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This issue's cover postcard features Tampa's Gasparilla Parade, first held in May 1904. The parade was the result of a desire to revamp the city's annual May Day celebration. The new festivities combined the mythical legend of José Gaspar with elements of Mardi Gras.


Cover postcard courtesy of Raymond T. (Tom) Elligett, Jr.
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Getting Involved with the HCBA

I always come away from HCBA events feeling as though I learned something, made a new connection, and caught up with a few friends.

My involvement with the HCBA began, in large part, out of fear.

In April, 2008, I started my first job out of law school — as an associate at Shumaker, Loop & Kendrick LLP. I remember being absolutely petrified of my new position, wondering not only whether I would meet the substantive work expectations placed on me, but also whether the other attorneys in the firm’s health care team would want to work with me. In my first week on the job, I received an email from (current YLD Board member, and then-associate on Shumaker’s health care team) Kelly Zarzycki. Kelly had been heavily involved for years in HCBA Law Week, and in her email asked me to volunteer for Law Week by speaking in a local middle school classroom. I agreed without hesitation, in part because I was new to the area and wanted to explore various volunteer opportunities, but also because I was frightened of telling any attorney on my team “no” so soon after my arrival.

My fears compounded almost immediately as I realized I was actually going to have to come up with something interesting, relevant, and law-centered to talk about with 12-year-olds for an hour. At that point, my legal career spanned a whopping three days (much of which had been spent trying to figure out the firm’s document management system and tracking down a decent-looking copy of my social security card for the human resources department). I figured that the best legal experience I could rely on was three years of law school, and put together a “jurisprudence-light” talk on the importance of clear and well-enforced rules. In what, looking back, was an entirely foreseeable unfolding of events, the subject went over like a lead balloon. It was positively nap-inducing to the preteens I spoke to. But after the talk evolved into a class discussion, with plenty of student participation on what makes “unfair rules” unfair (or not), I realized that both seasoned and new attorneys can help make aspects of the law relevant to kids.

That Law Week experience turned out to be a great introduction, for me, to HCBA involvement. Through our organization, I have learned that attorneys can find plenty of common ground between their respective practices, even if the attorneys do not practice the same type of law. Our members have their hands in various charitable endeavors throughout the year, so volunteer opportunities abound. And while it can sometimes be difficult to find time to attend weekday HCBA luncheons or evening events, I always come away from them feeling as though I learned something, made a new connection, and caught up with a few friends.

I encourage you all to be as active as you can in our organization. Attend a membership luncheon or a meeting of the section that covers your practice area (or even one that covers another area!). Volunteer through any HCBA community event. Submit an article for publication in the Lawyer magazine. There are plenty of opportunities to get involved!

Have a wonderful February!
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From the Journalists of The HCBA

Over the lawyer-gourmand’s business luncheon repast of Carrot Ginger Soup, Crab Meat Croquettes, Paula’s Tailhook Salad, a steaming bowl of Arancini Di Riso, with a half slab of Jane’s BBQ Ribs with Spicy Brown Sauce, a combination side plate of Green Beans with Roquefort Cheese and Walnuts, Dottie Banker’s Sweet and Sour Beans, Crustless Zucchini Pie, and Boiled Onions dipped up with a slice of Skillet Corn Bread, all washed down with a sparkling glass of Mango Coolata, followed by a sugary treat of Damascus Cake, Meyer Lemon Tart or two Praline Cookies, and then a walk-away, mouth-cleansing bite or two of chilled Wimauma cantaloupe, all for your gastronomical pleasure, these mid-winter additives.¹

I was advised, nay warned, by my predecessor that the hardest part of this job was putting together these articles, much less getting them out by the editorial deadline. Pedro, you were right!

And to think by the end of graduate school, as a hirsute, bespectacled young man who had just met the esteemed investigative reporter Mike Wallace, a career in journalism held a strong future sway. After all, with a Federal Communications Commission broadcast license in my hip pocket and experience as a jazz disc jockey at WUSF-FM during the heyday of the Underground Railroad, as a staff member and on-the-air personality at WFSU-FM, and a part-time newspaper reviewer of theatre, concerts and other musical events, my ticket was being written.

There was one main problem, however... writer’s block. For the life of me, I do not know how Tom McEwen, the long-time sports editor of The Tampa Tribune (for whom my brother George worked as an assistant sports writer for several years prior to attending law school) could manage to compose seven to eight articles per week, or more, throughout an entire year for decades. Some people have that knack, but unfortunately, I never did. It is one thing to craft acceptable and readable court pleadings, briefs and research memoranda, the skills for which one can hone after several years of practice. It is another thing to report a news story the same day it happens or creatively critique an arty event or other cultural happening with a unique style.

Once the realization hit me that I could not author an article once a month, much less three to four times a week, or provide radio commentary on a regular basis, it was off to law school. I also figured out quickly that with respect to media-related public expression, whether via print or broadcast, one may be appreciated by a few of the people some of the time, by others most of the time, and by all others none of the time, to paraphrase President Abraham Lincoln. Because no epiphany struck me as to what to write about for this issue, I submit these random musings, some of which may give rise to one of these Lincolnesque reactions.

For those who loved jazz legend and pianist Dave Brubeck, as I have for years, his recent passing reminded

Continued on page 6
Continued from page 5

me of the time I saw his famed quartet at the downtown Tampa Theatre and prompted me to play my Brubeck records (yes, I still have a turntable) and CDs countless times during the holidays. Can you beat *Take Five*, *Blue Rondo A La Turk*, *I'm In A Dancing Mood* or *Trolley Song*, perfectly arranged along with his bassist Gene Wright, drummer Joe Morello and the sublime alto saxophonist Paul Desmond. I sometimes get goose bumps from the joy of their jazz sounds. *Requiescat In Pace.*

Not to entirely challenge this past autumn’s sacred cow, but was the recent statewide “Vote’s In Your Court” campaign concerning the retention of the three Florida Supreme Court Justices a wee bit over-the-top reactive? Since the merit retention program went into effect in the mid-1970s, never before had a justice been voted off the bench by the citizenry. While I received many appeals to contribute $250 and up to the immense effort to retain Justices Fred Lewis, Peggy Quince and Barbara Pariente, I concluded, based on the historical record, to keep my money. Although I voted to retain all of the appellate judges on my ballot, I learned that subsequent to the election, the Florida Supreme Court ruled in favor of a petitioner who argued that his first amendment rights were violated when his thunderous automobile sound system was under legal scrutiny, notwithstanding the decibel damage being done to his fellow drivers. How about that first amendment? It is hard to imagine that one’s peace and tranquility can be so easily violated and disturbed under the rubric of “free speech.” So much for civility. Can I get a do-over on my retention vote? 😊

From a long-term Republican to a short-term independent, was anyone remotely surprised that Charlie Crist recently found in his heart that he was really and truly a “Democrat” and thus, pledged his loyal allegiance forever to the Party? Is this gentleman one of the greatest, self-serving promoters ever in the history of Florida politics? I cannot think of anyone or anything that self-aggrandizes in the same way other than the local cable news channel outlet, Bay News 9. And to think Mr. Crist could have been the governor for a second term in one of the largest states in the union. Instead, he aspired to be one of 100 senators, without success. To all pols everywhere, it is actually alright to step out of the spotlight after having been center stage for years.

Speaking of politics, do you know the definition of a “sore winner”? It is someone whose candidate recently won the heated United States presidential election but nonetheless complains about the non-alphabetical sequence in which the two main candidates were listed on the ballot. As said, you can only please some of the people some of the time.

With the Internet and all of the smart phone and tablet technology out there, I was saddened to discover that after 244 years, the Encyclopedia Britannica will no longer be printed. My family had the less expensive encyclopedic publication, Funk and Wagnalls, which I used to thumb through until every page was dog-eared. *Requiescat In Pace.*

A few days before New Year’s, I went to a festive party hosted by our former president Amy Farrior and her fine husband, Ed. If you have never had the opportunity to see Amy continuously “cut a rug” for over two straight hours, you don’t know what you are missing. It was akin to watching a perfectly choreographed whirling dervish infused with Mexican jumping beans. Thanks for the memories.

Will the audibly strident Bucs and Seminoles football announcer and renowned homer Gene Deckerhoff ever step down from the broadcast booth?

*Here Ye, Here Ye! The Law Follies is coming!* Curtain is on Thursday, February 28, 2013, at the Bar building. The title of the 23rd edition of the show is: *Follies Gone Vegas.* Make your plans soon.

