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The year 2010 is over, and another decade has begun. Where does the time go?! I remember when people all around the world worried if computers would malfunction due to the Y2K or millennium bug as the year 2000 approached. The fear was that computer programs would experience critical errors due to the common practice of using two digits to abbreviate four-digit years. Errors would occur when years 96, 97, 98, and 99 would then turn to 00. Would computers treat 00 as the year 1900 or the year 2000?

Computer experts worked hard in the months leading up to January 1, 2000 to address the problem and keep the computers running. Some attorneys became legal and technology advisors in a new niche practice area, leading Y2K-centered teams. For the most part, computer users breathed a collective sigh of relief when computers turned on and programs operated after January 1, 2000.

A decade later, the legal profession continues to depend heavily on computers. We create and share documents on computers. We send and receive e-mails on computers. We perform legal research on computers. We file pleadings using computers. We keep appointments, notes, and contacts on computers. We use a variety of social media to interact with others, to market ourselves, and to investigate what opposing counsel, expert witnesses, and parties to litigation have done or said. When computer systems occasionally shut down, there is a collective groan.

Our dependence on technology extends to the printers, the copiers, the scanners, the web cams, the videoconference equipment, the fax machines, the cameras, the phones … the list goes on. I wonder what the practice of law will be like in another decade. What kinds of new technology will we be using at our jobs? Will there be no faxes anymore? Will we be speaking with clients and colleagues on video screens? Will we only be getting a handful of mail from the post office?

Technology allows us to work and communicate more quickly. I also like the ability to work remotely from the office. For me, being able to work out of the office with the use of technology outweighs the criticism that technology makes it hard to escape from work. For example, I am typing this column on my home computer because I am home with one of my sons who is sick. The flexibility that technology offers is key because, as my legal assistant is fond of saying, “No two days are alike!”

Savvy marketers keep tempting us with cutting edge technology to use for work and play. For those of you who got new tech toys this holiday season, I hope you like them! As for my kids who asked when they could get mobile phones and their own computers, they need to wait a bit longer!
Beware the Comfort Zone

Being uncomfortable can be fun!

I’m writing this column on my birthday. I’m 52. It’s a good age. Some will think that’s pretty old. Others will wish they were 52 again. But as birthdays tend to do, they make you reflect on the passing of time and how you’ve changed.

One thing I’ve noticed in myself is an increased tendency to stay well within my comfort zone. The problem with the comfort zone is that it is entirely too comfortable. The more I think about this aspect of growing older, the less comfortable I become because without challenge, there is only stagnation.

When you’re young, your comfort zone is quite small. It’s as if you’re standing in a very small square: it’s impossible to get anywhere unless you leave that square. My three children are now young adults, and it’s a joy to watch them test their abilities at an ever-increasing rate. With each new undertaking, they change and grow, practically before my eyes.

As we get older, the square in which we feel comfortable increases in size. There comes a time,
Continued from page 4

however, when the square has grown sufficiently large so that we no longer have to venture beyond it in order to have productive, even successful lives. For lawyers, this may mean becoming proficient in one area of the law, and never taking a case outside that area. The problem a more experienced lawyer may have with tackling a new type of case is that clients rarely want to pay the lawyer’s higher rates while the lawyer navigates the learning curve. Pro bono cases, however, afford a wonderful opportunity for continued career challenge without concern for the client’s checkbook. The opportunities are practically endless. Just ask Judge James Barton about the One Program, and he’ll provide you with all the career challenges you can handle!

Avoiding comfort zone stagnation also demands personal challenges. To my mind, that simply means you must be willing to try something new and different. Whether it be taking up a new exercise regime or hobby, pursuing an academic interest in some non-legal field, traveling to new and exciting places, or meeting new people, creating the right kind of personal challenge is about as good as it gets!

My favorite commercial is one that ran a few years ago (although I have no idea now what it was advertising). It shows an older archeologist sitting in a tent, examining artifacts through a magnifying glass. A much younger archeologist storms into the tent, exasperated by some problem he encountered on the dig, and says, “I should have listened to my parents and gone to law school! Why are you still doing this at your age? Shouldn’t you be retired?” The older man calmly stands up, puts on his hat and, as he walks out of the tent, replies, “I am retired.” Upon leaving the tent, he says to himself, “And I was a lawyer.” My hero!

As the entertainer formerly and once again known as Prince urges in one of his songs, “Get up, come on, let’s do something!” That I am even familiar with this lyric is an example of how I am attempting to escape my music comfort zone! Being uncomfortable can be fun!
The HCBA Young Lawyers Division (YLD) urges you to get involved with youth projects!

Each year, the YLD Youth Projects Committee sponsors two large events for youth in the Tampa Bay Community. These events are **Holidays in January** and **Steak and Sports Day**. Both events provide lawyers with the opportunity to interact with youth in the community who have been dealt an unfortunate hand by participating in fun-filled activities with the children.

**Holidays in January** is a gift-giving event for foster children in Hillsborough County held at the Florida Aquarium on January 15, 2011. In the past, the YLD has hosted this event at Grand Prix Tampa, Gameworks and local skating rinks. The YLD partners with Foster Angels of Hillsborough County, a local non-profit whose mission is to ensure that every child who has been separated from his or her family and placed in a foster home due to abuse, neglect, or abandonment will be able to enjoy the Christmas holiday. Foster Angels provides the YLD with enough toys to give each child attending the event a new toy. YLD volunteers assist with lunch preparations and the gift giving. Following lunch, the kids and volunteers enjoy the rest of the afternoon, playing video games, riding go-carts, playing golf, or participating in other activities that are available at the venue.

**Steak and Sports Day** will be held in April this year, and is hosted at a local home for children displaced from their own homes due to issues, such as neglect or abuse. Previously, the YLD has hosted this event at the Children’s Home, the Joshua House and Everyday Blessings. The YLD created this event to provide these children with a day filled with fun activities, while also offering many of them a special treat—steak! The YLD arranges for there to be a wide variety of entertainment, including moonwalks, rock climbing walls, bungee jumps, petting zoos, face painters, snow cones and much, much more! The volunteers play a variety of sports with the children ranging from football to kickball. Last year at the Children’s Home, the volunteers orchestrated almost a full blown football game with the kids, and they had a blast!

Both **Holidays in January** and **Steak and Sports Day** are wonderful events for all HCBA members to get involved with and require only a small time commitment from the volunteers. These events provide lawyers and judges with the opportunity to give back to the community, while also having a lot of fun. The YLD encourages all of you to get involved this year by taking a break and having a little fun with us!

For more information about these events or to become involved, please contact Rachael Greenstein at greensteinr@hillsboroughcounty.org or Melissa Mora at mmora@allendell.com.

**Authors:**
Rachael L. Greenstein, Hillsborough

The YLD encourages all of you to get involved this year by taking a break and having a little fun with us!
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Sunny skies provided the perfect atmosphere for the Young Lawyers Division Annual Golf Tournament held on October 29, 2010 at MacDill Air Force Base.

From the Call to the Tees, offered by our lead sponsor Digital Legal’s Amy Edwards, to the military send off by golf master Fred Debilla, the day was a roaring success.

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- Brent Bigger, Andrew Phillips, Eric Roslansky, Jason Whittemore

3rd Place Prize Winners
- Russell Wills, John Dackson, Carl Hinson, Jared Lee

Longest Drive Men: William Stigall
Longest Drive Women: Linda Thorpe
Closest to the Pin: Mike Levine
Closest to the Pin: Gayle Carlson
For many years, our criminal justice system has been concerned with protecting the lives and property of our citizens. Traditional prosecutions for crimes such as theft, forgery, and robbery were used to bring offenders to justice.

The advent and growth of new technology has inevitably brought with it new criminal activities. Among these offenses, the most prevalent is what has come to be called “identity theft.” This crime, where a person uses the personal identification information of another, is disturbing for a number of reasons. A large amount of goods or services can be misappropriated in a short period of time and with relatively little effort on the part of the criminal. The victims of these crimes usually do not realize that they have in fact been victimized until weeks or months later. Innocent victims have to expend a good amount of money and energy in seeking to straighten out their bank accounts and credit reports. There is even the possibility that a person can be falsely arrested due to the criminal actions of another person who has appropriated his name and identifying characteristics.

Responding to these concerns, the Legislature created Florida Statute 817.568, entitled “Criminal Use of Personal Identification Information.” The definitions provided in the statute are designed to cover every conceivable species of information. In addition to the standard information such as name, social security number, and date of birth, the law also covers fraudulent use of fingerprints, voice prints, and retina or iris images. Also coming under the statute is unauthorized use of “unique electronic identification numbers” (PIN) and “telecommunication identifying information or access device.”

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Fraudulent use of such information without authorization subjects the perpetrator to a third-degree felony charge. In addition to the penalties provided under the Punishment Code, perhaps most significantly the statute makes clear that the offender can be ordered to pay “attorney’s fees incurred by the victim in clearing the victim’s credit history or credit rating” and expenses that the victim may have been subject to in civil proceedings that resulted from the defendant’s actions. The trial court also is empowered to issue any orders “as necessary to correct any public record that contains false information....”

Take these steps to help prevent becoming a victim.
- Be careful in giving personal identification information over the phone.
- Avoid leaving credit cards and bank slips containing account numbers where they can be obtained by others.
- Charge account and bank statements must be carefully scrutinized and discrepancies reported immediately.
- Businesses must ensure that their employees who have access to this information have been carefully screened.

Identity theft has been described as the fastest-growing offense in the country. We must all do what we can to help reduce this serious problem.
In May, 2010, the International Association of Women Judges (IAWJ) hosted its tenth biennial conference in Seoul, South Korea. The theme of the conference was “Judicial Challenges in a Changing World” and I was fortunate not only to attend this conference, but to be a presenter as well.

Lee Yong-Hoon, Chief Justice of the Supreme Court of Korea, gave a welcoming address. In his address, he noted that at present in Korea, half of the newly appointed judges are women. In fact, about 150 members of the Korean Women Judge’s Association (KWJA) attended the conference. Other participants came from all parts of the globe: Afghanistan to Kyrgyzstan; Papua, New Guinea to Zambia; and many countries in between. Co-presenters on my panel included a judge from Uganda and a judge from Australia.

The KWJA hosted a welcome reception at the beautiful National Museum of Korea, where we were treated to a private guided tour of the museum as well as a reception. The reception featured traditional Korean music performed by a well-known national company. Performers were attired in the traditional Korean dress: chagori and ch’ina.

Judges from our country received a special honor: a reception hosted by Ambassador Kathleen Stephens at the U.S. Embassy. Ambassador Stephens’ resume is quite impressive, and she is...

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fluent in Korean. She was originally appointed by President George W. Bush and then re-appointed by President Barack Obama—a tribute to her effectiveness as our representative in the Republic of South Korea.

To visit Seoul and see such a thriving, modern city is amazing when considering the utter devastation of the Korean conflict. Incheon Airport, which is a world renowned facility (yes, Tampa has some serious competition) is built on the site of General MacArthur’s amphibious landing. (For those interested in this period of American history, The Coldest Winter—America and the Korean War by David Halberstam is recommended.)

