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The Honorable Judge George E. Edgecomb is commemorated with a bronze sculpture, created by artist Harrison Covington, to honor his lifetime achievements, courage and perseverance. Judge Edgecomb was Hillsborough County’s first African-American judge, Assistant County Solicitor, Assistant State Attorney, and Chief of the Felony Division. The artist represented Judge Edgecomb rising out of rock to symbolize his reputation as a man of deep integrity based upon the fundamental and timeless principles of freedom and equality for all. Do you know where this art is displayed within the George E. Edgecomb Courthouse? Check page 58 for the answer.
The legal profession attracts many wordsmiths. We use words to persuade, to negotiate, to litigate, to settle, to memorialize, and to close deals. Sometimes we use Latin words and English words together in our written work product. Our profession has so many special words that we have books like *Black’s Law Dictionary* to define them.

Some of the words that I like writing the most are the ones I write in cards. I enjoy sending and receiving cards throughout the year. The period between Thanksgiving and New Year’s is when I send and receive the most cards.

I mail some cards with envelopes and stamps. I send others electronically. I know people who feel strongly that one type is superior to another, but I enjoy receiving both paper cards and e-cards in return.

One of my friends is convinced that holiday greetings should be sent electronically. “Electronic cards save paper and are quicker and cheaper to send,” he argues. He thinks I spend needless time checking addresses to create the mailing list for those cards that I mail.

While I do send many e-cards, I still like to send some paper cards, too. It is such a nice surprise to receive a personal, hand-written card in the mail in the midst of the junk mail pile. What matters, in my opinion, is that the card sender takes the time and effort to convey thanks, holiday wishes, happy new year wishes, or a combination of sentiments to the recipient. Through mail or e-mail, the card sender is saying that you are in his or her thoughts and that care and friendship connect you both.

I would like to wish everyone a very happy holiday season and healthy new year. I hope you all enjoyed a little time away from work to be with friends and family during whichever holiday you celebrated, and I hope you received some nice cards in the mail or e-mail!
It seems that every time I receive the news these days, be it the newspaper, television, radio, or the Internet, all I hear and read about is what a crazy world we are living in, and it is downright depressing. We are increasingly surrounded by negativity (politics—Occupy Wall Street) or horrifying acts (high profile coaches molesting unsuspecting children). Compound that with the pressures that we confront in our own professional lives, and it is enough to make you throw your hands up in the air and say, “What’s the use?” Then, just as I was getting ready to throw myself out of my window, it dawned on me....the holiday season is upon us!

As I sit to write this article, I think back about the past few holiday seasons and how they all seem to fly right by without me taking the time to truly enjoy such a wonderful time of year, not to mention sharing it.

We get trapped in the conundrum of billing hours and trying to complete as much as possible before the end of the year and forget what should be most important to each of us.

Continued on page 5
Continued from page 4

with those closest to me. In the process, I am quite certain that others around me similarly do not get to enjoy the season to the fullest.

Harkening back to my youth, I recall how exciting this time of year can be and how much now, as a “responsible” adult, I truly miss that feeling—not to mention the three weeks of vacation! It is far too easy in such a pressure packed profession, in which we sell our time for a living, to lose our perspective. We get trapped in the conundrum of billing hours and trying to complete as much as possible before the end of the year and forget about what should be most important to each of us.

The season should be about giving thanks for all of our blessings and sharing time with those we love—both in and out of the office. This is especially the time of year to do just that because each and every one of us should be doing the same thing at the same time.

I have far too often been a living example of getting caught up in the big machine and allowing that to alter my perspective during this time of year, but no more! ’Tis the season and it is time to smell the roses. Go home early, spend time with family and friends, go to holiday parties—do whatever it is that you can do to remind those who are important to you just why it is that they mean so much to you.

I urge everyone to join me in celebrating the holiday season to the fullest. Give thanks to all of those who are a special part of your lives. We can all go back to being a cog in the wheel once the season is over. And whatever you do this season, turn off the news until January.

My best to each and every one of you for a wonderful holiday season, and I hope to see you all in 2012 at one of our many HCBA events in the coming months. As my good friend and son of a preacher man, Greg Brown, would say, “So endeth the Sermon.”
The Golden Rule: “Do unto others as you would have them do unto you” is one of the first “rules” I remember learning as a child. The Golden Rule was mostly recited to me by my mother when I was arguing with my younger sister. It seems that many in our profession have forgotten the Golden Rule or have at least set it aside in their daily law practice. We have all dealt with opposing counsel who are difficult for the sake of being difficult, inappropriate in their written word and conduct, and some who are just downright rude. Though I have only been practicing law for seven years, I have noticed more recently the obvious lack of civility by some fellow practitioners.

The Florida Supreme Court has also noted this unfortunate trend. As most of you know, the Florida Supreme Court revised the Oath of Admission to the Florida Bar in September to contain the following pledge: “To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.”

In amending the Oath, the Court noted that “[i]n recent years, concerns have grown about acts of incivility among members of the legal profession.” To me, it is an embarrassment to our profession that the Court had to rewrite the Oath to include a provision on civility, something that we all should have learned in kindergarten. While most of us are cognizant of the need to be respectful and courteous, it is easy to lose sight of these values in

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striving to advocate vigorously for our clients or meet billable hour requirements.

Some attribute the rise of incivility to lack of mentoring for young lawyers. Some also attribute the lack of civility to increased emphasis on a paperless practice. It is much easier to say something nasty to opposing counsel in an e-mail than over the phone or in a letter. Others believe the increased focus on the billable hour and bottom line is partly to blame for the rise in incivility.

Whatever the cause of the increased incivility among lawyers, it is time to practice civility proactively and to “do unto others.” Often, lawyers think that in order to be the best advocate for their client, they must aggressively treat their opponent as their personal mortal enemy. However, zealous advocacy and civility should not be mutually exclusive. Instead, the most effective advocate is the one who successfully fights for a client’s position in a civil and professional manner.

Young lawyers are instrumental in the effort to curb the tide of incivility in our profession. Interestingly, at the YLD ceremony for the new Florida Bar admittees, where the Court discussed the importance of the additional civility language in the Oath with our newest members of the bar, many of the young lawyers approached me after the ceremony and said they were surprised civility was a problem. They just (refreshingly) assumed that lawyers act civilly. We should strive to treat our opponents and the court with courtesy and respect both in and out of the courtroom. Let’s challenge ourselves to “do unto others”—be courteous and always thoughtful of your written and spoken word. After all, practicing with civility is not only something that we should do, but something that we must do.

1 In Re: Oath of Admission to the Florida Bar, 2011 WL 4008136, No. SC11-1702 (Fla. Sept. 12, 2011).
2 Id.
Executive Director's Message
John F. Kynes, Hillsborough County Bar Association

LRIS Benefits Community and HCBA Members

As the new director of HCBA’s newly reinvigorated Lawyer Referral Information Service (LRIS), Cathy Fitch has strong opinions about providing quality legal advice to those in need from the community and also about the HCBA lawyers who participate in the program.

“It’s inspiring to work with so many wonderful lawyers who are dedicated to helping people solve their legal problems,” says Fitch, who came to the HCBA in June after working the past 14 years as director of career development at Stetson College of Law.

“LRIS provides a valuable community service, and the legal referrals we provide also benefit the lawyers who sign up to participate in the program,” says Fitch. “It’s a classic win-win situation.”

In case you do not know, the LRIS works like this: individuals looking for legal advice call the LRIS at (813) 221-7780; an HCBA staff member briefly interviews the caller and assesses the situation; and, if appropriate, callers are then referred to a participating LRIS attorney, for a small fee, for a 30-minute consultation to discuss their legal problem.

“The public can have confidence in the LRIS when they call, not only because of the quality of service provided, but also because it is one of only two LRIS programs in Florida certified by the American Bar Association,” Fitch says. Every attorney in the program has to meet certain qualifications and, depending on the practice area, has to have a certain level of trial experience.

