YES!

We are still accepting referrals in the area of medical malpractice after yet another session of legislatively created barriers to patients’ access to our courts.

Gunn Law Group, P.A. remains committed to ACCOUNTABILITY IN MEDICINE

The social cost of medical mistakes should not be borne by patients whose lives are crippled, while insurers, hospitals and clinics continue to grow and economically prosper.

400 N. Ashley Drive / Suite 2050 / Tampa, FL 33602 / 813-228-7070
866-GUNNLAW (486-6529) / info@gunnlawgroup.com / www.gunnlawgroup.com
You may have passed this massive mural project (the largest outdoor original artwork in Florida) while driving by Ybor City on Adamo Drive. The mural was designed by Michael Parker and produced with the help of volunteers, Hillsborough Community College students, and sponsors. The project captures the evolution of Ybor City and reflects the diversity of its population over the years. The mural touches on the struggles that the people of Ybor have faced — the challenges of leaving a homeland in turmoil, fighting for equality, and finding a place to build a new legacy. “There is no better example of successful assimilation of vastly different cultures within the United States. This is a legacy to treasure,” organizers state on the website for the project. To learn more about the mural, go to yborartproject.com.
SECTIONS

16  PRO BONO OPPORTUNITIES WITH “APPEAL”
    Appellate Practice Section by Sarah Lahlou-Amine

18  TOP 3 REASONS TO PRACTICE COLLABORATIVE LAW
    Collaborative Law Section by Adam B. Cordover

22  P3S IN FLORIDA: INNOVATION IN PUBLIC PROJECTS
    Construction Law Section by Erin E. Banks

24  HOW FAR CAN A LONG ARM REACH?
    Corporate Counsel Section by Caroline Johnson Levine

26  VENTURING OUT FOR CLE
    Criminal Law Section by George Bedell

38  ELDER LAW UPDATE
    Elder Law Section by Elizabeth P. Allen

39  U.S. SUPREME COURT DECIDES FLORIDA CASE
    Eminent Domain Section by Kenneth C. Pope

41  FLORIDA’S PATIENT SELF-REFERRAL ACT: THE STARK LAW ON STEROIDS
    Health Care Law Section by Jon Gatto

42  FIRST-TO-FILE RULE: WHAT’S IN A NAME?
    Intellectual Property Section by Kathleen M. Wade

44  TAX IMPLICATIONS OF SUPREME COURT DECISION ON DOMA
    Marital & Family Law Section by Constance Rossi and Briggs Stahl

46  REVISED FLORIDA ARBITRATION CODE: ARBITRATION FACE-LIFT
    Mediation and Arbitration Section by Christopher M. Shulman

50  ESTATE AND TAX PLANNING FOR SAME-SEX MARRIED COUPLES IN FLORIDA
    Real Property, Probate & Trust Law Section by Taylor C. Russo and Jamil G. Daoud

54  THE PECULIAR AND BRIEF SHELF LIFE OF THE “ESSENTIAL SERVICES” TEST
    Real Property, Probate & Trust Law Section by William J. Podosky, III, and Derek Larsen

57  THE PROPOSAL FOR SETTLEMENT — AN ALL-OR-NOTHING PROPOSITION?
    Trial & Litigation Section by Jaret J. Fuente

58  LIMITATIONS ON THE DISCOVERY OF ESI
    Trial & Litigation Section by Morgan W. Streetman

60  REDEFINING COVERAGE: LONGSHORE/DBA/JURISDICTION ISSUES
    Workers’ Compensation Section by Anthony V. Cortese

COMMITTEES

12  TAMPA BAY AREA PRO BONO LAWYERS MEAN BUSINESS
    Pro Bono Committee’s Message by Sarah Lahlou-Amine and Traci L. Koster

20  VOLUNTEER FOR A DAY AND CHANGE THE WORLD OF SOMEONE IN NEED
    Community Services Committee by Lara M. LaVoie

28  TAMPA BAY BEST BUDDIES SERVES VULNERABLE
    Diversity Committee by Jason Whitemore and Luis Viera

49  SUSPEND PROFESSIONALISM AND SUSPEND YOUR LICENSE!
    Professionalism & Ethics Committee by Caroline Johnson Levine

IN EVERY ISSUE

23  100 CLUB

27  HCBA BENEFIT PROVIDERS

43  SAVE THE DATES

62  AROUND THE ASSOCIATION

63  CLASSIFIED ADVERTISING

64  ADVERTISING INDEX

64  JURY TRIAL INFORMATION
The Joys and Pains of Technology and Social Media

It can be difficult to not only stay abreast of the new technology but also the rules and regulations governing it.

Twitter. Facebook. LinkedIn. Instagram. The “cloud.” DropBox. Summation. Westlaw. Lexis. BlackBerry. iPhone. iPad. The pace at which companies and clever entrepreneurs are developing new ways to create, manipulate, share, and store information is astounding. Typewriters, once the mainstay for drafting documents, have been relegated to those few documents and envelopes that cannot be altered by computer. Advertising in the Yellow Pages has been replaced by online forums. Electronic mail is replacing “regular” mail. Electronic filing is replacing paper filing. Indeed, depending on your law practice, it is now possible to have completely electronic — that is, paperless — files. Technology and social media are constantly changing and evolving. Consequently, our law practices, and the rules governing them, are also constantly changing and evolving.

Technological advances undoubtedly enhance our business and networking. They allow us to reach more people in a faster amount of time, and we can share information with clients or colleagues in the blink of an eye. For example, with the Hillsborough County Bar Association’s Lawyer magazine, pictures from events are immediately posted to our Facebook page (www.facebook.com/HCBAstamapbay). Members can view them instantly without having to wait for the written publication.

Additionally, electronic databases allow us to access stored information from anywhere in the world. We can now file a document with the court without ever leaving our seat. We can advertise our services to millions of people with a well-placed online advertisement or get access to thousands of potential employers by uploading a resume to one of the Internet job forums or using a LinkedIn profile.

Technology and social media are powerful tools. However, as has been cautioned throughout history — with great power comes great responsibility. This rings especially true with technological advances and social media. Navigating the potential pitfalls of evolving technology can be daunting. The Florida Bar is just starting to scratch the surface in dealing with the landmine of advertising legal services on social media. The procedural and evidentiary rules governing e-discovery are developing every day. Countless articles are being written about protecting a client’s privacy when storing data and information on the “cloud.”

It can be difficult to not only stay abreast of the new technology but also the rules and regulations governing it as they apply to the practice of law. While utilizing social media and technological advances becomes increasingly important, so does the responsibility of using it prudently and with care. I will be the first to admit that it is not easy to take full advantage of all that these advances have to offer. For example, I dictated the outline of this Editor’s Message on my iPhone’s voice memo while waiting at my daughter’s volleyball practice, but then I spent an inefficient five minutes trying to find where it was saved so that I could replay it. I am not alone (hello to those of you who still use the physical case reporters and digests). But at the Lawyer magazine, we strive not only to use technological advances and social media to bring information to you, but also to keep you apprised of some of the ever-changing rules and regulations. Enjoy the February publication!
Justice for All

Diversity has been a hot topic for many years but will likely continue to be so in light of the rapidly changing demographics in our country.

There are many words you could use to describe me. Some people think of me as a female attorney. Others label me half African-American or, on the flip side, half Filipino. Then there are descriptors such as heterosexual, college graduate, and mother of two. It’s difficult to pigeonhole a person into just one category, especially when such a diversity of interests, experiences, and backgrounds collide to make each one of us unique.

Diversity has been a hot topic for many years but will likely continue to be so in light of the

Continued on page 5
rapidly changing demographics in our country. “Embracing Diversity” was the theme of the Hillsborough County Bar Association’s January Membership Luncheon. The HCBA has a Diversity Committee, of which I am a part. Law firms and other companies have internal panels and groups that work toward the goal of inclusion in the workplace. The conversation has been building, and I’m pleased to see it stretching beyond good intentions and into positive actions.

In the Tampa Bay area, the HCBA’s Diversity Committee is spearheading two great events this year to raise awareness about the importance of diversity in the legal community. The first is the annual Diversity Networking Social, which is in its seventh year and is modeled after a similar event in Miami.

The Diversity Committee has invited students from all of the Florida law schools to come to the HCBA on Saturday, February 22, for a day of networking with representatives from local law firms and other voluntary bar associations. The social aims to highlight the diversity of the local legal community and to help students connect with professionals who may serve as mentors. If your firm would like to participate in this event, we would love to have you. Please contact committee co-chairs Amanda Buffinton (abuffinton@bushross.com) or Ronnell Robinzine (rrobinzine@bushross.com) for more information.

Less than a week after the social, on February 25, the committee is hosting a CLE featuring Gilbert King, Pulitzer Prize-winning author of “Devil in the Grove: Thurgood Marshall, the Groveland Boys and the Dawn of a New America.” King’s book recounts in chilling detail the racial injustices that plagued a 1949 rape case in Lake County, Florida. The author will discuss the case and share insights from the book, which fans can get signed copies of at the luncheon. King’s talk will be followed by a panel discussion about the evolution of justice and civil rights. To register, call (813) 221-7777.

Through these two events, the Diversity Committee hopes to provide you with an opportunity to learn from the past and look toward a more inclusive future.

Although headlines of racial injustice may be fading, new tales of immigration challenges and LGBT issues are coming into the spotlight. As we strive to get a better grip on these topics and confront potential injustices, I’d like to leave you with a parting thought: In 1896, the year the Hillsborough County Bar Association was formed, I would not have been able to join because women had not yet been admitted to practice law in Florida. Not to mention the barriers that would have stemmed from the color of my skin. Isn’t it amazing how far we’ve come? Now just imagine how far we can go.

---

**Shaping Young Minds**

Hillsborough County Bar Association Past President Bob Nader and his brother, George Nader, shared tales from past lives with a group of University of South Florida students in Wendy Whitt’s journalism class on November 20. Before becoming attorneys, both brothers worked in media — Bob as a radio DJ and George as a sports reporter. They reminisced about the days of calling the newsroom from payphones to dictate stories and cuing up vinyl records on turntables. My, how times have changed!

Both Bob and George stressed to the students the importance of having excellent communication skills in any career field. They also gave tips on transitioning into law school. The students were so interested in the presentation that the Naders were invited to return to speak to another class.

The HCBA invites members to share photos of themselves giving back to the community! Email high-resolution photos to Corrie Benfield at corrie@hillsbar.com or post them on Facebook.com/HCBAtampabay.
Lawyers Peter O. Knight and Cody Fowler Added to Riverwalk Monument Trail

Bronze busts of the former HCBA presidents and community leaders were unveiled at the ceremony.

Two titans from Tampa’s legal community — Peter O. Knight and Cody Fowler — will be among other prominent city leaders memorialized along Tampa’s developing Riverwalk. Tampa Mayor Bob Buckhorn and attorney Steve Anderson, president of Friends of the Riverwalk, unveiled bronze busts of the two distinguished lawyers in front of family, friends, and local officials at a ceremony at the Tampa Convention Center in December.

The Class of 2013 honorees also includes newspaper publisher C. Blythe Andrews, civic leader Kate Jackson, Cuban civil rights leader Paulina Pedroso, and businessman G.D. Rogers. The statues are mounted on granite pedestals and will be placed in a permanent location along the Riverwalk’s Historical Monument Trail, which stretches along the downtown waterfront from the Channel District to Tampa Heights, just west of the Chester H. Ferguson Law Center.

“Our goal is to preserve and honor the local people who created a lasting impact on Tampa,” said Anderson, who heads the local nonprofit Friends of the Riverwalk and is working in collaboration with the city of Tampa and the Tampa Bay History Center on the project.