The next IAWJ conference will be held in 2012 in London, which perhaps is more affordable for judges who might wish to attend. Participating judges attend programs at their own expense. But interestingly enough, the site of the 2014 conference has not yet been selected. The selection will be made in May of 2011, and Tampa might be an ideal location for the conference. North America is probably going to be the location of the conference, and hopefully Tampa will receive some serious consideration by the IAWJ committee. Although we don’t feature the spicy and delectable kimchi as one of our local dishes, our frijoles negros and arroz amarillo could give Korean cuisine some serious competition!

Author: The Honorable Susan Sexton, 13th Judicial Circuit Court
As I write this column to meet my October 15 deadline for this publication, I find myself in a real quandary. Since this column is for your December-January issue, I do not know for certain the outcome of many key issues regarding this office—issues which could impact seriously the level of service you and your office currently receive from the Clerk’s Office.

Money is definitely an issue here. We are all affected by the budgetary shortfall facing the state of Florida. It is a real dilemma for us—how to make ends meet in these tough economic times. Some of you may think that we are sitting pretty based on the increase in filing fees by the Florida Legislature, but what you may not know is that this money is not returned to us. We only wish it were!

Since the Legislature took over our funding, our office now operates under two different fiscal years. For our Courts personnel, approximately two-thirds of our employees, we are under the state’s fiscal year, from July 1 through June 30. For the remaining departments, we operate under Hillsborough County’s fiscal year, from October 1 through September 30. During last year’s legislative session, we tried unsuccessfully to get a measure passed to allow us to operate under one fiscal year.

The way our budgetary process works, we will not know if we have a budget shortfall in our Courts area—and, if so, how much—until the fourth quarter. Only then will we know for certain how we are faring for the year. This creates serious budgetary and planning problems. Imagine if you had to run your household for the entire year on a certain budget—but you weren’t given the exact figure until the year was almost over. Welcome to our world!

During the past few years, to balance our budget, I have been forced to implement several furlough days—days when you don’t work and don’t get paid, as well as a Reduction in Force and no raises or bonuses for our employees.

I truly believe that good service is our top priority, so sometimes it is quite a balancing act to achieve a high level of service with far fewer employees. However, we continue to move forward. To that end, we are now in the process of upgrading our courts technology system, while simultaneously relying on our older systems to meet your current requests. Thus, so many of our employees are performing dual functions—testing our new technology as well as performing their day-to-day assignments.

The Clerk’s Office is expected to be run as a business, and that has always been my objective. However, our current restrictions make it a real challenge at times. It is our hope—and our plan—that you will be the beneficiary of our upgrades now in progress. In the meantime, let’s stay tuned for good news from the Florida Legislature in 2011.
One of the most recognized historians of the day, Doris Kearns Goodwin provides trenchant, informed and enthralling commentary on current events by demonstrating how history has answered similar questions. With a deft wit and an uncanny ability to weave stories that put you “right in the room” as history occurs, Goodwin offers extraordinary insight into the lives of the leaders who have shaped the United States. Goodwin’s Team of Rivals: The Political Genius of Abraham Lincoln inspires business and political leaders of today by teaching Lincoln’s quiet but powerful leadership qualities—including his wisdom in building and maintaining teams in the midst of critically trying circumstances and his ability to overcome obstacles. Author of several best-selling books, Goodwin won the Pulitzer Prize for No Ordinary Time: Franklin and Eleanor Roosevelt: The Home Front in World War II. She also penned a touching memoir, Wait Till Next Year, about a love of baseball she shared with her father. A contributor, both on and off the air, to the PBS documentaries LBJ, The Kennedys, FDR and Baseball, Goodwin is the person most turned to for a keen historical perspective on political and current events.
RULE CHANGE CLARIFIES APPELLATE SANCTIONS PROCEDURE
Appellate Practice Section
Chairs: Duane A. Daiker, Shumaker, Loop & Kendrick, LLP, and Marie A. Borland, Hill Ward Henderson

This is the rule change you hope you never have to use. Florida Rules of Appellate Procedure 9.300(a) (contents of motions), 9.400 (costs and attorney’s fees) and 9.410 (sanctions) have all been modified to clarify the procedures for seeking Section 57.105, Fla. Stat., sanctions at the appellate level, effective December 1, 2010.

Under the provisions of outgoing rule 9.400, which required the filing of a motion for attorney’s fees “not later than the time for service of the reply brief,” there was no way to comply with the 21 day safe harbor provisions of Section 57.105(4) if the offending spurious claim was made in a reply brief, at oral argument, or in any paper filed after the reply brief.

Moreover, because the general motions Rule 9.300 required that a response to a motion be served “within 10 days of service of the motion,” a response to a rule 57.105 motion would have to be served before the safe harbor period expired and also before the 57.105 motion had even been filed with the Court of Appeal.

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The rule changes fix all of this. The changes to both Rules 9.300 and 9.400(b) make clear that their respective default rules for responding to motions or seeking attorney’s fees do not apply to motions for sanctions made pursuant to Rule 9.410. The existing Rule 9.410 is now 9.410(a) and has a new subheading noting that its provisions apply to awards of sanctions on the Court’s motion. The Rule’s new subdivision (b) explains the procedures for sanctions on motion of a party. Rule 9.410(b), in turn, sets out a procedure for serving a sanctions motion in compliance with Section 57.105. Specifically, the rule sets out the requirements for initial service of a “motion for attorney’s fees as a sanction” and notes that such a motion must be made “within 15 days after a challenged paper is served or a challenged claim, defense, contention, allegation, or denial is made at oral argument.” Rule 9.410(b)(3). The motion may be filed, if the offending paper or argument is not withdrawn, either no later than the time for service of the reply brief, or else no later than 30 days after service of the motion.

Interestingly, new Rule 9.410 makes no mention of Section 57.105 by name or by citation. The rule states only that it applies to sanctions “pursuant to general law,” and this may be deemed to include other sources for sanctions, such as the inherent power of the court.

The rule change should streamline the procedures for seeking sanctions on the appellate level. Nonetheless, such motions should be reserved for truly meritless positions or clear misrepresentations of the record, not mere arguments for an extension of the law. The new rule should not be used as an excuse to increase the serving of Section 57.105 motions in the appellate courts.

Author: Dineen Pashoukos Wasylk, Conwell Kirkpatrick, P.A.
HCBA ANNOUNCES NEW COMMUNITY SERVICE CO-CHAIR
Community Services Committee

As the new co-chair for the HCBA community service committee, I certainly have big shoes to fill by taking the place of Lori Vella co-chair of this committee for three years. I am truly honored to be selected as the co-chair with Stacy Estes Yates, whose dedication to the committee should be an inspiration to us all. Community service has always been one of my great passions. While my profession is family law, my avocation is community service and pro bono work. Most of the community service work I have performed has been for the benefit of non-profit animal rescue groups, shelters and clinics. I volunteer on a regular basis and provide pro bono legal services for Animal Coalition of Tampa (ACT), Big Cat Rescue, and routinely process adoption applications and conduct home visits for potential adopters or foster homes for animal rescue groups, primarily Florida Dachshund Rescue. I am also the co-vice chair of the Florida Bar Animal Law Committee.

The community service committee strives to have one major event per month and other events or projects for those wishing to become more involved in the

Active participants in the community service committee find that not only is community service work very rewarding, but it is greatly needed in the Tampa Bay area as there are so many individuals in need.

Continued on page 19

Environmental & Land Use Meeting

Steve Yerrid, Esquire, offered his observations on Florida’s Response to the Deepwater Horizon Oil Spill, to the Environmental & Land Use Law section on November 9, 2010.

Right: Steve Yerrid, Esq., Florida’s Special Counsel Regarding the Spill

Co-chair Hugh Marthinsen, Speaker Steve Yerrid, and Co-chair Douglas Grant
Continued from page 18

committee. We are compiling a list of people who wish to become more involved in our committee and greatly welcome additional volunteers and suggestions for projects in which we can participate. Our goal is to provide a wide variety of projects throughout the year to help several different causes. We challenge you to participate in at least one project per year. Active participants in the community service committee find that not only is community service work very rewarding, but it is greatly needed in the Tampa Bay area as there are so many individuals in need. By volunteering with the HCBA community service committee, we send a message to the community that lawyers sincerely want to help others and make our community a better place.

Our primary project for October was the Make a Difference Day with the James Haley Veterans Hospital. Several individuals "adopted" a veteran, purchased necessities and gifts for them based on their respective wish lists, and delivered these items to the veterans living in foster homes in which they permanently reside across the Tampa Bay area, as far away as Lakeland.

The HCBA community service committee also organized a team to participate in Animal Coalition of Tampa’s annual Stride for Strays, a walk-a-thon designed to raise funds to enable this charity to continue to provide low cost spay/neuter services for animals of indigent owners.

During the month of September, HCBA volunteers met with underprivileged individuals at the Helping Hands homeless shelter and provided pro bono services for those with legal issues. We found that those we helped were extremely grateful for our services.

We routinely send out emails to the entire HCBA seeking volunteers to assist with different projects, and we strongly urge you to look for those emails and contact Stacy at sey@manfitzlaw.com or me at mlasley@lasleylaw.com if you are interested in volunteering.

Author: Mindi Lasley, Mindi Lasley, P.A.

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Here are five marketing tips that have worked for me and may help others who practice in the construction law area.

1. Get involved in a construction specific organization.
   A couple of years ago, I became involved in the Tampa chapter of NAWIC (National Association of Women in Construction). When I decided to join a construction-specific organization, I wanted one without too many attorneys and appealed to a cross section of the industry (general contractors, sub contractors, suppliers, engineering professionals, laborers, etc).
   This was important because I wanted to learn more about a wide array of construction issues and topics. Joining NAWIC has been a win/win/win. I really enjoy the company, I learn a lot at the meetings, and I get to network with my ideal clients. It may take going to few meetings to find the group you’re looking for but it will be worth it when you do.

2. Get involved with a construction bar and find a mentor.
   I am active in the HCBA and Florida Bar construction sections. These organizations not only provide great educational opportunities, but I’ve also been introduced to some of the best attorneys practicing in construction.
   When I hung out my shingle in January, it was those attorneys

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I called on first to give me advice on everything from developing new business to finding office space.

Also, you are never too old or “seasoned” (as I prefer to say) to have a mentor. The best attorneys I know make a real effort to engage new attorneys to keep them invigorated and excited about the profession. So maybe the next time you have a bad day, call up that new whippersnapper and schedule lunch. I promise you’ll find it’s mutual beneficial.

3. Get to know your client’s business.

One of the best pieces of advice a partner once told me was that being a good lawyer wasn’t enough, I also had to be an expert at my client’s business. Because of that advice, I try to spend at least one day a year with each of my clients. They usually give me a tour of their facility or job site and demonstrate what they do on a daily basis. My clients love showing off their work, and I learn a lot in the process. The visits, of course, never fail to lead to legal questions which usually result in additional work, but that is not the motivation for the visit.

4. Keep in touch.

Yes, yes, I know every article in every bar newsletter goes on and on about keeping the clients informed, but that’s not what I mean. I make a point to read local papers, “fan” my clients on Facebook, and review their websites regularly. If I see a blurb in the paper, I cut it out and send a short handwritten note. If they post a great article on Facebook, I’ll comment on it. For a lot of my clients, it’s a family business. If they know I care about their business, they know that the advice I give them comes from that perspective.