Last year, the LRIS received more than 9,300 individual calls from the public. Based on

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the information provided by callers, more than 3,100 legal referrals were made to participating attorneys in various practice areas, from bankruptcy to probate.

Partly because of the sharp downturn in the economy, Fitch says she also has seen an increase in the number of calls to LRIS. That, in turn, has led to an increase in referrals. As an additional public service, the HCBA waives the initial consultation fees for callers who have certain legal problems, such as those involving Social Security, senior wills, torts, personal injury, workers’ compensation, and others.

In addition, consultation fees are waived for all active duty members of the military no matter what their problem.

HCBA board member Robert Scanlan of Young|Scanlan, LLC believes that referring people to the LRIS is a great way for attorneys to handle situations in which they may be asked for legal advice out of their practice area.

“When people ask me for help on a legal issue out of my practice area, I feel comfortable referring them to the LRIS,” says Scanlan. “It’s a trusted resource for the general public and the legal community.”

Many LRIS attorneys generously volunteer their time once a month by fielding questions and offering free legal advice as part of a phone bank on Ask-A-Lawyer, a broadcast in conjunction with WTVT, FOX 13’s Good Day program.

Additionally, many LRIS attorneys participate in the HCBA’s Library Series, where attorneys regularly offer free legal services and advice to the public on different topics at local libraries.

“I am a longtime member of the LRIS, and my practice has greatly benefitted from the many referrals I have received,” says HCBA member Clara Rodriguez Rokusek, a solo practitioner, summing up the benefits of participating in the program. “Furthermore, I have been able to provide a valuable public service as well, which is great.”

If you are interested in participating in the LRIS or if you just want to learn more about this outstanding HCBA community program, please contact Cathy Fitch directly at (813) 221-7783.

See you around the Chet.
Recently, the media uncovered a trend that occurs most Monday mornings in Hillsborough County while courts are in session. How many citizens are ignoring a summons to appear for jury duty? The answer is about 20 to 25 percent in Hillsborough County. Another concern is how many citizens are appearing, taking an oath to serve as a juror, but purposely attempting to avoid jury service.

Citizens of Florida regularly receive a summons ordering them to appear for jury duty. However, many potential jurors strive by any means necessary to be excused from service. Sadly, in today’s society, without a jury of our peers, there is no justice.

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these orders to appear are rarely welcomed. Why has the importance of serving as a juror become such a burden?

Jurors hold the highest position of power in a courtroom. Jurors, not judges, determine whether the government has proven its charge against a defendant. Jurors, not judges, determine whether a party seeking damages deserves an award. Yet every week, potential jurors provide a multitude of excuses to avoid being placed on a jury.

Some potential jurors appear for service but do not perform a juror’s duty. They swear under oath that they will make a decision based upon the evidence and the law. Groups of individuals regularly flood the George E. Edgecomb Courthouse with pamphlets telling citizens that they have the right, as a juror, to influence the legislature by rendering verdicts based on personal beliefs. This is contrary to the sworn oath that jurors take to follow and uphold the law as instructed by the judge, regardless of whether the juror agrees or disagrees with the law.

Avoiding jury duty or not adhering to a juror’s oath undermines the ability of the courts to ensure that only the guilty are convicted and that only the deserving receive compensation from those who truly caused injury. Without a jury of our peers, there is no justice.

If you receive a summons to serve as a juror, do so with honor and integrity. Do not observe the summons as a duty that you are forced to perform. As lawyers, we need to spread the word and encourage fellow citizens to serve as a juror when called upon. By trusting the citizens from our community to decide legal cases, we continue to support the belief that everyday people can make the right decision—a cornerstone of our democratic society. Thomas Jefferson stated, “I consider trial by jury as the only anchor, yet imagined by man, by which a government can be held to the principles of its constitution.”

1 Kim Wilmath and Alexandra Zayas, If Skipped Jury Duty in Hillsborough County Monday, Get Ready for Trouble, St. Petersburg Times, October 4, 2011.
To be successful, non-profit organizations depend upon several critical components. They must have a valid mission or cause, dedicated leadership and staff, and most importantly, a committed support from their donor constituencies. Without these components, non-profit organizations will not thrive. The Hillsborough County Bar Foundation is continuing its efforts to develop a base of donor support in our legal community in order to provide the Foundation the ability to reach out and make a difference to those less fortunate.

Your donation to the Annual Fund provides the Foundation the ability to help legally related charitable groups that need our support. Historically, the Foundation has supported the Bay Area Legal Services L. David Shear Children’s Law Center and the Judge Don Castor Community Law Center; Voices for Children Guardian ad Litem Program; The Spring of Tampa Bay’s After Hours Personal Protection Injunction Program; Connected By 25; Lawyers for Literacy; and Wills for Heroes. Tax deductible gifts of any amount will make a difference in the community by providing the help that so many need. Gifts may be made in honor or memory of friends and colleagues.

We recognize that many of you are already making contributions to other charitable entities, educational institutions, and political campaigns. Your gift gives hope to others less fortunate and in need of legally related services which otherwise would not be obtainable.

However, with the Annual Fund, any gift can truly make a difference. You see, with more than 3,300 members in the Hillsborough County Bar Association, even if 25% of the membership made a contribution, the Foundation would receive contributions from more than 800 donors! If 50% of the membership made a contribution, the Foundation would receive contributions from more than 1,650 donors! If 75% of the membership made a contribution, the Foundation would receive contributions from more than 2,500 donors! If 100% of the membership made a contribution, the Foundation would receive contributions from all 3,300 donors!

Continued on page 13
of the members contributed, there would be more than 1,600 donations! With numbers like these, it is easy to see how gifts of $50, $100, $500, or even $1,000 can make a big difference and provide the Foundation with a solid operational base.

Your gift gives hope to others less fortunate and in need of legally related services which otherwise would not be obtainable. It also shows the compassion and charitable desires of the legal community to be a contributing partner within the Tampa Bay community. Your donation will help with the modest administrative costs of the Foundation and, more importantly, support its charitable endeavors.

The Annual Fund is the life blood of the Foundation, and we need your commitment to continue supporting the organization and our community. As you contemplate your end of year tax-deductible giving, please consider voicing your support of the Foundation’s endeavors by making a gift to the Annual Fund. All gifts of $100 or more will be recognized in a future issue of the Lawyer magazine. During this time of economic uncertainty, your gift means a lot and your support, regardless of size, will make a difference.

“We make a living by what we get, we make a life by what we give.” — Sir Winston Churchill

Tax-deductible donations can be sent to:
The Hillsborough County Bar Foundation
1610 North Tampa Street
Tampa, FL 33602

Author:
Darlene L. Kelly, Hillsborough County Bar Foundation
The Conference considers and makes recommendations concerning the betterment of the judicial system and the improvement of the rules and methods of procedure and practice in the courts and reports its findings and recommendations to the Supreme Court.

Judge Ron Ficarrotta
Elected Chair of the Florida Conference of Circuit Judges

Thirteenth Judicial Circuit Judge Ron Ficarrotta has been unanimously elected Chair of the Florida Conference of Circuit Judges. He was formally sworn-in by Florida Supreme Court Chief Justice Charles Canady on August 16, 2011.

Judge Ficarrotta had been serving as the interim Chair of the Conference since December 2010. As Chair-elect, he completed the term of Eleventh Judicial Circuit Judge Kevin Emas, who was appointed to the Third District Court of Appeals. Judge Ficarrotta now will begin his own full term.


The purpose of the Conference is to assist circuit judges in more effectively and efficiently meeting their constitutional and statutory duties and responsibilities. The Conference considers and makes recommendations concerning the betterment of the judicial system and the improvement of the rules and methods of procedure and practice in the courts and reports its findings and recommendations to the Supreme Court.