Finally, kudos to all of the HCBA staff members and volunteer lawyers and judges who have made this Bar year so successful to date, from the three general membership luncheons, to the Bench Bar Conference, to the YLD’s History of Diversity Summit and Documentary Project, to the festive Holiday Party. Let us also extend exceptional recognition to all of the “Journalists of the HCBA” who submit articles for this superlative periodical, and especially to those good authors who are mandated to write a column for all seven editions, including Amy Nath, John Kynes and Rachael Greenstein. Thank you.

1 See *The Advocate’s Kitchen, Cooking For A Cause*, from members and friends of the HCBA © 2012, with recipes in order of consumption provided by Velna Christopher - pg. 33, Chief Judge Manuel Menendez, Jr. - pg. 3, Rosemary E. Perfit - pg. 29, John Vento - pg. 44, Jane M. Kelly - pg. 74, Richard Martin - pg. 107, Elizabeth Hapner - pg. 106, Susan Miles Whitaker - pg. 105, Bernie Barton - pg. 103, Dallas Albritton - pg. 117, Sheree Fish - pg. 19, Abraham Shafiek - pg. 132, Trudy Barkin - pg. 146, and Linda Streeter Mann - pg. 132. See also, *Press Pass* © 2004, by Tom McEwen, the late great sports editor of The Tampa Tribune, pages 153-156, to whom I am indebted for the opening of this article.
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Achieving a Work-Life Balance – Is It Possible?

While many of us strive to be superheroes and want to do it all, in reality we are only human.

Balancing work and a personal life is always a struggle for professionals, including lawyers. Too often we go about our daily routines without considering alternative ways to alleviate our stress so we can focus our energy on the things that matter most. In recognition of the challenges we all face in achieving this balance, the Young Lawyers Division (“YLD”) solicited the help of expert Lori Taplow, an executive coach experienced in assisting top-level professionals in Fortune 500 companies and premier law firms with career transitions. The YLD invited Taplow to speak at its quarterly luncheon on December 6, 2012, to discuss the tips and tricks of those who seem to have it all. Taplow offered our members advice on how to excel in a career and maintain personal time.

One of the key tips was to understand and identify priorities and goals and to learn to set boundaries for your time by saying “no.” We all get asked to participate in outside organizations, attend events, and assist family and friends. While many of us strive to be superheroes and want to do it all, we are only human and must accept that we cannot be everything for everyone. Identifying your priorities and taking control of your time will help you focus your energy on the tasks that are important to you and will ultimately help you achieve your goals.

Another useful tip Taplow imparted to our members was to improve resourcefulness. If you can set up a flexible schedule or work from home, this may provide you with additional time to do other things. Additionally, outsourcing various household chores and errands to certain companies can simplify your life. Some people also trade services with their family and friends such as babysitting each other’s children, taking turns preparing meals, or doing yard work for one another.

Of course, taking care of yourself and reducing your stress immediately can help achieve a better work-life balance. It is sometimes easy for us to get so wrapped up in our work or family that we forget to take care of ourselves. But we must take care of our bodies. Getting enough sleep and exercise and eating healthy food immediately relieves stress and provides energy to help accomplish everything else during the day.

Lastly, Taplow recommended seeking out a mentor or sponsor to bounce ideas off of and from whom to seek guidance. A mentor will give you advice regarding your career plans and goals while a sponsor will be in a position to assist in helping you advance in the profession. Having a mentor to talk to may give you some perspective on your career path and your priorities. This person does not have to work with you, but it is good to choose someone who knows you and your skills and can relate to the situations you are encountering. If you want to find a sponsor, you should look for someone in your firm or in another organization who can advocate for you for a promotion or can connect you to key contacts in your firm or other opportunities in the community.

While balancing work and our personal lives is by no means an easy task, it can be achieved if you take some time to prioritize your goals and establish a good support network of family, friends, and mentors.
YLD Holiday Happy Hour

The YLD celebrated the holidays with a happy hour on December 14, 2012, at Malio’s. YLD members donated toys to Metropolitan Ministries.

Thank you to The Bank of Tampa and PDK Investigations for their sponsorships.

UPCOMING CLES FOR FEBRUARY

- February 12, noon - 1:30 p.m. Judicial CLE Luncheon
- February 12, noon – 1 p.m. Tax Law CLE Luncheon
- February 13, noon – 1 p.m. Immigration & Nationality CLE Luncheon
- February 14, noon – 1 p.m. RPPTL CLE Luncheon
- February 19, 1 p.m. – 3 p.m. Mediation & Arbitration CLE
- February 20, noon – 2:30 p.m. Labor & Employment CLE & Luncheon
- February 21, noon – 1 p.m. ELUS CLE Luncheon
- February 21, 1 p.m. – 5 p.m. Construction Law CLE

ALL EVENTS WILL BE HELD AT THE CHESTER H. FERGUSON LAW CENTER.
Florida Supreme Court Chief Justice Ricky Polston’s keynote address to HCBA members was one of the highlights of the HCBA’s 16th Annual Bench Bar Conference and Judicial Reception held on October 30, 2012, at the downtown Hyatt Regency.

Polston, in his remarks, talked about the ongoing challenges facing Florida’s court system and the importance of legal ethics and professionalism to help maintain the integrity of the legal profession.

Polston noted Florida now has 94,000 lawyers, and he exhorted members of the Bar to fulfill their professional obligation under Florida Bar Rule 4-8.3(a) to report the misconduct of other lawyers.

In this post-9/11 era, he said, citizens are more willing to step forward and take action when they see wrongdoing, referencing the courageous actions of the airline passengers on Flight 93 that crashed in a field near Shanksville, Penn.

“We cannot be bystanders and allow the profession to get highjacked,” Polston said.

Commenting on the “bystander effect,” he reminded those attending the luncheon about the well-known New York murder case involving Catherine “Kitty” Genovese.

Genovese was a 28-year-old bar manager who, in 1964, was on her way home from work when she was stalked and stabbed late one night in her Queens neighborhood.

Two weeks after Genovese’s death, The New York Times reported that for more than half an hour “38 respectable, law-abiding citizens” watched her being attacked, but tragically did not call the police or offer assistance.

“The norm needs to be that we all do something,” Polston said.

Concluding his remarks, Polston expressed optimism about the Bench and Bar being able to build greater public trust and confidence in Florida’s courts and legal system with proper self-regulation.

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“Together, we can make a difference,” he said.

This year’s Bench Bar Conference theme was “Embracing the Future of Our Evolving Profession.” Thirteenth Judicial Circuit Judges Emily A. Peacock and Caroline J. Tesche were the conference co-chairs.

Both judges worked for months with other dedicated Bench Bar committee members, the HCBA’s CLE Director Amanda Uliano, and other HCBA staff members planning the conference.

“This year’s conference was a great success; we were so pleased with the collaboration between the Bench and Bar,” Tesche said.

There were six CLE breakout sessions in the morning, which targeted young lawyers, paralegals and legal support staff.

The morning plenary session focusing on social media and law proved to be very popular.

“This year’s theme was particularly strong and relevant, and the content of the sessions dovetailed the overall theme nicely,” Tesche said.

In the afternoon, there were eight CLE breakout sessions, which were geared toward attorneys and judges.

The plenary session in the afternoon included a lively roundtable discussion with the judiciary covering a range of issues related to legal ethics and professionalism.

More than 150 people participated in the roundtable discussion, which was ably moderated by former HCBA President Ken Turkel of the firm Bajo | Cuva | Cohen | Turkel.

Later in the day, more than 400 HCBA members enjoyed the camaraderie provided at the annual judicial reception, which Chief Justice Polston also attended.

Special thanks and gratitude go to the many generous sponsors that helped make this year’s Bench Bar Conference possible, and especially the Diamond Sponsor, Steve Yerrid and The Yerrid Law Firm.

Though this year’s event will be difficult to top, planning is already under way for the 17th annual Bench Bar Conference next fall.

See you around the Chet.

Florida Supreme Court Chief Justice Ricky Polston

Continued from page 10

EXECUTIVE DIRECTOR’S MESSAGE
John F. Kynes, Hillsborough County Bar Association

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The staff and volunteers of FLA know the problems faced by impaired attorneys and how to help overcome these problems because they have been there.

These pressures can take a toll on a person, both mentally and physically. Statistics show that 15 percent to 18 percent of lawyers will suffer from substance abuse at some point in their careers, compared with 10 percent of the general population. Even more

Continued on page 15
startling, up to 33 percent of attorneys suffer from depression during their careers.¹ In 1986, the Florida Supreme Court mandated that a program be created to offer assistance to Bar members struggling with these issues. Florida Lawyers Assistance (“FLA”) is a non-profit corporation that was formed in response to this mandate.