5. Write articles and give speeches.

If you read this far, you probably looked to see who wrote this article. Enough said.

Author: Stephanie Bolton, Esq., Bolton Law

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If you have ever experienced a merger & acquisition (M&A) transaction, you are likely aware of the intricacies involved in getting the transaction consummated and the parties “to the altar.” These transactions are often flush with emotions, personalities, timing pressures and surprises that could blow up the deal at any time. It is important that both in-house counsel and outside counsel understand the needs and expectations of the company.

**General Counsel’s Perspective**

—Nicole Strothman

Points to consider when starting the merger or acquisition journey with outside counsel:

1. Get outside counsel involved early on. The term sheet is what the business leaders will be focusing on, so that agreement should encompass major key business terms written in a way that leaves either little ambiguity or purposeful ambiguity for future negotiations.

2. Like any strong relationship, communication is key. Learn each other’s communication style and how to make the most efficient use of time spent working on the transaction.

*Continued on page 23*
3. You should have a strong sense what the company’s hot buttons are. Make sure outside counsel understands those hot buttons at the outset to assist in negotiation strategy.

4. Set timing and budget expectations. Keep each other apprised of dates when availability may be affected. Outside counsel can be the voice of reason if timing of tasks is unrealistic.

5. Anticipate any deal breaking issues or potential red flags and discuss a strategy to handle.

Outside Counsel’s Perspective —Curt Creely

In addition to the above, below outlines an outside counsel perspective to successfully guide a client through an M&A transaction.

1. Set Expectations. To a client who isn’t regularly involved in M&A transactions, such transactions are often fraught with angst and uncertainty. At the onset of a deal, giving the client an overview of the steps in the process and the issues that often arise can substantially alleviate the possibility of misunderstandings that may frustrate the client. For clients who frequently engage in M&A transactions, make sure that you understand the client’s style, philosophy, and approach for negotiating and consummating the deal.

2. Understand the client’s business objectives. Whether your client is on the buy or the sell side of an M&A transaction, the company and outside counsel should always make sure that outside counsel understands the client’s “business case” for the deal. For example, outside counsel in a buy-side engagement should know how the client is valuing the target and pricing the deal and what the client’s near-term and long-term expectations are. Outside counsel experienced in M&A transactions will know how to use this information to develop a negotiating strategy and focus his or her efforts on the more important parts of the deal (and avoid over-lawyering less important parts of the deal).

3. Keep track of tasks and deliverables. The typical M&A transaction will involve a broad array of issues to be addressed and deliverables to be tackled. For example, in a sell-side engagement, the corporate controller may need to prepare financial information, the chief technology officer may need to respond inquiries about systems, the general counsel may need to prepare disclosure schedules, and the tax advisor may need to work on purchase price tax allocation. Deals often stall whenever issues and deliverables are not effectively identified and tracked, and outside counsel is well-advised to maintain and regularly circulate a list or spreadsheet listing the various action items and tracking the progress.

4. Take an active role in managing your client’s deal team. If your client is not seasoned with M&A transactions, you can often best serve your client by proactively managing the members of the team. By giving “friendly reminders” of overdue deliverables and acting as a communication hub between internal members, you can often facilitate a smoother and more efficient deal process.

Authors: Curt Creely, Foley & Lardner LLP, and Nicole D. Strothman, Ideal Image Development Corporation, Inc.
EFFECTS OF LANDMARK AUTISM LAW Beginning To Be Felt

Diversity Committee
Chairs: Cynthia S. Oster, Hillsborough County Attorney’s Office and Deborah C. Blews, Hillsborough County Attorney’s Office

Mark 2010 as the first year in which we will see the success of Florida’s landmark autism insurance coverage law, the Steven A. Geller Autism Coverage Act.

This landmark law has three key components which collectively require health insurance companies to offer policies to cover therapy for children with autism. A guiding principle of this law is that covered carriers may not deny or refuse to issue coverage for medically necessary services for those with autism or developmental disabilities.

The first provision of this landmark law is the Developmental Disabilities Compact, which requires a workgroup that negotiates a “compact” binding health insurers and health maintenance organizations (HMO’s) to insure persons with autism and other developmental disabilities. This Compact mandates that its members provide additional coverage for therapy and behavior analysis services for children with autism, with penalties for denials of claims for medically necessary services.

The second provision of the autism mandate requires coverage for autistic persons under 18 years of age by health insurance companies that did not sign the Developmental Disabilities Compact by April 1, 2009. All insurance companies and HMO’s subject to the mandate had until April 1, 2010 to comply. Those companies are now compelled to cover treatment of autism via occupational, physical and speech therapy, as well as applied behavior analysis. This mandate is all inclusive under the “spectrum” of autism, covering all autistic disorders, including Asperger’s Syndrome. There is no requirement that Autism Spectrum Disorder (ASD) be the primary diagnosis for the child to qualify for coverage.

For treatment to qualify, it must be prescribed by the patient’s treating physician, and coverage is limited to $36,000.00 annually and no more than $200,000.00 over one’s lifetime (with the appropriate annual inflation adjustments).

Lastly, the Medicaid waiver authorizes Florida to seek federal approval for Medicaid coverage of specific therapies for children under the age of five with autism and other developmental disabilities. The new Medicaid benefits are limited to $36,000.00 annually and $108,000.00 in total lifetime benefits (again, with annual inflation adjustments).

Autism is a condition that affects 1 in 110 children. The enactment of this law is a move in the right direction. However, the exemptions result in approximately four out of every five children with autism in Florida not being covered. Some of the exemptions are due to state law, such as the exemption of small businesses with 50 or less employees; others are due to federal law, as self insured plans are exempt from the mandate as ERISA preempts state law applicable to employer sponsored benefit plans.

The passage of the Steven A. Geller Autism Coverage Act was a result of the undying commitment of those afflicted with autism, as well as their parents and families.

Author:
Luis E. Viera,
Ogden, Sullivan & O’Connor
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Bay Area Legal Services thanks you for helping victims of domestic violence. Your support is a gift of hope, and a gift for a healthier and secure future for those who have nowhere else to turn.

Special thanks to our gracious host John and Tracy Bales

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Six months after the Patient Protection & Affordable Care Act of 2010 (PPACA) was signed into law, 53 percent of people surveyed by the Kaiser Family Foundation’s Health Tracking Pollsters say they are “confused.” This percentage has consistently increased since April, as misconceptions and misperceptions continue concerning the law’s content and applicability to the American public. Notably, about 30 percent of seniors surveyed believe the law allows the government to make end-of-life health care decisions for Medicare recipients (correct answer: the law does not allow the government to make such decisions).

A survey by the National Association of Insurance Commissioners found similar results; only 14 percent of people surveyed could identify the date the first health care reform provisions would take effect (correct answer: September 23, 2010). Half of those surveyed believed employers with fewer than 50 employees must offer coverage to those employees (correct answer: such employers are not required to offer coverage).

With confusion about health care reform persisting, the Departments of Labor, Treasury, and Health and Human Services posted a series of 16 frequently asked questions (FAQs) on issues related to PPACA’s implementation. These FAQs attempt to provide assistance to plans, employers, employees, and others who have unsuccessfully attempted to understand and comply with the new law thus far.

What the agencies failed to mention in their FAQs is the recent data from Hewitt Associates, which reported employers can expect 2011 health care cost increases to reach their highest levels in five years. Average employees’ out-of-pocket costs will increase by approximately 12.5% from 2010.

The legal system may prove to be the “knight in shining armor” amidst the PPACA confusion. Some have reached out to the courts for clarification, adding fuel to the fire in the health care debate with lawsuits challenging PPACA’s constitutionality. The U.S. District Court for the Eastern District of Michigan recently denied an injunction blocking the health care reform law. This action challenged the 2014 requirement for individuals to purchase insurance or pay a penalty, but the Court held the individual insurance mandate under PPACA was a proper exercise of authority pursuant to the Commerce Clause. Similar suits exist elsewhere, including Virginia, where three former U.S. attorney generals filed amicus curiae briefs in support of the lawsuit challenging PPACA’s constitutionality. The insurance mandate is the main issue in Virginia’s lawsuit as well.

Florida’s lawsuit similarly challenges the individual mandate under PPACA, but differs from the other states’ actions, as it contains allegations specific to state’s rights. Specifically, Florida is challenging PPACA’s requirement for the state to expand its Medicaid program and to create a state-based insurance exchange for purchase of health insurance. Florida alleges it cannot afford this expansion. The hearing and oral argument on the motion for summary judgment is scheduled for December 16, 2010.

Amidst the confusion and costs created by PPACA, constitutionality challenges may only further confuse the general public. It is important for lawyers and clients alike to familiarize themselves with PPACA implementation dates and ensure compliance, even amidst the confusion and constitutionality challenges.

Author: Jessica Cohen, Physicians Independent Management Services, Inc.
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Left to right: Hillsborough County Attorney Renee Lee, Commissioner Rose Ferlita, The Honorable Ashley Moody, HCBA Member Susan Sandler, The Honorable James M. Barton, II, and HCBA President Amy Farrior.
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The Fourteenth Annual Bench Bar Conference & Judicial Reception provided outstanding education, candid conversation, and a few libations! The newly designed program of events was deemed a tremendous success by attendees throughout the day. Learning opportunities abounded for experienced attorneys, new law school graduates, paralegals, judicial assistants and firm administrators alike. Challenges presented in the game show, *Are you Smarter than a Law Student?*, generated lively discussion with audience participation hosted by Ken Turkel, HCBA Immediate Past President, and Michael Boucher of Trial Consulting Services.

The midday Membership Luncheon featured Judge Chris Altenbernd of the Second District Court of Appeal, recently presented with the American Inns of Court 2010 A. Sherman Christensen Award by Associate Justice Clarence Thomas in the Courtroom of the Supreme Court of the United States. HCBA members honored Leslie Reicin Stein with the association’s Outstanding Lawyer Award for the exemplary example she has set in her practice of law.

Traditional Judicial Roundtables and the ever popular Judicial Reception once again offered a venue for collaboration between the bench and bar. Many thanks to all of our sponsors for their contributions to this outstanding day of events!

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We maintain that while neutrality is a hallmark of mediation, in the context of hospital quality of care issues there is an obligation of the needs of the patient, which transcend the apparent wants of the parties at conflict.

Mediation of Hospital Quality of Care Conflicts:
A Modern View

Mediation of quality of care issues in the hospital setting today is characterized by a plethora of data as well as what can be considered a “war” among administration, nursing and various factions of the medical staff. The “civilian casualties” of these wars are the patients.

Continued on page 33
When one is asked to mediate such a conflict, it is important to recognize the often unspoken subtleties. The mediator needs to be able to differentiate between conflicts, which arise as a result of true quality of care compromise, as opposed to those relating primarily to revenue. This can often be a difficult task because each party has its own agenda and frame of reference. Understanding the culture and the inherent conflicts of interest is key to this differentiation.

