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This issue’s cover shows Miami Beach in the 1950s. The 1950s were a boom time for tourism, but by the end of the decade, some of the city’s hotels began to file for bankruptcy after a disappointing tourist season during 1957-1958 because of an unseasonably cold winter. This is a linen postcard produced by the Curt Teich Company, a major manufacturer of postcards from 1898 to 1978.

The Saturn V rocket, shown right and on page 31, is on display at the Kennedy Space Center, which opened in 1962.
18 CONFLICT JURISDICTION IN THE FLORIDA SUPREME COURT
Appellate Practice Section
by Caroline Johnson Levine

21 THE FUTURE IS NOW FOR COLLABORATIVE LAW IN FLORIDA!
Collaborative Law Section
by Fraser J. Himes

24 LIENORS BEWARE: A LESSON LEARNED FROM THE COOL GUYS, LLC
Construction Law Section
by Hugh D. Higgins

40 DIRECTOR LIABILITY
Corporate Counsel Section
by Caroline Johnson Levine

42 FLORIDA ONCE AGAIN ON THE FOREFRONT OF TAKINGS LAW
Environmental & Land Use Law Section
by Jacob T. Cremer

44 THE I-601 WAIVER FOR UNLAWFUL PRESENCE
Immigration & Nationality Section
by A. Renee Pobjecky

46 WILL .COM BECOME PART OF THE PAST?
Intellectual Property Section
by Joseph J. Weissman

49 IS MANDATORY DISCOVERY ALWAYS MANDATORY?
Marital & Family Law Section
by Ellen D. Ostman and Allison M. Perry

50 GETTING THE MOST OUT OF EVERY MEDIATION
Mediation & Arbitration Section
by Rosemary Bardi

52 JERVIS AND JASSER JUXTAPOSED: TESTAMENTARY CAPACITY IN GUARDIANSHIP
Real Property Probate & Trust Section
by Katie Everlove-Stone

54 SOLO AND SMALL FIRM – REPRESENTING CLIENTS WITH ADVERSE INTERESTS
Solo/Small Firm Section
by James A. Schmidt

58 EQUITABLE RELIEF FOR THE INNOCENT SPOUSE
Tax Law Section
by James A. Schmidt

60 PRESERVATION: WHAT IS YOUR CLIENT’S OBLIGATION?
Trial & Litigation Section
by Joshua R. Kersey

51 PROFESSIONALISM AND CIVILITY
Professionalism & Ethics Committee
by Caroline Johnson Levine

16 PRO BONO AS A GRATIFYING EXPERIENCE
Thirteenth Judicial Circuit
Pro Bono Committee’s Message
by Rory B. Weiner

22 HELP THE WORKING POOR - VOLUNTEER FOR DINING WITH DIGNITY
Community Services Committee
by Lisa A. Esposito

57 HCBA BENEFIT PROVIDERS

62 AROUND THE ASSOCIATION

63 JURY TRIAL INFORMATION

63 ADVERTISING INDEX
An Inspiring Afternoon with (Some of) the BALS Attorneys

Jim Hengelbrok, Carol Moody, and Linda Breen have each been with BALS for decades, choosing to spend their careers serving some of the most marginalized and in-need members of our community.

(Editor’s Note: On October 10, 2012, Bob Nader and I visited the offices of Bay Area Legal Services, resulting in two different feature articles for this edition of the LAWYER. This is my story.)

On Wednesday, October 10, HCBA President Bob Nader and I had the distinct pleasure of spending an afternoon with some of the most inspiring attorneys either of us had ever met. We traveled to the offices of Bay Area Legal Services (“BALS”) to interview BALS attorneys Jim Hengelbrok, Jr., Carol Moody, and Linda Breen. Bob’s President’s Message on page 5 is also about these exceptional attorneys. Our articles, along with Rory Weiner’s article on page 16 on the merits of pro bono service, were written to encourage voluntary pro bono work and contributions to BALS’s Sustaining Law Firm Campaign, both during the holiday season and throughout the year.

It is hard not to be moved when speaking with BALS attorneys about their work. In regard to Jim, Carol, and Linda, their passion and dedication are evident; they have each been with BALS for decades, choosing to spend their careers serving some of the most marginalized and in-need members of our community. Their humility is also clear. Each of them was uncomfortable with the idea that they might be “singled out” from among dozens of their BALS colleagues to participate in our interview, and they each made a point of recognizing the hard work and exceptional skills of the other attorneys in their departments. Finally, I was struck by the stories of the services they provide to their clients. Here are a few of them.

Jim has been with BALS since 1980, and leads its Tampa Family Law Team.1 He and his team recently helped procure an injunction against the abusive husband of a client. Shortly thereafter, they helped the same client obtain a divorce and sole responsibility of her two children. Though Jim has worked on behalf of domestic violence victims for decades, he explained that he is consistently moved by the effect legal work can have on the emotional health of an entire family. Confidence improves, children’s grades go up, and there is a discernible increase in overall happiness.

Carol manages the BALS Senior Advocacy Unit,2 and has been with the organization since 1991. She recently worked on behalf of an elderly couple about to lose their home to foreclosure. The couple had little income, and were raising young grandchildren. Through advocacy from Carol and her team, the couple adopted their grand-

Continued on page 4
children and thus became eligible to receive certain additional governmental benefits. As a result, the couple avoided foreclosure of their home.

Linda began her work at BALS in 1990, and serves on the BALS Advocates for Basic Legal Equality Team. Her expertise lies in public benefits. In a recent matter, Linda’s client was assaulted by the client’s adult daughter in the Section 8 residence they shared. Because the assault amounted to criminal activity that occurred at the client’s residence, the client was put in danger of losing her home through an eviction action. However, as a result of assistance received from Linda and her team, the daughter moved out and the client was able to keep her home.

It is clear that Jim, Carol, Linda, and their BALS colleagues offer their clients security in some of our basic necessities — a safe family, comfort and peace late in life, and a stable home. I hope that you are as inspired by these attorneys and their stories as I am.

1 Colleagues of BALS’ Tampa Family Law Team who work with Jim Hengelbrok include: Laura Ankenbruck, Ann Arledge, Mitzi Chen, and Henry Hower.

2 Colleagues of BALS’ Senior Advocacy Unit who work with Carol Moody include: Sue Motley, Heather Tager, and Kathy Woltmann.

3 Colleagues of BALS’ Advocates for Basic Legal Equality Team who work with Linda Breen include: Team Leader Tom DiFiore, Martin Lawyer (who has been a cast member of the HCBA Law Follies for many years), Linda Mann, and Steve Myers (who also works part-time on the Family Law Team).
I would bet my limited fortune that the attorneys I interviewed on that memorable October day could go measure-to-measure, toe-to-toe, … against any high-priced litigator in our community.

(\textit{President’s Note: On October 10, 2012, Amy Nath, the editor of this magazine, and I visited the offices of Bay Area Legal Services, resulting in companion articles for this edition. This is my story.})

Upon walking through the front door of the stand-alone building on Dr. Martin Luther King Boulevard and briefly surveying the entranceway, I was immediately taken by the simplicity of my surroundings. As I proceeded up the stairwell to the second floor, I noticed hanging on the blue-grey wall the slightly tilted, framed print of some native birds welcoming me. Then, for the first time, I stepped into the unadorned main offices of the 45-year-old, pre-eminent legal aid organization of the Tampa Bay region.

As I scanned the room, I did not see any cast iron or metal sculptures sitting on Plexiglas pedestals, numbered lithographs, original oils or specialty photographs on the walls, wood or tile flooring, Persian accent rugs thrown about, or fanciful cherry wood furnishings. Neither \textit{The New York Times} nor \textit{The Wall Street Journal} was prominently displayed on the old wooden table in the foyer. Instead, there was a composite wall hanging containing the photos of the many varied individuals who have for years passed through the doorways of Bay Area Legal Services ("BALS").

Having been greeted by the highly professional and friendly receptionist, Amy and I were escorted to a small conference room where we began a pleasurable three-hour sit-down interview with five extraordinary legal minds who, in all likelihood, are unknown to most of the membership of the HCBA. We were first welcomed by the smiling faces of a former collegiate tennis player on scholarship at Rollins College and Peace Corps volunteer, and by BALS's notable public speaker with the comedic flare, who was at one time a voluntary member of Mother Teresa’s Missionaries of Charity.

In response to our intrepid inquiries, Dick Woltmann, the executive director of BALS since 1980, and Joan Boles, its deputy director for 12 years, revealed some illuminating facts about this non-profit organization originally known as "Law, Inc.," the name of which initially caused me to shudder at its sheer awfulness. I was proud to learn that one of my favorite jurists of all time, Judge Donald Castor, was the original director. On the other hand, Amy and I were wide-eyed with astonishment to find out that Anola Gutierrez has been a paralegal with the organization since 1967, all 45 years of its existence. Unimaginable!

Of course, during this time of funding cutbacks and shrinking sources of revenue and other donative support, contraction has hit BALS. It employed 50 legal staff members about one year ago, but now it has only 40 full- and part-time attorneys and paralegals. This is a remarkably small constituency in view of the fact that the BALS Central Telephone Intake Team, headed by Mary Haberland, received 62,897 applicant calls for legal

\textit{Continued on page 6}
HCBA PRESIDENT’S MESSAGE
Bob Nader, The Law & Mediation Offices of Rober J. Nader

Continued from page 5

representation in 2011, even when these potential clients on average had to wait only a minute and 40 seconds for someone at BALS to initially screen their legal concern. Go figure the amount of calls received per day...!

Amy and I were then joined by a former teacher employed at a New England high school, otherwise known as the “Melting Pot of Massachusetts” with its 17 different nationalities; a Notre Dame Law School grad who once worked with migrant farm workers; and an attorney who was late-arriving to the field of law after having reared her children and who was, a few short years ago, the homecoming queen at the University of Florida. Linda Breen, Jim Hengelbrok, Jr. and Carol Moody added a lot more information to the mix.

Linda, fluent in Spanish, who is a part of the Advocates for Basic Legal Equality Team at BALS, which primarily focuses on legal issues related to housing and public benefits, advised us of the unfortunate drawbacks that face many of her low-income clients daily and prevent them from rising above the chronically difficult circumstances in which they survive. They are socially unemployable with transportation barriers, unexpected hospitalizations and criminal records. Despite handling matters for 22 years that might cause a lawyer in the private sector to shy away from as a regular course of his or her caseload, Linda represents her clients with the same expertise, energy and sincere passion that another lawyer would render to a multi-national corporate client.