The first group of honorees was selected in 2012, and the plan is to designate six new honorees each year until 30 or more historical monuments line the waterfront trail. To be considered, the honorees must have been dead for at least 15 years.

Knight moved to Tampa in 1889 and served as a Tampa City Council member and as Hillsborough County Solicitor. “At the turn of the 20th century, Peter O. Knight was probably the most influential lawyer and community leader in Hillsborough County,” said retired Appellate Judge E.J. Salcines, who is a member of the honoree selection committee.

Knight helped organize the Exchange National Bank, the Tampa Gas Company, and the city’s electric streetcar system. “[Knight] had his hands in everything, and he was integral in making Tampa a bigger and better place,” Salcines told me.

Continued on page 7
Additionally, Knight was a founding partner of what is now the international law firm of Holland & Knight. Tampa attorney William A. Knight, the great-grandson of Peter O. Knight, said about his relative: “He was a remarkable guy. I am in awe of what he was able to accomplish.”

In 1924, Fowler moved from Tennessee to Tampa to practice law. His mother, Maud, helped found Temple Terrace, and Cody Fowler served as its first attorney and later as mayor for a term.

Fowler quickly made a name for himself early in his career by defending African-Americans in Tampa’s courts — something few other white attorneys were willing to do at the time. In 1943, he joined with Morris White to form the Fowler and White law firm. In 1950, Fowler was elected president of the American Bar Association — the first Tampa lawyer to attain that position.

 “[Fowler] was the go-to guy for the bar association on major issues,” Salcines told me. “You always wanted Cody Fowler on your side.”

Appointed chairman of both Florida’s and Tampa’s Bi-Racial Commissions in 1959, Fowler, along with African-American leaders, helped guide the peaceful integration of Tampa’s lunch counters in 1960. His leadership on improving race relations continued through the turbulent 1960s as Tampa and the nation struggled with racial integration and other equality issues, such as the hiring practices of local businesses.

Fowler’s grandsons, Cody F. Davis and former U.S. Rep. Jim Davis, are both lawyers in Tampa. Jim Davis says people referred to Fowler as “Big Cody” and that he was inspired by Fowler’s example to “treat everyone with respect.”

“In his [Fowler’s] day, that meant standing up for equality among races,” Jim Davis said.

He added: “Big Cody took great joy in serving our community and helping his clients … and thought every lawyer should do his or her part to make their community a better place.”

See you around the Chet.

THE HCBA WELCOMES ITS NEW MEMBERS

NOVEMBER 2013

Joena N. Bartolini
Judd R. Bean II
Christopher D. Brown
Chad E. Burgess
Joshua C. Coldiron
Amy Funk
Samantha T. Gibbons
Jeremy R. Griner
Nicole M. Heiland
Emily Hestorff
Andrew C. Horne

Kristen Lang
Charlene E. Lee
Kyle J. Lee
Michael L. McCoy
Bradley H. Merritt
Alicia M. Moon
Tyler Puttick
John E. Schwencke
Mariko K. Shitama
Torri C. Simmons
Salem H.C. Willis

DECEMBER 2013

Adrian Chandler-Harris
Roni A. Elias
Jason Wentworth Fraser
Brett P. Gliosca
Sarah Gottlieb
Gregg W. Hooth
Andrew R. Mallory
Jason Quintus
Andrew Scott Rapacke
Bo Sellitti
Andrew H. Warren
Search and Seizure of Motor Vehicle Passengers

When a vehicle stop results in a passenger being charged with a crime, the legality of the detention or search of the passenger may become an issue in the case.

Under the United States Constitution, the Fourth Amendment guarantees “(t)he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Florida Constitution provides that this right must be “constrained in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court.”

When a vehicle stop results in a passenger being charged with a crime, the legality of the detention or search of the passenger may become an issue in the case.

Previously, Florida law indicated that a law enforcement officer could not lawfully command a passenger of a vehicle to remain in a vehicle during a traffic stop. Subsequent rulings by the U.S. Supreme Court have held that when a law enforcement officer stops a motor vehicle based on a traffic stop, the driver and all passengers are seized for Fourth Amendment purposes. The Supreme Court has held that all occupants of a vehicle are seized when law enforcement stops the vehicle, law enforcement may require passengers to remain at the scene of the traffic stop, and the temporary seizure of the driver and passengers continues and remains reasonable for the duration of the stop.

In *Brendlin v. California*, the court held that the passenger of a vehicle that was seized during a traffic stop was entitled to challenge the legality of the stop because “no reasonable person in his position … would have believed himself free to terminate the encounter” and the “stop necessarily curtail[ed] the travel a passenger ha[d] chosen as much as it halt[ed] the driver.”

In *Arizona v. Johnson*, the court held that an officer’s pat-down search of the defendant, who was a passenger during a traffic stop, was lawful. Although the police did not have a reason to suspect the car’s passenger of criminal activity at the time of the traffic stop, facts arose during the stop that provided the police with reasonable suspicion for a pat-down search of the passenger.

The court relied upon the precedent set by *Brendlin*, as well as *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), and *Maryland v. Wilson*, 519 U.S. 408 (1997). These rulings by the U.S. Supreme Court have extended the same constitutional protections to the passenger of a detained vehicle as are given to the driver, while also allowing law enforcement to develop reasonable suspicion to conduct further searches.

As your state attorney, I will always seek to keep the people of our community safe while respecting the safeguards put in place by the Constitution.

---

5. *Brendlin*, 551 at 257.
6. *Id*.
8. *Id*. 
Past Presidents Luncheon

About 25 former presidents of the Hillsborough County Bar Association gathered for a luncheon with the current president, Susan Johnson-Velez, and HCBA board members on December 9 at the Chester H. Ferguson Law Center. The group of former HCBA leaders who were present for the camaraderie and festivities covered a 45-year period, starting with Lewis Hill, III, who was the president in 1968, Larry Stagg (1970), David Shear (1971), Don Stichter (1972), Leonard Gilbert (1974), Ron Cacciatore (1975), Steve Sessums (1977), Ben Hill, III (1981), Judge Jim Moody, Jr. (1987), up to the present. What a memorable occasion!

Thank you to the luncheon sponsor:
A Positive Step

As I write this article for the upcoming issue of the Lawyer magazine, I see by the calendar date that we are approaching the one-year anniversary of the killing rampage in Sandy Hook, Connecticut, when 20 young children and six adults were murdered at Sandy Hook Elementary School.

Unfortunately, that is not an isolated incident. There have been similar frightening instances this past year of individuals with histories of mental illness who went on shooting rampages.

One way to help prevent these random acts of violence is to tighten up the laws regulating the purchase of firearms. This past session, the Florida Legislature passed an amendment, which took effect on July 1, 2013, that addressed the circumstances and conditions for prohibiting people from purchasing firearms if they have been voluntarily admitted to a Baker Act receiving facility and the examining physician deems that they are an imminent danger to themselves or someone else.

The challenge is how to best collect, qualify, and report information for the purpose of firearm purchase determinations nationwide — and how to develop a communication and training plan on behalf of reporting agencies to assist with implementation.

I am proud to say that in the state of Florida, Robin McCarty, manager of the clerk’s Mental Health Department, has been recognized for her work with the MECOM database, which is the Mental Competency database, established in February 2007. Due to Robin’s efforts, Hillsborough County is leading the state in reports of voluntary commitments, with 375 thus far.

For her leadership, she was asked by the Florida Department of Law Enforcement to serve on a work group for Hillsborough County, representing the clerk’s office, along with General Magistrate Sean Cadigan of the Thirteenth Judicial Circuit, representing the judiciary; Gracepoint, representing Baker Act receiving facilities; and other state agencies. The group is assigned the task of how to implement this amendment — collecting, qualifying, and reporting information on firearm purchases by individuals prohibited from doing so.

“Our group is trying to not only identify the practices but also trying to educate the key groups, including the mental health community, doctors, hospitals, and the judiciary, as well as the clerk offices throughout the state,” Robin said.

“We are also going to conduct training throughout the state to spread the word. It is so important to prevent people who are not supposed to be getting a gun from being able to get one,” she emphasized.

Robin has conducted training for members of the Hillsborough County Sheriff’s Office Crisis Intervention Team to update them on the new legislation. Along with other members of the training team, Robin is conducting similar statewide training that began in mid-January. She has also created a form for the officers to hand out, which outlines the steps for petitioners to follow for both the Baker and Marchman Acts.

This legislation will not prevent all senseless killings, but it is certainly a step in the right direction, and our office is proud to be on the cutting edge.
The Hillsborough County Bar Association’s Young Lawyers Division hosted a luncheon in December with the goal of connecting local legal aid and community service organizations with attorneys who want to volunteer. All HCBA members were invited to participate by visiting the organizations’ booths and signing up to take on pro bono cases or volunteer. Keeping with the theme of giving, the YLD ordered boxed lunches from Metropolitan Ministries’ Inside the Box Cafe & Catering, where every meal purchased provides a meal for someone in need.

Thanks to the organizations that participated in the luncheon: Bay Area Legal Services, Big Brothers Big Sisters Tampa Bay, Crossroads for Florida Kids, Family Forms Clinic, the Hillsborough County Bar Foundation, the Hillsborough Education Foundation, The Spring, Wills for Heroes, and the Thirteenth Judicial Circuit Pro Bono Committee.
Tampa Bay Area Pro Bono
Lawyers Mean Business

Harnessing the power of business to help those in need is something our community does exceedingly well.

As practicing attorneys and hard-working members of a thriving business community, we are a very fortunate group. We have the rewarding privilege of advocating for justice to help our clients achieve their goals. This privilege allows us not only the opportunity to make a living in a meaningful way, but it also allows us the opportunity to help those who cannot afford the legal assistance they need to fight for their families, their homes, and, in some cases, even their lives.

Local businesses and law firms recognize the immeasurable value of pro bono service and are leading an ongoing movement to integrate pro bono work into their business models. As part of that movement, the local business and legal communities have joined together to form the Tampa Bay Pro Bono Partnership, a project that pairs local businesses and law firms to provide pro bono service to the members of our community who need it the most.

Harnessing the power of business to help those in need is something our community does exceedingly well. The

Continued on page 13
synergies are countless, and it is to the credit of the
decision-makers at our local businesses and law firms who
have made it a priority to identify and implement these
synergies to help those who are less fortunate.
The Tampa Bay Pro Bono Partnership is scheduled to
launch in 2014. It will host two events per year. Each
event will begin with a networking reception for
participating law-firm attorneys, in-house counsel, and
local members of the state and federal judiciary. The
reception will be followed by a brief program and
breakout session, during which up to three attorneys from
each participating law firm will be teamed with up to
three in-house counsel from each participating business.
Teams will have the opportunity to select from a list of
pro bono projects, ranging widely in time commitment
and complexity. Each event offers a new opportunity to
mix things up, as pairings and pro bono opportunities will
vary every time. Team members are encouraged to
network and get to know each other while providing
service to their community.

In addition to creating a unique platform for
networking, the partnership offers participants resources
and support, including mentoring, malpractice coverage
for a variety of projects, and sponsorship opportunities.
The program is supported by members of our local
judiciary, who witness the critical need for pro bono
service in their courtrooms every day and are excited to
participate and see this project take hold.

Participants in the program are
couraged to make it their own by
sharing ideas to develop the program to
help those in need while achieving their
business goals. For additional information
about the Tampa Bay Pro Bono
Partnership and to find out how you and
your organization can get involved,
please contact Sarah Lahlou-Amine at
sarah.amine@fowlerwhite.com or Traci
L. Koster at tkoster@bushross.com.