Judge Ficarrotta, as Conference Chair, is responsible for reporting to the President of the Senate and the Speaker of the House such recommendations as the Conference may have concerning defects in the laws of the State and such amendments or additional legislation as the Conference may deem necessary.

The Conference also provides required continuing judicial educational programs and seminars for judges. Additionally, it gathers and disseminates information relating to the judiciary to the public.

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press, educational institutions and other organizations as may be interested in order to inform the people of the work and functions of their courts.

The Florida Conference of Circuit Judges works in cooperation with the other judicial conferences—the Florida Conference of County Judges and the Florida Conference of District Court of Appeals Judges, as well as the Florida Supreme Court and Office of the State Courts Administrator, in providing information to the Florida Legislature on any issues relating to the courts and judiciary. The Conference is also responsible for dealing with issues regarding salary and benefits for its members.

Judge Ficarrotta, a Tampa native, received his Bachelor of Science degree from the University of Florida in 1979 and earned his Juris Doctor degree from South Texas College of Law in 1982. Prior to his appointment to the bench, he served as an Assistant State Attorney for ten years. He was appointed as a Hillsborough County Judge in 1994 by Governor Lawton Chiles. In 1999, he was appointed to the Thirteenth Judicial Circuit bench by Governor Jeb Bush.

Judge Ron Ficarrotta is currently assigned the Criminal Justice of the Circuit Court, where he serves as Administrative Judge.

Author: Manuel Menendez, Jr., Chief Judge, Thirteenth Judicial Circuit Court
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• Custom Medical Animations

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• Inspections
• Environmental
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• Construction
Those who heard Doris Kearns Goodwin speak at last year's Law & Liberty Dinner learned that Abraham Lincoln was motivated to accomplish something by which he would be remembered. Our U.S. presidents are not the only ones with an interest in what their legacy will be.

Each of us will be remembered by what we have done or not done. One way to make a positive impact beyond our immediate family and friends is a contribution to the Bay Area Legal Services Endowment Fund. One relatively painless way to make that gift is through legacy or planned giving.

Bay Area Legal Services provides lawyers to those who would otherwise have no effective voice in our legal system: children who are at risk or awaiting a permanent stable relationship; the elderly who are too often victims of fraud or abuse; families struggling to keep their homes; and many others. The Endowment Fund exists to maximize providing this help, including when there are shortfalls in other funding sources—such as government funding in these tough times.

Retired Judge Paul Danahy observes: “When, after 33 years, I retired from the bench, I looked for the best way to give back to our profession and to those in most need in our community. Bay Area Legal Services was the perfect fit. I was pleased to make a gift at this time—and also a gift to the endowment fund in my planned giving. I hope you will join the Legacy for Justice Society and do the same. You will be pleased you did.”

In addition to considering a present day gift, a legacy gift—made from one’s estate or trust—provides an alternative to using funds the donor might not be ready to contribute at this time. There are numerous ways to make a legacy gift.

Besides making a legacy gift in a specific amount or percentage from a will or trust, gifts can be made through an IRA distribution or by designating insurance proceeds. The recent tax legislation has reinstated an attractive alternative for those who have reached the age when they must start to draw from their IRA accounts.

Let me hasten to add that, as those who know me would know, I am not qualified to give tax advice. So, please consult with your tax advisor. For more information on a legacy gift, please contact Rose Brempong at Bay Area Legal Services at rbrempong@bals.org or by phone at 813-232-1222, ext. 131. For more on BALS in general, see www.bals.org

Author: Raymond T. (Tom) Elligett, Jr., Buell & Elligett, PA.
**TIPS FOR DRAFTING YOUR FIRST APPELLATE BRIEF**

Appellate Practice Section
Chairs: Marie A. Borland, Hill Ward Henderson, and Kristin A. Norse, Kynes, Markman & Felman, P.A.

Young litigators, accustomed to drafting and responding to motions and memoranda at the state and federal trial level, will at times find themselves on the receiving (or filing) end of an appeal. To tackle drafting or responding to your first appeal, keep in mind several key distinctions from drafting at the trial level.

To begin with, make sure you timely file the notice of appeal. This rule is strictly enforced. Also, know the filing fee and pay it correctly. The filing of the notice sets the appeal into action.

Know the appellate procedural rules. Often more detailed and specific than civil rules of procedure, appellate rules sometimes consist of multiple parts. Look for general appellate rules, local rules, internal operating procedures, memoranda placed on the court website, and judge preferences, among other things. Confirm all applicable rules, including deadlines, printing requirements, required sections, font requirements and copy requirements. Also, know whether your deadlines are serving or filing deadlines.

Know the record. Review all pleadings, transcripts and discovery, and know how to cite them. Reviewing and citing to the record will take far longer than you expect, so plan accordingly.

Know your plan. Read and re-read the initial brief from the opposing party, read and

Continued on page 19
shepardsizeyouropponent’scaselaw,anddevelopathemeforyourbrief.

Yoursecondstepisdrafting.Beginbycreatingaskeletonbriefwithallrequiredsections.
Then,draftasolidoutline.At
thisstage,developthefirstdraftofyourheadingsandsubheadings.
Underneatheachheading,outlineyourargument.

Aftershepardsizeyounetsubheadings.
Underneatheachheading,outline
yourargument.

Afterdevelopingaskeleton
brief,draftthestandardofreview
section,asyouwillrefertothestandardthroughouttheargument.
Then,draftyourfactssection,
usingonlyfactssupportedbythe
record.Youmayaddintherecord
citationslater.Editthefacts
sectionafterdraftingthe
argument,eliminatingfactsthat
werenotincludedintheargument
orimportanttothebackground.

Writeyourargumentsconcisely
andinplainEnglish.Resistthetemptationtocopyandpaste
argumentsfromthelowercourt,
whichwillresultinconceptual
errorsandachoppybrief.Each
argumentshouldstandaloneand
transitiontothenext.Resistthetemptationtodraftdrawnout
historiesofthelaw.Thejudgesare
busy.Ifyouspendpageswriting
history,yourisklosingjudgesbefore
yougettoyourrealargument.

Reserveseveraldaysto
completethebrief.Youmustedit—
a lot.Euleremoveallunnecessary
words.Deleteunnecessary
citationsandfootnotes.Donot
completethetableofcontents
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Committee
newsletter.

Author:
HaleyMaple,
MarshallDennehey
WarnerColeman
&Goggin
The Florida Lien Law is fraught with landmines capable of destroying an otherwise valid lien and too often results in careless attorneys frantically reviewing their malpractice policies. This article discusses a few of the “gotchas” related to the Contractor’s Final Payment Affidavit and explains how to avoid being a Ch. 713 casualty.

Under Fla. Stat. 713.06(3)(d), when the contractor is entitled to final payment from the owner, the contractor must serve a final payment affidavit on the owner stating either that all subcontractors who gave notice to owner have been paid, or the names of lienors who have not been paid and the amount owed. The statute provides a form affidavit for use by the contractor; however, the negligent inclusion or omission of information in the affidavit does not operate to defeat an otherwise valid lien unless the owner shows prejudice.

Service of the Contractor’s Final Payment Affidavit is a condition precedent to a contractor’s lien foreclosure action. Although there is authority that goes both

“...his article discusses a few of the ‘gotchas’ related to the Contractor’s Final Payment Affidavit and explains how to avoid being a Ch. 713 casualty.”

Continued on page 21

Judge James S. Moody, Jr. and Judge Richard A. Nielsen presented, “A View From the Bench: Do’s and Don’ts in Construction Cases” for the Construction Law Section on October 20, 2011 at the Chester H. Ferguson Law Center. Thank you to our sponsor Lair Services, Inc.

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ways, cases have held that service of the final affidavit is the earliest date final payment for a project could be due, and accordingly, the earliest date interest could begin to accrue on the balance owed under a construction contract is the date the contractor submitted its final affidavit to the owner. It is not hard to imagine the disappointment an uninformed contractor might feel upon realizing the owner was essentially given an interest free loan for no reason other than failure to timely serve the Final Payment Affidavit.