Jim, also fluent in Spanish and who is the spouse of Intake Director Mary Haberland, heads up the Family Law Team, whose work is similar to the “one-stop shop” of Hillsborough County’s Family Justice Center. For 22 years, he has handled family law matters for indigent clients involving paternity, custody, impolite divorce, and domestic violence with its fearful and anxious victims. As he stated, BALS is unable to help everyone who seeks its assistance because of financial and other guidelines imposed by the rules and regulations of the Legal Services Corporation, which is one of the institution’s main funding sources. Like Linda, Jim’s demeanor and presence was gracious, at times serious, yet comfortably imposing.

While riding on the float on the turf of Florida Field, Carol would have never imagined that she would head the nationally award-winning Senior Advocacy Unit of BALS. She reminded me and Amy that what she, Jim and Linda do is not for everyone. However, to them, their work is a “calling.” For 21 years, this Stetson law school graduate, who holds other degrees in psychology and journalism, has defended the legal rights of our elderly population. In 2011, she received regional recognition by being given the “Salt and Pepper Award” for her distinguished community service and philanthropy. Moreover, as a result of the consistently hard work put in by this unique unit, Carol’s team has also been recognized by the Department of Elder Affairs as one of Florida’s model programs. As Carol stated to Amy and me, speaking generally about the clientele of BALS: “Justice is just a word without access to the courts.”

I would bet my limited fortune that the attorneys I interviewed on that memorable October day could go measure-to-measure, toe-to-toe, on any type of case and against any high-priced litigator in our community. So there you have it. I am encouraging you to visit, during some unhurried afternoon, the BALS main office or one of the BALS permanently staffed branch centers in Wimauma, Plant City, Dade City, St. Petersburg West, and New Port Richey. Spend a little time and talk with their lawyers and support staff. Like me, these men and women will no longer just be associated with the impersonalized descriptive, “an attorney with Bay Area Legal Services.” Their names instead will rather be etched in your memory. They will no longer remain, to the extent they even are, Unsung.

MAKE A DIFFERENCE DAY

The Community Services Committee, working with the James A. Haley Veterans’ Hospital, delivered gifts to veterans living in foster homes on Make a Difference Day, October 27, 2012. The veterans made lists of needed items, and HCBA members and firms fulfilled their wishes.

Left: Debra Whitworth, Mickey Emerson, Bailey, Jordan and Kenten Emerson visit with their veteran, John, on Make a Difference Day. Debra describes John as being “a young 95 years old.”
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An Ace of a Day

By every measure, the day was a resounding success!

On the Friday afternoon of November 2, the Young Lawyers Division proudly hosted its annual golf tournament at Rocky Point Golf Course.

Even before the tournament began, it was off to a great start. The temperature was in the mid-70s with no clouds in the sky. Every hole was sponsored by great organizations. And most importantly, the field was the fullest it has ever been with 84 avid golfers — true HCBA loyalists.

Though the tournament did not start until 1:00 p.m., players were showing up in droves before the tournament began to enjoy the great weather and get an early start to their weekend. At 1:00, everyone gathered around the putting green to hear David Mitchell of C1 Bank, our Platinum Sponsor, give the traditional “call to the tees” and announce the rules for the tournament. With some additional caveats from Kevin Kenney, the head golf professional at Rocky Point Golf Course, the figurative shotgun was fired, and the scramble format tournament began.

By every measure, the day was a resounding success! Even with a jam-packed field, everyone finished the course on time for the drawings, prizes, and dinner from Taco Bus. Some finished so early that two players, who shall remain unnamed, went back onto the golf course to play another nine holes. For the raffle drawings this year, we gave away cash, two iPods, two club seats for a Bucs home game and a new iPad. For the tournament prizes, we mixed it up with gift certificates to the Rocky Point Golf Course pro shop, gift certificates to Datz, gift certificates to Taco Bus and some nice bottles of wine. Taking the prizes this year were:

- **1st Place Team:** Bill Robertson, David Wilder, Ryan Wilder and Ted Eastmore
- **2nd Place Team:** Jason Whittemore, Mike Falkowski, Justin Petredis, and Matt Britten
- **3rd Place Team:** Wes Trombley, Matt Luka, Matt DeDomenico, and Kevin Flynn

- **Women’s Closest to the Pin:** Karen Winn
- **Men’s Closest to the Pin:** Ron Gillis
- **Women’s Longest Drive:** Deb Werner
- **Men’s Longest Drive:** Matt Luka

The YLD Board of Directors and the HCBA are grateful to our sponsors, without whom the tournament could not have been the huge success it was. Without further oratory, thank you to our Platinum Sponsor C1 Bank, our Gold Sponsor The Bank of Tampa and our Silver Sponsors. Silver Sponsors were Burr & Forman LLP, formerly Williams Schifino; Florida Lawyers Mutual Insurance Company; Lexus of Tampa Bay; Ricoh Legal; and Trial Consulting Services, LLC.


We encourage all of our participants, members, and readers to visit with these businesses and learn more about how they cater to the needs of our legal community.

Thank you to everyone who came out. Keep working on your golf game and better luck next year!

**Authors:**
Jason Whittemore, Wagner, Vaughan & McLaughlin, P.A.; and Jeff Wilcox, Hill Ward Henderson, P.A.
Thirteenth Circuit Mentoring Program Seeks to Assist New Lawyers

“The mentoring program is designed to help new lawyers bridge the gap between law school and the practice of law,” said Hillsborough Circuit Court Judge Bernard C. Silver.

In his keynote remarks at the HCBA’s membership luncheon in September, federal judge Gerald B. Tjoflat of the U.S. Eleventh Circuit Court of Appeals reflected on the evolving nature of the legal profession and the mentoring of new lawyers.

Law firms historically were shaped like a pyramid, with the more senior lawyers at the top of the pyramid, said Tjoflat, who began practicing law in 1957 and is the longest serving federal appeals court judge in the United States.

Senior lawyers took new lawyers under their wing and helped teach them the critical skills they needed to be successful in their legal careers, as well as common mistakes to avoid, he said.

But, now, the opportunities for this type of mentor-protégé relationship have diminished, Tjoflat said, and the traditional pyramid shape of law firms is flattening out.

A number of factors have accelerated this change, Tjoflat said, including: greater emphasis on the business side of the legal profession; increased practice specialization; and the fact that more law school graduates are having trouble getting jobs at law firms and are starting their own practices.

The consequences of this changing legal environment have brought about an increased level of unprofessionalism and incivility in the practice of law, which hurts the profession’s public image, Tjoflat said.

Which brings me to the Thirteenth Judicial Circuit’s new mentoring program that was launched in September in conjunction with the HCBA.

“The mentoring program is designed to help new lawyers bridge the gap between law school and the practice of law,” said Hillsborough Circuit Court Judge Bernard C. Silver, who is spearheading the program for Chief Judge Manuel Menendez, Jr. and the Thirteenth Circuit.

“From a judicial standpoint, we are encouraging participation in the program because the practice of law can oftentimes be difficult and frustrating,” Silver said, “and it’s a great resource to help new lawyers avoid the pitfalls they often encounter because of a lack of experience.”

“We also hope that, over time, it will help raise the level of professionalism and competence in the Bar as a whole,” Silver said.

Newly admitted members of the Florida Bar who have been practicing for less than three years are eligible to apply to become a protégé in the program.

And HCBA members in good standing with the Florida Bar for at least 12 years may apply to serve as mentors.

Mentors in the program will be matched with protégés, and they are expected to meet at least once a month in an

Continued on page 11
informal setting, e.g., over lunch, and talk about the protégé’s professional development.

Julie Sneed of Akerman Senterfitt is a co-chair of the HCBA’s Professionalism & Ethics Committee.

“*I believe this program provides a great opportunity for sole practitioners and lawyers in smaller firms,*” Sneed said. “*Protégés can benefit from having an ongoing relationship with a seasoned professional in the legal community.*”

“*Plus, it’s a great resource for protégés from larger firms because they can ask questions and talk to someone outside their firms about issues they might not otherwise want to talk about internally,*” Sneed added.

Some suggested discussion topics for the participants include professionalism and legal ethics; local legal rules and administrative orders; effective attorney-client communications; common malpractice and grievance traps; and balancing careers with family.

The minimum duration of the mentor-protégé relationship in the program is one year.

HCBA board member Carter Andersen of Bush Ross, PA. was a member of the ad hoc committee that put together the guidelines for the program.

“I have been fortunate to have mentors both inside and outside my firm, and it has had a tremendous impact on my career,” Andersen said.

“The HCBA continues to look for ways to help sole practitioners and others in smaller firms who don’t have the resources of the bigger firms, and this is one way to do that,” Andersen said. “Also, when Judge Menendez and Judge Silver asked the HCBA board to support this program, we saw it as an opportunity for more senior members of the Bar to give back to the legal community,” he added.

For an application to be a protégé or a mentor in the program, go to the link on the HCBA’s website at www.hillsbar.com, or call (813) 221-7777.

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This law provides another option for stalking victims and an additional layer of protection.

On October 1, 2012, Florida Statute § 784.0485 went into effect. This statute created a new type of injunction styled an “Injunction for Protection against Stalking.” Fl. Stat. § 784.0485. This law provides another option for stalking victims and an additional layer of protection.

In order to obtain a stalking injunction, a victim is not required to show that a particular type of relationship exists, but only that the respondent has stalked the victim. Fl. Stat. § 784.0485(3). A violation of a stalking injunction may be prosecuted as a criminal offense under Fl. Stat. § 784.0487 or may be enforced through a civil or criminal contempt proceeding before the court that issued the injunction. Fl. Stat. § 784.0485(9)(a). If a victim of stalking is not ready to seek criminal prosecution or wants additional protections from the stalker, the victim can now seek an injunction for protection.

As your state attorney, one of my main goals is to keep the people of Hillsborough County safe. By educating people about the legal tools available to protect them, my office seeks to accomplish this goal. When we can live in our community free of this type of criminal activity, we all benefit.

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A New Chapter

I knew it would be challenging, but I could not anticipate how enormous the challenges would be to reshape this office.

This January, I will begin my third term as Clerk of the Circuit Court/Comptroller for Hillsborough County. It truly does not seem like almost eight years since I was sworn into office.

As I write this column, I think back to January 2005 when I became clerk, my ambitious agenda for this office and the goals I set to attain. It was an exciting time for me, as I was determined to transition the clerk’s office.

I knew it would be challenging, but I could not anticipate how enormous the challenges would be to reshape this office to meet the needs of the people we serve in this technological age.

And then there were the unexpected problems, ones I could not have foreseen. The situation reminds me of a priceless quote from the late President John F. Kennedy: “When we got into office, the thing that surprised me the most was that things were as bad as we’d been saying they were.”

One issue that brought this to mind was my team discovering that 41,000 traffic citations had returned for correction to the clerk’s office by the state of Florida, yet they had not been corrected. That was no small matter. If information is not received by the state in the proper form, persons adjudicated guilty of driving under the influence would not have this information on their record, thus would not have their license suspended.