The following scenario is illustrative of the problem:

You are asked by Administration to mediate a dispute about quality of care of women in labor. The parties are Board Certified Obstetricians, Family Physicians credentialed by the hospital to perform deliveries and Cesarian Sections, and the Labor and Delivery Nursing Staff. The Family Physicians dispute the findings of a Joint Peer Review Committee, which contends that there is a statistical difference in the adverse outcomes between the Obstetricians and the Family Physicians, with those of the latter being worse. The Nursing Staff, while part of the Joint Committee, subjectively support the findings. The Family Physicians have the support of their department colleagues who threaten to change their referral patterns to a different hospital should there be any limitations to Family Physician privileges in the L&D suite. The potential for loss of revenue to the hospital has caught Administration’s attention. It has now turned to mediation to resolve this quality of care conflict.

This scenario, loosely based on a true situation, might at first blush appear to the mediator as obvious and simplistic, with a limited number of issues and parties. However, what is uncovered to the neutral mediator, who interviews the three parties and Administration, is that this situation is much more complex. There is conflict within each of the parties concerning related issues, such as the role of specialists versus family physicians. Additionally, there is a soon-to-be built competing hospital which will cater to medical specialists.

We maintain that while neutrality is a hallmark of mediation, in the context of hospital quality of care issues there is an obligation of the needs of the patient, which transcend the apparent wants of the parties at conflict. It is this often unspoken responsibility to the welfare of the patient that makes mediation in this environment unique.

Conclusion:

When one mediates quality of care issues in the hospital, there must be a realization that the conflict is multi-layered with many unspoken issues, as is often the case in other settings. However, one must be aware of the special cultures and nuances of the hospital. Apart from this is the singular requirement that the mediator always must represent the needs of the patient, who is not at the table.

Authors: Donald L. Mellman, MD, MPH, MBA, FACS and Martin J. Adelman, MD, FACS
When a reporter calls to write about a client, many lawyers fear that the press will get the story all wrong. But rather than gripe about the press’ mistakes, lawyers can ethically take simple steps to ensure accuracy in stories and enhance the public’s understanding of the legal system. Here are some tips:

First, Follow the Rules. The Rules of Professional Conduct and other court rules govern communication with the media. For instance, Local Rule 4.10 of the Middle District of Florida restricts what an attorney can say about a criminal case. Before opening your mouth, re-read the rules and follow them.

Know the Reporter. Some journalists are conscientious, hard-working, and smart. Some are not. Read the journalist’s clips, and ask colleagues about them. Cultivate journalists who build long-term relationships with the Bar.

Call Back Immediately. To influence a story’s direction, reach a reporter early in the process. You build instant credibility simply by being easy to reach.

Keep It Simple. Speak to a journalist like you would address a jury. Do not talk down to reporters, but do not assume that they know substantive law either.

If Possible, Provide Documents. Provide reporters with relevant motions or pleadings. Reporters can access these records from the clerk, but many will not have time to get them. They will appreciate your assistance.

Answer Questions That Should Be Asked. Journalists are often afraid to admit that they know little about a subject. If you sense that a journalist

Continued on page 35
does not understand the issue, ask him or her to summarize what you have said. Answer questions that should be asked but are not.

**No Surprises.** Tell the reporter you do not want to be surprised by any angle of the story. You want to confront the other side head on.

**Be Available Later.** Most journalists will not see holes in reporting until after deadline. A journalist trying to answer a question at 8 p.m. often makes mistakes. Be available at night. Taking a late call also lets you preview the story.

**Do Not Mislead.** You will get caught, and your credibility will not recover. If you cannot answer a reporter’s question, simply say so.

**Be a Guide.** Good journalists cultivate sources who serve as guides. Journalists depend on these guides for most of their stories, and they protect these sources. Helping a journalist navigate the legal system also builds credibility and improves the quality of reporting on the law.

**Fix Mistakes.** Politey ask reporters to correct factual errors in a story, but do not seek a correction to argue over the “angle” of a piece. Fixing mistakes makes journalists more careful next time.

**Follow-up.** Give reporters constructive feedback. Journalists crave recognition but do not often get it.

**Appeal to Editors.** If you find that a journalist is unreasonable or incompetent, someone else in his or her news organization probably shares your opinion. Speaking to an editor may not fix your immediate problem, but it will impact the reporter over time. If the problem persists, go to another news organization.

**Author:**
David A. Karp, White & Case LLP. David was a staff writer and editor at the St. Petersburg Times for ten years before becoming a lawyer.
A Bank’s Entitlement to Rents Upon Default

Scenario: Suppose a borrower obtains a loan from a lender, executing a promissory note, mortgage and assignment of rents. The borrower subsequently defaults on the loan and the lender files a lawsuit against the borrower. The lender makes written demand to the borrower for turnover of all rents, pursuant to the assignment of rents. Thereafter, the lender files a motion to require the rents to be deposited into the court registry. The borrower is utilizing the rents to continue operating and maintaining the property. Will the court automatically order that the borrower deposit the rents into the court registry? Not necessarily.

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“...the intention of the assignment of rents statute is to preserve the rents until the parties’ claims to the rents can be determined by the court.”

Continued from page 36

According to the assignment of rents statute, Fla. Stat. § 697.07(4), “[u]pon application by the mortgagee or mortgagor, in a foreclosure action, and notwithstanding any asserted defenses or counterclaims of the mortgagor, a court of competent jurisdiction, pending final adjudication of any action, may require the mortgagor to deposit the collected rents into the registry of the court, or in such other depository as the court may designate. However, the court may authorize the use of the collected rents, before deposit into the registry of the court or other depository, to: (a) pay the reasonable expenses solely to protect, preserve, and operate the real property, including without limitation, real estate taxes and insurance; (b) escrow sums required by the mortgagee or separate assignment of rents instrument; and (c) make payments to the mortgagee.”

Moreover, according to the applicable case law, Fla. Stat. § 697.07 was not written to create an “absolute transfer of ownership interest in rents where none existed before;” rather, it was “intended to be nothing more than additional security.” In re One Fourth Street North, Ltd., 103 B.R. 320, 321 (Bankr. M.D. Fla. 1989). The Court explained in Fourth Street North, “if the mortgagee had acquired an ownership right in the rents upon making the written demand, there would be no further need of any proceeding or an adjudication of the mortgagee’s right to the rents, and the statute contemplates some further adjudication or determination of the mortgagee’s right to the rents.” Id. at 321-2. The Court reasoned “section 697.07 on its face provides that the rent proceeds shall be utilized to protect the mortgaged property.” Id. at 322.

It appears that the intention of the assignment of rents statute is to preserve the rents until the parties’ claims to the rents can be determined by the court. Therefore, the court may require that the borrower deposit the rents into a designated account pending final adjudication of the action; alternatively, the court may permit the borrower to pay expenses associated with the property. See In re Venice-Oxford Assocs., Ltd., Partnership, 236 B.R. 791, 799 (Bankr. M.D. Fla. 1998).

Therefore, whether you represent a borrower or a lender, keep in mind that even if the borrower executed an assignment of rents, the court will not necessarily require that the rents be turned over to the lender or placed into the court registry upon the borrower’s default.

Authors: Camille J. Iurillo and Gina M. Pellegrino, Iurillo & Associates, P.A.
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The Hillsborough Association for Women Lawyers (HAWL) kicked off its annual mentoring program with a speed mentoring event modeled after “Speed Dating.” HAWL’s program included both male and female participants, and it matched students from Stetson University College of Law with practicing attorneys in the Tampa Bay Area. The program provided participants the opportunity to form mutually beneficial relationships that foster professional growth and personal fulfillment.

The third annual speed mentoring event was held at the Chester H. Ferguson Law Center on September 15th. In HAWL’s traditional speed mentoring format, prospective mentees had five minutes to talk with each of the prospective mentors. At the conclusion of the event, the attorneys and students anonymously ranked their top five selections. Participants were then “matched” by HAWL’s Mentoring Committee based on their preferences, areas of practice, interests, and schedules. This year’s event was particularly successful and marked an 11% increase in the number of participants from last year’s program. With a total of 91 participants, the HAWL Mentoring Program is currently comprised of 38 mentors and 53 mentees. Diversity of program participants is also increasing, with two male mentees and four male mentors, including one Judge.

It is not too late to join HAWL’s mentoring program. If you are interested in participating in the program, please contact program co-chairs Rachael Greenstein and Victoria McCloskey at hawlmentoring@gmail.com.

Author: Amy Bandow, Richard J. Mockler, P.A.
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Ever wonder what it is like to be a judge? On November 9, 2010, over thirty members of the Hillsborough County Bar Association’s Young Lawyers Division had the opportunity to answer that question when they shadowed judges from various divisions of the Thirteenth Judicial Circuit and Hillsborough County courts as part of an event presented by the Member Services Committee.

Many young lawyers do not get a chance to intern or clerk with the judiciary. The Judicial Shadowing Program presented the rare opportunity to gain “behind the scenes” understanding of how the judges’ chambers function. Each lawyer was matched with a judge to get a firsthand look at the judge’s daily routine and the diverse array of issues regularly handled by the court. After spending a half-day in observation, many of the lawyers also had lunch with their judge and discussed what they had learned.

“The Judicial Shadowing Program allowed young lawyers to engage in direct dialogue with the judges—an opportunity that is more typically afforded to law students,” said Member Services

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The Judicial Shadowing Program presented the rare opportunity to gain “behind the scenes” understanding of how the judges’ chambers function.

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co-chair Lisa M. Smith. “While students are a valid focus, it is equally important to inspire young lawyers who have recently entered the profession.”

Attorney Richard Martin, HCBA YLD treasurer and co-organizer, added, “As young lawyers, I think we are very focused on our own cases. We need to understand the demanding caseloads and variety of matters that come before our judges every day, and this event was a perfect introduction to those issues.”

Based upon the overwhelmingly positive feedback, a second Judicial Shadowing Program is being planned for 2011. “We hope to have even more participants from both the Young Lawyers Division and the judiciary next year,” said Smith.

Author: Robin Horton, Second District Court of Appeal
Last year’s 5K Race to the Courthouse gave runners a chance to compete as teams. Attorney Gary Dolgin had this say about his team.

“Team Dolgin, consisting of Ernie Segundo, Allison Tutwiler, Gary Dolgin, Melissa Powell and James Powell, had a great time finishing in third place in the 2010 5K Race to the Courthouse. Allison came in second place in the Women’s 40’s Division, and I came in second place in the Men’s 40’s Division. The team is training hard in the hot Florida sun to improve its standing next year. More importantly, 20 hours were donated to Bay Area Legal Services. There is a great need for lawyers to assist with family law cases where the client is indigent. In order to encourage lawyers who don’t typically practice family law to feel comfortable handling a family law matter, several family law lawyers, including myself, have agreed to mentor attorneys to answer questions for them and guide them through the legal process. If you’d like to join Team Dolgin in the 2011 race and donate some pro bono hours, we have a team shirt waiting for you.”

Our next 5K Race to the Courthouse is scheduled for April 9th, 2011. Make sure your team is training, too!