The Affidavit must be served on the owner at least 5 days before institution of an action. A contractor who has failed to serve the Final Affidavit, particularly one facing a Contest of Lien (requiring institution of suit to foreclose the lien within 60 days of service) or Order to Show Cause to Enforce Lien (requiring counterclaim to foreclose the lien within 20 days of service), could find itself unable to foreclose the lien because there is not sufficient time to satisfy this condition precedent and still file suit within the appropriate time.

Failure to serve the Affidavit five days prior to suit is grounds for dismissal. Post-suit cure is allowed by the filing of an Amended Complaint in the same action, as long as the Amended Complaint is filed within the original time for instituting suit. However, if the contractor does not realize and cure the failure to serve the Affidavit within one year of the date the lien was recorded, the foreclosure suit will be dismissed with prejudice.

To avoid these potential disasters, attorneys should encourage their contractor clients to serve the Final Affidavit as a matter of course at the same time the final invoice is submitted to the owner. By doing so, the contractor will maximize its recovery of interest and avoid, at least, the landmines associated with Final Affidavits.

Author:
John J. Thresher, Thresher & Thresher, PA
CALL FOR NOMINATIONS: 2011 BUBBA HUERTA AWARD
Criminal Law Section
Chairs: Mark P. Rankin, Shutts & Bowen, LLP, and Joseph C. Bodiford, Bodiford Law, P.A.

Last year, in Bubba’s memory, the Criminal Section of the Hillsborough County Bar Association created the Marcelino “Bubba” Huerta, III Award for Professionalism and Pro Bono Service. This award is presented to an attorney who exhibits the professional practice, the dedication to pro bono service, and the diligent work in the pursuit of equal justice that made Bubba a remarkable lawyer. The recipient of the Bubba award is selected by a committee consisting of local, state and federal criminal practitioners. In 2009, the first Bubba Huerta Award was presented to James Felman of Kynes, Markman & Felman. The 2010 award went to Michael Maddux of Tampa. The process has begun to select the recipient of the 2011 Bubba Huerta Award. Please nominate an attorney who exemplifies the professionalism and pro bono spirit that made Bubba Huerta exceptional. Your nomination can be submitted by emailing me at mrankin@shutts.com.

Author: Mark Rankin, Shutts & Bowen
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December 25, 2011 marks the 60th anniversary of the assassination of Florida civil rights pioneer Harry T. Moore and his wife, Harriette Moore.

On December 25, 1951, in Mims, Florida, at 10:20 PM, as the Moores lay sleeping, a bomb planted under their bed by Ku Klux Klan members exploded, resulting in their deaths. On this holy night of peace, the Moores celebrated not only Christmas, but also their wedding anniversary.

The late historian John Hope Franklin wrote that the history of African Americans is a tale of “slavery and freedom, humanity and inhumanity, democracy and its denial. It is tragedy and triumph, suffering and compassion, sadness and joy.” Few Floridians better represented these conflicting states than Harry T. Moore, founder of the Brevard County National Association for the Advancement of Colored People (NAACP). Under his leadership, by 1950, Florida black voter registration was 51% higher than the proportion of black registered voters in other Southern states. Moore filed the first lawsuit in the deep South to equalize the salaries of black and white Florida public school teachers. Moore took a stand against inequality, often with then-NAACP counsel Thurgood Marshall by his side.

Moore was a courageous voice in a Florida wilderness where lynching, murder, and torture awaited those who questioned the ugly realities of Jim Crow Laws. In 1951, the Moores’ case was one of twelve bombings against African-American families in Florida. Between 1900 and 1930, Florida was the state with highest per capita rate oflynchings.

Even before their murders, the Moores suffered because of their advocacy. By 1946, the Moores, public school teachers, were fired and blacklisted because of Harry T. Moore’s political agitation.

Moore has been called the first of many 1950’s era civil rights leader to be martyred. Well before young Emmett Till, Medgar Evers and Rev. Martin Luther King, Jr. were murdered, there was the murder of Floridian Harry T. Moore.

From Mims, Florida rang a vibrant bell that shook the conscience of Americans of good will. Poet Langston Hughes wrote a poem dedicated to his valor, and President Harry Truman and Eleanor Roosevelt also paid tribute. Jackie Robinson led a memorial service in New York, and a NAACP service in Madison Square Garden had 15,000 people paying tribute. To this day, this remains one of the great unsolved civil rights-related murders in the American South.

Today, few remember the Moores or know of the ultimate sacrifice that, just less than three hours from our own county, they made.

Author: Luis E. Viera, Ogden & Sullivan, P.A.
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Proud to support the Hillsborough County Bar Association.
Hillsborough County Bar Association Sponsors First “WILLS FOR HEROES” Program in Tampa Bay Area

The Hillsborough County Bar Association sponsored its first Wills for Heroes event on October 22, 2011 at the Chester H. Ferguson Law Center. At this event, the Wills for Heroes program offered free wills, health care advance directives, and durable powers of attorney to first responders and their spouses or partners who were members of Tampa Fire and Rescue. A total of ten estate plans were completed by five volunteer attorneys, with sixteen additional volunteer attorneys and paralegals acting as witnesses and notary publics for the execution of the estate planning documents, as well as one volunteer providing specialized technical assistance.

The Hillsborough County Bar Association Wills for Heroes program is under the auspices of the Wills for Heroes Foundation, which was organized shortly after the September 11, 2001 terrorist attacks. The organizers of the Foundation contacted their local fire department to ask what lawyers could do to help that department. During an impromptu focus group, it became evident that there was a glaring need for estate planning services. Since then, the Wills for Heroes program, which operates in ten states, has provided more than 7,000 free estate planning documents for first responders.

According to a November 2007 Forbes magazine article, a PNC Wealth Management survey found

Continued on page 27
Continued from page 26

that 30% of adults with investable assets of at least $500,000.00 did not have a will, and the same article references a Harris interactive survey completed for Lawyers.com finding that 55% of the general population had no will.

Paradoxically, these numbers are even lower for the first responder community. Despite the inherently dangerous nature of their jobs, an overwhelmingly large number of first responders, approximately 80 to 90%, do not have even simple wills. (These figures are based only on experiential data and feedback from state and national first responder organizations, and the Wills for Heroes Foundation has no information concerning any agency organization that does or can track this type of information.)

Thus, the relatively low numbers of first responders with wills speaks to the selflessness of first responders, to think of others first and to put the good of the community before themselves. First responders selflessly devote their lives to serving their communities and are prepared to pay the ultimate price in the line of duty. The Wills for Heroes program is devoted to “protecting those who protect us.”

The benefits of the Wills for Heroes program for the members of Tampa Fire and Rescue were best summed up by Driver/Engineer Gary Tinschert at Tampa Airport Fire Station #2. He said, “I have peace of mind knowing that when I am on the job, my family has a level of protection we never would have had without the Wills for Heroes program.”

For more information concerning the Wills for Heroes Foundation and ways you can assist in “protecting those who protect us,” please go to www.willsforheroes.org. For ways you can help the Wills for Heroes local efforts through the Hillsborough County Bar Association, please go to www.hillsbar.com.

Author:
Debra K. Smietanski,
Attorney-at-Law

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Back by popular demand, members and their guests kicked off the holiday season by celebrating at the HCBA Holiday Open House. Festive music provided by The Maios and delicious hors d’oeuvres created by Rita Carlino were enjoyed by all at the Chester H. Ferguson Law Center on December 1, 2011.
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A clear blue sky and rich green fairways provided the backdrop for the YLD Golf Tournament at Rocky Point Golf Course on October 14, 2011. Seventy-six golfers participated in the tournament with proceeds funding YLD community programs such as Holidays in January, Steak and Sports Day, Big Brothers Big Sisters, and Law Week.