Without this record of previous offenses, the judge would not have complete background information before sentencing — a serious public safety issue.

That experience underlined for me that being clerk was a huge responsibility, linked inextricably to the public trust.

On my 100th day of service, I delivered an address in which I summarized my first experiences on the job and outlined my future plans. Looking ahead, I talked about the importance of moving toward a paperless system. In an operation literally inundated with paper documents, I knew that this would be highly ambitious — but also highly necessary, for we needed to change with the times. For our office, that would be no simple assignment — and it remains a goal for the future.

However, the good news is that we are well on our way toward implementing a state-of-the-art case maintenance system in our courts, the Odyssey system by Tyler, which is already working in some of our courts areas, such as Probate/Mental Health, Family Law, and County and Circuit Civil, which lays the foundation for us to begin the transition into e-filing.

We are truly changing the way we do business, to transform into a far more user-friendly operation. Our goal is to serve you better — and I hope we are well on our way toward achieving that goal.
Pro Bono as a Gratifying Experience

Have you thought about taking a pro bono case? If you have, is your reason based on fulfilling your professional responsibility? Or, is it based on the gratifying experience you may receive? The ancient view of ethics was that “an ethically good life is also a good life for the person leading it.” In this article, I report pro bono stories to emphasize that taking a pro bono case, in addition to fulfilling one’s responsibility, is also gratifying to the lawyer accepting it.

• For 26 years, this pro bono client had been a lawful permanent resident. Despite filing a petition with the United States Citizen and Immigration Service, he could not obtain the status of United States citizen. In 2010, attorney Dionnie Wynter, with the help of student volunteers, developed a plan for this client to achieve his citizenship. She helped him with his application and with the civics portion of the naturalization exam. On September 18, 2012, Wynter received a picture of a smiling client holding his Certificate of Naturalization. How gratifying, she explains, “to know I made a difference in someone’s life.”

• A working mother of three children, this pro bono client experienced unspeakable domestic violence from a drug addict husband. The husband had moved out, but frequently returned to abuse and humiliate her while her children slept in their bedrooms. The abuse escalated when her husband confronted her in a parking lot, shoved her in her car, took the keys, and drove her around, repeatedly punching her and pulling her hair as her three children watched. Attorney Rosemary Armstrong helped her obtain a divorce and sole custody of her three children. The experience was gratifying, according to Armstrong, because “I helped this woman and her children banish horrific domestic violence from their lives.”

• When two underprivileged minors were to receive their father’s life insurance proceeds, their untrustworthy caregivers tried to control the money. Attorney Julie Sneed helped to protect their rights. Sneed represented the minors until they turned 18 and could receive the funds directly. During her representation, Sneed learned that the minors lived in different households in a rural part of Florida without access to telephones or reliable mail delivery. To contact them, she relied on others to relay messages. How gratifying, she explained, that she “as an attorney, a stranger, could help these minors retain a part of their father.”

• Tyler Cathey responded to a request to serve as an attorney ad-litem for a 14-year-old facing a criminal hearing without a parent or guardian. Cathey took the time to explain court procedures to the nervous young man and sat with him throughout his trial. Before the trial began, the juvenile donned a white ribbed tank top and sandals. Undeterred, Cathey provided his own size 52 jacket and size 13 shoes for the much smaller juvenile to wear. The juvenile was ultimately acquitted. As Cathey explained, “making a difference in this young man’s life was intensely gratifying.”

Hundreds of similar stories exist in our legal community. These stories highlight a reason for doing pro bono work in addition to fulfilling one’s professional responsibility; it feels good. And if something feels good, we tend to do more of it.

Author: Rory B. Weiner, Rory B. Weiner, P.A.
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When a district court of appeal issues an opinion unfavorable to a practitioner’s case, the practitioner may believe he or she can appeal the opinion to the Florida Supreme Court. However, the Florida Constitution grants only limited jurisdiction to the Florida Supreme Court to review district court decisions. The five categories of jurisdiction are 1) mandatory appellate jurisdiction, 2) discretionary review jurisdiction, 3) discretionary original jurisdiction, 4) exclusive jurisdiction, and 5) advisory opinions. See Fla. Const. art. V, § 3(b).

Many of these jurisdictional categories are specific and limited in scope. For example, mandatory appellate jurisdiction is limited to appeals of death penalty cases, validation of public revenue bonds, Florida Public Service Commission decisions, and district court decisions declaring a statute or constitutional provision invalid. When these limited avenues of review do not apply, a practitioner may conclude the best opportunity for Supreme Court review is to proceed under the “catch-all” category of “discretionary review” jurisdiction.

The Florida Supreme Court may review district court opinions that “expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law.” See Fla. R. App. P. 9.030(2)(iv); see also Fla. Const. art. V, § 3(b)(3). The conflict between the opinions must “appear within the four corners of the majority decision.” See Reaves v. State, 485 So. 2d 829 (Fla. 1986).

Continued on page 19
Continued from page 18

To meet this requirement, the opinion “must contain a statement or citation effectively establishing a point of law upon which the decision rests.” See The Florida Star v. B.J.E., 530 So. 2d 286 (Fla. 1988).

Therefore, unless the petitioner can convincingly argue that the holding is in irreconcilable conflict with another jurisdiction’s opinion, the chance of obtaining “discretionary review” is severely limited.

Procedurally, upon receiving the district court’s unfavorable opinion, the affected party may file a motion for rehearing or clarification within fifteen days. If the district court denies this motion or the petitioner abandons it, the petitioner must file in the district court a notice to invoke discretionary jurisdiction within thirty days. See Fla. R. App. P. 9.120(b), 9.900(d). Subsequently, the petitioner must file a “jurisdiction” brief in the Florida Supreme Court within 10 days of the notice, explaining the conflict and why the court should exercise its discretion to review the decision. See Fla. R. App. P. 9.120(d).

The jurisdictional brief is limited to 10 pages, cannot cite to the record, and must include an appendix containing only a copy of the district court’s opinion. See Fla. R. App. P. 9.120(d), 9.210(a)(5). Because the Florida Supreme Court can refuse to exercise its discretion, jurisdictional briefs should strongly convince the court of the significance of the legal issues at stake. Finally, if the court accepts jurisdiction or postpones its decision on jurisdiction, the petitioner must serve the initial “merits” brief within 20 days. See Fla. R. App. P. 9.120(f).

The bulk of the appeals filed in the Florida Supreme Court are classified under the discretionary category because practitioners believe that if they can simply discover a conflicting opinion, they can pursue an appeal. However, this is the most challenging jurisdictional category to achieve.

Author: Caroline Johnson Levine, Office of the Attorney General
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The Future is Now for Collaborative Law in Florida!
Collaborative Law Section

In May 2013, the Collaborative Family Law Council of Florida will present Florida’s “Inaugural Collaborative Conference: The Future is Now.” The guest speaker is Forrest “Woody” Mosten, and participating will be president-elect of the International Academy of Collaborative Professionals, Catherine Connor. It occurs May 17-18 at the Tampa Grand Hyatt Hotel — in our own backyard! Mosten, a nationally known speaker, author, and professor, as well as a practicing mediator and collaborative lawyer, brings a wealth of knowledge and experience with an informative and inspirational vision for the future of collaborative law.

I was recently reading a book containing contributions from nationally recognized collaborative law attorneys and was struck by the coincidence that the very chapter I was reading when the “Save the Date” notice for the conference arrived was written by none other than Woody Mosten! The name of the article is “Collaborative Practice: Key Issues and Future Trends.”

The article discusses developments in the legal field that had an impact on the collaborative law environment, including the legal clinic movement, mediation movement (noting that in 1979 there were only three mediators in all of Los Angeles!), and the unbundling of legal services, fundamental to collaborative law. It discusses contributing factors to the growing popularity of collaborative law, including cost, privacy, and cooperation.

Mosten makes numerous predictions, including that there will continue to be public support for the collaborative practice, and he mentions famous people, Robin Williams and Roy Disney as examples, who have chosen collaborative law to settle their divorces.

He also predicts courts will promote collaborative law. We now have the Thirteenth Judicial Circuit’s Administrative Order, discussed here last month, and three other Florida circuits have administrative orders.

He predicts that collaborative law will become the primary dispute resolution method, observing first calls of divorcing clients will be to the collaborative lawyer or mediator instead of the litigator, much like a medical patient going first to an internist and maybe getting a referral to a surgeon rather than going to a surgeon first.

He predicts collaborative law will be integrated into the courts, making collaborative law not a pioneering alternative, but part of the mainstream of the legal system. He predicts more professionals will specialize in collaborative law and collaborative law will be a component of legal education. I see our Collaborative Law Section and upcoming discussions with Stetson Family Law Professor Cynthia DeBose regarding incorporating collaborative law into the curriculum as local examples of fulfillments of Mosten’s predictions. I hope this discussion of Mosten’s article stirs your interest and enthusiasm for the upcoming conference, Mosten’s presentation, and our section’s ongoing promotion and development of the collaborative law practice.

Woody’s brief observations of the history, predictions, and realizations in collaborative law tell us clearly that the future of collaborative law is now!

Author: Fraser J. Himes, Himes & Hearn, P.A.
HELP THE WORKING POOR - VOLUNTEER FOR DINING WITH DIGNITY

Community Services Committee
Chairs: Zachary J. Glaser - Sponsler, Bennett, Jacobs & Adams, P.A.; and Sarah M. Glaser - Saxon, Gilmore, Carraway & Gibbons, P.A.

During the week of March 18, 2013, HCBA’s Community Services Committee is joining Trinity Café to further its mission of helping people in need. Between March 18 and March 22, attorneys, friends, and family will volunteer for Dining with Dignity, serving a three-course, sit-down lunch to local homeless and working poor.

While many believe the homeless are drug addicts or alcoholics, in reality, countless Trinity Café guests are elderly, children, and the physically challenged. Their stomachs are empty and they look to Trinity Café for a meal. Sadly, for many it is the only food they will eat all day.

According to the United States Census, Poverty in the United States Study, the number of Americans who are hungry or at risk of hunger is growing: 8.5 percent of Hillsborough County’s households are food insecure, meaning they do not have enough food to eat and often must choose between buying food and paying bills.

Since 2001, Trinity Café, in downtown Tampa, has been a beacon of hope and compassion, serving more than 200 hot meals each day to Hillsborough County’s needy. The café recognizes that although it is vitally important to provide nourishment to the hungry, more is needed. It strives to be a gateway to positive change in its guests’ lives, by increasing confidence, expanding desires for self-help and reconnecting guests to the community. This unique café aims not only to feed the hungry but to do it with dignity! At Trinity Café, the tables are set with tablecloths. Lunch is served on china; drinks are poured in glasses and the tableside conversation is compassionate.