FLA is a lawyers-helping-lawyers program that offers confidential help to judges, attorneys, and law students battling alcohol and drug abuse problems, compulsive gambling, stress, depression, other types of compulsive disorders, and similar conditions that may impair these individuals’ quality of life and ability to practice in a competent, ethical, and professional manner. FLA was created in 1986 by recovering attorneys and addiction professionals. The backbone of FLA is a network of more than 200 attorneys throughout Florida who are recovering from substance abuse, psychological problems, and impairment. These volunteer attorneys stand ready to assist their peers in all areas of recovery. The staff and volunteers of FLA know the problems faced by impaired attorneys and how to help overcome these problems because they have been there.

Because of the sensitive nature of addiction and psychological stress, attorneys who may be in need of help are sometimes reluctant to seek that assistance. Recognizing this concern and in order to foster early and confidential contact with FLA, the Supreme Court of Florida approved Rule 3-7.1(j), which states that any treatment provided to an impaired attorney shall be deemed confidential and may not be admitted as evidence in any disciplinary proceeding. In 1998, the Florida Legislature adopted Florida Statutes § 397.482-486, which protect confidentiality of any voluntary communications made to FLA.

FLA is available, if not for you, maybe for a friend or a colleague. We work in this profession together, and together we should strive to assist our colleagues who have fallen on difficult times. FLA can confidentially provide such help.

For additional information, call the FLA Hotline at (800) 282-8981 or visit the FLA web site: www.flalap.org.

¹ Statistics provided by Florida Lawyers Assistance.
A Familiar Refrain

The manner in which our Clerk’s Office funding is determined subjects us to an instability that, frankly, frightens me.

As we approach the upcoming session of the Florida Legislature, I find myself once again asking for sufficient funds to run the Clerk’s Office.

What this office needs most is stability, particularly in the funding arena. Ever since Revision 7 to Article V was enacted, prior to my administration, our funding has become a recurring issue. The Legislature has changed our methods of funding every year except one since I became clerk in 2005.

Last year, the clerks in Florida found out too late — right before the conclusion of the session — that we would face a 7 percent funding cut. This amounted to $29.5 million statewide — and $2 million for this office alone. Fortunately for us, the Legislative Budget Commission restored our funds, but that is dependent upon sufficient court-related revenue being raised.

I know full well that there would not have been a reversal without the strong support of our allies, especially the Florida Bar. I am very grateful for this support. However, the manner in which our funding is determined subjects us to an instability that, frankly, frightens me as we implement complicated and costly new technology to better serve the public and the judiciary.

The problem for us is that it is a stop-gap fix; it is not really a solution. This puts us in a precarious position now more than ever as we are in the process of changing the way we do business — with our courts areas transitioning and transforming into a complex case-maintenance system. We are making this transition after absorbing repeated funding cuts, working with almost 20 percent fewer people in courts, employees...
who have not received raises for more than four years. It is becoming increasingly difficult for our organization to retain staff long term, as many are seeking higher paying positions not only in the private sector, but with other government agencies that pay higher salaries for comparable positions.

This smaller work force now finds itself doing two jobs — working within our present case-maintenance system and meeting day-to-day operational commitments, inputting information electronically while still processing paper. Simultaneously, they are learning the new Tyler Odyssey system. Sometimes I do feel that we will burst!

I have asked the Florida Legislature to permit the Clerk’s Office first priority in the collection of all court fees. This will enable us to do what we are struggling with now — fulfilling the requirements of our office as defined by the Constitution. This has been the repeated recommendation from the Joint Court/Clerk Revenue Stabilization Committee.

The Clerk’s Office has been mandated by both the Florida Supreme Court and the Florida Legislature to implement mandatory e-filing during the coming year. However, we must first complete the implementation of our Odyssey case-maintenance system. We still have redaction and enterprise content management — which we will have to do in close partnership with the courts. Without an integrated paperless court system, we will NEVER achieve my goal — to become a paperless operation.

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**Remembering William Reece Smith, Jr.**

William Reece Smith, Jr.
1925 - 2013

All of us at Carlton Fields mourn the loss of William Reece Smith, Jr., Carlton Fields’ Chair Emeritus and shareholder.

Mr. Smith served the legal community at all levels, and is the only American lawyer to have been president of a local bar, a state bar, the American Bar Association, and the International Bar Association. He was an extraordinary trial lawyer, role model, and mentor to many. Throughout his distinguished career, he set the gold standard for professionalism and commitment to pro bono service. His presence in our lives will be truly missed, but his spirit and legacy will not soon be forgotten.

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Scan this QR code to read about his life and legacy.
Save the Date

5K PRO BONO RIVER RUN

5:30 P.M., MARCH 23, 2013
RACE DAY!!!

You Can Walk, You Can Run, But
Please Don’t Skip the 2013 River Run!

SPONSORSHIPS AVAILABLE
Contact Wendy Whitt
(813) 221-7779

HILLSBOROUGH COUNTY BAR ASSOCIATION
5K PRO BONO RIVER RUN
Saturday, March 23, 2013, 5:30 p.m.

5K RACE FINANCIAL OR IN-KIND SPONSOR

☐ 5K Spirit Towel $400
☐ 5K Stadium Cup $250
☐ 5K Goody Bag Sponsor (In-kind “goody” donations)

SPONSOR’S ORGANIZATION, FIRM OR OTHER NAME:

____________________________________________________________________________________
(Please provide name exactly as it is to appear on promotional materials)

CONTACT NAME: ________________________________________________________________

ADDRESS: __________________________________________________________________________

CITY: __________________________ STATE: ________ ZIP CODE: _________________

CONTACT PHONE NUMBER: __________________________ FAX: ____________________________

EMAIL ADDRESS: ________________________________________________________________

Note to In-Kind Sponsors: The 2013 5K Pro Bono River Run is a family-friendly event. Donated items should be rated “G” or “PG” to avoid problems. Thank you!

Payment should be payable to HCBA, and mailed to 1610 N. Tampa Street, Tampa, FL 33602.

Please return form to wendy@hillsbar.com. For sponsor questions, call Wendy Whitt at (813) 221-7779. Spirit towel and stadium cup sponsorship money must be received no later than March 2, so items can be ordered. Goody bag items should be received at the HCBA no later than March 16.
5K Pro Bono River Run Registration Form
March 23, 2013

Check-in: 4:00 p.m. • Race Start: 5:30 p.m. • Awards: 7:30 p.m.
On the Grounds of Stetson University’s Tampa Law Center
(Note: The race includes paved roads and some uneven terrain.)

First Name: ___________________________ Last Name: ___________________________
Age as of 3/23/13 ________________

Check one in each area: (Member of HCBA: __ Yes __ No) (Law Student: __ Yes __ No) (Member of Judiciary: __ Yes __ No) (Gender: __ Female __ Male)

Address: __________________________________ ___________________________________ City: __________________ State: __ ZIP: ______________

Email: ______________________________________ Home Phone: __________________ Work Phone: __________________

Print Name on Card: ______________________________ Signature: ______________________________

I am at least 18 years old, understand that HCBA may not provide refunds, and authorize the credit card charge above.

Name of Participant: (printed) ______________________________________________________________________________________________________________

I have read and understand the foregoing, and attest that I am an adult or am the legal parent or guardian of a youth race participant:

the HCBA harmless from all losses, liabilities, damages, costs or expenses incurred by the HCBA as a result of any claims or suits that I or anyone claiming by, under or through me may

the 2013 HCBA Pro Bono River Run and in any other activities connected with this event in which I or my minor child may voluntarily participate and agree to indemnify and/or hold

or not caused in whole or in part by the negligence or other fault of the HCBA. I hereby waive any claim I may have hereafter as a result of my own or my minor child’s participation in

event, and release from liability the Hillsborough County Bar Association (“HCBA”) and their officers, directors and agents, representatives, employees and members, regardless of whether

I expressly assume the risk and accept full responsibility for any and all injuries, including death and accidents which may occur as a result of my own or my minor child’s participation in this event, and release from liability the Hillsborough County Bar Association (“HCBA”) and their officers, directors and agents, representatives, employees and members, regardless of whether

or not caused in whole or in part by the negligence or other fault of the HCBA. I hereby waive any claim I may have hereafter as a result of my own or my minor child’s participation in

the 2013 HCBA Pro Bono River Run and in any other activities connected with this event in which I or my minor child may voluntarily participate and agree to indemnify and/or hold

the HCBA harmless from all losses, liabilities, damages, costs or expenses incurred by the HCBA as a result of any claims or suits that I or anyone claiming by, under or through me may bring against the HCBA to recover any losses, liabilities, costs, damages, or expenses which arise during or resulting from my participation in the 2013 HCBA Pro Bono River Run.