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First Place Team - Matt Dedomenico, Matt Luka, Denny Thaxton and Wes Trombley
Second Place Team - Keith Meehan, Kyle Romig, B.J. Stigall and Scott Stigall
Third Place Team - Jignesh Bakara, Karan Nayee, Devan Patel and Niven Patel
The legal community came together as Partners in Justice: Meeting Our Challenges was held on November 17, 2011 at the Hyatt Regency in downtown Tampa for the Fifteenth Annual Bench Bar Conference. Attorneys and legal support personnel were joined by members of the judiciary and local media to explore the opportunities and challenges of our legal system. Judge Emily Peacock, Judge Caroline Tesche and Judge Bernard Silver, all of the Thirteenth Judicial Circuit, served as the Bench Bar Conference co-chairs. Highlighting the conference was a discussion of how the legal system appears to the public led by Sue Carlton of the St. Petersburg Times, and a panel comprised of Warren Elly (formerly Fox 13), Hon. George Greer (6th Judicial Circuit, retired), Laura McElroy (Tampa Police Spokesperson) and John Fitzgibbons, Esq. They offered insight on how to work with the media productively. Throughout the day, seventeen conference sessions, the Membership Luncheon, and the Judicial Reception offered a diverse array of events to over 400 participants.

Tod Leiweke, CEO of the Tampa Bay Lightning, captivated the Membership Luncheon attendees with the latest news from the St. Pete Times Forum, soon to be the Tampa Bay Times Forum. Nancy Stuparich of Florida Lawyers Mutual Insurance Company won a signed Vinny Lecavalier jersey generously donated by the Lightning. Judge Wayne Timmerman, recently retired from the Thirteenth Judicial Circuit, was honored with the unveiling of his official portrait by Chief Judge Manuel Menendez, Jr.

Event photos are on pages 34-36.
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Ronald W. Fraley has practiced in Tampa as a trial attorney in Employment Law representing victims of sexual harassment and discrimination. He is an AV rated attorney.

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Swearing-In Ceremony

The judges of the Thirteenth Judicial Circuit welcomed new admittees to the practice of law on September 23, 2011 at the George E. Edgecomb Courthouse.
Thank you to our sponsor Stetson University College of Law.
Over the past year, this column addressed components of the Patient Protection & Affordable Care Act of 2010 (the “Act”) and the Health Care & Education Reconciliation Act of 2010, discussing the public’s confusion over implementation timelines and the debate over the Act’s constitutionality.

As of the end of September 2011, members of approximately 45 state legislatures have proposed legislation which would limit, alter, or change various requirements set forth for the states and/or federal governments to carry out. Perhaps in an effort to avoid the embarrassment and confusion of each state deciding how it will implement health reform, the Obama Administration itself asked the United States Supreme Court to look at the constitutionality of the individual mandate set forth in the Act. While critical nationwide, the Administration’s request has particular importance in Florida, as the case Florida et. al. v. United States Department of Health and Human Services et. al. (Florida v. HHS) is the case which prompted the Administration to petition the Supreme Court to petition the Supreme Court’s review. In Florida v. HHS, Judge Roger Vinson of the U.S. District Court for the Northern District of Florida found the Act’s individual mandate unconstitutional. Consequently, Judge Vinson held that the entire Act fails because the individual mandate is not severable from the Act as a whole. This decision was upheld, in part, and reversed, in part, by the Eleventh Circuit Court of Appeals on August 12, 2011. However, in a 2-1 decision, a three-judge panel of the Eleventh Circuit held that the individual mandate is, in fact, unconstitutional, but further held that it is severable from the Act as a whole, upholding the remainder of health reform law for survival.

Rather than request an en banc re-hearing on the case from the Eleventh Circuit, the Obama Administration filed a Writ of Certiorari on September 27, 2011. The Supreme Court announced it will hear the case, but this delays any ultimate decision on the matter for another year, at least.

As we await the Supreme Court’s decision, how will the Obama Administration’s elimination of its insurance program for long-term care on October 14, 2011 impact additional upcoming provisions of the Act? With all GOP presidential candidates offering their pledge to repeal the Act, should our healthcare clients, human resources clients, benefits clients, and all other consumers of healthcare continue actions toward the upcoming implementation dates?

One year later, we are no closer to answering many of the questions which have plagued not only healthcare consumers, but also health plans, physicians, hospitals, and attorneys.

Author: Jessica Cohen, Physicians Independent Management Services, Inc.
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By now, many of you know that on September 16, 2011, President Obama signed into law the Leahy-Smith America Invents Act (the “AIA”). According to President Obama, the AIA will help reduce the number of current patent applications waiting for review; help improve patent quality; and give entrepreneurs the protection and the confidence needed to attract investments, to grow their businesses, and hire more workers. Only time will tell. This article provides a brief summary of some of the changes to the patent law provided by the AIA.

First-Inventor-to-File - The most fundamental change in the patent law will occur on March 16, 2013, when the U.S. transitions from a first-to-invent system to a first-inventor-to-file system. Patentability will be based on whether prior art was available before the filing date of a patent application. The law, however, does provide an exception that excludes as prior art any disclosures made by the inventor or derived from the inventor within one year of the filing date of the patent application.

Derivation Proceedings - Also on March 16, 2013, the current interference proceedings will be replaced with the derivation proceedings. An applicant for a patent must file a petition for a derivation proceeding within one year of the first publication of a claim to an invention. The proceedings will determine whether a prior applicant derived the claimed invention from a subsequent applicant.

Post Grant Review - After September 16, 2012, the post grant review for patents will be implemented. Under the post grant review, any third party may request to cancel one or more claims of any patent on any ground regarding invalidity. A petition for post grant review must be filed no later than nine months after the issuance of a patent.

Changes that are now in place include:

New Fees and Entity Status - The United States Patent and Trademark Office increased the majority of its fees by 15%. Further, a new micro entity status is created that provides for a 75% discount on fees for qualified applicants. The discount will be available once the fees are set in accordance with the AIA.

False Marking - Only the U.S. government or a person who has suffered a competitive injury as a result of a false mark may file a civil action. The damages for the injured person are limited to only the amount adequate to compensate for the injury.

Joinder and Consolidation Requirements - In the legislation’s attempt to reduce “patent troll” litigation, accused infringers may be joined as defendants into one action or have their actions consolidated for trial only if: (1) any right to relief is asserted against the parties arising out of the same transactions, occurrence, or series of transactions; and (2) questions of fact common to all the defendants will arise in the action. Any accused infringer, however, may waive this requirement.

Author: Harriet Myrick-Jones, Pennington, Moore, Wilkinson, Bell & Dunbar PA.
HILLSBOROUGH COUNTY BAR ASSOCIATION
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EMPLOYER OPTION TO DEFEAT FLSA FEES CLAIMS

Labor & Employment Section
Chairs: Tammie L. Rattray, Ford & Harrison LLP, and Scott T. Silverman, Akerman Senterfitt

The Fair Labor Standards Act ("FLSA") requires most businesses to pay their non-exempt employees the federal minimum wage for all compensable time, as well as time-and-one-half the regular rate for hours worked in excess of forty (40) per week.¹ The FLSA provides that a prevailing plaintiff is entitled to attorneys’ fees. The FLSA therefore tends to be a fee-driven statute, because

the amount of attorneys’ fees sought by a plaintiff typically exceeds the amount of any damages allegedly owed. However, is it possible for an employer to resolve the employee’s claimed damages without having to pay the attorneys’ fees sought by the employee’s counsel?

In a recent victory for employers, the United States Court of Appeals for the Eleventh Circuit said “yes,” finding that an employer who tenders the entire amount of damages claimed by the employee moots the case and bars collection of FLSA attorneys’ fees. That case, Dionne v. Floormasters Enterprises, Inc., F.3d:___, 2011 WL 318977 (July 28, 2011) (11th Cir. 2011), provides powerful leverage for employers against FLSA litigation.