Author: Gary Dolgin, Law Office of Gary S. Dolgin

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Author: Charles P. Adams, Jr.
Florida SJI Committee Alters Florida Insurer Bad Faith Law with Proposed Jury Instructions

"Proposed SJI 404.5 totally ignores each and all of the provisions of Section 766.1185 . . ."
defendants, if such disclosure materially alters the risk to the insured of an excess judgment; or
2. The 60th day after the conclusion of all of the following:
a. Deposition of all claimants named in the complaint or amended complaint.
b. Deposition of all defendants named in the complaint or amended complaint, including, in the case of a corporate defendant, deposition of a designated representative.
c. Deposition of all of the claimants’ expert witnesses.
d. The initial disclosure of witnesses and production of documents.
e. Mediation as provided in s. 766.108.

(b) Either party may request that the court enter an order finding that the other party has unnecessarily or inappropriately delayed any of the events specified in subparagraph (a)2. If the court finds that the claimant was responsible for such unnecessary or inappropriate delay, subparagraph (a)1 shall not apply to the insurer’s tendering of policy limits. If the court finds that the defendant or insurer was responsible for such unnecessary or inappropriate delay, subparagraph (a)2 shall not apply to the insurer’s tendering of policy limits.

(c) If any party to an action alleging medical negligence amends its witness list after service of the complaint in such action, that party shall provide a copy of the amended witness list to the insurer of the defendant health care provider.

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period and after the 150th day after service of the complaint, the claimant provided new information previously unavailable to the insurer relating to the identity or testimony of any material witnesses or the identity of any additional claimants or

Continued on page 48

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(d) The fact that the insurer did not tender policy limits during the time periods specified in this paragraph is not presumptive evidence that the insurer acted in bad faith.2

The Statute expressly provides in Subsection (2) that certain factors— which appear in somewhat altered form in the newly proposed Instruction 404.5— apply “[w]hen subsection (1) does not apply”.3 Because the Legislature expressly intended for the events it enumerated in subsection (1) to be determined first, before any of the events which the Legislature thereafter enumerated in subsection (2) are determined, it is certainly incongruous, if not misleading, to blow past the subsection (1) events entirely as if they did not exist and as if they are not worth mentioning even in passing, and go directly to (2).

One last change remains for discussion this day. Proposed SJI 404.9 breaks out the language of current SJI MI 3.1 c, which is simply that in cases without claims for mental distress, the Jury should be instructed: “If your verdict is for (claimant), the court will award damages in an amount allowable under Florida law.” Proposed SJI 404.9 would add a new title to hang down over this language like a banner, that it is the “Concluding Instruction When Court to Award Damages.” Maybe, maybe not. But the change is not necessary and the consequences of the change are not known, and may not be intended.

As it has done in the past when authorizing publication of the Jury Instruction Committee’s recommendations, the Florida Supreme Court has carefully also stated that “we express no opinion on their correctness and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions nor contesting the legal correctness of the instructions.”4

Moreover, even then, “[t]he instructions as set forth in the appendix, fully engrossed, shall be effective when this opinion becomes final.”5

1 This Statute purports to apply to “all actions for bad faith against a medical malpractice insurer relating to professional liability insurance coverage for medical negligence”. To begin with, the continuing validity of this Statute is highly questionable on Equal Protection grounds advanced by various parties. See Dennis J. Wall, “Litigation and Prevention of Insurer Bad Faith” § 3:2 (2009 Supplement West Publishing Company).
5 The opinion was issued on March 4, 2010. In re Standard Jury Instructions in Civil Cases, 2010 WL 727521 *5 (Fla. March 4, 2010).


Author:
Dennis J. Wall, Esquire,
Dennis J. Wall, Attorney At Law,
A Professional Association
ALA Luncheon

The Suncoast Chapter of the Association of Legal Administrators (ALA) invited HCBA Human Resources Coordinator, Cilicia “C.C.” Prince, to speak at their Chapter Luncheon held at Feather Sound Country Club. The ALA members enjoyed C.C.’s presentation on the many aspects of diversity, and learned valuable life lessons as well. The luncheon provided an opportunity to share HCBA membership materials and continuing legal education information with the ALA participants.

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One of our most thankful applicants was an individual subpoenaed for deposition. He simply wanted to know what a deposition was and how he should prepare. In approximately ten minutes, he became more comfortable with the process, and he was extremely grateful.

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Pro Bono Program Offers
Range of Time Commitment for Volunteers

The Federal Bar Association of Tampa Bay (“FBA”) is dedicated to assisting pro bono clients. The FBA’s pro bono program is entirely reliant on volunteers who are matched with applicants seeking assistance with cases pending in federal court. Our applicants are typically first-time litigants trying to understand the procedural rules. Substantive assistance is also appreciated but not requested as often.

As the pro bono coordinator, I work to match our applicants with volunteers experienced in the substantive area requested. At this time, many of our applicants seek volunteers with experience in cases dealing with civil rights, real estate, and bankruptcy. If you are experienced in these areas and looking for a way to increase your practical experience, please consider volunteering to assist our program.

The assistance offered to applicants is as much or as little as the volunteer can provide. If you only have the capacity to speak with an applicant about procedural issues, that is just as welcome as a volunteer with the capacity to take the case on as a full pro bono opportunity and work it through to resolution.

So far this year, we have matched nine applicants with volunteers from our legal community. The need continues. We have approximately 15 pending requests, so any help you can give would be greatly appreciated. One of our most thankful applicants was an individual subpoenaed for deposition. He simply wanted to know what a deposition was and how he should prepare. In approximately ten minutes, he became more comfortable with the process, and he was extremely grateful. Just a few minutes of your time can ease hours of frustration.

If you have time to volunteer for the FBA Pro Bono Program, please email ann.hensler@raymondjames.com. Your time and effort are greatly appreciated.

1 The FBA nationally consists of more than 15,000 federal lawyers, including 1,200 federal judges, who work together to promote the sound administration of justice and integrity, quality and independence of the judiciary. The FBA provides opportunities for judges and lawyers to interact professionally and socially. See www.fedbar.org

Author:
Ann Hensler,
Associate Corporate Counsel,
Raymond James Financial
20 Volunteer Opportunities in the 13th Judicial Circuit

1. Ask-A-Lawyer, respond to calls from local residents on Fox 13’s morning television show. Contact Pat at pat@hillsbar.com or 813-221-7783.

2. Case Referral Panel, assist low income clients screened for eligibility and legal merit.

3. Client Intake, help the legal aid process by interviewing legal aid applicants.

4. Community Counsel, offer transactional legal assistance to community groups and non-profit organizations.

5. Domestic Violence Assistance Project, assist victims of domestic violence complete petition forms for injunctions.

6. Family Forms Clinic/FFC en Espanol, help pro se litigants complete family law forms. Contact Tampa Bay Hispanic Bar Association.

7. Federal Litigation Project, provide limited one-time consultation to pro se litigants in federal courts. Contact Tampa Bay Chapter of the Federal Bar Association.

8. Fostering Independence Program, make a difference in the life of a child by assisting at-risk teens living in foster care.

9. Guardian Ad Litem Program, become an appointed guardian to a young person in our local community.

10. Guardian Advocate Program, give families the chance to care for their own by assisting relatives of the developmentally disabled become Court Appointed Guardian Advocates.

11. Juvenile Delinquency Attorney Ad Litem Program, act as the juvenile’s representative in the absence of a parent or guardian.

12. Library Series, educational series providing free legal services at area libraries. Contact HCBA, hcbarsvp@hillsbar.com or 813-221-7777.


14. Mediation Panel, volunteer certified mediators provide free mediation services in cases involving low income clients.

15. Military Liaison Committee, provide legal assistance to military personnel. Contact HCBA, hcbarsvp@hillsbar.com or 813-221-7777.

16. Shear Children’s Law Center Adoption Project, attorneys ad litem for children ages birth to 5 and their siblings.

17. St. Michael’s Legal Center, a free legal service helping low-income, primarily women and children, people, who require legal assistance. Contact J. Michael Shea at mike@jmichaelshea.com.

18. Teen Court, serve as a judge or mentor face to face with first time juvenile offenders. www.fjud13.org/jdp/teencourt.

19. USF Legal Aid, assist USF students and graduate students with legal problems, including family law, consumer, landlord/tenant, DUI, and traffic.

20. VA Homeless Women Veterans Assistance Project, provide pro bono or reduced-fee assistance to women veterans with civil and criminal-related legal problems. Contact Hillsborough Association for Women Lawyers, www.hawl.org.

For programs listed without contact information, please inquire with Bay Area Legal Services at www.bals.org or 813-232-1343.
Immigration is a hot topic of late. As such, attorneys are becoming increasingly familiar with words such as “U.S. Citizen” and “Lawful Permanent Resident.” Basic knowledge of the distinctions between these terms is helpful as the immigration issue is invading all practice areas. The differences between the rights, responsibilities and vulnerabilities of a lawful permanent resident verses those of a U.S. citizen are dramatic.

A lawful permanent resident (“LPR”), also known as a “green card” holder, is an individual who has been granted the privilege of residing permanently in the U.S. An LPR is also afforded the right to work and can travel in and out of the country at his discretion. Additionally, an LPR retains his birthright citizenship. As required by law, an LPR must carry evidence of his status and must also keep U.S. Citizenship & Immigration Services updated as to his current address.

An LPR can lose his permanent resident status, either intentionally or by accident. For instance, if an LPR remains outside of the U.S. for an extended period, the U.S. government can argue that he has abandoned his status. It is important to know that factors, such as length of absence from the U.S. and intention at the time of departure, are key issues in the LPR abandonment inquiry. Further, an LPR can lose his status if he commits certain crimes that constitute removable offenses pursuant to the Immigration & Nationality Act (“INA”). There are two main categories of removable offenses within the INA: (1) crimes involving moral turpitude and (2) aggravated felonies. The analysis of what types of crimes constitute removable offenses is quite detailed, as is the examination of whether relief from removal is available to the LPR. An LPR must understand that if he departs the U.S. for temporary foreign travel and re-enters the U.S. and/or if he applies for an affirmative immigration benefit, his criminal background will be examined for possible immigration consequence.

A United States citizen (“USC”), notwithstanding whether his status was acquired at birth or through naturalization, is afforded many rights and privileges. For instance, a USC can vote; can be elected in state/federal elections; can apply for federal government positions; is eligible for certain federal benefits, scholarships and grants; can petition foreign-born relatives for immigration benefits; has the right to remain in the U.S. without the risk of removal or deportation; and cannot lose his status by accident.

While U.S. citizenship offers multiple benefits, an LPR may lose his birthright citizenship if he chooses to naturalize.

Developing an understanding of the vulnerabilities of permanent residency and the protections that U.S. citizenship affords is imperative in today’s legal practice.

1 INA §§264 (e); 265(a),(b)
2 INA §101(a)(27)(A)
3 INA §§212(a)(2)(A); 237(a)(2)(A);101(a)(43)
4 INA §349

Author: Kathryn Reeves, AzulaySeiden Law Group

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For your firm to be listed here, contact Dawn McConnell, dawn@hillsbar.com
Tabatha Marshall lives in Washington. She says she’s only been to Florida once. But she’s now defending herself against claims of defamation in Federal Court because of what she wrote on her website.