Authors: Sarah Lahlou-Amine, Fowler White
Boggs, P.A., and Traci L. Koster, Bush Ross

---

Charles W. Ross, Esq.
Certified Circuit and Federal Mediator

- Florida Supreme Court Certified Mediator for Circuit Civil, Federal,
and Appellate Mediations
- Civil Trial Lawyer since 1979; Martindale-Hubbell attorney rating—AV
- Graduate of Harvard Law School Advanced Mediation Program for Lawyers (2001)
- Selected for Membership in Florida’s Legal Elite and Best Lawyers in America
- Member of National Academy of Distinguished Neutrals
- Handled over 3,000 mediations including commercial litigation, construction
claims, employment disputes, business torts, personal injury lawsuits
- No travel charges for Florida mediations
- Private mediation facility in St. Petersburg, Florida

Charles W. Ross, Esq.
(727) 502-5000 – www.rossmediations.com
1535 Dr. M.L. King Jr. Street North, St. Petersburg, Fl 33704 cwross@tampabay.rr.com
The Hillsborough County Bar Foundation
Wishes to thank these sponsors of

The Law & Liberty
Dinner
Marquee Sponsor

THE CENTERS

Premier Sponsors
The Bank of Tampa
The Yerrid Law Firm

Silver Sponsors
Arneisn & Lehr, LLP
Barnett Bolt Kirkwood Long & McBride
Burr & Forman LLP, formerly Williams Schifino
Carlton Fields Jorden Burt, P.A.
David M. Rieth / Rieth & Ritchie, P.A. / Sheila M. McDevitt
Holland & Knight, LLP
Schifino Lee Advertising + Branding
Shumaker, Loop & Kendrick, LLP
Stichter, Riedel, Blain & Prosser, P.A.
TECO Energy
Wagner, Vaughan & McLaughlin, P.A.

Bronze Sponsors
Adams & Reese LLP
Allen Dell, P.A.
Bajo | Cuva | Cohen | Turkel
Buell & Elligett, P.A. / Edward H. Farrior, M.D.
Bush Ross, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A. / Kynes, Markman & Felman, P.A.
Constancy, Brooks & Smith, LLP
Free Press
George & Titus, P.A.
Greenberg Traurig, P.A.
Gunn Law Group
Hill Ward Henderson P.A.
Johnson Pope Bokor Ruppel & Burns, LLP
Mason Black & Caballero
Merlin Law Group, P.A.
Mike & Rachelle Bedke
Navigant Consulting
Phelps Dunbar LLP
PNC Wealth Management
Prida-Guida & Co. PA
Sabal Trust Company
Smoak & Chistolini
Stetson University College of Law
Thompson Studios
Trenam Kemker
Trial Consulting Services, LLC
Renaissance man Ben Stein melds deadpan humor and serious insights on the economy and human nature in talks that leave people laughing and thinking.

Ben Stein offers laughter, insight and tears as he explores society’s most quirky conundrums. Armed with a curmudgeonly persona and offbeat style, he dissects the economy and helps audiences balance life’s priorities, even as he offers an eye-opening tour of its greatest absurdities. An exceptionally gifted economist whose market analysis is sought by companies and organizations across the country, Stein is author of Yes, You Can Supercharge Your Portfolio; Yes, You Can Get a Financial Life; and How to Ruin the United States of America, among others. The nation’s self-styled “hope for the new millennium” Stein’s career achievements range from Economist and Longtime Columnist for The Wall Street Journal, Barrons and The New York Times; Commentator for CBS News, Fox News and CNN and Award-winning Commentator on Finance; to speech writer and aid for Presidents Nixon and Ford; and even the pop icon who starred as Ferris Bueller’s teacher. He is, above all, an expert on bringing meaning to both life and work.

The son of an economist and writer, Stein was born in Washington, D.C. and attended school in Maryland. He graduated from Columbia University in 1966 with honors in economics and from Yale Law School in 1970 as valedictorian of his class by election of his classmates. He has worked as an economist at The Department of Commerce, a poverty lawyer in New Haven and Washington, D.C., a trial lawyer in the field of trade regulation at the Federal Trade Commission in Washington, D.C., a university adjunct at American University in Washington, D.C., at the University of California at Santa Cruz and at Pepperdine University in Malibu, CA. He has taught about the political and social content of mass culture, political and civil rights under the Constitution, libel law, securities law, and ethical issues since 1986.

In 1973 and 1974, he was a speech writer and lawyer for Richard Nixon at The White House and then for Gerald Ford. (He did NOT write the line, 'I am not a crook.') He has been a columnist and editorial writer for The Wall Street Journal, a frequent contributor to Barrons, a regular columnist for Los Angeles Magazine, New York Magazine, Esquire Online, and has written a lengthy diary for twenty years for The American Spectator. He currently writes a column for The New York Times Sunday Business Section, has a column about personal finance for Yahoo!, and is a commentator for CBS Sunday Morning and Fox News. He has written, co-written and published thirty books, including seven novels. His most recent books are the best-selling humor self-help series, How To Ruin Your Life.

Admission by sponsorship or reservation only.
For more information call (818) 221-7774.
A pro bono client’s needs do not always end with a disposition in the trial court. An appeal may be the client’s last hope for justice. Or, a client who has prevailed in the trial court may become an appellee when the other side appeals the favorable result.

For a pro se litigant, proceeding unrepresented in an appellate court can be an overwhelming hurdle to the relief he or she needs. The ability to use one’s legal skills to help someone in need to overcome that hurdle is an incredibly satisfying and meaningful experience.

In addition to being an important component of a pro bono client’s legal needs, appellate pro bono service gives lawyers a unique opportunity to develop their skills and obtain an even more comprehensive understanding of appellate rules and procedures than their everyday practice may afford. Particularly where the client was pro se in the trial court, the uncommon issues that may arise in pro bono cases help lawyers learn the ins and outs of appellate practice, including ensuring a thorough record on appeal, organizing a layperson’s argument into concrete appellate issues, and helping a client minimize appellate costs. In these ways, appellate pro bono service provides great opportunities for a lawyer’s professional development.

The Hillsborough County Bar Association Appellate Practice Section’s Pro Bono Committee has teamed up with the Pro Bono Committee of The Florida Bar Appellate Practice Section to help interested attorneys learn about current appellate pro bono opportunities. The Florida Bar Appellate Practice Section’s Pro Bono Committee maintains a listserv for such attorneys to apprise them of these opportunities as they arise. Both sections welcome members to participate in this program.

The program provides information about pro bono opportunities in a wide array of practice areas in all of Florida’s appellate courts. Members may volunteer for opportunities across the state, regardless of where they routinely practice, because aside from a possible oral argument, the vast majority of a lawyer’s appellate work can be done from the lawyer’s office.

The pro bono opportunities available through the program are not limited to direct representation. Opportunities also exist for more limited appellate assistance, including providing appellate advice to legal aid offices across the state on discrete appellate issues as they arise in cases. Opportunities for those interested in program development to expand the provision of appellate pro bono service are also available.

If you have been looking for an “appealing” pro bono opportunity and would like more information about the program offered by The Florida Bar and HCBA Appellate Practice Sections’ Pro Bono Committees, please contact Sarah Lahlou-Amine at sarah.amine@fowlerwhite.com.

Author: Sarah Lahlou-Amine, Fowler White Boggs, P.A.
THE CORRECT WAY TO ACCEPT PAYMENTS!

Trust your credit card transactions to the only merchant account provider recommended by 39 state and 48 local bar associations!

- Separate earned and unearned fees
- 100% protection of your Trust or IOLTA account
- Complies with ABA & State Bar guidelines
- Safe, simple, and secure!

Reduce processing fees and avoid commingling funds through LawPay.

866.376.0950
LawPay.com/hillsbar

Proud Member Benefit Provider
AVAILABLE EXCLUSIVELY THROUGH
THE HILLSBOROUGH COUNTY BAR ASSOCIATION
You may have heard of the reasons clients choose the collaborative method to resolve their legal and family disputes: Respect is fostered. Communication is enhanced. Privacy is maintained. Solutions are comprehensive. Budgets are respected. Agreements are long-lasting.

But why do attorneys choose to practice collaborative law?

**Work in a Team Environment**

Rather than adversaries, the other party and attorney on a collaborative case are fellow team members whose goals include finding a solution best for the family. The team is led by a neutral facilitator — generally a mental health professional — who guides productive and respectful behavior for the clients and their attorneys. A financial professional usually takes over many of the disclosure responsibilities and develops options that maximize the parties’ resources. Collaborative practitioners refer to this team-centric view as a “paradigm-shift,” as attorneys must:

1. Discard the “us versus them” mentality; and
2. Cede control over aspects of the case to professionals who will more efficiently and effectively address them.

**Engage in a Creative and Intellectual Endeavor**

Creativity as a problem-solving skill is essential in collaborative practice, as attorneys must withdraw if the clients are unable to reach an agreement. Unlike in mediation, where the option of impasse takes the pressure off of parties and their attorneys from making difficult decisions, attorneys who do not want to be fired must dig deep into their toolboxes to address interests behind stated positions.

Of course, this is made easier with the help of the interdisciplinary team. The facilitator will identify underlying issues, lead brainstorming sessions, and help the clients respectfully and productively choose the best solution for them. Further, the financial professional will propose property division, child support, and alimony scenarios that are well beyond the expertise of family law attorneys. In turn, attorneys’ exposure to financial and mental health professionals’ perspectives on issues tend to widen their knowledge base and aide their general law practice.

**Help Clients Grow**

Rather than being destructive, collaborative practice tends to be a constructive process for clients. The facilitator teaches respectful communication skills and techniques for resolving future disputes. Where children are involved, the focus remains on them, and co-parenting skills are enhanced. The financial professional can often find tax benefits, teach the financially less sophisticated spouse how to create a budget, and/or propose better strategies for the clients’ portfolios.

Client growth brings higher rates of satisfaction, and happy clients lead to happy attorneys. (By the way, according to a multi-year study by the International Academy of Collaborative Professionals, almost 90 percent of collaborative cases end successfully, with an additional 2 percent of cases ending in reconciliation of the clients.)

So how can you become a collaborative lawyer?

The first step is to attend a collaborative training. Fortunately, we are having a training session March 20-22 right here in Tampa. You can find the registration form and learn more about collaborative practice at the websites of Next Generation Divorce, Tampa Bay Collaborative Divorce Group, and the HCBA Collaborative Law Section.

Author: Adam B. Cordover, The Law Firm of Adam B. Cordover, P.A.

Need space to rent for your collaborative meeting? Call (813) 221-7777.
Photography
For Websites, Marketing & Advertising

We bring our studio to you!

HCBA Members receive a 10% discount on all services!

Clients include:

Fowler, White Boggs
Raymond James
Sparkman & Sparkman PA
Older & Lundy
Raymond James
Bank of America
Florida Hospital
University of Tampa
Baycare Health System
Barker, Rodems & Cook

Over 20 years of in Tampa Bay!

Call Today!!
813.994.2000

THOMPSON Studios
Visit: ThompsonStudiosTampa.com
VOLUNTEER FOR A DAY AND CHANGE THE WORLD OF SOMEONE IN NEED
Community Services Committee
Chairs: Lisa Esposito - Law Offices of Lisa Esposito, P.A.; and Lara M. LaVoie - LaVoie & Kaizer, P.A.