In Dionne, the Plaintiff sought to

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EMPLOYER OPTION TO DEFEND FLSA FEES CLAIMS
Labor & Employment Section

Continued from page 44

recover overtime compensation, liquidated damages (an equal amount of the wages owed), and attorneys’ fees under the FLSA. During the litigation, Floormasters filed a motion, which denied that Dionne was owed anything, but offered $3,000—the entire amount of the Plaintiff’s alleged overtime claim. Floormasters argued that its tender of the entire amount of FLSA damages mooted Plaintiff’s case, and it should be dismissed. The Plaintiff accepted the offer but sought to collect his attorneys’ fees by claiming that he had prevailed in the litigation. The trial court denied the Plaintiff’s motion for attorneys’ fees by stating that the FLSA only provides for such an award where there is a determination that a defendant violated the FLSA. That did not occur, because Floormasters had denied any and all liability and merely tendered payment to resolve the litigation and render the Plaintiff’s claim moot. On appeal, the Eleventh Circuit affirmed the denial of fees, because Plaintiff had not prevailed in his lawsuit. Rather, his claim was dismissed as moot.

Therefore, where an employer denies liability, but tenders payment of the entire amount of the FLSA damages claimed by a plaintiff, the employer will be able to dismiss the plaintiff’s lawsuit and avoid liability for payment of the plaintiff’s attorneys’ fees. Consequently, employers who maintain accurate wage and hour records will be in a good position to determine the amount, if any, of wages owed to an employee or to obtain, as in Dionne, an employee’s admission as to the amount of damages owed. The employer may then offer to pay the agreed upon amount and move to dismiss the claim as moot, without payment of fees. Of course, even prior to litigation, employers may moot a FLSA claim and deter a lawsuit for damages and fees by offering to pay the entire amount claimed to be owed.

1 Some employees are exempt from the FLSA minimum wage and/or overtime requirements.

Author: Scott T. Silverman, Akerman Senterfitt
In part one of this article, we discussed what it means for a couple to be married. In part two of this article, we address what changes the domestic relations law community may expect if the law in Florida as to same-sex marriage were to change. In Florida, same-sex couples are free to contract for rights and obligations related to support, though marriages between persons of the same sex are not recognized under Florida law.¹ Gays and lesbians are also no longer banned from adopting, however, same-sex couples cannot adopt a child together; rather, gays can only adopt individually.² Other than this, same-sex couples have no further rights in Florida. So, what if the law in Florida was to change suddenly and same-sex couples could marry? A problem faced in states that have legalized the marriage of same-sex couples is the conflict between state and federal definitions of marriage. If Florida were to adopt marriage equality, its laws would immediately conflict with the present state of federal law. This means that same-sex couples would not enjoy the federal tax benefits associated with marriage and having children, nor could they transfer property without tax consequences.

If Florida were to enact marriage equality, one of the issues that family law practitioners would have to address is “portability.” Portability refers to the ability of married couples to take their marital rights with them when they cross state lines. As long as some states continue to decline recognition of marriages between persons of the same sex, the rights of married same-sex couples are not portable to all states. The solution may be judicial—the Courts may change the laws related to obtaining a divorce in Florida. It may also require the use of pre- or postnuptial agreements to address the issue. Legalizing marriage of same-sex couples would raise questions concerning equitable distribution. While many same-sex couples have been denied the right to get married, they may have nevertheless been living together as a family for long periods of time. When these couples divorce, is it fair to use the date of marriage as the starting point for equitable distribution?

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SAME-SEX MARRIAGE IN FLORIDA: PART II
Marital and Family Law Section

Continued from page 46

...for equitable distribution? Two different approaches have arisen in other states facing this issue. In Massachusetts, courts look to other significant events, such as a ceremonial marriage, as their starting point. However, in California, courts will only look to the date of legal marriage or establishment of domestic partnership.

While the issue of marriage equality for same-sex couples is contentious, there is no doubt that there would be a positive economic impact in the state if the law was to change. Businesses that provide wedding related services would grow. Local governments would receive more revenue from marriage license applications. Not only would the number of divorce litigants increase, but the number of issues would also increase. Thus, we are hopeful that change is forthcoming not only in fairness to the disenfranchised, but also in hopes of strengthening the family law community.

See generally Posik v. Layton, 695 So. 2d 759 (Fla. 5th DCA 1997).

Florida Dept. of Children and Families v. Matter of Adoption of X.X.G. and N.R.G., 45 So. 2d 79 (Fla. 3d DCA 2010).

Authors:
Matthew L. Lundy, Esq.,
Older, Lundy & Weisman and
O. Kim Byrd, Esq.,
The Givens Law Group

Nader Named Honorary Civilian Commander

HCBA President-Elect Robert J. Nader was inducted as the Honorary Civilian Commander of the Judge Advocate General’s office of the 6th Air Mobility Wing on September 16, 2011 at MacDill Air Force Base. Thirty-nine local leaders were paired with wing commanders, group commanders, command chiefs or squadron commanders of the 6th Air Mobility Wing and the 927th Air Refueling Wing. Mr. Nader will serve for two years and is partnered with Lt. Colonel B.J. Cottrell, the Staff Judge Advocate at the MacDill JAG Office.

L-R: Lt. Colonel B.J. Cottrell, Robert Nader, Susan Johnson-Velez, Amy Farrior and John Kynes

Above: Robert Nader receives the 6th Air Mobility Wing flag from Colonel Lenny J. Richoux.

Left: Lt. Colonel B.J. Cottrell presents Robert Nader with a gift acknowledging his installation.
HCBA members enjoyed a barbecue feast at the Membership Cookout held on October 20, 2011 at the Chester H. Ferguson Law Center. Thank you to our sponsor The Bank of Tampa.
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While one need not be an attorney to be a certified mediator in Florida, many mediators are attorneys. In fact, many mediators are sought after as mediators precisely because of their knowledge of a particular substantive area in which the mediator practices or practiced as an attorney. The mediator/attorney should be aware of several Mediator Ethics Advisory Committee (MEAC) opinions which discuss the mediator’s ability or inability to serve when a party to the mediation is a former client or adverse party to the mediator or his or her law firm.

Rule 10.340 of the Florida Rules for Certified and Court-Appointed Mediators pertains to conflicts of interest. Unlike rules governing attorneys which permit an attorney to serve as legal counsel if a conflict is waived by the parties, Rule 1.340(c) mandates the mediator’s withdrawal “regardless of the express agreement of the parties” in the event of a “clear” conflict of interest. According to the Committee Notes for Rule 1.340, clear conflict occurs “when circumstances or relationships involving the mediator cannot be reasonably regarded as allowing the mediator to maintain impartiality.”

In MEAC Opinion 2003-006, a mediator asked if it was proper to mediate for a former wife from a dissolution proceeding 22 years prior when both the former wife and former husband had waived any potential conflict and both wanted the mediator to serve. The MEAC opined that it was a clear conflict of interest to serve as mediator in a case where the mediator had “once acted as an advocate for one party.” Clarification of this opinion was sought in MEAC Opinion 2004-007, in which the question posed focused on legal representation of institutional entities such as an insurer and inquired if “any prior representation of any party” would be considered a clear conflict. The MEAC stated that prior representation of a party may be waivable if the prior representation involved different parties, a different case, or different subject matter.

In 2008, a mediator inquired whether it was permissible to mediate a matter when one of the parties was a large business entity who had an unrelated matter in litigation in another city against one of the mediator’s law partners. MEAC 2008-007 opined that such facts resulted in a clear conflict of interest as the mediator held a financial stake in the pending litigation against one of the parties to the mediation. In its most recent opinion regarding conflicts of interest, the MEAC stated that a mediator who had represented a borrower as legal counsel against a bank could not mediate a different matter involving the bank as it was a clear conflict of interest. See MEAC 2010-008.