I have read and understand the foregoing, and attest that I am an adult or am the legal parent or guardian of a youth race participant:

ASSUMPTION OF RISK AND WAIVER STATEMENT: In consideration for the acceptance of my own or my minor child's registration as a participant in the above described event, and

with the understanding that participation in this event is only on condition that I enter into this agreement, for myself, my heirs and assigns, I hereby assume the inherent and extraordinary

risks involved in the 2013 HCBA Pro Bono River Run and any risks inherent in any other activities connected with this event in which I or my minor child may voluntarily participate.

REGISTRATION FEE

q Adult Male $35  q Adult Female $35  q Youth (age 19 or younger) $15

q Team Member* Name of Team: ______________________________________________________________________________________________

*(TEAMS MUST HAVE 3 OR MORE RUNNERS AND EACH RUNNER MUST REGISTER SEPARATELY)

PAYMENT INFORMATION:

Check/Credit Card Charge $_________ (Card Type: __ Mastercard __ VISA) ____________ Exp. Date: __________ Security Code: __________

I am at least 18 years old, understand that HCBA may not provide refunds, and authorize the credit card charge above.

Print Name on Card: ___________________________________________________ Signature: ______________________________

PRE-REGISTRATION ENDS FRIDAY, MARCH 15, 2013 • SAME DAY REGISTRATION MARCH 23, 2013, 3:30 PM - 4:30 PM
REGISTRATION PACKETS WILL BE AVAILABLE FOR PICK UP THE DAY OF THE EVENT

PRO BONO HOURS PLEDGE (Please complete area below)

2013 PRO BONO PLEDGE

Name of Person Performing Hours ________________________________________________
Telephone ________________________________________________ Email ___________________________
Number of Hours Pledged ____________________________________________________________
Area of Practice ________________________________________________________________

2012 PRO BONO PLEDGE REPORT

Name of Person Performing Hours ________________________________________________
Telephone ________________________________________________ Email ___________________________
Number of Hours Performed _________________________________________________________
Location(s) of Pro Bono Work ________________________________________________________

FEB 2013 | HCBA LAWYER 19
In addition to establishing the district courts of appeal, Article V, Section 4 of the Florida Constitution establishes the constitutional office of the Clerk of Court. The Florida Constitution states only that the clerk shall “hold office during the pleasure of the court and perform such duties as the court directs.” Florida Rule of Judicial Administration 2.210 lists the district court clerks’ duties: to maintain records of proceedings, to collect filing fees, to issue mandates and furnish copies of orders and opinions to attorneys of record, and to maintain and transmit documents and records on appeal as is necessary. Each district court designates additional duties as it sees fit.

In the Second District Court of Appeal, these tasks (and more) fall upon the shoulders of James Birkhold. Before joining the court, Birkhold spent the early part of his legal career as a VISTA volunteer, a staff attorney with the Prison Project, and an assistant public defender. Thereafter, he engaged in private practice for 12 years in the fields of domestic relations and criminal defense. According to Birkhold, he joined the court in 1995 after Judge John

Continued on page 21
Continued from page 20

Blue (now retired) “coaxed” him into filling a temporary staff attorney position in the court’s Central Staff. That assignment quickly became permanent, leading to Birkhold becoming the director of Central Staff the following year. After three years of service, the judges of the Second District appointed Birkhold as clerk.

Birkhold’s office is responsible for each filing from the time it arrives at the court until the last portion of the record is returned and the district court file is destroyed pursuant to rule. See Fla. R. Jud. Admin. 2.430. The gravity of this responsibility is apparent upon consideration of the 6,548 new filings the Second District received in 2011 alone. Every filing requires the clerk’s office to manage intake and setup, often requiring Birkhold’s personal review to determine questions of classification, jurisdiction, or timeliness. Thereafter, the clerk’s office maintains the docket, accepts filings, issues orders (some originating from the clerk’s office, some from the judges or central staff), and manages records. And in the Second District, the clerk must also coordinate the assignment of cases among the fourteen judges and two courtroom locations.

Birkhold has delegated a substantial amount of his administrative duties to his dependable deputy clerks so that he may personally focus on what he thinks is his most critical responsibility: responding to inquiries, from both outside the court and within. “The most important thing to fulfill my obligations here is to be here,” he says.

Birkhold recognizes that the detailed process through which his office manages a case “is not something that practitioners, or judges, or the staff attorneys in the suites here, know a great deal about or need to know.” This humble desire to manage his duties efficiently, behind the scenes, allows the judges of the Second District Court of Appeal and those appearing before them to proficiently accomplish their own undertakings.

Author:
Jared M. Krukar,
Butler Pappas Weihmuller Katz Craig LLP

HILLSBOROUGH COUNTY BAR ASSOCIATION PRESENTS

FOLLIES Gone VEGAS
A Nightclub Cabaret Show

Thursday, February 28, 2013
Reception at 5:30 p.m.
Follies at 7:00 p.m.
Chester H. Ferguson Law Center
Cost: $30 members; $35 non-members
Register at www.hillsbar.com or call (813) 221-7777.
Collaborative law offers a divorce process based on cooperation, rather than the traditional adversarial process based upon conflict. Hopes for success with the collaborative method require us to exploit individual predispositions to cooperate and to use cooperation-enhancing environments to promote it. Clients’ individual tendencies to cooperate, which can be strengthened by their lawyer’s cooperation-promoting behavior, can thereby provide a much stronger foundation for Collaborative Law practice.

How cooperative people are varies, but current research shows that certain social contexts can promote cooperative behavior. Research in psychology, behavioral economics, anthropology, and evolutionary biology suggests that the following are tools that lawyers, their divorcing clients, and the rest of the collaborative team can use to make their collaborative efforts successful.

Applying these tools during a collaborative divorce is likely to make it faster, less emotionally loaded and promote the mutual agreement of the parties. Consider learning to use the following tools in your collaborative practice to increase trust and cooperation between the parties:

**Touch.** Physical closeness can increase cooperation. If you greet your client and his or her spouse cordially and/or encourage the spouses to shake hands at the beginning of collaborative sessions, it can break through their emotional reluctance to be together and help them to cooperate in finding solutions to their problems.

**Physical Warmth.** Be sure to offer coffee, tea, or other warm drinks at every session. Warmth and the activity of drinking can

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Learn to use these tools, and your confidence and success rate in the collaborative process will rise to a new level.

---

THANK YOU TO THE ATTORNEYS WHO PARTICIPATED IN ASK-A-LAWYER IN DECEMBER 2012 - JANUARY 2013

- Efrain Aponte
- Dale Appell
- Mark Aubin
- Jesus Elizarraras
- Brian J. Esposito
- Mike Fluke
- Jonathan Hackworth
- Tom Hyde
- Stan Musial
- Kemi Oguntebi
- Rinky Parwani
- Clara Rodriguez Rokusek
- Larry Samaha
- Marshall Schaap
- William Schwarz
- Shazia Sparkman
- Chip Waller

To volunteer for the Ask-A-Lawyer programs, please contact the HCBA Lawyer Referral & Information Service at 813-221-7783.
substitute cooperation for anger or anxiety. They may also promote personal warmth.

**Establish Group Membership.** People tend to favor members of their own group and cooperate with them more than with out-group members. Group membership can be facilitated by such insignificant things as making it clear to the parties that they too are important members of the collaborative team working to complete their divorce.

**Similarities and Common Goals.** Find personal similarities between spouses and help them identify common goals such as the happiness and success of their children. Shared goals and values help the parties to see themselves as belonging to the same group.

**Aversion to, and Fear of, Loss.** People are loss averse. So clearly explain the costs of an adversarial divorce and frame them as losses. Parties can also sometimes understand the emotional losses that can be avoided by cooperation.

**Engaged Observers.** People tend to cooperate more and be more honest when they know that they are being watched. Use the collaborative team as observers as well as participants and encourage them to express their observations as part of the basis for their recommendations.

**Progress From the Insignificant to the Important.** Successful cooperation leads to more successes, regardless of the significance of the first success. So start with discussions of small issues that are easy to agree on. These successes will help the parties to reach agreement when it comes to more serious matters.

Learn to use these tools, and your confidence and success rate in the collaborative process will rise to a new level.