The committed group of volunteers that I have met over the past few months through my involvement as co-chair of the Community Services Committee (CSC) has left me with a great sense of hope and pride, especially for the legal profession. After the success of the Adopt-a-Veteran event in October, where volunteers gave their time so generously to fulfill the wish lists and hearts of veterans in need, I am amazed at how many individuals stepped up once again to support the Elves for Elders event in December. The CSC (due in no small part to the unwavering dedication of my co-chair, Lisa Esposito) was able to get all 230 Elders “adopted” this year! Without elves like us, these wonderful seniors would have had no presents under their trees/menorahs. As I write this article, I am anticipating the joy of delivering gifts and smiles to this forgotten group of people during the holidays.

Continued on page 21

“Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.”
— Margaret Mead

Wiang Guerra King P.L. has established a dispute resolution practice, WGK-ADR, to assist in the confidential resolution of complex business litigation and arbitration matters. WGK-ADR was formed with the idea that the most effective mediators and private arbitrators for these cases and other business disputes are individuals who have spent their professional lives resolving such matters.

To schedule mediation or arbitration, or to arrange an interview with one or more WGK-ADR principals, contact Diane Burnette at dburnette@wiandlaw.com or 813.347.5125.

For more information about WGK-ADR, visit wiandlaw.com.
Continued from page 20

Hopefully, you will be able to spare a few hours to volunteer at one of our upcoming heartwarming volunteer events. In February, we will spend a day with the children at A Kid’s Place in Brandon, which is a 60-bed facility for abused, neglected, or abandoned children. It has a unique setting with five 3,200-square-foot homes, located on 5 acres. A Kid’s Place uses a live-in house parent model, which provides the children (from newborn to 17 years of age) with a family living atmosphere and a variety of services to meet their social, educational, medical, and psychological needs. We hope to have a carnival-type event there on a Saturday afternoon, with a cookout and fun events for the kids and teens. Organizing and implementing this event is going to require a lot of time and resources; we really appreciate and need any and all help that you can provide! To find out more about A Kid’s Place, please visit: http://www.akidsplacetb.org.

In March, the CSC will participate in Dining with Dignity Week, in association with Trinity Café. The CSC’s friends and family will spend a few hours at Trinity Café serving sit-down, three-course meals to Hillsborough County’s homeless, hungry, and working poor. The café’s mission is to restore a sense of dignity to the homeless and hungry, while serving a nutritious meal. This unique café sets its tables with tablecloths and silverware. Lunch is served on china; drinks are poured in glasses; and the conversation is cheerful and compassionate. We will need volunteers for any day that week to serve lunch, pour drinks, or just sit and share some one-on-one meal-time conversation! To learn more about Trinity Café, please visit: http://www.trinitycafe.org.

If you are interested in joining the CSC or volunteering for an upcoming event, please contact Lara LaVoie (landklawgroup@gmail.com) or Lisa Esposito (lisa@lesposito.com).

Author: Lara M. LaVoie, LaVoie & Kaizer, P.A.
The recent economic downturn, coupled with a decline in the availability of public funding for capital projects, has resulted in a focus on public-private partnerships (also referred to as “PPPs” or “P3s”). P3s are contractual agreements formed between public and private entities that allow for greater private-sector participation in the financing and delivery of public building and infrastructure projects. See USDOT, Innovative Program Delivery website, http://www.fhwa.dot.gov/ipd/p3/defined/index.htm.

Florida recently adopted a bill, chapter 2013-223, Laws of Florida, to broaden the ability to use P3s in the state because “there is a public need for timely cost effective acquisition, design, construction, improvements, renovation, expansion, equipping, maintenance, operation, implementation, or installation of project serving a public purpose” and “a public-private partnership has demonstrated it can meet the needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.” The Florida Department of Transportation (FDOT) already operates a P3 program pursuant to Section 334.30, Florida Statutes. For example, the FDOT is currently in the process of taking proposals for the $2.1 billion I-4 Ultimate Project, which is being procured as a 40-year design, build, finance, operate, and maintain concession agreement.

The bill broadens the ability to use P3s in Florida in an effort to further encourage growth. Among other things, the bill amends Section 255.60, Florida Statutes, to authorize P3s to contract for public-service work with not-for-profit organizations or charitable youth organizations, and it created Section 287.05712 to govern the procurement process for P3s in Florida. Section 287.05712 expansively defines a “private entity” as “any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public-benefit corporation, non-profit entity or other private business entity.” Subsections 287.05712(4), (5), and (6) provide procurement procedures for both solicited and unsolicited proposals for qualifying projects, project approval requirements, and project qualification processes. Perhaps most importantly, Subsection 287.05712(11) sets forth financing options for P3s that include private-source financing secured by the private entity, the loan of funds from the responsible public entity to the private entity, and the use of “innovative finance techniques” by the responsible public entity, including federal loans, commercial bank loans, and hedges against inflation from commercial banks or other private sources.

The bill also creates a task force responsible for recommending guidelines to the Florida Legislature for establishing a uniform P3 selection and review process. The task force must submit a final report of its recommendations to the governor and others by July 1.

What does this all mean for Florida? Some believe growth is on the horizon as a large increase in private funding to construct, operate, and maintain public projects becomes available. For example, the Seminole State College is planning to leverage the new legislation to build up its new Altamonte Springs campus, with the first floor of the building probably consisting entirely of retail and commercial with classrooms above — arguably the kind of innovation promoted by P3s.

Author:
Erin E. Banks,
Carlton Fields Jorden Burt, P.A.
Hillsborough County Bar Association 100 Club

Law firms with 100% membership in the HCBA

FEB 2014 | HCBA LAWYER
Employees of foreign corporations who are physically present and working in Florida may believe that they enjoy immunity from liability for any tortious acts committed within Florida. However, the Florida Supreme Court has made it clear in Kitroser v. Hurt, 85 So. 3d 1084 (Fla. 2012), that the “corporate shield doctrine” does not operate as a bar to personal jurisdiction over nonresidents who commit negligent acts in Florida on behalf of their corporate employer.

Dale Dickey was driving a commercial truck as an employee of Airgas Carbonic Inc. when he struck and killed Rhina Castro Lara. The estate of Lara (Kitroser) filed a lawsuit against Airgas, Dickey, and five Airgas employees who failed to properly supervise and train Dickey. Airgas was a foreign corporation. However, Airgas employees used an Airgas facility in Bartow. Airgas filed motions to quash service and a motion dismiss the complaint because it “asserted that because their actions were taken on behalf of Airgas, rather than for their own personal benefit, the corporate shield doctrine precluded personal jurisdiction over them in Florida even though the negligent conduct occurred in Florida.” Id. at 1086.

Uncontroverted evidence demonstrated that the Airgas employees were not Florida residents; did not rent or own Florida vehicles or real estate; did not have Florida financial accounts or tax liability; did not obtain Florida vocational, professional, or driver’s licenses; and were not registered to vote.

Generally, “the ‘corporate shield’ doctrine, also referred to as the ‘fiduciary shield’ doctrine, provides that acts performed by a person exclusively in his corporate capacity not in Florida but in a foreign state may not form the predicate for the exercise of personal jurisdiction over the employee in the forum state.” Id. at 1088; citing Doe v. Thompson, 620 So. 2d 1004, 1005 (Fla. 1993). Based upon this doctrine, the Airgas employees asserted that the relevant inquiry is whether the actions occurred within the scope of employment and thus on behalf of the corporation.” Id. at 1088.

Importantly, the Florida Supreme Court has created a procedural process to determine whether the long-arm statute provides for personal jurisdiction over a nonresident. “First, a court must determine whether sufficient jurisdictional facts are alleged to bring the action within the ambit of Florida’s long-arm statute. If the first step of the inquiry is satisfied, a court must then determine whether the defendant has sufficient ‘minimum contacts’ with the state to satisfy the Fourteenth Amendment’s due-process requirements.” Id. at 1087; citing Venetian Salami Co. v. Parthenais, 554 So. 2d 499, 502 (Fla. 1989). Further, Florida’s long-arm statute, Section 48.193(1), provides that a nonresident submits himself or herself to the jurisdiction of Florida courts if that individual (b) commits a “tortious act within this state” or (f) causes “injury to persons or property within this state” as the defendant engages in business or service activities within Florida.

In Kitroser, the court established that corporation employees can be held liable for negligent or intentional acts, regardless of the employees’ resident status.

Author: Caroline Johnson Levine, Office of the Attorney General
M y recent trip to England made me wonder whether I have missed some great opportunities in fulfilling my CLE requirements. I had already planned a vacation in Scotland for late September when, shortly after booking my flight, an email from the American Bar Association arrived announcing (probably for at least the third time) that there was a white-collar crime seminar in London two days after I was scheduled to return to Tampa. After briefly considering how much I enjoy my white-collar cases, I signed up for the seminar and rescheduled my flight.

The first indication that the trip was going to be professionally worthwhile and personally fulfilling came on the flight from Atlanta to London. The passenger to my right, who now lives in Naples, Florida, turned out to be a barrister and member of Grays Inn in London. She offered to take me to an inn dinner. Unfortunately, the schedule would not work out, but I hope to be able to take her up on that nice offer in the future. Next, at baggage claim, I ran into a friend who used to practice law in Tampa who is now in Tallahassee. He, too, was heading for Scotland, and it turned out that our hotels in London were directly across the street from one another.

The white-collar seminar was hosted by a solicitors firm that has its offices on the north bank of the Thames River. Although a large portion of the attendees were from London, there were others from the Netherlands, France, Germany, Russia, Portugal, and, of course, the United States. The group was small enough that it was easy to meet, recognize, and talk with other lawyers, which is always valuable.

The substantive aspect of the seminar began with David Green, director of United Kingdom Serious Fraud Office, explaining the U.K. approach to large-scale fraud. The sessions covered both U.S. and U.K. enforcement of tax laws, foreign corrupt practices, money laundering, whistleblowing, and other contemporary issues that companies and individuals may encounter during business transactions. I learned a number of worthwhile strategies that will help with my next white-collar client.

The Fishmongers’ Company Banqueting Hall, the setting for lunch on Monday and the reception that evening, provided one of the more interesting parts of the program. The Fishmongers’ Company is a 700-year-old guild that has its building on the north bank of the Thames River at the foot of London Bridge. The building has a Greco Roman design and was completed in 1835. Towering portraits of King George II, Queen Caroline, and Queen Elizabeth II hang on the walls; coats of arms hang beneath the gilded molding in the banquet room; and every bit of brass in the building gleams.

Over the years, I have been perfunctory in fulfilling my CLE requirements. From here on, I plan to be a bit more adventurous in acquiring the credits I need because of my experience in London. I learned a lot, met some interesting people, and enjoyed a historic change of scenery.

Author:
George Bedell,
George Bedell, P.A.
IT PAYS TO BE A MEMBER!

HCBA members receive exclusive discounts and services through our Benefit Providers. To suggest or become a Benefit Provider, call Corrie Benfield at (813) 221-7779 or email corrie@hillsbar.com.

FREE MINARET DIAMOND RELATIONSHIP ACCOUNT

HCBA members qualify for a free Minaret Diamond account with The Bank of Tampa, with no minimum balance or monthly service fee. Benefits include checking accounts; free checks; leather checkbook covers; no foreign ATM fees; refund of surcharge fees charged by other bank ATMs of up to $25 per month; no surcharge fees at any Publix Presto! ATM; Personal Online Banking and Mobile Banking with free CheckFree® WebPay; and much more.

Contact Jeff Armstrong at (813) 998-2733, or call (813) 872-1200. www.bankoftampa.com

10 PERCENT DISCOUNT

TCS
Trial Consulting Services, LLC

From exhibit boards to trial graphics and other professional presentations, this expert team provides a wide range of services. HCBA members receive a 10 percent discount on all trial research including mock trials. Visit www.triales.com for a list of services.