A mediator/attorney should proceed with caution when mediating a matter where he or she has been legal counsel for or against one of the parties to the mediation. MEAC Opinions are advisory in nature, and at least one of the opinions states that prior representation of a party to mediation may be a waivable conflict of interest on a case by case basis. At a minimum, the mediator should secure a written waiver from the parties to the mediation in any instance of prior legal representation.

Author: Mary J. Dorman, Dorman & Gutman, PL.
### HCBA Calendar of Events

#### January 2012

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<td>12:00 - 1:00 p.m. Appellate Law Luncheon</td>
<td>7:00 - 9:00 a.m. Ask-A-Lawyer Fox 13</td>
<td>12:00 - 1:00 p.m. Intellectual Property Lunch</td>
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<td>12:00 - 1:30 p.m. Judicial CLE Luncheon</td>
<td>12:00 - 1:00 p.m. Membership Luncheon Hyatt Regency Downtown</td>
<td>12:00 - 1:00 p.m. Real Property Probate &amp; Trust Law Luncheon</td>
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<td>10:00 a.m. - 3:00 p.m. YLD Holidays in January Malibu Grand Prix</td>
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<td>12:00 - 1:00 p.m. Tax Law CLE Luncheon</td>
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<td>12:00 - 1:00 p.m. Construction Law Luncheon</td>
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<td>12:00 - 1:00 p.m. Environmental &amp; Land Use CLE Luncheon</td>
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<td>12:00 - 1:00 p.m. Senior Council Luncheon</td>
<td>12:00 - 1:00 p.m. Wills For Heroes Committee</td>
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<td>12:00 - 1:00 p.m. Mediation &amp; Arbitration Luncheon</td>
<td>12:00 - 1:00 p.m. Family Law Quarterly Luncheon</td>
<td>3:00 - 5:00 p.m. Real Property Probate &amp; Trust Law CLE and Happy Hour</td>
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<td>1:00 - 3:00 p.m. Family Law CLE</td>
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In merger and acquisition ("M&A") transactions, a seller’s retirement plan can create unintended liability for a buyer. To avoid such liability, the buyer should (i) perform its due diligence with respect to the retirement plan carefully, and (ii) address issues with the seller early in the M&A transaction process. By identifying the issues and considering the options well before the transaction occurs, the buyer can minimize risk and prevent “gotchas” from arising after the deal closes.

The buyer should investigate carefully the seller’s retirement plan as part of its due diligence investigation. For example, the due diligence request list should include, among other things, a request for (i) copies of the seller’s retirement plans (including pension plans and 401(k) plans) and any amendments; (ii) summary plan descriptions; (iii) copies of any favorable determination letters issued by the IRS; (iv) actuarial reports and trust agreements; (v) correspondence with respect to the tax qualification of such plans; (vi) year-end compliance testing results; and (vii) copies of IRS Form 5500s filed in recent years. Through its due diligence investigation, the buyer can determine if there are facts that require special consideration with specific representations and warranties, covenants, or both in the acquisition agreement.

Where the buyer intends to acquire the seller’s business through a stock sale or a merger, there are additional issues that may need to be addressed. The buyer will generally assume the liabilities of the seller in stock sales and mergers. Therefore, the buyer needs to consider how the seller’s plan should be handled. The options may include taking on the seller’s plan and operating it as a stand-alone plan, merging the seller’s plan into the buyer’s existing plan, terminating the seller’s plan, or leaving the seller’s plan with the seller (where possible). Each of these options raises additional questions that must be considered by the buyer when analyzing its options.

Generally, the buyer in an asset sale has some comfort that it is not assuming any retirement plan liabilities of the seller unless the acquisition agreement provides otherwise. An exception to this general rule, however, may arise if the seller contributes to a multiemployer plan. Multiemployer plans cover collectively bargained employees of more than one employer (typically members of the same union). Under certain factual circumstances, the buyer may be deemed to be a successor of the seller and will be found to be responsible for funding liabilities related to multiemployer plans. To minimize this potential risk, the buyer may propose alternatives to the seller to address its concerns, like a holdback of a portion of the sales proceeds to provide comfort to the buyer.

The foregoing is a basic overview of a few selected matters that buyers need to consider in this area, and it is not intended to be a comprehensive review.

Buyers in M&A deals should consult with an employee benefits specialist when the facts warrant specialized knowledge of an issue.

Author:
Eric J. Hall and Mary Snyder, Hill Ward Henderson
We are fortunate in the United States to enjoy the best legal system in the world. For that reason, it is frequently the preferred jurisdiction for foreign parties to redress claims. Foreign parties can satisfy jurisdiction in federal court through diversity pursuant to 28 U.S.C. § 1332(a)(2) or subject matter. International disputes can involve federal statutory law such as the Alien Tort Statute, Torture Victim Protection Act and the Racketeering Influenced and Corrupt Organizations Act. Also, issues of international dimension are generally encompassed by federal common law.1 Hyatt Corp. v. Stanton, 945 F.Supp. 675, 690 -691 (S.D.N.Y. 1996) (citing Chapalain Compagnie v. Standard Oil Co. (Indiana), 467 F.Supp. 181, 185 (N.D.Ill.1978)).

However, the mysteries of international law can often be as distant as the countries in which they arose, and they rarely apply to most cases. Classic tort and commercial actions are typically not governed by international law principles.2 See, e.g., Maugéin v. Newmont Mining Corp., 298 F.Supp.2d 1124, 1130 (D.Colo. 2004); see also Hyatt Corp., 945 F.Supp. at 691. Nonetheless, international disputes often involve torts which may have occurred in other countries or contracts which were executed abroad. In such cases, courts are confronted with the decision of whether to apply American law or the law of a foreign jurisdiction. Frequently, choice of law principles require the application of foreign law.3 The law applied not only affects the causes of action, remedies and defenses available, but also where the case will proceed. Even if a foreign plaintiff establishes jurisdiction, venue can present the most difficult obstacle to maintaining the case in the United States. The doctrine of forum non conveniens favors dismissal if another forum is more suitable. A plaintiff’s choice of forum should rarely be disturbed, but the need to apply foreign law points towards dismissal. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241, 260 (1981); see also Bonzel v. Pfizer, Inc. 439 F.3d 1358, 1364 (Fed. Cir. 2006). American courts often dislike applying the law of foreign jurisdictions. See, e.g., Sigalas v. Lido Maritime, Inc., 776 F.2d 1512, 1519 (11th Cir. 1985). Foreign law is a fact to be pleaded and proved. When the foreign law is not alleged, the law of the foreign jurisdiction will be assumed to be the same as the law of the state in which the court sits. Stone v. Wall, 135 F.3d 1438, 1442 (11th Cir. 1998)(citing Collins v. Collins, 160 Fla. 732, 36 So.2d 417, 417 (1948)). Whether plaintiff or defendant, the decision to plead foreign law should always follow careful thought.

1 The customary principles of international law are often subject to debate because there is not one source. Customary international law is composed only of those rules that states universally abide by, or accede to, out of a sense of legal obligation and mutual concern. Flores v. Southern Peru Copper Corp., 414 F.3d 233, 248 (2d Cir. 2003).

2 However, on occasion treaties or conventions, such as the Convention on International Sale of Goods (CISG), can impact international commercial disputes. But see Impuls I.D. Intern., S.L. v. Psion-Teklogix, Inc., 234 F. Supp. 2d 1267, 1272 (S.D. Fla. 2002) (CISG only applies if all parties are from contracting states).


Author: Matt Luka, Trombley & Hanes
## February 2012

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<td>7:30 a.m. - 1:30 p.m. YLD Judicial Shadowing Coffee at the Courthouse George Edgecomb Courthouse</td>
<td>7:00 - 9:00 a.m. Ask-A-Lawyer Fox 13</td>
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**RSVP for events online at www.hillsbar.com, by calling 813-221-7777 or emailing hcbarsvp@hillsbar.com.**

Walk-ins are charged an additional $5 fee, and seating is not guaranteed for walk-ins.