Marshall uses her website to post consumer-related information. She didn’t like what Internet Solutions Corporation (ISC) was up to, so she wrote about it. Other users of her website added their own comments as well. Some of these users appeared to be from Florida. Apparently, she accused ISC of criminal activity.

ISC, whose principal place of business is in Florida, sued her for defamation. ISC asserted that Marshall’s posts constituted tortious activity conducted in Florida, and she should have expected to be sued in Florida for such activity. Marshall moved to dismiss, arguing that Florida’s long-arm statute did not extend to her activities and that subjecting her to personal jurisdiction here violated her right to due process because of her limited contacts with Florida.

Assuming Marshall’s comments were defamatory, the trial court found that ISC’s claim was sufficient to satisfy Florida’s long-arm statute because defamatory remarks published in Florida constitute a tort that resulted in an injury in Florida. But the trial court granted Marshall’s motion to dismiss because subjecting her to personal jurisdiction here would violate the Constitution’s due process requirement.

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Marshall had not specifically targeted her remarks at Florida. And her website was no more available to Florida citizens than it was to everyone else on Earth. Subjecting her to jurisdiction here would violate her due process rights.

ISC appealed to the Eleventh Circuit, which had a question about Florida law, which it certified to Florida’s Supreme Court. The Supreme Court framed the question as follows:

Does a Nonresident commit a tortious act within Florida for purposes of Section 48.193(1)(b) when he or she makes allegedly defamatory statements about a company with its principal place of business in Florida by posting those statements on a website, where the website posts containing the statements are accessible and access in Florida?

The Court answered in the affirmative:

We conclude that posting defamatory material on a website alone does not constitute the commission of a tortious act within Florida for purposes of section 48.193(1)(b), Florida Statutes. Rather, the material posted on the website about a Florida resident must not only be accessible in Florida, but also be accessed in Florida in order to constitute the commission of the tortious act of defamation within Florida under section 48.193(1)(b).

Marshall v. ISC, 39 So. 3d 1201, 1203 (Fla. 2010). (emphasis in original).

Thus, a defendant is subject to personal jurisdiction in Florida if he or she: (1) posts something on a webpage; (2) the webpage is accessible in Florida; and (3) someone accesses it in Florida. The Court limited its holding to the question it was asked—does posting defamatory content on a webpage constitute a tort committed in Florida? It did not address the due process inquiry. Marshall won on this point at the trial level, and the case now returns to the Eleventh Circuit.

This decision may be good news for people who post defamatory statements on their websites so long as nobody reads them in Florida. But if someone accesses websites in Florida, web posters and publishers should be ready to defend themselves here. Such activity satisfies Florida’s long-arm statute, and if it doesn’t violate due process, you’ll be explaining yourself in one of our courts.

1 This article was adapted from a blog post on the same topic at http://floridaip.blogspot.com/

Author: Woody Pollack1, Gray Robinson, P.A.
A recurring practice we see over and over again as plaintiffs’ employment lawyers when litigating employment discrimination cases is the defendants’ attempt to use non-party subpoenas to obtain irrelevant, confidential and private personnel information from plaintiffs’ former employers. Not only do plaintiffs find these subpoenas overly intrusive and an invasion of privacy, but they fear that these subpoenas interfere with their future job opportunities. Defendants use non-party subpoenas to pry into plaintiffs’ pasts without regard to relevance of the information sought.

It is important for all plaintiffs’ attorneys to see through these classic fishing expeditions and oppose these tactics with full force. Depending on what information is sought in the non-party subpoenas, plaintiffs have strong, persuasive arguments with which to arm themselves to oppose these subpoenas.

The most common arguments opposing these subpoenas are based on overbreadth, relevance, and that the information sought is not reasonably calculated to lead to discovery of admissible evidence. For example, when a defendant broadly requests an employee’s entire personnel file from a former employer, this is exceedingly overbroad and typically seeks irrelevant information. In these situations, undoubtedly plaintiffs should attack the subpoena.¹

One specific battle counsel should fight regarding non-party subpoenas to former employers is where a defendant seeks information regarding past wrongdoing (i.e., lying about or misrepresenting information on their employment application and resumes). Defendants will claim this information supports their after-acquired evidence defense. This defense allows employers to use evidence of wrongdoing on the part of a plaintiff that the employers learn of after-the-fact to limit damages awardable to plaintiffs.² Many courts will not permit defendants to obtain this information, especially early on in discovery, without some pre-existing factual basis showing that after-acquired evidence exists.³ The mere possibility or belief by defendants that after-acquired evidence may exist is not sufficient.

Another time to challenge a subpoena to a former employer is when it seeks inadmissible character evidence, such as a plaintiff’s previous discipline history or complaints and/or charges of discrimination against former employers. The rules of

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TAKING A STAND AGAINST SUBPOENAS TO FORMER EMPLOYERS
Labor & Employment Section

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evidence prohibit the admissibility of character evidence to show that a person acted in conformity with that specific character trait. When an employer seeks information regarding a plaintiff’s previous complaints or charges of discrimination, the motive is usually to show that the plaintiff is litigious, which is improper character evidence.4 Moreover, a subpoena seeking the previous disciplinary history of a plaintiff with a former employer also forms the basis of improper character evidence.5 The key to remember in evaluating non-party subpoenas is whether the information actually sought will lead to admissible evidence. If the subpoena seeks inadmissible character evidence, then plaintiffs should stand firm and vigorously defend against these subpoenas.

Of course, plaintiffs, just like defendants, have an obligation to confer in good faith to resolve discovery disputes before seeking court intervention. Nonetheless, plaintiffs’ attorneys should take great care in reviewing non-party subpoenas to former employers and zealously represent their employee plaintiffs by applying these legal arguments to oppose such subpoenas.

1 Middleton v. Orange Park Medical Center, Inc., No. 3:00-cv-876-J-21HTS (doc.14, pg. 2); Lopez v. State of Florida, et al, No.3:00-cv312-J-w5TJC (doc. 17, n. 3); Cute v. ICC Capital Management, No. 6:09-cv-01761-ACC-DAB (doc. 52, pp.5-7).


5 Fed. R. Evid. 404; Chamberlain v. Farmington Savings Bank, 2007 WL 2786421 (D. Conn. 2002); Maxwell, supra, n. 3.

Author: Yvette D. Daniels-Everhart, Law Offices of Cynthia N. Sass, P.A.
Though Qualified Domestic Relations Orders (QDROs) are useful tools for dividing retirement assets at the end of cases, a QDRO can also be an effective tool in the middle of a case, when your client is trying to enforce a temporary support or attorney’s fees order.

In a recent dissolution action, a husband who had $400,000.00 in his 401(k) had all but financially abandoned the marital home, the parties’ children and my firm’s client, the wife. The court awarded my client temporary spousal support, temporary child support and temporary attorney’s fees and costs.

The husband immediately disobeyed the temporary relief order. The court entered an order of contempt, and after the husband failed to pay the purge of approximately $38,000.00, a writ of bodily attachment was issued for his incarceration. It became apparent that the best source for temporary relief funds was the husband’s 401(k) account by QDRO, which would effectively take this matter entirely out of the husband’s hands.

I drafted a QDRO for the entire purge amount, grossed up the total amount to be segregated for my client by 30% to account for the taxes and penalties that my client would have to pay when she withdrew the funds, submitted the QDRO to the plan administrator for pre-approval and then sought entry of the QDRO in court. After entry, the QDRO was submitted to the plan administrator for payment. As a result, both my client and my firm were paid in full.

A QDRO is a device used to transfer an interest (i.e. money), either as support or property distribution, from a participant’s qualified retirement account to an alternate payee. See ERISA § 206(d)(3)(K). Nowhere in federal or state law does it say that a QDRO can only be entered at the end of an action, it merely needs to be pursuant to a “domestic relations order” which can be any judgment, decree, or order which relates to the provision of child support, alimony, or marital property rights and is made pursuant to a state domestic relations law. Further, there is no definition for what constitutes “support” or “property division.” See ERISA § 206(d)(3)(B)(ii)(I).

Thus, it follows that the law allows the use of QDROs to collect temporary and permanent attorney’s fees and temporary support, as well as contempt purges, to the extent that the monies subject to such collection are in fact for “support” or “property division.” See ERISA § 206(d)(3)(B)(ii)(I). Keep in mind that temporary attorney’s fees are in the nature of support, in that they give a needy party the financial support to proceed with litigation. See generally Canakaris v. Canakris, 382 So. 2d 1197 (Fla. 1980).

As a practice pointer, when you have an order of contempt entered against an opposing party for failure to pay temporary support or temporary attorney’s fees, consider asking the judge to reserve jurisdiction to enter a QDRO later. It is also important to retain an experienced QDRO drafter to streamline this process and avoid a malpractice claim.

The best source for temporary relief funds was the husband’s 401(k) account by QDRO, which would effectively take this matter entirely out of the husband’s hands.
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Perhaps this statement may be somewhat of a bold assertion, but given the state of alternative dispute resolution in today’s modern judicial system, it may not be too far off the mark. How many cases are actually getting to trial these days, and is trial the best means to the end for your client? The risks of trial are many and for the most part are unknown and unpredictable. It has become increasingly expensive to take cases to trial. Expert fees, doctor’s testimony and courtroom trial support do not come at bargain prices. Even a simple auto accident case costs thousands to take to trial. The greatest service an attorney can do for his or her client is to limit the costs, minimize the risk and control the possibility of a runaway outcome.

Whether you are suffering the wrath of an out of control insurance adjuster or a client with outlandish expectations, having a jury evaluate your case and provide insight into what an independent view of your case might be can only serve to help bring resolution to your case. A new approach to alternative dispute resolution is being offered in Tampa and other jurisdictions: mediation with jurors.

Many cases cannot be resolved in mediation because they lack an essential element to resolution. Who can resolve the questions of fact? Who can evaluate the damages or the value of the case? It takes a jury. This approach provides that opportunity to trial practitioners and their clients without the peril of the courtroom. The concept involves a brief summary jury trial (both sides presenting their case) which includes as few as 6 and as many as 18 jurors to evaluate the presentation of evidence put on by each side to the dispute. The cases that do not settle at traditional mediation fail for many reasons, but primarily because there is an “all or nothing” issue (such as liability or causation) or that the parties simply cannot agree as to the value of the case. The jury provides insight into the process, limiting the chances your client will be severely hurt by the outcome.

Jurors can be observed privately by both parties during the deliberation process, and each of the six member panels deliberate separately. The parties agree to mediation as part of the process. The mediation takes place immediately after the jury returns its verdict. Partiers are encouraged to have their settlement authority in place to avoid delay in the process. Both sides should have some idea of where they want to go. It is surprising how many cases settle as a result of outcomes that neither side expect. During mediation, large jury awards or zero verdicts are tempered by “this is one jury’s view” or “we will do better in court.” The jury decision is sobering to most of the participants, and just as in a jury trial, no one can predict what will happen.