10 PERCENT DISCOUNT

THOMPSON Studios
photography

HCBA members get 10 percent off at this world-class photography studio. Thompson Studios will come to your office for firm photos, headshots, holiday parties and other special events. Contact Bob Thompson at (813) 994-2000, or email info@thompsonstudiosftm.com.

FREE VALUE OR EMERALD CHECKING

For HCBA members, C1 Bank offers its Value checking account package with direct deposit with no charge and no minimum balance. Partners are eligible for C1’s exclusive Emerald checking at no charge as well.

Contact Christina Morris at (727) 456-5692, or email HCBA@c1bank.com.

FREE TIPS AND NEWSLETTER

Florida Lawyers Mutual Insurance Company (FLMIC) was created by The Florida Bar and is celebrating its 25 years of service in 2014. FLMIC offers HCBA members a free copy of its quarterly Advisor e-newsletter as well as bi-monthly risk management tips. To receive either or both, email your request to becky@flmic.com.

15 PERCENT DISCOUNT

John Boyer, Inc.
Comprehensive Wealth Planning

Get your financial house in order with personalized financial services. HCBA members receive a permanent 15 percent reduction in asset management fees and no initial financial planning fee for new clients. Contact Sarina Correa at (813) 254-9500 or Sarina@johnboyerinc.com.

UP TO 25 PERCENT OFF PROCESSING FEES

LawPay
Credit Card Processing

Trust your transactions to the only payment solution recommended by over 80 bar associations. Correctly safeguard and separate client funds into trust and operating accounts. Funds are never commingled. The ability to accept credit cards attracts clients, improves cash flow and reduces collections. Plus, members save up to 25 percent off their credit card processing fees.

For information, call 1-866-376-0950 or visit www.LawPay.com/hillsbar.
TAMPA BAY BEST BUDDIES SERVES VULNERABLE

Diversity Committee

To us, one of the great attributes of our country has been the march toward equality for all. Since its founding, our country has made great strides — generation by generation — to bring the American promise of liberty and equality to more and more groups of Americans. Few Americans have had a more troubled journey to this promise than those with developmental disabilities. One organization that has done so much to fulfill both the promise of liberty and equality, as well as the moral promise of dignity, for Americans with developmental disabilities is Best Buddies.

Since its founding, Best Buddies has served as one of the greatest advocates for those with developmental disabilities in the United States. Founded by two great Americans, Sargent Shriver and Eunice Kennedy Shriver, Best Buddies has come to reflect the hopes and dreams of families raising children with developmental disabilities and special needs.

The purpose of Best Buddies is simple: to create a culture of tolerance, affirmation, and fair play in our school system as it applies to those with developmental disabilities. Participating schools have students without special needs who are partnered with “Buddies,” or individuals with special needs or developmental disabilities. Those students then serve as not only friends for their “Buddies” but as advocates. This role fosters tolerance in our schools for a population that is all too often maligned and attacked, and it allows the student participant to become aware of a world that few of us know about.

We both are proud to serve on the board of the Tampa Bay Best Buddies organization. We come to this organization based on similar experiences. We both have siblings who are developmentally disabled. We both know what is like to hear words such as “retarded” and feel the sting of bias as suffered by our siblings. We both know what it is...

Continued on page 29

RECOVERY OF INVESTORS' LOSSES

Representing individuals who have suffered losses as a result of the negligence, fraud or other wrongdoing of their stock broker, investment advisor, or other financial professional.

Scott C. Ilgenfritz
Board Certified Business Litigation Attorney
SCOTTI@JPFFIRM.COM
WWW.FLORIDASECURITYSFRAUDLAWYER.COM

Johnson Pope
BOKOR RUPPTEL & BURNS, LLP
COUNSELORS AT LAW

403 E. MADISON ST., TAMPA, FL 33602
(813) 225-2500

Member of the Public Investors Arbitration Bar Association (PIABA) since 1997. Immediate Past President of PIABA. Elected member of PIABA’s Board of Directors.
Continued from page 28

like to feel the scar of rejection or discrimination, as felt by our beloved siblings. And we both know what it is like to see our parents hope and pray that their special-needs child will be cared for after they are no longer on this earth to protect them.

We both firmly believe that there is no greater duty in life than to speak out on behalf of those who have no voice. As attorneys, we promise to defend the substantive values enshrined in our Constitution. As Americans, we are given the duty to care for our neighbor.

There are few populations more ripe for this level of care and advocacy than those with developmental disabilities. This is a group of Americans who, quite often, lack a voice to speak on their behalf.

That is why it is incumbent on us — both as Americans and attorneys — to speak out for this group of vulnerable people who have no voice. People like our siblings deserve dignity, and until the day this goal is achieved, Best Buddies of Tampa Bay will be here to advocate on their behalf.

We hope you will join us in our journey. For more information, go to www.bestbuddiesflorida.org or contact us.

Authors: Jason Whittemore, Wagner Vaughan McLaughlin and Luis Viera, Ogden Sullivan
The countdown has begun for the Sixth Annual Hillsborough County Bar Association 5k Pro Bono River Run on Saturday, March 22! Get ready for a fantastic family friendly event! The 2013 River Run was record-breaking, with 249 registered runners and 899 pro bono service hours pledged. The 2014 River Run is on track to be even better.

The River Run is well-suited for everyone from casual walkers to elite runners, featuring professional chip timing, a USTAF-certified course, a water station, and the glorious Hillsborough River! Check-in begins at 4 p.m. at Bush Ross, and the race

Continued on page 31

S P E C I A L F E A T U R E
Sarah E. Kay and Laura Westerman Tanner

Get Ready for the 6th Annual HCBA 5k Pro Bono River Run

BUELL & ELLIGETT, P.A.

Plaintiffs’ Personal Injury Wrongful Death

Tried by Board Certified Trial and Appellate Lawyers

For more information on our experience, see www.belawtampa.com
Referral fees paid per Florida Bar rules.

3003 W. Azeele Street, Suite 100 Tampa, FL 33609 (813)874-2600

FEB 2014 | HCBA LAWYER
After the River Run, please stay for the Judicial Pig Roast/Food Festival on the grounds of Stetson University’s Tampa Law Center.

begins promptly at 5:30 p.m. You can register for the 2014 River Run ($35 for adults or $15 for those 12 and younger before March 1) on the HCBA website, www.hillsbar.com.

After the River Run, please stay for the Judicial Pig Roast/Food Festival on the grounds of Stetson University’s Tampa Law Center. You can expect to enjoy delicious food, an abundance of fun, and even a little dancing. The pig roast is free for HCBA members and their families.

Not a runner or walker? You can still get involved by volunteering or sponsoring the 2014 River Run. Last year, we had more than 60 volunteers. Please contact Laura Westerman Tanner at ltanner@burr.com if you are interested in volunteering. You can sponsor the River Run through a financial contribution or an in-kind donation for the goody bags. If you wish to be a sponsor, please visit the HCBA website for a form or contact Corrie Benfield at corrie@hillsbar.com or (813) 221-7779.

So, grab your sneakers and come on downtown for an exciting race, a fun afternoon, and a chance to support pro bono legal services! We hope to see you there!

Authors: Sarah E. Kay, Mason, Black and Caballero P.A., and Laura Westerman Tanner, Burr & Forman LLP

Robert H. Bonanno, Esquire
Mediator/Arbitrator
Telephone No. (813)769-3701
www.TampaMediation.com

> Downtown Tampa Facilities Available
> Convenient Online Calendar
> Over 37 years legal experience
> Certified Florida Circuit Civil & Federal Mediator
> Member Florida Circuit-Civil Mediator Society
> Resume’ and rates available on website
> Available to serve as Special Master
The Hillsborough County Bar Association explored the future of diversity and inclusion at the first membership luncheon of the year on January 16. Kathleen Koch, associate general counsel and senior vice president at Bank of America, was the guest speaker. Koch discussed taking a broader view of diversity, thinking beyond the traditional categories of race and gender and identifying “unconscious biases” people may have. She shared some of Bank of America’s practices and identified ways law firms could foster a more inclusive work environment.

Recognizing local efforts to promote inclusion, HCBA President Susan Johnson-Velez thanked HCBA Diversity Committee Co-Chairs Amanda Buffinton and Ronnell Robinzine for their hard work in coordinating the upcoming Diversity Networking Social and a special CLE featuring Pulitzer Prize-winning author Gilbert King. She also recognized several representatives of local minority bar associations — the George Edgecomb Bar Association, Hillsborough Association for Women Lawyers, Tampa Bay Hispanic Bar Association, South Asian Bar Association of Florida, Asian Pacific American Bar Association of Tampa Bay, and the Florida Muslim Bar Association.

Speaking on another important topic, Judge Catherine Peek McEwen discussed the pro bono needs of groups such as Bay Area Legal Services and encouraged attendees to sign up to take a case. Hillsborough County Bar Foundation President Rob Williams also encouraged members to support the upcoming Law & Liberty event, which raises money for local legal-related charities.

January’s luncheon was sponsored by Florida Lawyers Mutual Insurance Company, which is celebrating its 25th anniversary in 2014. The HCBA appreciates the continued support Florida Lawyers Mutual has provided.
Holiday Open House

The trees were lit and the mood was festive at the Hillsborough County Bar Association’s Holiday Open House on December 5. About 300 lawyers, judges, family members, and friends gathered to celebrate, mingle, and catch up on the events of 2013. The open house was a great success, thanks largely in part to the generosity of our sponsor, The Bank of Tampa.

For more event photos, go to www.facebook.com/HCBAtampabay.
Older & Lundy
FAMILY LAW / PERSONAL INJURY

For years you have been trusting us with your clients, families, friends and colleagues. We are always here when you need us.

WWW.OLDERLUNDYLAW.COM

813.254.8998
3014 West Palmira Avenue, Suite 202 Tampa, Florida 33629
Get the legal advertising service you deserve

Publish your legal notice with the Business Observer
- Coverage in 9 Counties: Sarasota, Manatee, Lee, Collier, Hillsborough, Pasco, Pinellas, Charlotte and Orange
- Low, Competitive Flat Rates
- Superior Customer Service
- Online Verification
- Electronic Invoicing and E-filing Capabilities
- Qualified Legal Status

Call 941-906-9386 or email legal@businessobserverfl.com today!

Bar Member SPECIAL Limited-Time Offer:
Complimentary 13-week trial subscription available. Bar members only.
Call 877-231-8834 or email subscriptions@businessobserverfl.com today and mention special code Q013LBA.

zTrip.com

YOUR PRIVATE RIDE
To or from the airport.
Private charters and VIP transfers.
Visit ExecuCar.com
or call 1-800-410-4444

Need a ride? Get the app.
Enter promo code: TAMPALEGAL for $25 credit.

Trenam Kemker
ATTORNEYS
MEDIATORS and ARBITRATORS when experience matters

Arbitrator
- Member of AAA Commercial and Large Complex Panels

Arbitrator
- Member of AAA Construction Panel

Certified Circuit Civil Mediator
- Real Estate

Arbitrator
- Member of AAA Commercial and Construction Panels

Arbitrator
- Member of AAA Commercial Panel

Certified Circuit Civil Mediator
- Bankruptcy
- Creditors’ Rights
- Commercial Litigation

Certified Circuit Civil Mediator
- Motor Vehicle Accidents
- Civil Litigation
- Medical Malpractice
- Personal Injury

Certified Circuit Civil Mediator
- Civil Litigation
- Construction Litigation
- Eminent Domain and Condemnation
- Governmental Disputes
- Ad Valorem Tax Disputes

Certified Circuit Civil Mediator
- Construction
- Federal Government Contracting
- Commercial

Certified Circuit Civil Mediator
- Commercial Litigation
- Shareholder/Fiduciary Disputes
- Real Property Disputes
- Personal Injury

All mediators are Florida Supreme Court Certified. All arbitrators are members in good standing on the panel of neutrals for the American Arbitration Association.