I volunteered at Trinity Café. My job was simple: walk around, refill guests’ glasses, and clear tables. It was nothing too tasking. I met Jenny, an elderly woman who lived on the streets. Jenny was unable to afford a place to live and told me how much Trinity Café meant to her. She said she heard about the café, a place where meals were brought to tables! Jenny’s eyes became misty. She smiled, thanking me for the wonderful meal and for making her feel special. It was hard to respond with the lump in my throat. I mumbled that it is our pleasure and that I hoped to see her return for more meals and perhaps some assistance. I have not seen Jenny again but wonder about her. It was then that I thought about getting Trinity Café and the Community Services Committee together. The idea for Dining with Dignity week was born. HCBA’s Community Services Committee is seeking volunteers, any day, the week of March 18-22, between 11:00-1:30 p.m., to serve lunch, pour drinks, or sit and share some good old-fashioned conversation with people who need a meal and compassion!

Volunteer with your firm, family, friends, and make a difference!

To learn more or volunteer, contact Lisa Esposito, 813-223-6037 or lisa@lesposito.com.

Trinity Café is a 501c-3 non-profit serving free lunch. Its mission is to restore dignity to the homeless, to make a difference. Learn more at www.trinitycafe.org. Monetary or food donations are needed and greatly appreciated!

Author: Lisa A. Esposito, Law Offices of Lisa Esposito, P.A.
Did you know that by making a contribution to Bay Area Legal Services you can fulfill your pro bono public service responsibility? An annual donation of $350 or more to Bay Area Legal Services can satisfy your professional responsibility (Rule 4-6.1) and make a valuable contribution to our community at the same time. If everyone in your law firm donates, you can join the many attorneys and firms who have supported Bay Area by becoming a Sustaining Law Firm. Fulfill your professional responsibility today – make a donation to Bay Area and ensure access to justice for the poor in our community.

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LIENORS BEWARE: A LESSON LEARNED FROM THE COOL GUYS, LLC
Construction Law Section
Chairs: Jason J. Quintero - Carlton Fields, P.A.; and Jeffrey M. Paskert - Mills Paskert Divers P.A.

A recent decision by the Fourth District Court of Appeal (“DCA”) makes one area of construction lien law painfully clear and unforgiving in its application. Previously, a lienor need only initiate litigation to foreclose its lien within one year of recording its lien. Now, lienors who have timely initiated litigation to foreclose must overcome another hurdle: If the property owner posts a transfer bond, the lienor must add a claim against the transfer bond within one year of transfer.

In The Cool Guys, LLC v. Jomar Properties, LLC, 84 So. 3d 1076, 1078 (Fla. 4th Dist. Ct. App. 2012), Cool Guys filed a lien against Jomar Properties for an unpaid bill for air conditioning services. After Cool Guys timely initiated litigation to foreclose its lien, Jomar Properties transferred the lien to a surety bond issued by Accredited Surety. Cool Guys received notice of the transfer but did not add Accredited to the litigation for two years. The Fourth DCA held that Cool Guys’ claims against Jomar and Accredited were barred by the one-year limitations period set forth in Florida Statute § 713.24(4).

Since 1979, the Florida Supreme Court interpreted Florida Statute § 713.24(4), Florida Statutes, such that a limitations period did not apply to lien transfer bonds that were transferred after the commencement of litigation against the property owner. American Fire & Cas. Co. v. Davis Water & Waste Indus. Inc., 358 So. 2d 225 (Fla. 4th Dist. Ct. App. 1978, aff’d, 377 So. 2d 164 (Fla. 1979)). However, in 2005, the Florida Legislature snuffed out American Fire when it amended Florida Statute § 713.24(4) by adding the following:

“If the property owner posts a transfer bond, the lienor must add a claim against the transfer bond within one year of transfer.

Florida Statute § 713.24(4), (2005). As the Cool Guys court held, the new language requires lienors to bring a claim against the transferred security “within one year of the transfer,” in the event a lien is transferred to security during a pending lien foreclosure suit. Cool Guys, 84 So. 3d at 1078.

The Cool Guys decision brings clarity and certainty to this area of construction lien law. Not only must a lienor file an action to foreclose within one year of recording its lien, it must also join any surety that issues a transfer lien bond during foreclosure litigation.

Cool Guys is a wake-up call to lienors and their counsel, who must always be vigilant to enforce their rights.

Author:
Hugh D. Higgins,
Rumberger, Kirk & Caldwell, P.A.
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Membership Events in 2013

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Keynote speakers:
Gwynne Young, Florida Bar president
Eugene Pettis, Florida Bar president-elect

The HCBA 2012 Outstanding Lawyer Award will be presented at the luncheon.

FEBRUARY 16
HCBA Student/Law Firm Diversity Mixer
Chester H. Ferguson Law Center

FEBRUARY 28
Law Follies
Chester H. Ferguson Law Center

MARCH 23
Judicial Pig Roast & 5K Pro Bono River Run
Stetson’s Tampa Law Center

MAY 21
Membership Luncheon
Hotel Tampa, an affiliation of Hilton
(formerly the Hyatt Regency Downtown)
For many years, our local bar association held its monthly luncheons and Christmas receptions at The Floridan Hotel. In fact, the long-time secretary of our local bar association, (25 years pro bono) attorney Joe (Joseph F.) Miyares, suffered a fatal heart attack walking down the marble stairs at The Floridan following our meeting on May 3, 1968. No other functioning hotel in Hillsborough County can boast a longer history, and with its newly completed multimillion-dollar renaissance, it is a site to be seen.

Please note the correct spelling and pronunciation of its name: “FLORIDAN,” not Floridian. In its 85-year history, it has had three slightly differing versions: In 1927, its given name was The Floridan; in the 1960s, it was the Floridan Motor Hotel; and now, it’s the Floridan Palace Hotel.

On March 12, 1996, The Floridan was added to the United States National Register of Historic Places. Between 1920 and 1930, Tampa went through a boom in population and geographic size. In 1920, Tampa’s population was 51,608. By 1925, Tampa’s population went to 101,162 when the independent City of West Tampa was annexed into the

Continued on page 27

Historic Floridan Hotel

A knight in shining armor called Antonios Markopoulos arrived with a deep pocket and a dream of restoring the historic Floridan...

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City of Tampa, making Tampa the third-largest city in Florida. The Floridan Hotel was conceived in 1925 by Allen J. Simms and partners calling themselves The Tampa Commercial Hotel.

Construction started on February 4, 1926, as Tampa lawyers and residents watched the gigantic steel skeleton go up and began to piece together the inspiring gem of a structure at a cost of $1.9 million. It was inaugurated on January 15, 1927, with a full 18 stories, making it the tallest building in Florida. The rates ranged from $1 to $5 per night. The building was so big it took more than 500,000 gallons of paint, stain, and varnish. Atop the hotel was a red neon sign with six-foot-tall letters, illuminated by 660 50-watt lamps that could be seen for miles in every direction. Simms’ vision had become a reality when the hotel opened for business with 316 rooms — it had cost $3 million, a colossal amount of money in 1927. The famous architects, Francis J. Kennard, G. A. Miller, and their associates looked on with pride.

The Tampa Morning Tribune in its June 23, 1927, Sunday edition called it the forerunner of the greater Tampa of the future. Simms and his visionary partners in the Tampa Development Company also built the Cass Street Arcade (across the street, just south of the hotel) and opened Cass Street from Benjamin Field (now Fort Homer Hesterly) on Howard Avenue — crossing the Cass Street Bridge — to the Union Railroad Station on Nebraska Avenue. They went on to build the Michigan Avenue Bridge, now called the Columbus Drive Bridge.

There was no question that Tampa was the commercial and business center of Florida’s Gulf Coast. 1926 was a big construction year in downtown: The Citizens Building; The First National Bank Building on Franklin Street; The Floridan Hotel and the 12-story Tampa Terrace Hotel on Florida Avenue and Lafayette (now John F. Kennedy Boulevard) were under construction; the 10-story Tampa Theatre Building being completed, the first business in Tampa to have air conditioning; and the Thomas Jefferson Hotel was being enlarged and refurbished. Many lawyers opened their offices in the First National Bank Building and the Tampa Theatre Building. The Floridan Hotel was the tallest building in Florida until the Exchange National Bank Building in downtown Tampa was completed in 1966.

That Sunday Tribune special on January 23, 1927, had an entire section dedicated to The Floridan and its grandeur. It was Tampa’s goliath, at 18 stories high.
Tampa had 175,000 permanent residents and its economy was booming in 1927. It had 40,000 automobiles and 6,000 trucks registered in Hillsborough County. Tampa cigar factories, the backbone of the economy then, were producing 482,239,717 cigars a year. Tampa led the world in the manufacturing of quality cigars. Building permits issued in 1927 amounted to $6 million; 2,874 ships entered and left Tampa. That year, Tampa led the world in shipments of phosphate rock — 1,534,266 tons. We even had two radio stations, WDAE and WFLA. 1927 also saw movies changing forever. It was the end of the silent film. Sound was here to stay!

But in 1929, construction in downtown Tampa slowed to a crawl as the entire nation sank into the Great Depression. The Tampa Commercial Hotel Company relinquished control of The Floridan to Collier Florida Hotels, Inc., which also purchased the Tampa Terrace Hotel. The Floridan successfully survived the economic downturn under Barron Collier Management. In 1943, The Floridan was purchased by the Floridan Hotel Operating Company, which also acquired the Thomas Jefferson Hotel with 162 rooms.

That fall, America’s dream girl Lupe Velez enjoyed the penthouse, lobby, and lounge at The Floridan while filming the early “talkie” Hell Harbor in nearby Rocky Point. It was a great boost to Tampa and The Floridan, bringing to Tampa more than $250,000. Tampa’s own Governor Doyle Carlton traveled from Tallahassee to welcome Lupe Velez as she stepped off the train in downtown Tampa. The gossip columns all over the country talked about her love affair with Hollywood star Gary Cooper coming to Tampa. Among the many celebrities and other movie stars that followed to The Floridan were William Powell, Charlton Heston, Elvis “the King” Presley, Ann Blythe (while filming Hell Harbor) in nearby Rocky Point. It was a great boost to Tampa and The Floridan, bringing to Tampa more than $250,000. Tampa’s own Governor Doyle Carlton traveled from Tallahassee to welcome Lupe Velez as she stepped off the train in downtown Tampa. The gossip columns all over the country talked about her love affair with Hollywood star Gary Cooper coming to Tampa. Among the many celebrities and other movie stars that followed to The Floridan were William Powell, Charlton Heston, Elvis “the King” Presley, Ann Blythe (while filming Mr. Peabody and the Mermaid); Forrest Tucker, Jimmy Stewart and June Allyson (while filming Strategic Air Command), football hero Paul “Bear” Bryant, international female golf pro Louise Schruggs, the Cincinnati Reds baseball team, and many other professional athletes, musicians, movie stars, and leading businessmen.