**Please note: Events may change from time of print. Call 813-221-7777 for updated event information. All events held at the Chester H. Ferguson Law Center unless otherwise noted.**
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One Tampa City Center Suite 3200 Tampa, Florida 33602 (813) 221-2626 wsmslaw.com
Thompson, Sizemore, Gonzalez & Hearing, P.A. is proud to announce that shareholder Kevin D. Johnson has been appointed by Florida Bar President-Elect Scott Hawkins to serve as Chair of the Florida Bar’s Civil Procedures Rules Committee.

Shumaker, Loop & Kendrick, LLP is pleased to announce that Gregory C. Yadley, Partner, has been named to a new high-level national Advisory Committee to the U.S. Securities and Exchange Commission on Small and Emerging Companies.

The law firm of Barr, Murman & Tonelli, P.A. is pleased to announce that Hector J. Rivera, whose practice focuses on civil litigation matters specializing in premises liability and personal injury defense, has become a Partner with the firm.

Fisher & Phillips LLP announces that Christine Howard is the new managing partner of the firm’s Tampa office as part of a planned leadership rotation. She assumes the role following Steve Bernstein’s three-year term as managing partner.

Holland & Knight is pleased to announce that partner Joseph H. Varner, III, has been elected to the Board of Directors of Tampa Bay & Company.

Galloway, Johnson, Tompkins, Burr and Smith, PLC. is pleased to announce the election of Sarah Baggett to its Board of Directors, effective Jan. 1, 2012.

Galloway, Johnson, Tompkins, Burr & Smith, PLC is pleased to announce the addition of Nicole M. Fluet and Katie L. Everlove-Stone to their team.

The Honorable Nick Nazaretian was appointed as a circuit court judge for the Thirteenth Judicial Circuit by Governor Rick Scott on December 16, 2011.

Givens Law Group is pleased to announce the addition of Joanna Chapman, attorney at law, to the firm.

Williams Schifino Mangione & Steady PA is pleased to announce that Amy Baruch has joined the firm’s Business Litigation group.

Shumaker, Loop & Kendrick, LLP is pleased to announce that B. Herbert Boatner, Jr. has joined the firm as a Partner practicing in the area of public finance.

The law firm of Trenam Kemker is pleased to announce that prominent litigator Paul D. Bain has joined the firm as Senior Counsel.

Fowler White Boggs is pleased to announce shareholder Richard A. Jacobson has been re-elected to the Board of Directors of TerraLex, a global legal network of law firms.

Shumaker, Loop & Kendrick, LLP is pleased to announce that Associate Jason P. Stearns has been elected to the Board of Directors of the Campo Family YMCA.

Englander Fischer announces the hiring of E. Tyler Cathey as an associate and member of the firm’s litigation department.

Rhea F. Law, Chair of the Board, and CEO of Fowler White Boggs, has been selected to serve on the Multicultural Advisory Council of Blue Cross and Blue Shield of Florida, Inc.

Glenn Rasmussen Fogarty & Hooker, P.A is pleased to announce that Rachel K. Jones has joined the firm as an associate attorney in the commercial litigation group.

Judge Lawrence M. Lefler was awarded the Meritorious Service Medal by LTC Patrick N. Leduc, Commander 154th Trial Defense Service, because of his service as a Captain in the United States Army Reserve.

answer for about the cover
The bronze sculpture of The Honorable Judge George E. Edgecomb is displayed in the George E. Edgecomb Courthouse on the first floor to the left of the front entrance. Please take a moment to view this art on your next visit to the courthouse.
JURY TRIAL INFORMATION

For The Month of: April 2011.
Judge: Honorable Ed Bergmann.
Parties: John Stephens vs. Publix Super Markets, Inc.
Attorneys: For Plaintiff: Nathaniel Tindall; For Defendant: Robert Wallace and Paula Rousselle.
Nature of Case: Slip & fall; Plaintiff to undergo laminectomies from L3 to S1 and a fusion.
Verdict: Defense verdict; Motion for fees and cost pending.

For The Month of: July 2011.
Judge: Honorable Arnold.
Parties: Michael & Ilene Bell vs. State Farm Insurance Corp.
Attorneys: For Plaintiff: K.C. Williams and Alicia Lopez; For Defendant: Fred Zinober.
Nature of Case: Denied sinkhole claim.
Verdict: $409,000.00 for Plaintiff; Plaintiffs motion for attorneys fees and cost pending.

For The Month of: September 2011.
Judge: Honorable Martha J. Cook.
Attorneys: For Plaintiff: Rolando Guerra and Eric Moore; For Defendant: Scott K. Hewitt and Stacy E. Yates.
Verdict: Defense verdict; zero damages awarded.

For The Month of: September 2011.
Judge: Honorable William P. Levens.
Parties: Pamela Blocker-Green vs. City of Tampa.
Nature of Case: City denied Plaintiff’s allegation she was rear-ended by City truck.
Verdict: Defense verdict; no liability found against Defendant.

For The Month of: September 2011.
Judge: Honorable William P. Levens.
Parties: Danielle Turner vs. Gunwant Dhaliwal, M.D. & Gulfview Walk in Clinic.
Attorneys: For Plaintiff: Scott Borders and Russell Artille; For Defendant: Morris Purcell and Joseph Tsombangios.
Nature of Case: Assault & battery by Dr. Dhaliwal during a dermabrasion procedure.
Verdict: Settlement for plaintiff, $120,000 for pain and suffering & $700,000 for punitive damages.

For The Month of: October 2011.
Judge: Honorable Scott Farr.
Parties: Sheffield Woods vs. Orkin.
Attorneys: For Plaintiff: Peter Cardillo and Scott Davis; For Defendant: Daniel Gerber.
Nature of Case: Breach of contract termite damage claim.
Verdict: $413,046.00.

For The Month of: October 2011.
Judge: Honorable Amy M. Williams.
Parties: George P. Ciporkin vs. Irwin Contracting, Inc. vs. Mark 1 Contracting, Inc.
Attorneys: For Plaintiff: Joseph D. Magri; For Defendant: Thamir A.R. Kaddouri; For Third Party: Michael L. Forte.
Nature of Case: Construction Defect.
Verdict: Defense verdict as to Mark 1 Contracting, Inc.

For The Month of: October 2011.
Judge: Honorable Thomas Smith.
Parties: James Diaz vs. Big Lots.
Attorneys: For Plaintiff: Pedro Morales; For Defendant: Brandon R. Scheele.
Nature of Case: Trip and fall with alleged permanent neck and back injuries.
Verdict: Defense Verdict.
Clark & Martino, P.A. is proud to announce that Anthony D. Martino has made partner.

Many attorneys refer their most complex brain and spine injuries to Clark & Martino. One attorney has the expertise and experience to become our newest partner.

Anthony has become well known and respected for his success with serious personal injury cases having been AV Rated by Martindale-Hubbell, named to “The Top 40 Under 40” by The National Trial Lawyers, recognized as a “Rising Star” by Florida Super Lawyers, an “Up and Comer” by Florida Trend’s Legal Elite and having been elected twice to the Board of Directors for the Young Lawyers Division of the Hillsborough County Bar Association, a position he has held since 2008.

Anthony earned his Bachelor’s in Business Administration with minors in Economics and Criminology from the University of Florida in 2001 where he was inducted into Florida Blue Key and his Juris Doctorate from Stetson University College of Law in 2004. Prior to joining the firm, he was a Judicial Law Clerk for two Circuit Judges, a clinic Prosecutor for the State Attorney’s Office of the 13th Judicial Circuit in Hillsborough County and worked as an associate defending civil litigation claims. Anthony has extensive experience conducting jury trials and has argued in front of the Second District Court of Appeal.

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