Tampa – 813-223-7474 | St. Petersburg – 727-896-7171 | trenam.com
By the time you read this article, the revived Elder Law Section of the Hillsborough County Bar Association will have had six months of luncheon meetings under its belt. The section got to this point through a lot of hard work by some very dedicated people.

The goal of the Elder Law Section is to educate and update attorneys of the Tampa Bay area on the critical issues and status of the law that affect the lives of the seniors and people with disabilities who are their clients. From real estate to guardianship, personal injury to family law, elder law issues are everywhere. With the aging of our population, the intersection of other areas of law and elder law will only widen. Increased knowledge of the often unique issues facing our elderly and disabled populations can only make the HCBA a stronger and better advocate for the people who use the services of its members.

In the first six months, the Elder Law Section has hosted luncheons, with accompanying CLE credit, on such varied topics as Florida’s Medicaid Long-Term Care Managed Care Program, durable powers of attorneys, and VA benefits, trends and pitfalls. Other meetings dealt with the subject of Medicaid transfer rules and the impact of holiday gift giving, transfer on death accounts and implications for probate, and the role of pre- and post-nuptial agreements in long-term care planning. At all of these luncheons, expert attorneys and industry personnel provided important information and practical tips to those in attendance. Upcoming luncheon meetings should prove to be just as timely and informative. The meetings to come will cover:

- **March 12:** The Affordable Care Act and Special Needs Trust, presented by attorney David Lillesand
- **April 10:** Qualified Income Trusts, presented by attorney Ira Wiesner
- **May 14:** Situational Capacity – CYA for the Attorney, presented by Professor Rebecca Morgan and Professor Roberta Flowers, Stetson University

All luncheon meetings are from noon to 1 p.m. at the Chester H. Ferguson Law Center, 1610 N. Tampa St., Tampa FL 33602. Members and nonmembers of the HCBA are welcome. The cost for the CLE luncheon is $35 for members and $65 for nonmembers. Registration is available at www.hillsbar.com. We look forward to your attendance at the remaining meetings and the further growth of the Elder Law Section.

Author: Elizabeth P. Allen, Gibbons, Neuman, Bello, Segall, Allen & Halloran, P.A.

Are you interested in writing an article for the Lawyer magazine? Contact Corrie Benfield at (813) 221-7779 or corrie@hillsbar.com
The recent United States Supreme Court case *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013), dealt with the requirements of two previous U.S. Supreme Court cases: *Nollan v. California Coastal Comm’n*, 483 U.S. 825, and *Dolan v. City of Tigard*, 512 U.S. 374. Those cases held that the government may not condition the approval of a land-use permit on the owner’s relinquishment of a portion of his or her property unless there is a “nexus” and “rough proportionality” between the government’s demand and the effects of the proposed land use.

In *Koontz*, the Supreme Court answered two questions concerning the application of the *Nollan/Dolan* test in holding that: 1. The government’s demand for property from a land-use permit application must satisfy the *Nollan/Dolan* requirements even when it denies the permit; and 2. The government’s demand for property from a land-use permit applicant must satisfy the *Nollan/Dolan* requirements even when its demand is for money.

In the 1990s, Mr. Koontz sought to develop about 4 acres of his nearly 15-acre tract of land near Orlando. State regulation required him to obtain certain wetlands permits from the Water Management District. State law authorized the district to apply reasonable conditions to the permits to ensure that construction is not harmful to the water resources of the district. Such conditions could include mitigation for wetland impacts. In seeking the permit to develop, Mr. Koontz proposed to grant a conservation easement on 11 acres of his property to prevent any future development. The district found the conservation easement to be inadequate to offset the impacts of the proposed development, and the district suggested other mitigation conditions that would be acceptable offsets, including reducing the footprint of the development and using retaining walls or paying for off-site wetlands improvements on district-owned property several miles away. The district did not require these alternatives and left the door open for Mr. Koontz to suggest other possible mitigation.

Mr. Koontz felt the requests for additional mitigation were excessive, accepted his permit rejection, and filed suit in state court. When challenging a denied permit, the claim is not for an uncompensated taking but for damages caused by an unconstitutional condition. It is important to note that no property was taken from Mr. Koontz. The parties appealed the case through the Florida court system and eventually to the U.S. Supreme Court.

In ruling in favor of Mr. Koontz, the Supreme Court majority identified the injury to the applicant to be an unconstitutional condition, not a taking of property. The *Koontz* decision further clarified that the *Nollan/Dolan* doctrine stands for the proposition that the government may not require an individual to give up a constitutional right in order to obtain a government benefit. However, no compensation is due if the government agency can show the “nexus” and “proportionality” between the impact of the development and the exaction.

*Author: Kenneth C. Pope, Hillsborough County Attorney’s Office*

---

**Do you know when your sections meet?**

Sign up for the weekly CLE e-newsletter and the HCBA events email by calling (813) 221-7777.
YOUR DREAM HOME DESERVES A DREAM MORTGAGE.

FOR MODERN TIMES, A CLASSIC BANK™

SabadellSM is a service mark of Banco de Sabadell, S.A. used by Sabadell United Bank, N.A., member FDIC. ©2012 Sabadell United Bank, N.A., a subsidiary of Banco de Sabadell, S.A. All rights reserved. SABADELL UNITED BANK™ is a trademark and service mark of Banco Sabadell, S.A. BANCOSABADELL® is a registered trademark and service mark of Banco de Sabadell, S.A.
T

he federal Stark Law, 42 U.S.C. § 1395nn, regulates referrals of specific “designated health services” payable by federal insurance programs such as Medicare and Medicaid by physicians who have financial relationships with entities to which they refer such services. The law has resulted in a maze of complex and rapidly evolving regulations, leaving providers in a quandary as to which types of referrals are permissible.

Complicating matters even further is the Florida Patient Self-Referral Act of 1992, Section 456.053, Florida Statutes (the Florida Act), which the American Medical Association has described as “the most complicated and perhaps the most restrictive self-referral law of any of the states.”1 The Florida Act serves a similar purpose as the Stark Law and contains some overlapping language, but it does not expressly tie itself to the Stark Law. Rather, the Florida Act stands on its own as a separate prohibition. In January 2013, the Eleventh Circuit held that the Stark Law does not pre-empt the Florida Act.2

In one respect, the Florida Act is narrower than the Stark Law because it prohibits referrals only when a provider has a direct or indirect investment interest in the entity receiving the referrals. In contrast, the Stark Law applies to a host of financial relationships, including investment interests and other relationships such as independent contractor relationships. In two other respects, however, the Florida Act is broader. First, it applies to referrals of any health services, not just “designated health services.” Second, the Florida Act applies regardless of who pays for the referred services, whereas the Stark Law is limited to services payable by federal insurance programs.

The Florida Act and the Stark Law contain two largely distinct sets of exceptions to their referral prohibitions. The most important exception that is common to both laws is the “in-office ancillary services exception,” which allows providers to refer ancillary services such as imaging and laboratory services to their own group medical practices. Although both laws embrace this general principle, the Florida Act, true to form, is more restrictive. First, the Florida Act requires one of the physician members of the practice to be in the office while the ancillary services are performed, whereas in many cases the Stark Law does not. Second, the Florida Act requires that the ancillary services be provided solely for the benefit of patients of the practice, prohibiting the acceptance of outside referrals for such services (except that the practice may accept up to 15 percent outside referrals for diagnostic imaging services if it meets a host of onerous requirements). No such requirement is included in the Stark Law exception.

A violation of the Florida Act requires the entity to which the services were referred to forego any claim for payment for the services. If the entity knowingly submits a claim in violation of the Florida Act, the entity is subject to a civil penalty of $15,000 per claim.

2 Fresenius Medical Care Holdings, Inc. v. Tucker, 704 E3d 935 (11th Cir. 2013).

Author: Jon Gatto, Carlton Fields Jorden Burt, PA
FIRST-TO-FILE RULE: WHAT’S IN A NAME?

Well Juliet, it depends upon whether you are asking a patent prosecutor or litigator. Under the Leahy-Smith America Invents Act (AIA), the rule means as the name suggests: A patent is issued to the first to file an application.1 Although the AIA awards patents to the inventor who first files, federal courts do not automatically award the race to the courthouse to the swiftest in patent cases.

The litigation rule was not misnamed when originally established by the United States Supreme Court in 1824. “In all cases of concurrent jurisdiction, the Court which first has possession of the subject must decide it.” Smith v. McIver, 22 U.S. 532, 535 (1824).

Since Smith, the general rule in federal litigation favors the forum of the first-filed action.

The Federal Circuit, whose law controls issues impacting patent law2, advocates following this general rule “unless considerations of judicial and litigant economy, and the just and effective disposition of disputes, requires otherwise.” Electronics for Imaging, Inc. v. Coyle, 394 F.3d 1341, 1347 (Fed. Cir. 2005) (emphasis added). The court has rejected applying a bright-line rule that would automatically defer to the first-filed court, the fate of the second-filed action. Micron Tech., Inc. v. Mosaid Techs., Inc., 518 F.3d 897, 904 (Fed. Cir. 2008).

Instead, Federal Circuit precedent instructs that factors such as tenueness of jurisdiction, broadness of the parallel actions, the degree of judicial investment, the possibility of consolidating related litigation, and the convenience factors under 28 U.S.C. § 1404 (a) may be considered in determining whether parallel actions should proceed separately or together, and, if the latter, in which forum.

Exceptions to the general rule may also be made if bad faith, anticipatory suit, and forum shopping are present.

The Federal Circuit has further carved out a “customer suit exception”: If an infringement action is first brought against the customer, and the manufacturer (from whom the customer purchased the allegedly infringing good) subsequently brings a declaratory judgment action in response, the first-filed action may be stayed in favor of the manufacturer’s declaratory judgment action. See Kahn v. General Motors Corp., 889 F.2d 1078, 1081 (Fed. Cir. 1989).

In light of the “ample degree of discretion” the Federal Circuit accords the lower courts, it may be the second-filed court that determines both actions when applying the first-to-file rule. Merial Ltd. v. Cipla Ltd., 681 F.3d 1283, 1299 (Fed. Cir. 2012).

So as Juliet doth love the man behind the name, the Federal Circuit too desires that the justice and expediency considerations behind the first-to-file rule, and not the name, have meaning in patent cases.


2 Midwest Indus., Inc. v. Karavan Trailers, Inc., 175 F.3d 1356, 1359 (Fed. Cir. 1999).

Author: Kathleen M. Wade, Fee & Jeffries, P.A.

Save the date:
Intellectual Property Section Luncheon at noon on March 19.
Call (813) 221-7777 to register.
Elder Law CLE
The HCBA Elder Law Section welcomed guest speaker Babette B. Bach in November for a CLE luncheon detailing “VA Benefits, Trends, Pitfalls and Medicaid.” Thanks to all who attended!

Health Care Law CLE
HCBA Health Care Law Section Chairs Sara Younger and T.J. Ferrante welcomed guest speaker Radha V. Bachman in November for a CLE luncheon detailing “Disability Compliance for Health Care Providers: Navigating the Landmines.” Thanks to all who attended!

Save the Dates

FEBRUARY 22
Diversity Networking Social at the Chester H. Ferguson Law Center

FEBRUARY 25
Diversity Committee Presents: A Special Luncheon, CLE and Book Signing with “Devil in the Grove” Author Gilbert King at the Chester H. Ferguson Law Center

MARCH 17
HCBA Hockey Night, Tampa Bay Lightning vs. Vancouver Canucks

MARCH 22
Judicial Pig Roast/Food Festival & 5K Pro Bono River Run on the grounds of Stetson’s Tampa Law Center

MAY 13
Law Day Membership Luncheon at the Hilton Tampa Downtown

Learn more about HCBA events at www.hillsbar.com.