During World War II, the servicemen and women gathered at The Floridan’s Sapphire Room, one of Tampa’s popular night spots. The Crystal Dining Room was a beautiful spot to take a date with soft, live music. Cesar Gonzmart’s musical group played there for many years and went on to our famous Columbia Restaurant in Ybor City. Like New York City’s 21 Club, The Floridan featured two bars, a dance floor and dining rooms on two levels as well as valet service and a garage.

Even “finger food” (new at the time) was available there. In 1941, beer at the hotel cost 35 cents, and the bartender raked in $10 to $15 a night in tips. Colonel Clarence L. Tinker, MacDill’s first field commander, was at The Floridan when he found out about the attack on Pearl Harbor on December 7, 1941. He was the first United States general to die in World War II.

After World War II was over, civilian travel restrictions were lifted and northerners invaded Florida by the millions. Tampa benefited greatly. The days after Christmas 1950 saw the arrival at The Floridan of United States Senator Estes Kefauver and his staff who came as the Kefauver Investigating Committee and conducted public hearings at the Federal Courthouse (and Post Office) Building on Florida Avenue between Twiggs and Zack streets.

The Floridan hosted an annual Baseball Banquet, an awards dinner that brought together the major league teams that had their spring training in Central Florida. The teams stayed at The Floridan during spring training, and many a youngster got his baseball autographed at the hotel.

With the increased popularity of motels, in the early 1960s, the Tampa Sheraton Motor Inn was built at Cass and Morgan streets, one block east of The Floridan and soon we saw the word “Motor Hotel” added to The Floridan. The room rates were $10 for a single room and $15 for twin double beds.

As suburban living became increasingly popular, downtown after dark became a lonely place. The Tampa Terrace in 1967 and later the Hillsboro hotels were demolished to make room for parking lots. The Floridan struggled to survive; with declining occupancy and budget and personnel cuts, it deteriorated quickly. But in its darkest hour, a knight in shining armor called Antonios Markopoulos arrived with a deep pocket and a dream of restoring the historic Floridan, and has made a renaissance of the new Floridan Palace. It was booked solid for the Republican National Convention. It is a gorgeous sight to behold.

About the Author: A frequent speaker at universities, civic, and historical and Bar associations, Judge E. J. Salcines, a native of Tampa, was licensed 49 years ago. Elected for 16 years as our State (Prosecuting) Attorney, he was in private practice for 13 years before being appointed Appellate Judge on the Second District Court of Appeal in 1998.
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SATURN V ROCKET

The Saturn V rocket powered the Apollo astronauts on their voyages, culminating in the moon landings. Visitors to the Kennedy Space Center can walk under the massive rocket, on display in the Saturn V Center. Before viewing the rocket, guests experience the feel of liftoff from the command center. For more information, visit www.kennedyspacecenter.com.

Postcard courtesy of Raymond T. (Tom) Elligett, Jr.

Jeff Vinik, owner of the Tampa Bay Lightning and the Tampa Bay Storm, was the keynote speaker at the Senior Counsel Luncheon on Tuesday, November 7, 2012, at the Chester H. Ferguson Law Center.

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Postcard courtesy of Raymond T. (Tom) Elligett, Jr.

Hold your next Meeting at the Chester H. Ferguson Law Center

The Chester H. Ferguson Law Center is an ideal location with a variety of rooms to meet your needs. Reserve for a day or for a few weeks.

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- Free, street-level parking

“Wonderful facility! Rave reviews when I survey my participants about the location. Plenty of free parking, beautiful spacious rooms with all amenities…”
— Janelle Walkley, The Settlement Center, CME/CLE Training Provider

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16th Annual
Bench Bar Conference, Membership Luncheon, and Judicial Reception

The 16th Annual Bench Bar Conference was a great success this year as hundreds of HCBA members and supporters came together at the Hyatt Regency for a day of education and networking. Embracing the Future of Our Evolving Profession was the theme of the day. Judge Emily Peacock and Judge Caroline Tesche, of the Thirteenth Judicial Circuit, served as the Bench Bar Conference co-chairs. The conference included 16 informative sessions on popular topics such as e-filing and social media, and provided an opportunity for lawyers and members of the judiciary to candidly discuss the challenges facing the legal community.

The morning sessions were followed by a Membership Luncheon. Florida Supreme Court Chief Justice Ricky Polston was the keynote speaker. Justice Polston emphasized the importance of ethics in the practice of law, and the obligation attorneys have to report others who are not behaving ethically. Also at the luncheon, Hillsborough County Bar Foundation President Stan Murphy presented checks to three local charities: Voices for Children, benefiting the Guardian Ad Litem Program; The Spring, an after-hours personal protection program; and the L. David Shear Children’s Law Center at Bay Area Legal Services.

The Judicial Reception followed an afternoon of well-attended Bench Bar sessions, including roundtable discussions highlighted by interaction between the lawyers and judges.

The HCBA thanks its many generous sponsors of this important event.

(See event photos on pages 34-38)
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Therefore, when financial distress occurs, shareholders and creditors may become anxious at the prospect of losing an investment in the corporation. The desire to recoup any financial loss may lead some shareholders to pursue personal liability against the directors, who made the decisions that led to the corporation’s devaluation. However, this is generally not an advantageous course of action, as a “director is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director.” See Florida Statute § 607.0831.

This statute essentially provides an immunity known as the “business judgment rule.” The exception to this rule is if a director breaches his fiduciary duties through a criminal act (unless the director believed that his conduct was lawful), receiving a direct or indirect “improper personal benefit,” conscious disregard of or willful misconduct toward the corporation, or reckless acts or omissions committed in bad faith or with a malicious purpose. Id.; see also Perlw v. Goldberg, 700 So. 2d 148 (Fla. 3d Dist. Ct. App. 1997) (holding that directors were not personally liable for their failure to successfully manage monetary assets because there was no pleading of an allegation of criminal or willful misconduct, fraud, or self-dealing).

Florida law requires that a director discharge his duties in “good faith” and with “the care an ordinarily prudent person in a like position would exercise under similar circumstances; and [i]n a manner he or she reasonably believes to be in the best interests of the corporation.” See Florida Statute § 607.0830. In a civil suit, a director must demonstrate that he relied upon “information, opinions, reports, or statements” prepared by reliable and competent employees, lawyers, accountants, or consultants. Id. Further, the director may have considered the “long-term prospects and interests of the corporation and its shareholders, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation.” Therefore, a director is given a great deal of discretionary latitude, even if his decision subsequently results in an unintentional injury to the corporation.

It is clear that directors exercise business expertise to manage a corporation and the courts will not pierce a director’s personal immunity for an ineffective or unprofitable business decision. See In re Bal Harbour Club, Inc. 316 E3d 1192 (11th Cir. 2003).

Author: Caroline Johnson Levine, Office of the Attorney General
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In the development approval process, governments commonly require a dedication of real property to mitigate adverse impacts. But what if the request is for cash or for services? What if the request is unreasonable, and the landowner cannot use the property?

Land use lawyers and urban planners wonder whether these questions will be answered now that the United States Supreme Court has granted review of Koontz v. St. Johns River Water Management District, No. 11-1447 (cert. granted Oct. 5, 2012). In what could be the most important land use decision in years, Koontz questions common bargaining practices that governments use when negotiating development permits.

An exaction is a government requirement to donate something in exchange for the right to develop property. Generally, the government cannot force landowners to give up the right to exclude others from property in return for the ability to develop it. It can, however, require mitigation of adverse development impacts.

If the mitigation involves access to real property, there must be an “essential nexus” and a “rough proportionality” between the exaction and the interest that the exaction is advancing. Dolan v. Tigard, 512 U.S. 374, 391 (2005); Nollan v. Cal. Coastal Com., 483 U.S. 825, 837 (1987). Otherwise, the government must pay just compensation because the landowner has lost the ability to exclude others from the property.

In Koontz, the government agreed to issue a permit if the landowner would work on government-owned culverts and canals seven miles away. The landowner refused, and the government denied the permit. When the landowner brought an inverse condemnation suit, the trial court and the Fifth DCA found the exaction illegal. The Florida

Continued on page 43
FLORIDA ONCE AGAIN ON THE FOREFRONT OF TAKINGS LAW

Continued from page 42

Supreme Court reversed, holding that the Nollan-Dolan test applied only to exactions of real property, where a permit was actually issued imposing the onerous exaction. *St. Johns River Water Management District v. Koontz*, 77 So. 3d 1220 (Fla. 2011).

Now, the landowner asks the United States Supreme Court if exactions law applies beyond real property. That is, can the government make unreasonable requests for money and for work, when it cannot for property? Second, the landowner asks whether a taking can occur when a permit is denied because an applicant rejects an illegal exaction. In other words, does the landowner have to accede to an unreasonable exaction in order to challenge it? This latter question is the more problematic for governments because it could increase their exposure to takings litigation and limit a lucrative funding source.

These days, Florida is a hotbed of property rights litigation. Three years ago, Florida was defending its beach renourishment program before the United States Supreme Court. *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 130 S. Ct. 2592 (2010). That case broke new ground when a plurality of justices acknowledged that a court can take property, just as the legislative and executive branches can. Will Florida again be on the forefront of takings law?

Author: Jacob T. Cremer, Bricklemyer Smolker & Bolves, P.A.

LEADERSHIP INSTITUTE

The 2012-2013 HCBA Leadership Institute kicked off the year with a boat tour of the Port of Tampa on October 10, 2012. The institute’s first module was led by Major Sherri Ohr, co-chair of the Leadership Institute. HCBA Board Liaison Carter Andersen and Jeff Armstrong of The Bank of Tampa, the institute sponsor, also participated.

PAST PRESIDENTS LUNCHEON

The HCBA held its annual luncheon for its past presidents on Tuesday, December 11, 2012, at the Chester H. Ferguson Law Center. Twenty-one past presidents and current HCBA President Bob Nader attended.
The filing of an I-601 waiver is often the only remedy available to a client who is in violation of Immigration and Nationality Act §212(a)(9)(B) for unlawful presence in the United States. Without lawful status in the United States, a foreign national may become unemployed as a result of an e-verify check or face jail time for a minor offense such as driving without a license. The foreign national may not be eligible to adjust status in the United States as a result of an entry without inspection or having overstayed a visa. As such, the only available relief is through consular processing. When the foreign national departs the United States, he or she becomes subject to a three- or 10-year ban. Until recently, families could expect to be separated for a year or more while waiting for a decision on a waiver for the unlawful presence. Fortunately, the process has changed.