*The author extends his gratitude to Karolina Sylwester, D. Phil., for her immense help in the preparation of the scientific data used for this article and her help in drafting. Sylwester is a researcher and academic psychologist and provided all of the science and much of the other content of this article. This article could not have been written without her assistance.*

Author: Jeremy E. Gluckman, Jeremy E. Gluckman, P.A., Attorney at Law
In *Graney v. Caduceus Properties, LLC*, 91 So. 3d 220 (Fla. 1st DCA 2012), the First District Court of Appeal ruled that direct claims brought against an existing third-party defendant after expiration of the statute of limitations do not relate back to the filing of the original complaint, certifying direct conflict with the Fifth District Court of Appeal. On November 6, 2012, the Florida Supreme Court accepted jurisdiction.

In *Graney*, owner sued architect in 2006 for seeking to recover damages for defects related to a malfunctioning HVAC system, alleging the system began to fail in August 2005. Thereafter, architect filed a third-party complaint against KTD (engineering firm) and Graney (principle of KTD). In 2010, owner filed direct claims against KTD and Graney. At trial, KTD and Graney moved for involuntary dismissal based upon the statute of limitations. The motion was denied and judgment was entered in owner’s favor.

On appeal, the court found that owner was aware of problems with the HVAC system by September 2005; therefore, the statute of limitations ran no later than September 2009. Ruling that owner’s amendment to bring direct claims against KTD and Graney did not relate back to the original complaint, following the majority of other jurisdictions, the Court stated:

> [Owner] can advance no argument that [its] failure to timely add Graney and KTD as defendants in the original action was the result of misnomer or mistake as to the identities of the potential defendants. [Owner] was well aware of the identities of Graney and KTD . . . from the time the system began to fail in August or September 2005. Further, it is undisputed that [owner] was aware of the potential liability of KTD and Graney when Gordon filed the third-party complaint . . . .

Owner urged the court to adopt the reasoning set forth in *Gatins v. Sebastian Inlet Tax Dist.*, 453 So. 2d 871 (Fla. 5th DCA 1984), in which the defendant filed its third-party complaint one day before the statute of limitations ran, after which plaintiff was allowed to bring direct claims against the third-party defendants. The Fifth District Court of Appeal opined “[c]ase law in this state indicates our limitations periods are designed to protect defendants against unusually long delays in filing of lawsuits and to prevent unexpected enforcement of stale claims. If a third party complaint is filed within the applicable limitation period and the third party defendant is made aware that it may be held liable for plaintiff’s damages, these purposes are satisfied . . . .”

In declining to follow the Fifth District Court of Appeal’s decision in *Gatins*, the First District Court of Appeal stated that it found the majority view represents a more reasonable interpretation of the relation back doctrine and reiterated “[r]elation back should only be permitted where there is a mistake or misnomer in identifying a party defendant, not a mistake in failing to add a party.”

The Florida Supreme’s Court’s decision will, undoubtedly, impact complex litigation with layers of parties and defendants. Stay tuned.

**Author:**
**Erin E. Banks, Carlton Fields, P.A.**

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UPCOMING CLES FOR MARCH

March 6, 8 a.m. – 10 a.m.........................Appellate CLE
March 7, noon – 1 p.m.............................Corporate Counsel CLE Luncheon
March 12, noon – 1:30 p.m.......................Judicial Luncheon
March 13, noon – 1 p.m...........................Labor & Employment CLE Luncheon
March 21, noon – 1 p.m...........................Construction Law CLE Luncheon
March 28, 1 p.m. – 3 p.m........................Family Law CLE

ALL EVENTS ARE AT THE CHESTER H. FERGUSON LAW CENTER.
HCBA Holiday Open House

The HCBA celebrated the holiday season with its annual Holiday Open House on December 6, 2012, at the Chester H. Ferguson Law Center. About 300 members and guests attended the event, sponsored by The Bank of Tampa. Special guests included the lawyers and judges featured in HCBA President Bob Nader’s “The Bus Ride” article in the November issue of the Lawyer magazine.
Photography is courtesy of Thompson Studios.

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January Membership Diversity Luncheon

Diversity was the theme of the day at the HCBA January Membership Diversity Luncheon on January 9, 2013, at the Hotel Tampa.

About 400 members and guests attended the agenda-packed luncheon, sponsored by C1 Bank.

HCBA Diversity Committee Co-Chairs Victoria McCloskey and Luis Viera and Diversity Committee members were recognized for their work throughout the year. Representatives of minority bar associations, including the Hillsborough Association for Women Lawyers, The South Asian Bar Association of Florida and the National LGBT Bar Association, were special guests.

The keynote speakers were Gwynne Young, Florida Bar president, and Eugene Pettis, Florida Bar president-elect. Both discussed the importance of diversity in the legal profession and in bar associations.

Pedro F. Bajo, Jr., immediate past president of the HCBA, presented the HCBA 2012 Outstanding Lawyer Award to Gwynne Young. The prestigious award recognizes attorneys who have made a significant difference in the practice of law and in the community with their personal and professional conduct.

Young, of Carlton Fields, P.A., is a leader in the profession and the Tampa community. She is a past president of the HCBA and the Hillsborough County Bar Foundation. She also has held numerous leadership roles in alumni and other groups at her alma maters, Duke University and the University of Florida. She has received a number of awards for her pro bono service.

The HCBA also recognized Judge Donald Castor for his many contributions to the judicial system and the community. Castor was the first executive director of Bay Area Legal Services. He later became a Hillsborough County judge. U.S. Circuit Judge Charles Wilson paid tribute to Castor, calling him an innovator and crediting him with creating the community service program for those convicted of certain crimes.
Photography is courtesy of Thompson Studios. Thompson Studios is a Benefit Provider for the HCBA. www.thompsonstudiosstampa.com

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Cypress Gardens opened in 1936 in Winter Haven as a botanical garden. It grew into one of Florida’s largest tourist attractions, known not only for its beautiful gardens, but also for its water ski shows and Southern Belles. It became known as the “Water Ski Capital of the World.” More than 50 world records in skiing were broken there. Several films and TV shows were filmed at the gardens in the 1950s and ’60s. Today, the skiers and Southern Belles have been replaced by Legos. Legoland Florida opened on the site in 2011.

Postcard courtesy of Raymond T. (Tom) Elligett, Jr.
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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. Law firms that contribute the equivalent of $350 for each attorney 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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The Jumpstart Our Business Startups Act (the “Act”), enacted in April 2012, makes significant changes to Rule 506 of Regulation D. Rule 506 allows issuers of securities to sell securities without having to abide by the complicated and costly process of registering the offering with the Securities and Exchange Commission (the “SEC”), subject to certain conditions. Until the recent changes, those conditions included that the issuer not use general advertisements or solicitations to sell securities and that under 35 “non-accredited investors” purchase through the offering. An “accredited investor” is generally an individual who, because of his wealth, has been deemed to be of sufficient sophistication to invest in higher risk investments. An individual is deemed to be an “accredited investor” if his “individual net worth . . . exceeds $1,000,000,” excluding his primary residence, or he has “income in excess of $200,000 in each of the two most recent years” and can expect to earn the same in the current year. An entity can be an “accredited investor” under certain circumstances.

Since it was adopted in 1982, Rule 506 has been used by issuers seeking to raise money without registering their offerings with the SEC. The changes in the Act increase the importance of Rule 506 as an issuer has greater flexibility in reaching potential investors.

The Act directs that Rule 506 be amended to permit general solicitation and advertising, provided that all purchasers are accredited. In August, the SEC released a proposed new subsection (c) to Rule 506, which provides that the prohibition against general solicitation and advertising will not apply, as long as (1) the issuer takes “reasonable steps” to verify that the purchasers are accredited, (2) all purchasers are, or the issuer reasonably believes that the purchasers are, accredited at the time of the sale, and (3) the offering satisfies Rules 501, 502(a), and 502(d), which deal with aggregating the number of investors and the offering amount, integration of offerings and limitations on resale of securities. Whether “reasonable steps” have been taken is based upon the facts and circumstances of each transaction.

The SEC requested comments on the proposed Rule 506(c), including possible approaches to “accredited investor” verification. Although the deadline for the submission of comments passed in October 2012, at the time this article was submitted in mid-December, the Rule was still in the comment phase. Additional guidance on the changes to Rule 506 should be on the horizon for 2013. As the SEC works to implement changes to Rule 506, we can expect to see increased marketing of investment opportunities and ingenuity in reaching a wider base of investors.