Stay Connected
The United States Supreme Court’s recent decision — “Section 3 of the Federal Defense of Marriage Act (DOMA) violates the equal protection of the Fifth Amendment of the U.S. Constitution as applied to persons of the same sex who are legally married under the law of their state” — opens the door for same-sex couples to enjoy many federal tax-related benefits previously available only to opposite-sex married couples. These benefits include income tax benefits, estate and gift tax benefits, and taxpayer-friendly employee benefits.

Under the ruling, individuals of the same sex will be considered to be lawfully married under the code as long as they were married in a state, which means any domestic or foreign jurisdiction having the legal authority to sanction marriage, even if they are domiciled in a state that does not recognize the validity of same-sex marriage.

Due to our increasingly mobile society, it is important to have a uniform rule of recognition that can be applied with consistency by the IRS and taxpayers alike for all federal tax purposes.

A taxpayer’s filing status determines the right to many tax benefits relative to access and amounts. The filing status determines income tax bracket levels, the standard deduction, personal exemptions, and the adjusted gross income at which many of the tax benefits “phase-out.” In most cases, the taxpayer’s marital status is the deciding factor for the filing status.

Same-sex couples who are currently married under state law must file either a jointly or married filing separately return for 2013. They are barred for federal tax purposes from filing separate returns as single or head of household unless, like opposite-sex couples, they are divorced or have a final separation agreement in place by the end of 2013.

For 2012 and prior years, assuming the statute of limitations for amending a return has not expired, same-sex spouses who filed their return before September 16, 2013, may choose to amend their returns to file using a joint filing or married filing separately status. However, the returns are not required to be amended; this is optional.

Keep in mind that the benefits of filing a joint return may not always produce a better result than filing separately as unmarried individuals. One factor, known as the marriage penalty, is a problem for many opposite-sex married couples and same-sex married couples. Same-sex married couples also cannot turn a blind eye to any item that is listed on a joint return, triggering the consideration of joint and several liability.

 Innocent spouse status now comes into play with the decision to file joint returns.

Many same-sex married couples may find it beneficial to revisit their estate plans to make certain that interests passing to the other spouse qualify for all the tax benefits. The marital deduction can defer or eliminate transfer tax until the surviving spouse dies. The ability to transfer assets between same-sex married couples with no concern for lifetime gift tax consequences creates flexibility for estate planning.

Effective date issues of the ruling will consider the same-sex marriage effective retroactively to the date of the couple’s marriage under state law rather than the date of the Supreme Court’s decision, June 27, 2013.

Authors: Constance Rossi and Briggs Stahl, Stahl Consulting Group, PA.
The Fraley Law Firm, P.A.

- Employee Rights
- Victims of Sexual Harassment
- Unpaid Overtime
- Whistleblowers
- Discrimination/Retaliation
- Breach of Employment Contracts

Ronald Fraley, an AV rated attorney, has practiced Employment Law in Tampa for over 25 years.

2525 PARK CITY WAY, TAMPA FL 33609 813-229-8300 VISIT OUR WEBSITE: www.fraleylawfirm.com

ChrisCraft Tampa Bay

Represent Yourself in Style!

www.ChrisCraftTampaBay.com 727-341-8110

Let Us Help You With The Numbers

We help clients prepare for the Financial Realities of Divorce with Pre and Post Financial Divorce Consulting

Help your client by referring them to a trusted advisor

John Boyer
CFP® CDFA™
813.254.9500

FinancialDivorceConsultants.com - John@FinancialDivorceConsultants.com
Effective July 1, 2013, most new arbitration agreements between Florida parties are subject to the Revised Florida Arbitration Code.

Arbitration Agreement. The RFAC provides that many of its provisions may be waived or varied by the parties, but some may not. The RFAC specifies that the court decides whether the agreement is enforceable and whether it applies to a specific controversy, but the arbitrator decides whether the arbitration clause is enforceable and whether conditions precedent to arbitrability have been fulfilled. Moreover, the sections relating to motions to compel/stay arbitration have been updated.

Initiation of Arbitration. Parties commence arbitration using the method they have provided in their agreement; if none, then by certified mail or service of process. Separate arbitrations may be consolidated by the court, unless prohibited by the arbitration agreement(s), and waivers of class arbitration retain their validity.

Prehearing Procedures. Arbitrators may permit discovery as they deem appropriate, considering “the needs of the parties … and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.” They may issue subpœnae for appearance or ducès tecum at hearing or “at a discovery proceeding” and may issue protective orders.

Arbitration Hearings. Scheduling and conduct of the hearings is more streamlined. Arbitrators may rule on motions for summary disposition, with due notice; final evidentiary hearings are no longer required. A hearing — summary or final — may move forward in the absence of a party, if that party has received due notice. Parties still have the right to be heard, present evidence, and cross-examine witnesses appearing at a final hearing.

Awards. Arbitrators may award punitive damages or attorney’s fees and costs, if such would be available in a civil action involving the same claim(s). Awards may be modified or corrected by the arbitrator, on motion submitted within 20 days after receipt of the award; opposing party has 10 days to object. Alternatively, on motion to confirm, vacate, or modify the award, the court may rule, after taking what evidence the court deems necessary, or may submit some types of modifications or corrections to the arbitrator to resolve.

1 The Federal Arbitration Act still pre-empts arbitration clauses involving disputes related to “maritime transactions” or “interstate commerce” as defined in 9 U.S.C. §1. An exception to the pre-emption exists where the parties have specifically stated that the law of Florida would govern the agreement. Volt Information Sciences, Inc. v. Board of Trustees, 489 U.S. 468 (1989).
2 The code will apply to all non-pre-empted arbitration agreements as of July 1, 2016, and applies to any pre-existing agreement where the parties agree it will apply. Fla. Stat. § 682.013 (2013).
3 For example, the following may not be waived: whether RFAC applies;
Continued from page 46

the availability of judicial proceedings pre- and post-hearing; the standards for judicial vacation or modification of an arbitration award; arbitrator immunity; the arbitrator’s authority to change an award; provisional remedies; arbitrator authority to issue subpoenas and to permit depositions; the enforceability of a judgment on award or the bases for appeal therefrom. Fla. Stat. § 682.014 (2013).

4 Fla. Stat. § 682.02(2) - (4) (2013).
5 Fla. Stat. § 682.03 (2013).

7 i.e., an arbitrator “who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party.” Fla. Stat. § 682.04 (2013).


Arbitrators are also entitled to their reasonable attorney’s fees and costs if the court determines the arbitrator is immune or is not required to testify. Id.
13 Fla. Stat. §§ 682.05, 682.06 (2013).

Author:
Christopher M. Shulman,
Christopher M. Shulman, P.A.

Judicial Luncheon

A panel of judges gave some very helpful tips to HCBA attorneys on November 19 during a presentation titled “Motions: How to Present, Persuade and Defend in Motion Practice by the Circuit Criminal Felony Bench.” Attendees earned 2 CLE credits during the luncheon. The HCBA greatly appreciates the judges who participated: Judge Tom Barber, Judge Lisa D. Campbell, Judge Kimberly K. Fernandez, Judge Ronald Ficarrotta, Judge Gregory P. Holder, Judge Christopher C. Sabella, Judge Michelle Sisco, Judge Caroline J. Tesche, and Judge Samantha L. Ward.
I HAVE MORE THAN 34 YEARS OF EXPERIENCE REPRESENTING BOTH PLAINTIFFS AND DEFENDANTS IN A WIDE VARIETY OF CIVIL LAWSUITS. I NOW USE THAT EXPERIENCE TO HELP PARTIES SETTLE THEIR CASES.

■ AV RATED BY MARTINDALE-HUBBELL
■ MEMBER OF THE AMERICAN BOARD OF TRIAL ADVOCATES
■ CERTIFIED MEDIATOR SINCE 1994, PROVIDING SERVICES TO LAW FIRMS, CORPORATIONS AND INDIVIDUALS.
■ LICENSED IN ARIZONA, FLORIDA, KENTUCKY, MISSISSIPPI, TENNESSEE AND PENNSYLVANIA.

ATTORNEY JAMES R. FREEMAN
111 SECOND AVENUE N., SUITE 305
ST. PETERSBURG, FL 33701
Ph: 727-456-0026
Jim@FreemanMediationServices.com
WWW.FreemanMediationServices.com

FOCUSED ON
MEDIATION SOLUTIONS

Treasury services that put your working capital to work.

At C1 Bank, our Treasury Management Services team offers a dynamic suite of working capital management solutions including:
• Remote Deposit Capture
• Automated Clearing House (ACH)
• Zero Balance Accounts (ZBA)
• eCorp Business Online Banking
• Wires/Online Wires (Domestic and International)
• Positive Pay
• Sweep to Line of Credit
• Merchant Bankcard Services
• Account Reconciliation
• Controlled Disbursement
• Business Advantage MasterCard or Visa Cards

Contact us for a consultation today.
C1Bank.com/treasury • (877) 266-2265
checking • savings • money markets • mortgages
• business loans • SBA loans • association and
treasury services • and a host of other sophisticated
banking products you might not expect

C1 Bank
Clients 1st. Community 1st.

MEMBER FDIC
Incivility in the legal community can be a constant source of frustration for attorneys who seek to honor and hold the legal profession in high regard. Some practitioners may unwittingly assume that nothing can be done to cure this issue. However, the Florida Supreme Court is working to remedy what some practitioners believe is an increasing problem of unprofessionalism in The Florida Bar.

In *The Florida Bar v. Norkin*, the Supreme Court recently overruled a referee recommendation that Jeffrey Alan Norkin should only be suspended from the practice of law for 90 days and serve 18 months of probation for unprofessionalism. In its place, the court imposed a two-year suspension of his Bar license. Norkin was litigating a civil case in Miami when he “improperly threatened the filing of a legal action against [his opponent] personally and, without supporting facts, asserted that [his opponent] was involved in a conspiracy.”

Subsequently, Norkin filed a motion to recuse the presiding judge and wrote disparaging and unprofessional remarks about his opponent and the judge, to include assertions that the court’s rulings allowed the opposing party “in [a] fraudulent and criminal manner; [to] use this Court as an instrument of destruction.” Further, Norkin asserted that the court “acted at the ‘beck and call’ of the plaintiff, and that there was an improper and illegal relationship between the judge” and Norkin’s opponent. Norkin routinely raised his voice and was confrontational in the courtroom until the judge finally granted Norkin’s motion for recusal. A second judge also found that Norkin was antagonistic, and eventually that judge “was forced to terminate [the] proceedings and refer” them to a general magistrate. The Supreme Court found that Norkin’s “lack of professionalism and inappropriate courtroom demeanor made it impossible for the judges to conduct hearings.”

Additional evidence of Norkin’s unprofessionalism became apparent in his emails, where he wrote statements such as “when is your unprofessional, ludicrous, downright unintelligent conduct going to stop? Before or after you are directed to pay my bills?” Norkin’s subsequent outbursts included publicly screaming about his opponent, stating that “[he] is a liar. He’s lying” and that he “is underhanded and a scumbag.”

The Supreme Court found that “the record amply demonstrates that Norkin knowingly, or through callous indifference, was incessantly disparaging and humiliating” toward his opposing counsel. Further, the court found Norkin guilty of violating Rules 4-3.5(c), 4-8.2(a), and 4-8.4(a) and (d).