Recent statistics show that 23,574 waiver applications were filed for the 2011 fiscal year and the Ciudad Juarez Field Office received approximately 75 percent of that case load.1 The Department of Homeland Security reported that the I-601 approval rates for the 2011 fiscal year were 54 percent in the Bangkok District, 50 percent in the Rome District, and 84 percent in the Mexico District.2 Thus, in each district the majority of waiver cases are approvable.

In order to qualify for a waiver of unlawful presence, the immigrant must demonstrate extreme hardship to a qualifying relative. Such a waiver is available only to foreign nationals with a United States citizen or lawful permanent resident spouse or parent. For this waiver, children are not a qualifying relative. Currently, such waivers cannot be filed with an application for adjustment of status in the United States or prior to an interview at a consular post abroad. Instead, the foreign national must return to his or her home country for consular processing. Based on the above factors, the practitioner must prepare a waiver demonstrating that the qualifying relative will suffer extreme hardship under two fact scenarios: hardship abroad if the qualifying relative joins the alien and hardship if the qualifying relative remains in the United States.

New Filing Procedures

Beginning June 4, 2012, foreign nationals abroad who have applied for certain visas and have been found ineligible by a United States consular officer, are able to mail requests to waive certain grounds of inadmissibility directly to the United States Citizenship and Immigration Services (“USCIS”) Lockbox facility in Phoenix, Arizona. Upon receipt, the Lockbox facility will send all Form I-601 applications submitted by international filers to the USCIS Nebraska Service Center for adjudication. This centralization will provide applicants with faster and more efficient application processing and consistent adjudication. In addition, foreign nationals will be able to track their applications with the Nebraska Service Center. The wait times for the adjudication of applications will become more uniform and in most circumstances take approximately four months.

There are a few exceptions to filing with the Lockbox Facility, so you must refer to the USCIS website for further information and updates.

2 Id.

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<table>
<thead>
<tr>
<th>Business Valuations</th>
<th>Family Law</th>
<th>Forensic Investigation</th>
<th>Litigation / Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Built-in Gains Tax</td>
<td>Alimony &amp; Child Support</td>
<td>Complex Fraud Schemes</td>
<td>Criminal/Civil Litigation Support</td>
</tr>
<tr>
<td>Divorce Litigation</td>
<td>Business Valuation</td>
<td>Embezzlement</td>
<td>Damage Claims</td>
</tr>
<tr>
<td>Estate &amp; gift taxes</td>
<td>Division of Marital Assets</td>
<td>Hidden Asset Tracing</td>
<td>Economic Loss Analysis</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>Financial Affidavit</td>
<td>Money Laundering</td>
<td>Insurance Claims</td>
</tr>
<tr>
<td>Goodwill Valuations</td>
<td>Lifestyle Analysis</td>
<td>Mortgage Fraud</td>
<td>Breach of Contract</td>
</tr>
<tr>
<td>Mergers &amp; acquisitions</td>
<td>Pension Valuation Allocation</td>
<td>Ponzi Schemes</td>
<td>Lost Profit Analysis</td>
</tr>
<tr>
<td>Minority Discounts</td>
<td>Settlement Planning</td>
<td>Securities Fraud</td>
<td>Patent, Trademark, Cyber Piracy</td>
</tr>
<tr>
<td>Patent, trademark</td>
<td>Tax Analysis</td>
<td>Shareholder/Partner Disputes</td>
<td>Personal Injury</td>
</tr>
<tr>
<td>Shareholder/Partner Disputes</td>
<td>Tracing Hidden Assets</td>
<td>Fraud Deterrence</td>
<td>Shareholder/Partner Disputes</td>
</tr>
</tbody>
</table>
Big changes are coming to the Internet, and brand owners and their counsel need to be prepared. The Internet Corporation for Assigned Names and Numbers (“ICANN”), a non-profit corporation created in 1998 to oversee the Internet’s domain name system, is greatly expanding the number of generic Top Level Domains (gTLDs) available for use on the Internet. Initially, the Internet featured only eight gTLDs including the standards .COM, .EDU, .GOV and .NET. In 2000 and 2004, ICANN approved thirteen additional gTLDs including .BIZ and .INFO. This year, however, a process is under way that will expand the number of available gTLDs into the hundreds, possibly the thousands. As a result, companies and organizations alike will need to be ever more vigilant in protecting their trademarks and brands. Though some companies have regularly purchased numerous Internet domains with various gTLDs to protect their brands proactively, doing so in the future may become prohibitively expensive.

Earlier this year, ICANN received more than 1,900 applications from entities interested in controlling myriad new gTLDs ranging from .AARP and .AMAZON to .VIDEO and .WEATHER. Bridgestone and Goodyear submitted competing applications to obtain .TIRES, and four entities plunked down the $185,000 application fee to obtain .INSURANCE. Under the current ICANN guidelines, the entity who gains control of the .INSURANCE gTLD, for example, will become the registry (or operator) for that gTLD and be able to exclude competitors and others from registering second-level domains under the gTLD such as STATEFARM.INSURANCE.

The initial list of applied-for new gTLDs can be found on the ICANN website at http://newgtlds.icann.org/en. A seven-month formal objection period for objecting to the issuance of these applied-for gTLDs began on June 13, 2012 and is set to expire in January 2013, although it could be extended. Four bases exist to object to applied-for new gTLDs that are likely to be confused with existing or other applied-for gTLDs and for proposed gTLDs that should rightfully belong to a community not represented by the applicant. Once an objection is raised, the objection will be administered by Independent Dispute Resolution Providers, a process that will likely take months.

The first new gTLDs are expected to go live sometime in 2013 with waves of new gTLDs following in subsequent years. Assuming this initial application process goes smoothly, additional application periods are likely to occur in the future. Savvy business owners should stay abreast of these developments and make sure that their interests are protected.

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Left to right: Bench Bar Committee Chairs Judge Emily Peacock and Judge Caroline Tesche.
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Although Rule 12.285 of the Florida Family Law Rules of Procedure requires certain automatic disclosure of documents and financial information, there are a few exceptions to “mandatory” disclosure in post-judgment actions.

One of the exceptions is that a paying party can be relieved from mandatory disclosure when he or she does not dispute his or her ability to pay any amount of support or attorney’s fee award the court may award. See Alterman v. Alterman, 361 So. 2d 773 (Fla. 3d Dist. Ct. App. 1978); See also, Bedell v. Bedell, 583 So. 2d 1005 (Fla. 1991) and Woodward v. Berkey, 714 So. 2d 1027 (Fla. 4th Dist. Ct. App. 1998). Singer Tom Jones successfully limited discovery in a post-judgment paternity action when his financial affidavit demonstrated an undeniable ability to pay any possible reasonable increase in child support, making further discovery of his finances irrelevant to the “contested issue”.

A second exception to mandatory disclosure is when a party moves to set aside a post-discovery settlement agreement based upon the other party’s non-disclosure of assets and income. In Carter v. Carter, 3 So. 3d 397 (Fla. 4th Dist. Ct. App. 2009), the wife moved to set aside a post-discovery marital settlement agreement based upon the husband’s alleged non-disclosure of assets and income. She sought discovery from him, claiming the discovery was necessary to prove his non-disclosure. The appellate court found that the wife would not be entitled to the husband’s financial information unless the parties’ marital settlement agreement is invalidated by the trial court.

A third exception is when a party moves for a modification of alimony based upon a substantial change in circumstances. There, the moving party must prove a prima facie basis for relief from prior to being entitled to mandatory discovery from the other party. In Carter v. Carter, 3 So. 3d 397 (Fla. 4th Dist. Ct. App. 2009), the court held that once the payor spouse has established a substantial change in circumstances, “the burden of proof of continued need should shift to the recipient spouse.”

Maas v. Maas, 438 So. 2d 1068, 1070 (Fla. 2d Dist. Ct. App. 1983). In Baumann v. Baumann, 22 So. 3d 719, 720 (Fla. 2d Dist. Ct. App. 2009), the court held that once the former husband provided sufficient evidence that the former wife was living in a supportive relationship, the issue of reducing or terminating the alimony obligation becomes one determined by the financial needs and abilities of the parties. “Since the Former Wife is the better source with regard to her financial needs, the burden is on her as the recipient to demonstrate that her financial need as originally established upon dissolution continues to exist despite the existence of the supportive relationship.” Bauman, 22 So. 3d at 720-721.

When faced with unwarranted discovery requests, an immediate motion for protective order should be filed citing the applicable cases. After the motion has been filed, it is recommended that the attorney send a courtesy letter to opposing counsel requesting forbearance of discovery requests and informing him or her that the attorney will seek attorney’s fees if required to go forward with the motion.

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I can recall countless conversations over early morning coffee that begin with one party or another saying to me, “We won’t be here long.” Not necessarily music to a dedicated mediator’s ears. I often accept this as a challenge, not to settle the case per se, but to get both parties to engage in the process meaningfully and achieve the benefits mediation has to offer.

Whether you are plaintiff or defendant, mediation has myriad benefits. It may be a chance to see what your opponent is arguing, to get some face time with your client, or to do the best for a client whose odds may be stacked against them at trial. It is also a great place for setting deadlines and determining your future course in cases that aren’t going to resolve until further down the road.

How can you get the most out of your mediation experience? The biggest key is preparation. “Mediation is a process of negotiation, not a process of evaluation,” meaning that it should not be the first time important information vital to resolving your case is being exchanged. The conference then becomes a discovery swap rather than a negotiation.

The most successful mediations are those in which the groundwork for settlement has been laid in advance of the mediation. One easy way to do this and stay organized is to create a mediation checklist. A checklist will ultimately lead you to be more successful in any type of mediation, but let us take a personal injury case as our example.

A plaintiff’s checklist might include providing an itemized list of medical bills and other expenses to the insurance carrier 60 days prior to mediation and then providing follow-up medical records, lien information or surgical recommendations, at least 30 days before the mediation conference. Getting updated, accurate information to defense counsel in a timely manner before mediation is essential to assuring that the insurance carrier’s pre-mediation evaluation will include everything relevant to your client’s case.

On the defendant’s side of a personal injury case, a defense checklist might make sure independent medical exams are scheduled, important depositions are taken, and expert reports are obtained prior to mediation. Preparation may also mean having persuasive materials available at the mediation conference such as surveillance videos, IME reports, offers of judgment to aide negotiations, as well as any dispositive motions to be filed.

Whether you are hopeful mediation is your last stop in a case or just the next step before trial, it can always be a useful tool. Just be prepared with the necessary discovery to make negotiations meaningful. Then the next time you see a mediation conference set on your calendar, I hope you do not think, “We won’t be here long.” Rather, you will take out your checklist and feel prepared to get the most out of your mediation experience.