Authors:
Celeste Perrino,
Bush Ross, P.A., and Jamie Meola,
Bush Ross, P.A.
Save the Dates

HCBA DIVERSITY NETWORKING EVENT
Saturday, February 16
1:00 p.m. to 3:30 p.m.
Chester H. Ferguson Law Center

FOLLIES GONE VEGAS
Thursday, February 28
Reception at 5:30 p.m.
Follies at 7:00 p.m.
Chester H. Ferguson Law Center

JUDICIAL PIG ROAST/ FOOD FESTIVAL
5K PRO BONO RIVER RUN
Saturday, March 23
6:00 p.m. to 8:00 p.m. Pig Roast | 5:30 p.m. 5K Race
On the grounds of the Stetson Tampa Law Center

MEMBERSHIP LUNCHEON
Tuesday, May 21
Noon
Hotel Tampa (formerly downtown Hyatt Regency)

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STAY CONNECTED
On December 7, 2012, by a vote of 12-1, the Florida Supreme Court issued a professional ethics opinion, joining a growing number of states that have opined that a “criminal defense lawyer has an unwaivable conflict of interest when advising a client about accepting a plea offer in which the client is required to expressly waive ineffective assistance of counsel and prosecutorial misconduct. A prosecutor may not make an offer that requires the defendant to expressly waive ineffective assistance of counsel and prosecutorial misconduct because the offer creates a conflict of interest for defense counsel and is prejudicial to the administration of justice.”

As a general rule, this opinion will have minimal impact in state court prosecutions in this jurisdiction because in the Thirteenth Judicial Circuit (Hillsborough County) plea agreements have not generally included the prohibited language. But there have been instances in which such waivers have been required as part of a plea agreement. In fact, such a plea offer was extended recently in the context of a motion to withdraw a defendant’s plea, and the Second District Court of Appeal specifically found that defendant cannot waive a claim of ineffective assistance of counsel in entering a plea. *Pagan v. State*, Case No. 2D11-3804 (Fla. 2d DCA November 14, 2012).

The greater impact of the Florida Supreme Court’s ethics opinion will be in federal court where prosecutors often insist on requiring such waivers as part of plea agreements. The court’s

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opinion now makes it clear that such waivers are prohibited.

In reaching this conclusion, Florida joins Alabama, Arizona, Missouri, North Carolina, Ohio, Tennessee, Vermont, Virginia, and Vermont in finding that such waivers are impermissible. The opinion also comports with a proposed ethics opinion issued by the National Association of Criminal Defense Lawyers, which suggests that a criminal defense lawyer should not participate in plea agreements containing such language. Texas stands alone as the only state to consider the issue and not find it per se unethical. In 2006, Texas determined that such waivers may be permissible depending on the circumstances. This, of course, places lawyers in the very difficult position of having to make case-by-case determinations of whether they can ethically advise their clients to waive an attack on the effectiveness of the representation they have provided.

In proscribing an outright ban on such waivers in plea agreements, thereby making it clear that prosecutors may not offer plea agreements with such language and that criminal defense lawyers have unwaviable conflicts of interest in such situations, the Florida Supreme Court has established a bright-line rule, far more workable and certain than Texas’ case-by-case approach.

Author:
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To me, reality television falls into two categories—(1) appalling spectacle, e.g. “Real Housewives;” or (2) appalling spectacle/really guilty pleasure, e.g. “Jersey Shore.” My feelings about reality TV lead me to watch it infrequently. Not surprisingly, when I do watch, I do not expect to take away anything noteworthy (other than maybe how to flip a dinner table without hurting oneself).

So you can imagine my surprise when I had some meaningful realizations while watching an episode of “Shahs of Sunset.” For those who are unfamiliar, “Shahs” follows several wealthy Americans living in Beverly Hills as they party, fight, and make up. Though faithful to one of reality TV’s successful formulas, there’s something unique about “Shahs”—its cast is entirely Middle Eastern. As the only such program I have ever seen, “Shahs” led me to a noteworthy realization: Programming that highlights your cultural identity is special.

Allow me to explain. Though I do not live in California, come from a wealthy family, or engage in (or condone) many of the Shahs’ behaviors, I am Middle Eastern. My cultural identity alone helps me connect with their show, as I recognize the meals they eat as dishes my mom would have made, their accents as similar to the ones I would hear at home or in church, and their facial features and complexion as somewhat similar to what I see in the mirror or at family gatherings. For me, that is pretty cool.

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Watching “Shahs” led me to appreciate the value of diversity and inclusion in a new way. Previously, I had grown accustomed to seeing Middle Eastern people portrayed as one-dimensional side characters (e.g., the convenience store clerk in “Bad Boys”) or terrorists (e.g., “True Lies”). To see programming that breaks these stereotypes by explicitly recognizing Middle Eastern people and (occasionally) presenting them as three-dimensional individuals with diverse interests and religious affiliations made me feel a greater connection to both “Shahs” and the country in which it airs. Though “Shahs” may not always (or usually) cast Middle Easterners in a positive light, I feel it is still a positive step for us, and hope it is the first of many that will lead to greater understanding and inclusion of our cultures.

Notwithstanding our new primetime presence, Middle Eastern Americans still don’t enjoy a high level of recognition or cultural understanding. For example, the U.S. Census does not recognize us as a distinct group. As a result, my country identifies me, and millions like me, as “other.” Unfortunately, the legal community has followed the U.S. Census’ lead, and generally does not recognize us when reporting on diversity in law schools or at law firms.

I hope this will change. And, honestly, I think it will. “Shahs” existence shows the process has begun. And during my lifetime, both America and the legal community have enjoyed a good track record of remedying past biases.

So that is what reality TV has taught me about diversity. Thank you for reading. Now I am off to watch The Learning Channel. Who knows what Honey Boo Boo might teach me.

Author:
Richard N. Asfar, Saxon, Gilmore, Carraway & Gibbons, P.A.
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HCBA Members, welcome to a whole new level of professional and executive banking.
In celebration of Valentine’s Day this month, the Immigration Section would like to send its heartfelt thanks and appreciation to our local law enforcement agencies for their valor and compassion for victims of crimes, regardless of their immigration status. We share one client’s story whose life was saved and forever changed by one hero from the Pinellas County Sheriff’s Office.

In a case of mistaken identity, Luis was viciously attacked, beaten, and left for dead by gang members who mistook him for a rival gang member. He remembers the attack and remembers waking up to the officer who found him clinging to life. Luis had another problem; he was an undocumented alien. Luis, however, was fortunate that the investigating officer was knowledgeable enough to inform him of a potential immigration benefit.

Luis, who had no prior criminal history except for traffic violations, cooperated with police to bring his attackers to justice, and, therefore, could qualify for a U visa. Luis applied for and was approved for a U visa. Now fully recovered from the attack, Luis is working full time as a construction worker and is applying to become a naturalized citizen.

The U visa was created to encourage undocumented alien victims such as Luis to step forward and assist law enforcement with the prosecution of certain qualifying crimes without the fear that, by doing so, they will be reported to Immigration and Customs Enforcement. In order to apply for the U visa, a qualifying agency, most often local law enforcement, must certify through the I-918, Supplement B, U Non-immigrant Status Certification that the victim was helpful, or did not unreasonably refuse to cooperate in the investigation or prosecution of the criminal activity, or is likely to be helpful in the future.

Many of the local law enforcement agencies in the Tampa Bay area have developed internal policies and have designated an officer to respond to U visa requests. These law enforcement agencies recognize the importance of building trust and cooperation with members of the community. This trust yields dividends in the form of victims and witnesses coming forward to aide in the prosecution of crimes. To these agencies, we send our gratitude and a public thank you.

Author: C. Christine Smith, Law Offices of Hernandez & Smith, P.A.
M usical compositions are among the many protected works under the United States Copyright Act whose owners enjoy many exclusive rights, including the exclusive right for the public performance of such compositions. Eating and drinking establishments that offer the public performance of musical compositions for their patrons, whether it is live entertainment, karaoke, a disc jockey or a video jockey, must generally obtain a license to allow such performances.

The unauthorized performance of the musical composition often exposes the establishment to claims for copyright infringement under 17 U.S.C. § 101 et. seq. To establish a copyright infringement claim for the unauthorized performance of musical compositions, the plaintiff need only show: (1) the originality and authorship of the compositions involved; (2) compliance with all formalities required to secure a copyright under Title 17, United States Code; (3) that plaintiffs are the proprietors of the copyrights of the compositions involved in the action; (4) that the compositions were performed publicly by the defendant; and (5) that the defendant did not receive permission from any of the plaintiffs or their representative[s] for such performance. See Milk Money Music v. Oakland Park Entm’t Corp., 2009 WL 4800272, *2 (S.D.Fla. Dec.11, 2009); Major Bob Music v. Stubbs, 851 F.Supp. 475, 479 (S.D.Ga.1994).

