices in Tampa and Atlanta.

**Woody Pollack** - Intellectual property attorney Woodrow H. "Woody" Pollack, shareholder in **GrayRobinson's** Tampa law office, has been elected chair of The Tampa Connection. He will serve in this role through May 2017.

**Isabel Cissy Boza Sevelin** received The Charlie Houchell Community Advocate Award on April 30, during the annual "Take Back the Night" gathering in St. Petersburg. The award recognizes Sevelin's dedication and compassion for supporting survivors through advocacy in Hillsborough County.

**Murray B. Silverstein**, a shareholder in the Tampa Appellate Practice of **Greenberg Traurig, P.A.**, spoke at the American Conference Institute's Consumer Finance Class Actions & Litigation Conference on April 7-8 in Los Angeles.

**Kim A. Turilli** - The law firm of **Shumaker, Loop & Kendrick, LLP** is pleased to announce that Tampa paralegal Kim A. Turilli has been appointed

director of the Paralegal Association of Florida, Inc. for Hillsborough County.

**Luis E. Viera** has been named a partner with the law firm of **Ogden & Sullivan, P.A.** Viera has been with the firm since 2008.

**Dineen Pashoukos Wasylik**, founding partner of **DPW Legal**, has been appointed to serve a three-year term as a member of the Florida Bar Intellectual Property Certification Committee, beginning July 2016.

**Laura Whitmore - Shook, Hardy & Bacon** welcomes partner Laura Whitmore to its Tampa office. Whitmore joined the firm's Global Product Liability group on May 16.

**Gregory C. Yadley - Shumaker, Loop & Kendrick, LLP** is pleased to announce that Tampa partner Gregory C. Yadley was a principal participant at the Business of Biotech Conference held March 18 at Moffitt Cancer Center. Yadley moderated the panel "Be Smart in Financing Your Innovation - All Dollars are Not the Same," addressing the legal and practical aspects of funding biotech and health care companies.



For more HCBA news, go to [www.facebook.com/HCBAtampabay](http://www.facebook.com/HCBAtampabay). To submit news for Around the Association or Jury Trial Information, please email [Teresa@hillsbar.com](mailto:Teresa@hillsbar.com)

## JURY TRIAL INFORMATION

**For the month of** November 2015

**Judge:** Hon. James R. Stearns, Sixth Judicial Circuit

**Parties:** Phyllis Barbose v. R.J. Reynolds Tobacco Company and Philip Morris USA, Inc.

**Attorneys:** For plaintiff: Brent R. Bigger, William L. Clark, Paul Berg, George A. Vaka & Anna Frederiksen-Cherry

**Nature of Case:** Product Liability - Tobacco-related Wrongful Death

**Verdict:** \$11,000,000 (\$10,000,000 for compensatory damages and \$500,000 from each defendant for punitive damages)

**For the month of** May 2016

**Judge:** Hon. John M. Radabaugh, Tenth Judicial Circuit

**Parties:** Marlene Nally v. R.J. Reynolds Tobacco Co.

**Attorneys:** For plaintiff: Brent R. Bigger, James D. Clark, Don Greiwe, George A. Vaka & Anna Frederiksen-Cherry

**Nature of Case:** Product Liability - Tobacco-related Wrongful Death

**Verdict:** \$18,000,000 (\$6,000,000 for compensatory damages and \$12,000,000 for punitive damages)



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**Primary Trainer:** James Williams, Esq.

<sup>1</sup> Approved by the Florida Bar for CLER. <sup>2</sup> Approved by the Florida Supreme Court. <sup>3</sup> Visit [www.myfloridamediator.com](http://www.myfloridamediator.com) for CE information for accountants and healthcare professionals. <sup>4</sup> Approved by the Florida Dispute Resolution Center in accordance with Supreme Court of Florida Administrative Order AOSC14-64.