The price of the overall program is surprisingly inexpensive, particularly when compared to traditional mediation and mock trial presentations (generally paid by one party to analyze their case). Remember, each side agrees to pay one half of the costs. Consider mediation with jurors to help resolve future cases.
### January 2011

**HCBA Calendar of Events**

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<td>Solo &amp; Small Firm Luncheon</td>
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**Please note: Events may change from time of print. Call 813-221-7777 for updated event information.**

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he 2010 regular session of the Florida Legislature produced many noteworthy changes to Chapter 718 of the Florida Statutes (the “Condominium Act”). Many of these changes were implemented to improve the ability of condominium associations to recover unpaid assessments from delinquent unit owners. Specifically, the Legislature established new remedies to provide condominium associations with additional tools to encourage and compel delinquent unit owners to pay outstanding association dues.

Most notably, Senate Bill 1196 amended Section 718.303, Florida Statutes, to provide condominium associations with the power to suspend a unit owner’s common element use rights for the nonpayment of any monetary obligation due to the association in excess of ninety days. In addition to the power to suspend the use rights of delinquent unit owners, Senate Bill 1196 granted condominium associations the power to suspend the common element use rights of any tenant, licensee or invitee of the delinquent unit owner. Furthermore, Section 718.303, Florida Statutes, was revised to allow condominium associations to suspend a member’s voting rights for the nonpayment of any monetary obligation which is more than ninety days delinquent.

While potentially heavy-handed at first glance, these changes were implemented out of necessity. Prior to July 1, 2010, Florida law did not permit a condominium association to suspend a unit owner’s access to condominium amenities, even when the unit owner was significantly delinquent.

Senate Bill 1196 amended Section 718.303, Florida Statutes, to provide condominium associations with the power to suspend a unit owner’s common element use rights for the nonpayment of any monetary obligation due to the association in excess of ninety days.

Continued on page 63
Continued from page 62

delinquent in the payment of condominium association dues. Prior to July 1, 2010, a unit owner who had not paid assessments to a condominium association was still allowed to participate in the business of the condominium association, including voting on critical issues, such as the election of directors, the imposition of a special assessment and the waiver of reserve account funding. The ability of seriously delinquent unit owners to have standing equal to diligent unit owners who had timely paid association dues was seen as unjust in the eyes of many “paying” condominium unit owners.

Notwithstanding the new powers granted to condominium associations by Senate Bill 1196, a condominium association still may not restrict access to a unit, a unit owner’s parking space or an elevator. Furthermore, the new law prohibits suspension of limited common elements, such as a patio or balcony, or utility services.

While under the new law condominium associations are not obligated to provide a hearing prior to the suspension of voting and common element use rights, suspension must be determined by a vote of the Board of Directors at an open and noticed meeting of the Board. After the meeting, the Board must provide the unit owner, and, if applicable, any tenant, licensee, or invitee with notice of the terms of the suspension via mail or hand-delivery.

Given the significant and historically large number of delinquent accounts condominium associations in Florida are facing, these amendments to the Condominium Act provide condominium associations with valuable tools to assist in the recovery of assessments from delinquent unit owners. Time will tell how effective these tools will be to condominium associations.

Author: Loren J. Beer, Bush Ross, P.A.
"My Life & Times", in the words of Sam Gibbons, was presented at the Senior Council for the section luncheon held on November 9, 2010 at the Chester H. Ferguson Law Center. Stories woven with a lifetime of experience were shared with the Council members.
## HCBA Calendar of Events

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<td>12:00 p.m.</td>
<td>Criminal Law Luncheon</td>
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<td>Health Care Luncheon &amp; CLE</td>
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<td>12:00 p.m.</td>
<td>Judicial Lunch &amp; CLE with Judge Tesche</td>
<td>12:00 p.m.</td>
<td>Eminent Domain Lunch &amp; CLE</td>
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<td>Valentine’s Day</td>
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<td>Marital &amp; Family Law Luncheon</td>
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<td>Labor &amp; Employment Luncheon</td>
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Over the years, the winter holiday season typically sees a down-swing in legal filings and activity. As holiday preparation, planning, and events increase, substantive legal work tends to decrease proportionally. During my days as a young lawyer, I frequently heard that one should enjoy such slow times before the inevitable wave of new work arrived to sweep this free time away.

Despite the obvious validity of this advice, it has historically been much easier to sell this concept on my logical side than on my emotional one. Compounding upon this are the pressures that come with running a small law office. Whereas my big corporate law paycheck was guaranteed during both the slow and heavy times, as a small and solo practitioner, the situation was quite the opposite. As a result, these slow times, which should be valued as opportunities to explore substantive personal, family and professional growth, are more often than not received with dread for the financial future. Understanding the importance of this advice is even more difficult for a small and solo practitioner whose paycheck depends solely upon the active existence of work. Accordingly, the true irony is that these slow times, otherwise necessary to refresh one’s perspective and recharge one’s vigor in preparation for the inevitable deluge of work that often follows, are often dreaded rather than enjoyed. Over the past ten years, I have found legal work trends towards “feast or famine” phases where business boredom quickly turns to a legal hurricane. The moral is that although work may come and work may go, you will never get back the time wasted on worrying that should have been used on more constructive ventures. Accordingly, use these slow times to get active with the Bar, give back to the community, take on a pro bono case or simply enjoy some down time with family and friends. The benefits of doing so are plentiful and expand beyond the obvious emotional ones. Not only will you be giving back to the profession and the community, the contacts you make from these activities might be what leads to the next wave of work. The Florida Bar, the HCBA and many other charitable organizations are always looking for volunteers. If you want to get involved with or know more about the Solo/Small Firm Section, please contact either Anthony Garcia (Alvarez Garcia; (813) 259-9555; agarcia@alvarezgarcia.com) or myself (John Bales Attorneys; (727) 823-9100; afantauzzi@johnbales.com) for further information. We have many great projects in the works and encourage participation from all of the small and solo lawyers in Hillsborough County. Most importantly, in the interim, don’t forget to enjoy the slow times!

Author: Anthony Fantauzzi, John Bales Attorneys

Don’t Miss the 4th Annual Central Florida Diversity Picnic
February 26, 2011
1:00 - 4:00 PM
Chester H. Ferguson Law Center
Family Fun Event - Free of Charge
The Solo/Small Firm Practitioners “Speed Networking” Luncheon was held on November 9, 2010 at the Chester H. Ferguson Law Center. Co-Chairs Anthony Garcia and Anthony Fantauzzi encouraged attendees to utilize the wealth of resources in the room, as each practitioner provided a description of their various practice areas.
n the month of September, home repossessions by lending institutions set a historic record—this was the first time that over 100,000 foreclosures occurred in one month.1 During that same month, Florida continued to rank in the top five states for the number of foreclosures.2 With foreclosure on the horizon for many Floridians, practitioners will likely find themselves speaking with clients planning for, worrying about, or dealing with home foreclosures. This article serves to introduce and explain the most common tax law issues pertaining to foreclosure.

A loan of money to a borrower does not create income because of a prior obligation to repay the loan; however, if this obligation to repay is discharged for less than the amount due, then the borrower has an accession to wealth and gross income to the borrower.3 This concept is referred to in the Internal Revenue Code as “income from discharge of indebtedness,” but is often referred to by practitioners as “cancellation of indebtedness income” (or commonly “COD income”). COD income is taxable, unless excepted or excluded by some other provision of the Code.

With this basic understanding of the climate and the concepts, there are three common questions asked by those facing foreclosure:

1. What is the importance of Form 1099-A or 1099-C?
2. When does a borrower have to account for this income on his or her taxes, and (3) does the borrower have any way to not pay this tax?

When a lender forecloses on a home, that lender issues either a 1099-A, which is later followed by a 1099-C, or just a 1099-C. The 1099-A is an informational form that the creditor is required to file with the IRS, recording the foreclosure and/or abandonment of property. If the abandonment or foreclosure and a discharge of indebtedness occur within the same year, then the lender is only required to file the 1099-C, which provides notice to the IRS that there has been a discharge of indebtedness for more than $600. It is the 1099-C that indicates that there is COD income through some identifiable event, but, while a deficiency judgment may be unlikely, the 1099-C should not be read as a guarantee that the creditor will not pursue a deficiency judgment.5

Many timing questions on realization of COD income stem from a misunderstanding of the purpose of the 1099-A and 1099-C. If there is a -C, then it will determine the timing. The borrower is responsible, however, for proper filing of his or her return, and there are circumstances where the lender may delay filing a 1099-C, not file for the proper year, or file a -C but also pursue a deficiency judgment. The timing issue involves a close intertwining of tax and real property law, but they can diverge on this issue. Absent a 1099-C or given contrary facts, the borrower will have realization of income when it is clear that the debt will not be repaid, there is an agreement between the parties for satisfaction of the debt, there has been a judicial determination, the statute of limitation on collection has run, or some other finalizing event.6

The borrower may now seem to be in the position of losing his or her home and having a large tax liability. There are two common exceptions to exclude the COD income from gross income: insolvency and qualified principal residence indebtedness. The insolvency exception provides that COD income will be excluded...
from the borrower’s income to the extent
the borrower was insolvent prior to the
cancellation, and insolvency is defined as
liabilities in excess of the fair market value of
assets. As a response to the mortgage crisis,
homeowners can exclude from income debt
forgiveness that arose from 2007 through
2012 as a result of forgiveness of “qualified
principal residence” indebtedness” that does
not exceed $2,000,000 for married couples
filing jointly and $1,000,000 for others.

The general requirements are: (1) the home
is the principal residence of the borrower,
(2) the money was used to buy, build, or
substantially improve the property, and (3)
the cancellation was due to either a decline
in the value of the home or the borrower’s
financial condition. Either exception,
insolvency or qualified principal residence
indebtedness, can be claimed by filing a
Form 982.

1 Corbett B. Daly, September Home
Foreclosures Top 100,000 for First Time, REUTERS,
article/idUSTRE69D0SF20101014.
2 Id.
4 See Treas. Reg. § 1.6050P-1(b)(2).
5 Les Christie, You Lost Your House but You
Still Have to Pay, CNNMONEY.COM, Feb. 10, 2010
available at http://money.cnn.com/2010/02/03/
real_estate/foreclosure_deficiency_judgement/.
6 See Leonard L. Silverstein, et al., “Discharge of
Indebtedness, Bankruptcy and Insolvency,” 540 Tax
8 I.R.C. § 108(d)(3).
9 Principal Residence defined in I.R.C. § 121.
11 Id.

Author: Justin J. Klatsky, Esquire,
Owens Law Group, P.A.
In connection with its recent reorganization of the standard civil jury instructions, the Supreme Court Committee on Standard Jury Instructions in Civil Cases (the Committee) has modified the recommended timing of instructions during the trial process and reordered the sequence in which the instructions are to be given. The new format provides for instructions before the taking of evidence, including during voir dire, and for final instructions before closing argument. The Committee’s stated purpose for the change is to improve juror communications.

**When Instructions Are Given**

Florida Rule of Civil Procedure 1.470(b) provides that instructions may be given during the trial and either before or after final argument. The timing of instructions is a matter within the sound discretion of the trial judge. However, in its reorganized jury instruction handbook, the Committee states that it envisions that before voir dire, the judge may give three instructions: first, a brief explanation of the case as set forth in instruction 201.1; second, an introduction of the participants (judge, lawyers, court clerk, court reporter, bailiff, and jury) and their roles as set for in instruction 201.2; and third, an explanation of the voir dire process as set forth in instruction 201.3.