Once established, the remedies available to the copyright owner for the infringement of the musical compositions are stiff. Such remedies include statutory damages of $750 to $30,000 for each non-willful infringement, up to $150,000 in statutory damages for willful infringement, actual damages, disgorgement of the infringer’s profits, injunctive relief, and the ability for the prevailing party to seek the recovery of their reasonable attorney’s fees and costs. 17 U.S.C. § 502 et. seq.

Fortunately, there are several performance rights societies, such as Broadcast Music, Inc. (“BMI”), American Society of Composers, Authors and Publisher (“ASCAP”) and SESAC that offer licenses to allow the public performance of musical compositions within their repertoire.

Author:
Zachary D. Messa, Johnson, Pope, Bokor, Ruppel & Burns, LLP

Eating and drinking establishments that offer the public performance of musical compositions for its patrons … must generally obtain a license to allow such performances.
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Financial trauma sometimes occurs as a result of a divorce. As a family law practitioner, you may see a bankruptcy in your client’s future during the course of the divorce case. If that is the case and your client may have to pay alimony, those two things can work together to help settle your divorce case.

Not everyone can file a chapter 7 bankruptcy, which allows you to discharge your debt and start rebuilding your credit quickly. Generally, that is the more desirable chapter in bankruptcy. The biggest reason someone has to file a chapter 13 is that they make too much money. If you make over the median income for our state, you have to take a means test. In that test, you are allowed to subtract from your income certain set expenses and a few unique expenses – one of which is alimony. If the alimony is large enough, it could qualify you for a chapter 7 bankruptcy or allow you to make small payments in a chapter 13 bankruptcy. Keep in mind that the alimony should last at least five years, which is the typical time period of repayment in a chapter 13.

Therefore, if you have a client who may need to pay alimony and has debt issues, he or she will basically have to pay the soon-to-be ex or the trustee. If you know this in advance, you can agree to the alimony more readily and thus get the tax deduction and possibly qualify for a chapter 7. You should send your client to a qualified bankruptcy attorney who can run the means test to determine what amount of alimony would work best. That could help you settle your case quicker, knowing that paying alimony can actually help your client discharge debt easier and for less money.

Also, with more judges granting equal time-sharing, this can assist in the bankruptcy assessment because each parent can claim the children in their household count. This is important because the median income discussed above is based upon household size. In essence, the larger the household, the more income you get to keep. So an intact family with two children would have a household size of four. A divorced couple with the same two children with equal or close to equal time-sharing would each have a household of three. So it is helpful to have a shared parenting situation in these types of cases.

The bottom line on someone who will have to pay alimony and has debt issues is to get him or her to a bankruptcy attorney earlier in the course of the case rather than later. And as always, get your fees paid in advance because they could be dischargeable in a bankruptcy.

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Your case is set for mediation. You and your client appear at the appointed hour; pleasantries are exchanged, and the parties present respectful opening statements. But after the mediator moves the group into private sessions, your client announces that he is unwilling to continue with mediation.

You and the mediator are befuddled — neither of you has seen nor heard anything that might be interpreted as offensive. After some intense questioning, your client blurts out that he believes opposing counsel is a “bad person,” and that he is not going to allow “someone like that” to dictate his future. What is going on here?

Among numerous possible explanations, you should consider whether transference is behind this sudden change in attitude. Transference is an unconscious defense mechanism whereby feelings and attitudes originally associated with important people and events in one’s earlier life are attributed to others in current interpersonal situations. When we first encounter a person who reminds us of someone else, we may infer, unconsciously, that this person is indeed like a “significant other” (whether a lover, friend, relative, or other influential person).

Transference is a form of Freudian psychological projection; however, it is also a type of organizing activity — our subconscious mind uses transference to assimilate interpersonal relationships into the thematic structures of our personal subjective world. Transference allows us to process new information quickly, but often inaccurately.

When faced with such “irrational” behavior, the mediator and counsel might consider the transference dynamic and whether it is blocking a participant’s full participation in the mediation. Perhaps the client was reminded of a significant person when he confronted opposing counsel.

Of course, the justice system does not recognize the concept of transference. Lawyers are trained that each case is to be evaluated on the facts and applicable legal guidelines. In our example, it would be tempting to tell the client that he needs to focus on the matter at hand. We can also envision another scenario in which precious time is spent exploring — in agonizing detail — the client’s childhood experiences in an effort to unearth an explanation for the client’s reversal.

We suggest a more balanced approach that acknowledges the client’s negative feelings or attitudes but also seeks to move beyond these feelings and attitudes as soon as possible. In other words, do not ignore or belittle the psychological issues, but do not dwell on them, either. The mediator does not have to “solve” these problems for the participant, but she can ask the participant how she might help him overcome the obstacle.

There are innumerable psychological factors, such as transference, that can influence the outcome of a mediation session. Rather than declare an impasse when we are faced with an “irrational” participant, or browbeat that participant back into the negotiations, we believe mediators and counsel should seek empathetic understanding of that person’s feelings and attitudes if they are to confront (and resolve) the real issues in the dispute.

Authors: Jay Frank Castle and Dedra Newman Castle, Level Mediation LLC
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A few years ago, a disciplinary action in this circuit involved email exchanges that began with the attorneys attempting to coordinate a hearing time and bitterly dissolved into name calling and insulting each other’s intelligence, competence, and family members. One of the less scandalous emails stated: “Wow, you are delusional!! What kind of drugs are you on??? I can handle anything a little punk like you can dish out . . . otherwise, go back to your single wide trailer in the dumps of Pennsylvania and get a life!!” Additionally, there was an explosive exchange between the attorneys in a deposition. The Bar found that these attorneys violated Rule 3-4.3 (commission of an act that is contrary to justice) and Rule 4-8.4 (conduct that is prejudicial to the administration of justice). Further, it sanctioned one of the attorneys with a public reprimand, and the other attorney received a 10-day suspension.

Importantly, an attorney should consider the costs and stress associated with a Bar investigation. The costs of retaining an attorney during the investigation, fees to reimburse the Bar’s cost of investigation, fees for a professionalism workshop, and lost client revenue for the time spent defending oneself or serving a suspension could easily reach $10,000 or more. Never mind the embarrassment or loss of reputation when an attorney’s actions and punishment are published in newspapers. Additionally, the long-term effects of an attorney’s unprofessional behavior and negative reputation could result in the failure to be appointed to a committee or judicial position, or to obtain certification in one’s area of legal expertise. See Rule 6-3.5(c)(6) of the Rules Regulating the Florida Bar.

Unprofessional behavior damages the image and reputation of attorneys everywhere, making everyone’s job more difficult. More importantly, obtaining the privilege to practice law should be an honor that is cherished, not degraded by uncivilized conduct.

Author: Caroline Johnson Levine, Office of the Attorney General

Join the Professionalism & Ethics Committee.
Call (813) 221-7777 for information.
In order to determine whether a burden is undue, the court will balance the potential value of the information to the party seeking it against the cost, effort, and expense to be incurred by the person or party producing it. In other words, the court will weigh “the likely relevance of the requested material . . . against the burden . . . of producing the material.” Nonparty status will be a factor in the court’s consideration.

If the court determines that the requested documents are indeed relevant and compel production, the court must then enforce Rule 45(c). Rule 45(c) states that “the issuing court must enforce this duty [the duty on a party issuing the subpoena to avoid undue burden and expense] and impose an appropriate sanction – which may include lost earnings and reasonable attorneys’ fees – on a party or attorney who fails to comply.”

The purpose of Rule 45(c) is to protect nonparties “against significant expense resulting from involuntary assistance to the court.”

To protect nonparties, the court will consider 1) whether compliance with the subpoena imposes some expense on the nonparty; and 2) if so, whether that expense is “significant.” Whether an expense is significant is left to the discretion of the court. One court recently concluded expenses of $14,000 and $16,000 for nonparties were significant under Rule 45.

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Your client calls with an emergency. She has been served with a subpoena directing her company to produce an extraordinary volume of documents within a short time for litigation in which neither she nor her company is a party. Your client is not without options. Federal Rule of Civil Procedure 45 does not identify irrelevance or overbreadth as reasons for quashing a subpoena. Federal courts, however, treat the scope of discovery under Rule 45 the same as the scope of discovery under Rule 26. The court must, therefore, consider whether the subpoena duces tecum at issue seeks irrelevant information and/or is overbroad and unduly burdensome under the Rule 26(b) standard, and as applied to a Rule 34 request for documents.