Author: Rosemary Bardi, Whitney Bardi Mediation Group Inc.
Every attorney who is admitted to The Florida Bar must give an Oath of Admission and state “to opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications; ...[and] I will abstain from all offensive personality...” Unfortunately, incivility and unprofessionalism is a recurring problem that many attorneys would like to solve.

Importantly, the Supreme Court’s Commission on Professionalism and The Florida Bar’s Committee on Professionalism are working hard to extinguish unprofessional confrontations. In fact, the commission has been actively working to develop a method to enforce civility by addressing offensive behavior prior to the need for disciplinary sanctions.

The Florida Bar and Supreme Court have clearly demonstrated that unprofessionalism will be punished. In The Florida Bar v. Ratiner, 46 So. 3d 33 (Fla. 2010), an attorney was suspended for 60 days and found in violation of Rules 3-4.3, 4-3.5, 4-4.4(a), 4-8.4 (a and d) of the Rules Regulating The Florida Bar for losing his temper during a video deposition and engaging in tactics intended to intimidate the witness and opposing counsel. Ratiner’s behavior included a verbal tirade and physical aggression toward opposing counsel until his “own consultant had to attempt to calm the Respondent down and specifically told the Respondent to ‘take a Xanax.’”

Additionally, The Florida Bar v. Abramson, 3 So. 3d 964 (Fla. 2009) resulted in a 91 day suspension for an attorney who violated Rules 4-3.5(a), 4-3.5(c), 4-8.2(a), and 4-8.4(d) by engaging in obstreperous exchanges with the court and arguing to prospective jurors that “the judge was the one that was completely disrespectful, lacking in respect, lacking in professionalism, and it was not me ... he violated the procedures; he violated the rules; he was disrespectful and he was unprofessional, not me.”

In response to the issues of unprofessionalism highlighted by Abramson and Ratiner, the commission has created “Proposed Rules for Resolving Professionalism Complaints,” which offers the opportunity for minor grievances to be initially handled by a local professionalism panel or the Attorney Consumer Assistance Program (“ACAP”). The commission’s efforts are aimed at determining a method to enforce the Bar’s standards of professionalism without impeding the administration of justice. The goal is to provide attorneys with an avenue to resolve a complaint of unprofessionalism locally or through ACAP, without the need for disciplinary sanctions.

Importantly, advancing the message of the Bar’s requirement of professionalism and civility by placing offending attorneys on notice of unacceptable behaviors, could be an efficient remedy to this problem. In fact, the Report and Recommendations of The Florida Bar’s 2012 Hawkins Commission on Review of the Discipline System revealed that 90 percent of the attorneys who entered into diversionary “Practice and Professionalism Enhancement Programs,” such as ethics school, professionalism workshops, or anger management workshops, had no subsequent history of disciplinary problems.

Practicing with professionalism should be more than an aspirational goal, and we should all join The Florida Bar in ensuring that the practice of law is accomplished with decency and dignity.

Author: Caroline Johnson Levine, Office of the Attorney General
Can a person under a guardianship create or amend a trust? That is the question posed by two recent Florida cases, *Jervis v. Tucker* and *Jasser v. Saadeh*, 82 So. 3d 126 (Fla. 4th Dist. Ct. App. 2012) and Case No. 4D09-3974 (Fla. 4th Dist. Ct. App. July 18, 2012).

In *Jervis*, Bernice J. Meikle was under a plenary guardianship with her brother serving as her guardian. Prior to her guardianship, Meikle executed a revocable trust. After the imposition of the guardianship, Meikle signed an amendment to her trust that drastically changed the disposition of her estate. After she died, the beneficiaries under the original trust sued to have the amendment declared void, arguing that she was incapacitated at the time it was signed. The guardian, who stood to benefit from the amendment, argued that although she was under a guardianship at the time the amendment was signed, Meikle had the testamentary capacity necessary to execute the trust amendment.

Under the terms of the original trust, if there was a question of capacity, the trust could be amended if the trustee received opinions from two licensed physicians who have examined the grantor. Here, the trustee received opinions from Meikle’s treating physician and from a licensed nursing home health care administrator that Meikle had testamentary capacity when the amendment was signed. The court held that the second opinion from the nursing home health care administrator did not qualify as an opinion from a “licensed physician” and concluded that the trust amendment was invalid.

In the case of *Jasser v. Saadeh*, Karim Saadeh was a widower in his eighties who began dating a younger woman. Saadeh loaned money to his girlfriend, upsetting his children. The children brought a petition to determine him to be incapacitated, and the court appointed an emergency temporary guardian. In the weeks that followed, the parties reached an agreement whereby the guardianship petition would be dismissed if Saadeh created a trust with his children serving as co-trustees. Saadeh was convinced that this would be the best option for him, so he signed the trust.

Of note in this case is that two rounds of examining committees were ordered. Five out of the six examining committee members found that Saadeh did not need a guardianship and had full capacity. Thus, the guardianship proceedings were dismissed and Saadeh sought to have the trust declared void. In ruling on the issue of whether the trust was valid, the court determined that because Saadeh was under an emergency temporary guardianship and his right to contract had been removed, the trust was void.

The interesting contrast between these two cases is that in *Jervis*, the court was willing to entertain the argument that if testamentary capacity could be shown, then the trust amendment would be valid. In *Jasser*, the court concluded that the plain fact that a guardianship was in place meant that any trust signed by the ward was invalid even though five out of the six examining committee members concluded that Saadeh had full capacity when the trust was signed.

The *Jervis* court used testamentary capacity to determine the validity of the trust, and the *Jasser* court used contractual capacity to determine the validity of the trust. Why?

Author: Katie Everlove-Stone, Everlove Legal, PLLC
Normal or Abnormal?

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This article addresses how lawyers may represent multiple current clients with adverse interests. These engagements typically develop when several clients with common interests wish to consolidate their representation into a single engagement for the sake of efficiency. Frequent examples include married couples and business entities and their majority owners, but there are clients like this in every litigation and transactional practice area across the spectrum.

Rule 4-1.7 of the Rules of Professional Conduct controls the lawyer’s conduct under these circumstances. It says that a lawyer shall not represent clients who are directly adverse if there is a substantial risk that the representation of one of the clients will be materially limited by the lawyer’s existing responsibilities (e.g., to another client, former client, third person or the lawyer’s personal interest), except that a lawyer may represent clients who are adverse if: (i) the lawyer reasonably believes that she will be able to provide competent and diligent representation to each client; (ii) the representation is not prohibited by law; (iii) the representation does not involve asserting a position that is adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and (iv) each affected client gives informed consent, confirmed in writing or is clearly stated on the record at a hearing. Informed consent and confirmed in writing are both defined under the Rules.1

The rule requires the attorney to explain the implications of common representation and its advantages and risks when representing clients in a single engagement. For example, between commonly represented clients, the prevailing rule is that the attorney-client privilege does not attach to communication. Thus, if litigation ensues between the clients, the privilege will not protect any of their communication with the attorney. And if an impermissible conflict does arise, under Rule 4-1.9 (“Conflict of Interest; Former Client”) the attorney will likely be prohibited from continuing to represent either of them in the current matter. This may also be a good time to discuss practical matters, such as whether one person should be designated as the client representative, who will be responsible for all correspondence and billing.

Rule 4.1-7, its comments, and the related rules include further elements that should be considered before undertaking engagements in this context. But one caveat from the comment section; “Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client,” is a salient reference point to consider whenever evaluating any potential engagement involving multiple clients.

1 See Rules Regulating the Florida Bar, Chapter 4, Termination.

“Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

Author: James A. Schmidt, James A. Schmidt, P.A.
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In Notice 2012-8 and 2012-4 (the “Notice”), the IRS says that it will allow a taxpayer to apply for innocent spouse relief under IRC 6015(f) anytime within the 10-year period of collection – not the two-year limit that the IRS had previously been enforcing.

There have also been changes to the conditions for eligibility and factors used in determination of relief.1

Congress created Sec. 6015(f) to give the IRS the authority to relieve a tax liability if, “taking into account all the facts and circumstances,

Paul Simon once sang that there are 50 ways to leave your lover. His list seemed all-inclusive, but he did leave off one – leaving them with a mountain of tax debt. But, fortunately, this year the IRS expanded the means by which an innocent spouse can avoid that burden.

Continued on page 59

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it is inequitable to hold an individual liable for all or part of any unpaid tax or deficiency arising from a joint return.” 2 The Notice provides the conditions for eligibility and the factors that the IRS uses in evaluating each case.

Conditions for Eligibility
To be eligible for relief, the requesting spouse must meet all of the following conditions. He or she must have filed a joint return for the taxable year in which she seeks relief. Relief must not be available under section 6015(b) or (c). The request must be made in a timely manner. No assets can have been transferred between the spouses as a part of a fraudulent scheme by the spouses. The non-requesting spouse must not have transferred disqualified assets to the requesting spouse.3 If there was a transfer, relief can be granted only to the extent that the tax liability exceeds the value of the transfer. The requesting spouse must not have knowingly participated in the filing of a fraudulent return. The income tax liability from which the requesting spouse seeks relief must be attributable to an item of the non-requesting spouse. Relief can be granted only for the portion of the liability attributable to the non-requesting spouse. Tax attributable to the requesting spouse’s income cannot be relieved.

Factors for Determining Whether to Grant Relief
Once a requesting spouse is determined to be eligible, all of the facts and circumstances of each case are taken into account. The weight of each factor varies depending on the circumstances of the requesting spouse and the factual context surrounding the marriage. They include whether the requesting spouse and the non-requesting spouse are still married; and whether the spouse will suffer economic hardship if relief is not granted (hardship is measured relative to a percentage of federal poverty guidelines). They also include whether the requesting spouse knew or had reason to know of the item giving rise to the tax liability. This factor can be mitigated by evidence of abuse. Other factors include whether the requesting spouse had an obligation (e.g., pursuant to a decree or agreement) to pay the tax; whether the requesting spouse received a significant benefit, beyond normal support, from the non-requesting spouse; whether the requesting spouse has made a good-faith effort to comply with tax laws in years subsequent to the application; and whether the requesting spouse was in poor physical or mental health.

The eligibility conditions are subject to exceptions, and the factors contain definitions and standards I am not able to cover here. But the change in the IRS position opens the door for many who may have felt trapped before. So make yourself a new plan, Stan (or Pam), and set yourself free.

3 A “disqualified asset” is a transfer or payment that is made for the purpose of the avoidance of tax. See IRC Section 6015(c)(4)(B).

Author: James A. Schmidt, James A. Schmidt, P.A.
On June 29, 2012, the Florida Second District Court of Appeal issued its decision in Osmulski v. Oldsmar Fine Wine, Inc. The court held that a defendant’s duty to preserve video camera recordings relevant to a plaintiff’s claim arises only “if a written request to do so has been made by the injured party or their representative prior to the point at which the information is lost or destroyed in the normal course of the defendant’s video operations.”