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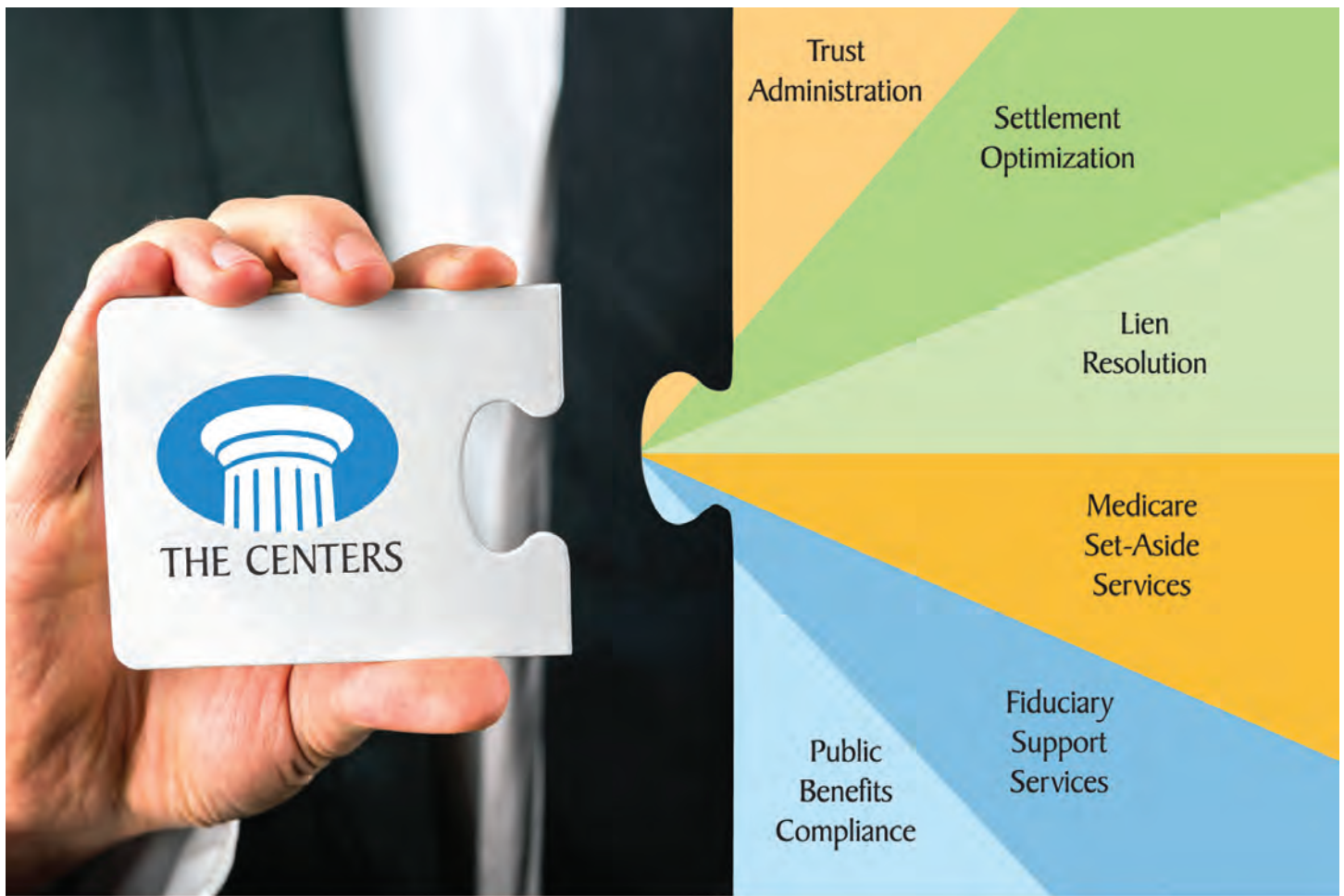


## THANKS TO ALL OUR FOX 13 ASK-A-LAWYER VOLUNTEERS!

Attorneys from the Lawyer Referral & Information Service once again got up before dawn to start answering phones as part of Fox 13's Ask-A-Lawyer program. We appreciate all those who volunteered to take calls in April and May!

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