The purpose of Rule 45(c) is to protect nonparties “against significant expense resulting from involuntary assistance to the court.”
PROTECT YOUR NONPARTY CLIENT FROM UNDUE BURDEN AND EXPENSE
Trial & Litigation Section

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If the court determines that compliance with the subpoena will impose a significant expense, “the court must protect the nonparty by requiring the party seeking discovery to bear at least enough of the expense to render the remainder ‘non-significant.’” In order to determine the amount to shift to the party seeking discovery, the court must balance the equities. In balancing the equities, the court will consider 1) whether the nonparty has an interest in the outcome of the case; 2) whether the nonparty can more readily bear its cost than the requesting party; and 3) whether the litigation is of public importance. When filing your motion or objection, keep in mind the court may not shift the entire expense to the party issuing the subpoena – do not overreach. The court will likely shift only an amount sufficient to render the expense “non-significant” in light of the above equities.  

4. *Ford Motor Credit*, 26 F. 3d at 47.  
6. FED.R.CIV.P. 45 (c)(1).  
7. FED.R.CIV.P. 45 (Advisory Committee Notes, 1991 Amendment, Subdivision (c)).  
13. In order to determine whether the nonparty has an interest in the litigation, the court will consider whether the nonparty was “substantially involved in the underlying transaction and could have anticipated that [the transaction would] reasonably spawn litigation, expense should not be awarded.” *In re First Am. Corp.*, 184 F.R.D. 234, 242 (S.D.N.Y. 1998); *Wells Fargo Bank, N.A. v. Konover*, 259 F.R.D. 206, 207 (D. Conn. 2009).  

Author: John A. Schifino, Burr & Forman LLP

**Trial & Litigation Section Quarterly Luncheon**

The Trial & Litigation Section welcomed Mark Fernandez, senior vice president of the Tampa Bay Rays, as the keynote speaker at its luncheon on December 18, 2012. Fernandez discussed the team’s personnel changes during the off-season, reported that discussions on a new stadium were at a standstill, and shared some of the team’s many contributions to the community.

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FOR MODERN TIMES, A CLASSIC BANK.
The HCBA Trial & Litigation Section is seeking nominations for these important awards:

- **Herbert G. Goldburg Award:** A nominee must have led a distinguished legal career exhibiting fairness, integrity, courtesy, zeal, forensic skill, legal acumen, good sense, and respect for fellow lawyers. A nominee’s lifetime body of work must reflect a dedication and commitment to advocacy in the court system.

- **Michael A. Fogarty Memorial “In the Trenches” Award:** A nominee must have demonstrated excellence and integrity in Civil Advocacy, and must have demonstrated ongoing efforts and recent and/or current accomplishments in the representation of clients in the court system.

- **James H. Kynes Memorial “In the Trenches” Award:** A nominee must have demonstrated excellence and integrity in Criminal Advocacy, and must have demonstrated ongoing efforts and recent and/or current accomplishments in the representation of clients in the court system. This award is intended to apply to both prosecutors and defense attorneys.

- **Court Family:** A nominee must be a deserving member of the state or federal court staff who has demonstrated ongoing courtesy, consideration, and professionalism toward members of the Bar.

Nominees for the Goldburg, Fogarty and Kynes awards must be members of the Hillsborough County Bar Association.

Download the nomination form from the HCBA website at www.hillsbar.com and email to Kevin McLaughlin at kevin@wagnerlaw.com.

NOMINATIONS MUST BE RECEIVED BY 5 P.M. APRIL 5.

The awards will be presented at the Trial & Litigation Section Quarterly Luncheon on May 1 at the Chester H. Ferguson Law Center.

2012 RECIPIENTS
Herbert G. Goldburg Award - Bennie Lazzara
Michael A. Fogarty Memorial Award - John Holcomb
James H. Kynes Memorial Award - Jim Felman
Court Family Award - Hillsborough County Sheriff’s Deputy Miguel Ingles

Lawyer Referral & Information Service

The Lawyer Referral & Information Service thanks all the dedicated lawyers who have been serving monthly in the “Ask-A-Lawyer” program with Fox 13. The program is the first Thursday of each month. If you are interested in participating, contact LRIS Director Lupe Mitcham at lupe@hillsbar.com.
Free Press has served the Tampa area since 1911 providing quality printing and graphic design. We have now expanded our operations to include website development. Our knowledgeable and experienced staff will work closely with you to provide exactly what you need to compete in the marketplace. Call today or go online for a free quote, 4freepress.com.
The Alvarez Legal Group was named the 2012 Tampa Latin Chamber of Commerce Small Business of the Year.

Barnett, Bolt, Kirkwood, Long & McBride Attorneys at Law announced that attorney Gordon J. Schiff of the Schiff Law Group has joined their Tampa law firm. Schiff’s expertise adds practice capabilities in land development, land use, and eminent domain law.

The Greater Tampa Chamber of Commerce has selected Steve Bernstein to serve on the organization’s Executive Committee as legal counsel. In the volunteer position, Bernstein will counsel the chamber’s leadership on legal matters and regulations, and ensure compliance with the organization’s bylaws. Bernstein is a partner in the Tampa office of Fisher & Phillips, LLP, a national labor and employment law firm. He is a former co-chair of the Bar Association’s Labor & Employment section.

Shumaker, Loop & Kendrick, LLP is pleased to announce that Mark A. Connolly, partner in the Tampa Office, coordinated and moderated a Florida Coalition for Children (FCC) seminar recently at Eckerd Youth Alternatives Tampa facilities. The half-day seminar covered Legal Trends & Risk Management Issues in Child Welfare.

The law firm of Shumaker, Loop & Kendrick, LLP, is pleased to announce that Erin Smith Aebel, partner in the Tampa Office, participated in a panel discussion on “Health Care Reform: What Does the Future Hold?” held at Tampa General Hospital recently. Aebel is certified as a health law specialist by the Florida Bar.

Best Lawyers in America named four attorneys from Tampa law firm Hill Ward Henderson to its 2013 Tampa Lawyers of the Year: Scott A. McLaren – Tampa Real Estate Litigation Lawyer of the Year; Timothy A. Hunt – Tampa Construction Lawyer of the Year; Brett J. Preston – Tampa Legal Malpractice Defense Lawyer of the Year; Benjamin H. Hill, III – Tampa Insurance Lawyer of the Year.

The Sarasota office of the law firm of Shumaker, Loop & Kendrick, LLP has established and made a significant contribution to an endowment fund in memory of former partner Jeffrey S. Russell, who passed away in October. The Jeffrey S. Russell – Shumaker, Loop & Kendrick, LLP Memorial Fund has been established through Gulf Coast Community Foundation.

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The Real Estate Department of the Sarasota office will direct an annual donation from the endowment to one or more charitable organizations that enhance the quality of life for all who live and work in the Sarasota region.

Adoption attorney Jeanne T. Tate has been selected as the recipient of The Florida Bar President’s Pro Bono Service Award for the 2013 Thirteenth Judicial Circuit. She was honored at a ceremony in Tallahassee on January 31 by the Florida Bar and the Justices of the Supreme Court of Florida.

Thompson, Sizemore, Gonzalez & Hearing is pleased to announce that Marquis W. Heilig has been made a partner in the firm. Marquis has been with the firm since 2006 and will continue to practice in employment relations advice and litigation.

Attention HCBA Members: Please send Around the Association news items to Wendy Whitt at wendy@hillsbar.com.

JURY TRIAL INFORMATION

For the month of: November 2012
Judge: Honorable Charles E. Bergmann.
Participants: Robin Patterson vs. Aprite Farms, Inc. and Joseph V. Aprite d/b/a Golden A Cattle Company.
Attorneys: Attorneys for Plaintiff: Frank De La Grana, D. Scott Boardman, Luis M. Bessone; Attorneys for Defendant: Catherine M. Verona, Robert M. Stoler.
Nature of Case: Motor vehicle accident involving an escaped cow
Verdict: Directed verdict as to Aprite Farms, Inc. Plaintiff then voluntarily dismissed case as to Joseph V. Aprite d/b/a/ Golden A Cattle Company.

For the month of: December 2012
Judge: Honorable Mark Wolfe.
Attorneys: Attorneys for Plaintiff: Timothy F. Prugh; Attorneys for Defendant: J. Emory Wood.
Nature of Case: Rear-end accident; defendant contested causation and damages.
Verdict: $211,600; plaintiff’s motion for fees and cost pending.

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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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