Then, once the jury has been selected, and before opening statements, the Committee strongly recommends that the judge provide the jury case-specific substantive instructions. The Committee states that it believes it will be possible to give a complete set of instructions in most cases. It acknowledges, though, that in some instances some instructions may depend on the admission of certain evidence or rulings from the court such that it will not be possible to give a complete set of instructions before opening statements. In those instances, the Committee recommends giving a set of instructions as complete as possible before opening statements.

**Order in Which Information is Given**

The Committee also reordered the sequence of the substantive instructions in order to facilitate juror understanding and communication. The Committee’s rationale is that a person’s attention is most focused at the beginning of a communication and that jurors are more receptive to instructions if they know what is important. Under the Committee’s reordered sequence, in most instances, the jury will first receive a concise description of the case, followed by the substantive instructions, followed by the basic principles. The Committee’s reorganized format lends itself to this type of sequence.

**Providing Written Instructions to the Jury**

In addition, Florida Rule of Civil Procedure 1.470(b) also provides that the court shall furnish a written copy of its instructions to each juror. Consistent with its recommendation to instruct juries earlier, the Committee also strongly encourages the judge to provide the written instructions to the jury prior to the court’s oral instruction so that jurors can follow along when the instructions are read aloud.

The timing of jury instructions is a matter within the sound discretion of the trial judge. However, after substantial effort reorganizing the instructions, the Committee now strongly recommends that trial judges instruct juries earlier and in the sequence set forth above in order to improve juror communications.

**Author:**
Jaret J. Fuente, Carlton Fields, P.A.
As the year comes to an end, major changes in the law affecting the practice of representing injured workers continue at a rapid pace.

A major development last year was adoption of changes in the Rules of Procedure. These rules streamline the filing of documentation on the internet, motions practice, pre-trial procedures and rules for telephonic mediations. There is a new rule allowing the Employer/Carrier to ask the JCC to direct Claimant’s counsel to file a fee petition. See Notice of Proposed Rule and Notice of Change at www.jcc.state.fl.us/jcc/.

The web site continues to be an excellent resource for practitioners, as well as the interface for e-filing.

Attorney’s fees have also undergone major changes with new issues on the horizon. In Murray v. Mariner Health, 994 So. 2d 1051 (Fla. 2008), the Florida Supreme Court ruled that the 2003 changes to the method of calculation of attorney’s fees did not change the requirement that they be reasonable. The Florida Legislature amended the statute to remove the word “reasonable” to reduce fees. A challenge to that is now proceeding through the appellate process which may dramatically affect future fee awards. See Kaufman v.

Community Inclusions, OJCC 09-19629EDS (7/23/10).

One amendment in 2003 allowed the employer/carrier to seek costs if the Claimant was unsuccessful at a final hearing. F.S. 440.34 (3) (2003). In Orange County and Derck New, Case No. 5 DO9-2970 (5 DCA, 6/25/2010) Fifth District held the employer/carrier cannot enforce an award of costs using the same rule nisi procedure used by claimants, which makes enforcement difficult.

On major contributing cause, a question exists whether it is a denial of access to the Court to allow the Employer to have an immunity from a negligence lawsuit while only requiring the Employer to pay for medical conditions which have the work injury as the major contributing cause. It has already been held that where the employer/carrier denies compensability of a work injury, the employer/carrier is estopped from raising the workers’ compensation immunity. Francoeur v. Pipers, 560 So. 2d 244 (Fla. 3rd DCA 1990). In Durley Mejia v. Chevron and Broadspire, Case No. 1 D09-5368 (Fla. 1st DCA, 10/15/10)) the First District Court of Appeal indicated this issue should be addressed in civil litigation, like estoppel was.

The law on permanent total disability is also undergoing a transformation. The First District held in Blake v. Merck & Company, Case No. 1 D09-5464 (Fla. 1st DCA, 9/7/10) that a Claimant may prove permanent and total disability either by a long and unsuccessful job search, by medical testimony of total disability, or by medical and vocational testimony. This is a clear standard to follow.

Author: Anthony V. Cortese, Esq., Anthony V. Cortese, Attorney At Law

Refer a new member! www.hillsbar.com
Russell S. Buhite, a shareholder with the law firm of Fowler White Boggs, has been named to the Health Care Reform Task Force of the Tort, Trial and Insurance Practice Section of the American Bar Association.

Amy L. Drushal, an attorney with Trenam Kemker, was presented the Young Lawyers’ Division (YLD) Star of the Quarter Award in February 2010 by the American Bar Association.

The Law Firm of Buckley & Curtis is pleased to announce that Fredric Zinober has rejoined the firm as a Partner.

Trenam Kemker is pleased to announce that two attorneys have been elected shareholders of the firm. Mark D. Kiser joined the firm in 2003 and practices in the area of Construction Law and Government Contracting. Heather R. Schwarz joined the firm in 2006 and practices in the area of Corporate Transactions, specifically trademark and copyright issues.

Williams Schifino Mangione & Steady PA is pleased to announce that Heather Jarrell has joined the firm as an Associate, concentrating in employment law and business litigation.

Rumberger, Kirk & Caldwell, P.A. is pleased to announce Michael L. Forte has been elected partner in the Tampa law firm.

The law firm of Trenam Kemker is pleased to announce that Marla DeVicente Bohlander has joined the firm as an Associate.

Fowler White Boggs is pleased to announce that Ceci Culpepper Berman has been selected to the Tampa Bay Business Journal’s 2010 Up & Comers.

Richard A. Jacobson, a shareholder in the Tampa office of Fowler White Boggs, has been re-elected to the Board of Directors of TerraLex.

Trenton H. Cotney, a shareholder in the Construction Law practice group of Glenn Rasmussen Fogarty & Hooker, P.A., has been chosen as an honoree for Tampa Bay Business Journal’s 2010 Up and Comers Awards.

Sanchez Law Offices announce the appointment of Danny Alvarez Sr. to the Hillsborough County Children’s Services Advisory Board.

Adams and Reese Partner Jim Porter, in the firm’s Tampa office, has been elected to a second term as Chairman of the Arts Council of Hillsborough County.

The law firm of Shumaker, Loop & Kendrick, LLP is pleased to announce that Timothy C. Garding, Associate in the Tampa office, will receive Tampa Bay Business Journal’s 2010 Up & Comers Award.

David Hendrix, a shareholder in the Tampa office of GrayRobinson, P.A., has been appointed to the Boy Scouts of America Southern Region Board of Directors and the vice president of council operations for the state of Florida for the Boy Scouts of America.

Scott Borders, Esq., was appointed by Governor Crist to the Judicial Nominating Committee for the 13th Judicial Circuit.

The Florida Bar Young Lawyers Division is pleased to announce the appointment of Paige Greenlee of Hill Ward Henderson for Chair of the Continuing Legal Education Committee on its Board of Governors.

Trenton H. Cotney, a shareholder in the Construction Law practice group of Glenn Rasmussen Fogarty & Hooker, P.A., has been unanimously re-elected to the West Coast Roofing Contractors’ Association (WCRCA) Board of Directors and will serve a three-year term.

James J. Kennedy, III; Linda L. Fleming; Edward J. Carbone; Jan Johnson Gorrie; Richard Oliver; Kenneth Harfenist; R. Andrew Rock; Jon T. Gatto; and Patricia S. Calhoun have joined Carlton Fields P.A.’s Health Care practice group in Tampa.

Woodrow H. “Woody” Pollack, a patent attorney in the Tampa office of GrayRobinson, P.A., has been appointed as the pro bono representative for the Hillsborough County Bar Association’s Intellectual Property Section.

Kevin B. Elmore has joined the firm of McCumber, Daniels, Buntz, Hartig & Puig, P.A., as an associate in the Tampa office. Mr. Elmore focuses his practice on insurance, medical malpractice, first party insurance, health care and workers compensation defense.

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For The Month of: January 2010.
Judge: Honorable James D. Arnold.
Parties: Estate of Isabel Ramos vs. Pepin Distributing Co.
Attorneys: For Plaintiff: Allen Carman; For Defendant: Greg Giannuzzi.
Nature of Case: Decedent operating riding lawnmower struck by defendant owned tractor trailer.
Verdict: Parties settled at mediation for $5,000,000.00.

For The Month of: February 2010.
Judge: Honorable Martha Cook.
Parties: Carlos Velazquez vs. Evelyn McCain.
Nature of Case: Personal injury claim due to auto accident.
Verdict: For Plaintiff, $3,339.64 (jury awarded $3,339.64 for past medical bills. This verdict was reduced to ($0) after applicable PIP set-off post trial. Plaintiff boarded in excess of $60,000.00 total at trial.

For The Month of: June 2010.
Judge: Honorable James D. Arnold.
Parties: Estate of Evelyn Yeager vs. Palm Avenue Baptist Towers.
Attorneys: For Plaintiff: Allen Carman; For Defendant: Michael Kraft; Conroy Simberg, P.A.
Nature of Case: Decedent choked on candy and died while resident of ALF.
Verdict: Parties settled for $575,000.00 at mediation.

For The Month of: August 2010.
Judge: Hon. Herbert J. Baumann, Jr.
Parties: Lynda and Rodney See vs. West Florida Hospital.
Attorneys: For Plaintiff: Thomas C. Staples, H.E. Ellis, Jr., Charles F. Beall, Jr. Harry Rein; For Defendant: James J. Evangelista, Joshua Welsh, Benjamin Jilek, Christopher Hart.
Nature of Case: Case involving common bile duct injury from laparoscopic cholecystectomy.
Verdict: Jury demands of $15 million: defense verdict awarded $0.00.

For The Month of: August 2010.
Judge: Honorable Terry D. Terrell.
Parties: Lynda and Rodney See vs. West Florida Hospital.
Attorneys: For Plaintiff: Thomas C. Staples, H.E. Ellis, Jr., Charles F. Beall, Jr. Harry Rein; For Defendant: James J. Evangelista, Joshua Welsh, Benjamin Jilek, Christopher Hart.
Nature of Case: Case involving common bile duct injury from laparoscopic cholecystectomy.
Verdict: Jury demands of $15 million: defense verdict awarded $0.00.

For The Month of: September 2010.
Judge: Honorable Susan C. Bucklew.
Nature of Case: Plaintiff claimed race-discrimination and retaliation under Title VII.
Verdict: Plaintiff lost discrimination claim; won the retaliation claim, $62,000.

For The Month of: September 2010.
Judge: Honorable Matthew Lucas.
Parties: David Reyes vs. Seavy & Associates, Inc.
Attorneys: For Plaintiff: Will Williams & Dothc Towne; For Defendant: Roland A. Hermida II.
Nature of Case: Tire and wheel came off defendant’s trailer and struck plaintiff vehicle.
Verdict: Defense verdict.

For The Month of: October, 2010.
Judge: Honorable James M. Barton, II.
Parties: James N. Favata, Jr. (PL) vs. USAA (DEF).
Nature of Case: Plaintiff’s motorcycle was struck by underinsured motorists: multiple leg surgeries.
Verdict: 2.1 Million, less 15% comparative negligence of plaintiff.

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