In Osmulski, the plaintiff—customer brought suit against the defendant-storeowner for injuries sustained when Osmulski slipped and fell in the store. A “few months” after Osmulski was unable to settle her claims with the defendant’s insurance carrier, she requested the video surveillance recordings of the premises from the day of the incident. The defendant responded that the recordings are retained for only 60 days and, therefore, those recordings had been deleted.

The trial court denied Osmulski’s request for a jury instruction on spoliation of evidence and the Second District affirmed, reasoning that because of the “myriad of uncertainties” regarding the use of digital video technology “it would not be fair to businesses or homeowners to require them to preserve the video evidence in the absence of a written request to do so.”

The Osmulski decision adds to the obscurity surrounding a party’s duty to preserve evidence under Florida law. The decision could be viewed as limiting the duty to preserve and conflicting with the Fourth District’s opinions in Hagopian and Hettiger, which stated that a duty to preserve evidence might exist where the defendant could reasonably have foreseen the claim, even in the absence of a contractual, statutory, or administrative duty. On the other hand, Osmulski could be viewed as expanding the duty to preserve, by widening the Fourth District’s opinions in Royal and Gayer. There, the court seemingly contradicted its holdings in Hagopian and Hettiger and held that a duty to preserve evidence can arise only by contract, statute, or by a properly served discovery request after a lawsuit has been filed.

The Osmulski court asks the Florida Legislature to resolve the issue.

While noting that it did not need to reach the issue of which spoliation instruction the plaintiff would have been entitled to if the defendant had a duty to preserve the evidence, the Osmulski court discussed the issue at length in order to provide “clarification.” The court then distinguished the lesser “adverse inference” instruction — appropriate where no statutory duty to preserve the evidence exists — from the stronger “burden-shifting presumption” instruction, which is appropriate where a statutory duty does exist.

In the publication of The Florida Bar News, the Supreme Court Committee on Standard Jury Instructions in Civil Cases proposed new instruction “301.11 FAILURE TO MAINTAIN EVIDENCE OR KEEP A RECORD,” along with proposed instructions 401.4d(1) and (2), in order to reach consensus on the issue. The proposed revisions were open for comment from interested parties until November 15, 2012.

2 Id. at 7.
3 “In the context of a claim for spoliation of evidence other than medical records, we have held that a defendant could be charged with a duty to preserve evidence where it could reasonably have foreseen the claim.” American Hospitality Management Company of Minnesota v. Hettiger, 904 So. 2d 547, 549 (Fla. 4th Dist. Ct. App.)

Continued on page 61
Continued from page 60

2005); *Hagopian v. Publix Supermarkets, Inc.*, 788 So. 2d 1088, 1090 (Fla. 4th Dist. Ct. App. 2001), review denied, 817 So. 2d 849 (Fla. 2002) (recognizing retail establishment’s duty to preserve evidence even without a contractual, statutory or administrative duty).

4 *Royal & Sunalliance v. Lauderdale Marine Ctr.*, 877 So. 2d 843, 845 (Fla. 4th Dist. Ct. App. 2004) (holding that “we find Royal’s argument that there was a common law duty to preserve evidence in anticipation of litigation to be without merit.”); *Gayer v. Fine Line Const. & Electric Inc.*, 970 So. 2d 424, 426 (Fla. 4th Dist. Ct. App. 2007) (holding “[b]ecause a duty to preserve evidence does not exist at common law, the duty must originate either in a contract, a statute, or a discovery request.”).

5 Osmulski at 9.

Author:

Joshua R. Kersey, Law Offices of Cynthia N. Sass, P.A.

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**Preservation: What is Your Client’s Obligation?**

Trial & Litigation Section

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Allen, Dyer, Doppelt, Milbrath and Gilchrist, P.A., is pleased to announce that Matthew N. Horowitz, has joined their office in Miami. Horowitz is a registered patent attorney.

Burr & Forman LLP has combined with Tampa law firm Williams Schifino Mangione & Steady, P.A. The combination marks Burr & Forman’s entrance into the Tampa market, following the addition of a Fort Lauderdale office in April, and complements the firm’s growing presence in Orlando.

Carlton Fields is pleased to announce that Jennifer M. McPheeters has joined the firm as an associate in Tampa. She practices in the Appellate Practice and Trial Support Group.

Patrick M. Causey, an associate in the General Commercial Litigation Group at Hill Ward Henderson, has been named vice-liaison for the Trial Tactics Committee for Defense Research Institute.

John C. Connery, Jr., attorney at Tampa law firm Hill Ward Henderson, has been selected to serve as the 2014 Capital Connection Co-Chair for the Association for Corporate Growth (ACG) Florida. ACG Florida is a partnership among the four Florida chapters — North Florida, Orlando, South Florida and Tampa Bay.

C. Steven Yerrid, of The Yerrid Law Firm, was honored at a reception in Washington, D.C., for his contributions to the Saint George Children’s Hospital in Beirut, Lebanon.

Haley R. Maple, an attorney at the Tampa office of Marshall, Dennehey, Warner, Coleman & Goggin, was appointed to serve as co-chair of the Communications Committee in the ABA Section of Litigation leadership.

Michael L. Rhey has joined Hill Ward Henderson as an associate in the firm’s Real Estate Group. His focus is in commercial real estate development, institutional lending, purchase and sale transactions, and commercial leasing.

Ben Diamond, a member of Akerman Senterfitt’s Litigation Practice Group, served as moderator for The Florida Bar Review’s second installment of the Allen L. Poucher Legal Education Series featuring five former Florida governors who discussed critical public policy issues impacting the future of the state.

FordHarrison LLP, a national labor and employment law firm, is pleased to announce that Shane T. Muñoz, a partner in the firm’s Tampa office, has been inducted as a fellow of The College of Labor and Employment Lawyers.

Richard A. Harrison is pleased to announce the formation of Richard A. Harrison, P.A., with offices at 400 N. Ashley Drive, Suite 2600, Tampa FL 33602. Harrison is board certified by The Florida Bar in city, county, and local government law and will continue his practice in that area, with particular emphasis on Sunshine Law and public records law and governmental litigation. The firm is also pleased to announce the arrival of associate Elizabeth M. Galbavy and paralegal Lisa Ferrara.

Givens Law Group is pleased to announce the addition of Chris D. Codling and Kelly A. Tobaygo. Codling represents victims and policyholders in all areas of litigation including personal injury, wrongful death, insurance claims and disputes, nursing home abuse, and commercial litigation. Tobaygo practices in all areas of Family Law.

Richard A. Harrison, P.A., is pleased to announce that Richard A. Harrison has been elected to serve a second term as Chairman of the Hillsborough County Land Use Appeals Board. The Land Use Appeals Board hears variance and special use appeals from decisions of the county’s land use hearing officers.

Patrick J. McNamara, vice-managing shareholder of de la Parte & Gilbert, P.A., has joined the University of Tampa’s Board of Fellows, a group of distinguished men and women who are recognized as community and business leaders in the Tampa Bay area.

Thompson, Sizemore, Gonzalez & Hearing is pleased to announce the addition of three new associates: Elizabeth A. Stringer, a graduate of Stetson University College of Law, where she received the John B. Stetson Merit Scholarship; Amy E. Smith, a graduate of The University of Georgia School of Law, where she received the ABA-BNA Award for Excellence in Labor Law; and Benjamin W. Bard, who received his J.D. degree, magna cum laude, from Tulane University Law School.

Continued on page 63
Thompson, Sizemore, Gonzalez & Hearing is pleased to announce that Sacha Dyson has been made a partner in the firm. Dyson has been with the firm since 2005 and will continue to practice in employment relations advice and litigation.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that Duane A. Daiker received an award for his contributions to the Appellate Practice Section’s Continuing Legal Education programs.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that Mary Li Creasy, partner and co-chair of the Employment and Labor Law practice group, has been admitted to the National Academy of Distinguished Neutrals.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that Willard A. Blair, associate in the Tampa Office, has been elected to the Board of Directors of MacDonald Training Center Properties, Inc. The mission of MacDonald Training Center is to empower people with disabilities to lead the lives they choose.

Jury Trial Information

For the month of: October 2012.
Judge: Honorable Bruce Boyer.
Parties: Harry Schlenther, P.R. for the Estate of Beverly Schlenther, vs. R.J. Reynolds Tobacco Company.
Nature of Case: Wrongful death, conspiracy, and negligence against defendant for death of his wife.

Verdict: $5 million compensatory damages; $2.5 million punitive damages.

For the month of: October 2012.
Judge: Stanley R. Mills.
Parties: Alfred Pennacchia vs. Ellis & Co. LLP & Zephyr Stripe N’Seal, Inc.
Attorneys: Attorneys for Plaintiff: Robert Shuttera; Attorneys for Defendant: Mark H. Garrison.
Nature of Case: Slip and fall in parking lot.
Verdict: Defense verdict.
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The statewide Florida law firm of Fowler White Boggs (Fowler) and the Ft. Lauderdale based firm of Atkinson, Dine, Stone, Mandula, & Ploucha, PA (Atkinson) merged May 1, 2012. This merger is a continuation of the dynamic expansion of the Ft. Lauderdale office of Fowler which has grown to nearly 30 attorneys in less than two years. The firm is meeting its goal of attracting quality lawyers through the addition of the highly regarded and successful Atkinson attorneys.

The Atkinson attorneys have a long standing history of excellence, community accomplishment, leadership in the legal profession, and a distinguished law practice for more than 40 years. Fowler, established in 1943, has grown from its original roots on the west coast of Florida into a strong state wide presence.

The combined firm will continue the tradition of outstanding representation for clients that comprise the economic engine of Florida. Business and Construction Litigation, Land Use, Real Estate, Corporate, Immigration, Tax, Intellectual Property, Health Care and Wealth Management are some of the areas of practice that the Ft. Lauderdale office of the combined full service firm will offer.

Fowler White Boggs is internationally connected with a Florida focus with 140 attorneys in five offices located in Tampa, Fort Myers, Tallahassee, Jacksonvillle and Ft. Lauderdale.

Terrence Russell - Office Managing Shareholder
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The BP spill was a disaster, not only for Florida’s environment, but also its economy. Now, after 2 years of litigation, the broad indirect economic impacts of this disaster on all types of businesses and consumers have finally been acknowledged.

Beginning June 4, 2012, under a new class action settlement, most businesses who suffered financial losses in 2010 are now eligible to make claims. The Settlement Program is broad in scope, and all west coast businesses and professionals should be evaluated. ERG is dedicated to helping clients who wish to be evaluated. We are working in referral relationships with business, commercial litigation, and consumer law firms across the State of Florida that have clients located along Florida’s Gulf Coast. We look forward to helping you.
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