Members of the public and the legal profession may assume that antagonistic lawyers are simply fulfilling a bona fide responsibility to be a zealous advocate. However, the Florida Supreme Court imposed a severe sanction upon Norkin, making it clear that incivility and unprofessionalism will not and cannot be tolerated in the practice of law.

2 Id. at 3.
3 Id.
4 Id.
5 Id. at 6.
6 Id.
7 Id. at 7.
8 Id. at 8.
9 Id.

Author: Caroline Johnson Levine, Office of the Attorney General
The recent U.S. Supreme Court ruling in *U.S. v. Windsor* and subsequent guidance published by the Internal Revenue Service (IRS) has created numerous estate and tax planning opportunities for same-sex married couples nationwide. Because many of these couples may relocate to Florida to take advantage of Florida’s lack of income, gift, and estate taxes, practitioners should apprise themselves of the various planning opportunities that now exist.

In *Windsor*, the U.S. Supreme Court held Section 3 of the Defense of Marriage Act to be unconstitutional as a deprivation of the equal liberty protection found in the Fifth Amendment. After *Windsor*, same-sex married couples were considered married for purposes of federal estate and gift tax laws if they had been married in a state that recognizes same-sex marriages and if they resided in a state that recognizes same-sex marriages. Therefore, immediately after *Windsor*, same-sex married couples who had been married in a state that recognizes same-sex marriages but who resided in Florida, a non-recognition state, could not avail themselves of the benefits of married couples under federal gift and estate tax laws. This all changed when the IRS issued Revenue Ruling 2013-17, which clarified that any same-sex marriages legally entered into will be recognized for federal income, gift, and estate tax purposes even if the same-sex married couples reside in a state that does not recognize same-sex marriages.

The IRS’s Notice IR-2013-72 makes it clear that same-sex married couples must now file their 2013 federal income tax returns (and all future income tax returns) as married filing jointly or as married filing separately. Additionally, this notice also states that individuals who were in same-sex marriages may file amended federal returns (income, gift, or estate) for one or more prior tax years still open under the statute of limitations. This option may create income, gift, and estate tax planning opportunities for same-sex married couples that should be evaluated.

Same-sex married couples (regardless of where they reside) are now able to take advantage of several federal tax benefits that were previously unavailable to them. These benefits include, but are not limited to, the following: (i) unlimited marital deduction for federal estate and gift tax purposes; (ii) “portability” of the deceased spouse’s unused estate tax exclusion amount for federal estate tax purposes; and (iii) gift splitting for federal gift tax purposes.

A possible problem now arises when same-sex married couples reside in a state that does not recognize same-sex marriages but has a state income, gift, or estate tax. For example, under current law and IRS guidance, these couples will now be required to file their federal income tax returns as married filing jointly or as married filing separately, but they may very well be forced to file separate state income tax returns. For this reason, Florida appears to be an attractive home for same-sex married couples due to its lack of income, gift, and estate taxes, and Florida practitioners should be prepared to advise such couples on the various planning opportunities that are now available.

**Authors:**
Taylor C. Russo and Jamil G. Daoud, MacFarlane Ferguson and McMullen, PA.
Fulfill Your Professional Responsibility
Donate to Bay Area Legal Services

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.

THANK YOU TO OUR 2013 SUSTAINING LAW FIRMS FOR THEIR LOYALTY AND SUPPORT:

Gail Martin Abercrombie, P.A.
Richard S. Agster, P.A.
Akerman Senterfitt
Alloy, Clark & Greilwe
Amstein & Lehr, LLP
Ashley Allen Law, P.A.
Banker Lopez Gassler, P.A.
Barrett, Bolt, Kirkwood, Long & McBride, P.A.
Betts Mediations
Buell & Elliott, P.A.
Burr & Forman, LLP
Ronald K. Cacciaputo, P.A.
Norman S. Cannella, Jr., P.A.
Law Offices of J. Kevin Carey, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
The Law Office of Julia Best Chase, P.A.
Cheeseam & Phillips
Clark & Martino, P.A.
Preston O. Cockey, Jr., P.A.
Thomas E. Cone, Jr., P.A.
Danahy & Murray, P.A.
de la Parte & Gilbert, P.A.
R. Michael Deloach, P.A.
The Law Office of Christine Derr
Richard W. Driscoll, P.A.
Greg W. Dworzanowski, P.A.
Epperson & Rich, P.A.
Gerald A. Figurski, P.A.
Forcon International Corp.
Buddy D. Ford, P.A.
Michael Foster, P.A.
Fowler White Boggs, P.A.
George & Titus, P.A.
Bruce S. Goldstein, P.A.
Fritz Gray, Attorney at Law
Melvia B. Green, P.A.
Gunn Appellate Practice, P.A.
Gunn Law Group, P.A.
The Law Firm of Gunster
William E. Hahn, P.A.
Linda C. Hanna, P.A.
Harmon, Woods, Parker & Abrunzo, P.A.
Harris and Hunt, P.A.
Ward Henderson
Himes & Hearn, P.A.
Ron A. Hobgood, Attorney at Law
Holland & Lamouroux, P.A.
Mark S. Howard, P.A.
The Law Offices of George Hunter, P.A.
A. Woodson Isom, Jr., P.A.
Jennings & Bowen P.L.
Joyce & Reyes Law Firm
Edwin B. Kagan, P.A.
Ann Loughridge Kent, Attorney at Law
Kynes, Markman & Felman, P.A.
Lauro Law Firm
Leon & Berg, P.A.
Vincent A. Leto, P.A.
Mark A. Linsky, P.A.
James B. Loper, Attorney at Law
Madison Street Properties
Law Office of Ryan Manning
Marlowe McNabb, P.A.
Marshall Thomas Burnett, P.L.
Mason Black & Caballero, P.A.
LeRoy H. Merkle, Jr., P.A.
Lawrence E. Mccollum, P.A.
Mark E. Miller, P.A.
H. Lee Moffitt, P.A.
Morgenstern & Herd, P.A.
The Law & Mediation Offices of Robert J. Nader
New Tampa Mediation Services, Inc.
Catherine Novack
Ogden & Sullivan, P.A.
Michael J. Palermo, P.A.
Terrence F. Pyle, P.A.
John H. Rains, III, P.A.
Rissman, Barrett, Hurt, Donahue & McLain, P.A.
Daniel Rivero, Jr., P.A.
Rocke, McLean & Sbar, P.A.
Irene M. Rodriguez, P.A.
Craig E. Rothbard, P.A.
Rumberger, Kirk & Caldwell, P.A.
Rywant, Alvarez, Jones, Russo & Gayton, P.A.
Sharp Kemm, P.A.
Mark Shetlon, P.A.
Gary R. Singletary, P.A.
Singletary Law Firm, P.A.
Christopher J. Smith, P.A.
Law Office of James H. Smith, PL
Malcolm R. Smith, Attorney at Law
Gerald Stead, P.A.
Stichter, Riedel, Blain & Prosser, P.A.
John E. Sullivan, P.A.
TECO Energy, Inc.
Jack L. Townsend, Sr., P.A.
Law Offices of Deborah Rose Tracy, P.A.
Trenam Kemker
Trombley & Hanes, P.A.
Law Office of Amanda M. Ullano, P.A.
Veredus Corp.
John W. Voelpel, P.A.
Rory B. Weiner, P.A.
Wenzel Fenton Cabassa, P.A.
Deborah Larned Werner, P.A.
Charles S. White, P.A.
Wiand Guerra King P.L.
Barbara L. Wilhite, P.A.
Wilkes & McHugh, P.A.
Richard Benjamin Wilkes, P.A.
Law Offices of Thomas L. Young
Zuckerman Spaeder LLP

Thank you so much for your support. BALS is deeply grateful for your generosity. We would love to continue to present your organization on the Lawyer Magazine list of our sustaining law firms in 2014: will you be there? If so, please act fast – deadlines are the 15th of the months two months prior to the date of the publication. A precise schedule for the magazine can be found below.

MATERIAL DEADLINE
JULY 15
SEPTEMBER 15
OCTOBER 15
DECEMBER 15
JANUARY 15
MARCH 15
APRIL 15

PUBLICATION
SEPTEMBER/OCTOBER
NOVEMBER
DECEMBER/JANUARY
FEBRUARY
MARCH/APRIL
MAY
JUNE/JULY/AUGUST

To make a donation or become a 2014 Sustaining Law Firm
Contact: Development – Rose Brempong 813-232-1222 x131 or email: rbrempong@bals.org
Sensory Friendly Santa

Santa made a very important stop at the Chester H. Ferguson Law Center on December 7 to bring joy to children living with autism and developmental delays. The Lawyers Autism Awareness Foundation organized the Sensory Friendly Santa event, which featured arts and crafts, a toy giveaway, and photos with the bearded man himself. Elements that make up traditional visits with Santa, including bright lights, loud Christmas music, and long lines, can cause stress and anxiety for children with autism. The Sensory Friendly Santa event provided a more calming environment, including natural light, low noise, and appointed blocks of time to minimize waiting for Santa. The organizers would like to thank Judge Rex Barbas and Judge Nick Nazaretian for suiting up to play Santa. Also added to the “nice” list are the event sponsors: City of Tampa Firefighters Local 754, Cooley Law School, Hillsborough County Bar Association, Joe Photo Tampa, Kubicki Draper, Law Offices of Christine Derr, Phelps Dunbar, Sanchez Valencia, and Tampa Hispanic Bar Association.
GlassRatner Advisory & Capital Group is a national specialty financial advisory services firm providing solutions to complex business problems and Board level agenda items. Our combination of proven operating and financial expertise, a hands-on approach, and our absolute focus on assignment execution make us a unique, valuable ally for our clients and partners. For more information about our services, please contact us or visit www.GlassRatner.com.

M.D. Luetgert
Senior Managing Director
142 W. Platt St, Suite 118
Tampa, Florida 33606
813-849-6034 Direct
813-404-0240 Cell
mluetgert@glassratner.com

ATLANTA · BAKERSFIELD · CHICAGO · IRVINE · LOS ANGELES · MIAMI · NEW YORK · PHOENIX · TAMPA

Constance d'Angelis
Mediator · Arbitrator · Attorney
Education & Certification
US Bankruptcy Court
Mortgage Mediator Certification
On Line Course
www.CLEanytime.com

Certification
Real Estate 8.5
Business Litigation 6.5

Not Only for Mediators
A portion of the proceeds benefits the Institute for Peaceful Solutions

Clark Jordan-Holmes
Mediator · Arbitrator · Attorney
Certified / Approved
• Circuit Court - Business, Personal Injury
• Middle District
• Bankruptcy
• Family Law
• Condominium Disputes
• Pre-suit & Suit Mediations of All Kinds
813·966·2626
www.MediationForFlorida.com

Join Us on Facebook
Clark@MediationForFlorida.com
P.O. Box 172297 · Tampa, FL 33601
Cleveland Avenue Near Downtown · Plenty of Parking
A
n unusual confluence of Florida statutory and common law has created — and immediately doomed — an expanded view of the implied warranty of habitability as applied to the development of residential subdivisions. The story began when Lakeview Reserve Homeowners Association, on behalf of its members, sued builder Maronda Homes, Inc., which subsequently joined the subdivision’s developer, T.D. Thompson Construction Co., for damages resulting from defective infrastructure improvements within the common areas of a subdivision in Orange County. Residents alleged that the builder and developer breached the implied warranty by erecting a faulty drainage system that caused recurrent flooding, which, in turn, caused erosion and damage to the subdivision roads. The trial court, however, rejected the association’s claim that the implied warranty extended beyond the residence to the common areas.¹

In 2010, the Fifth District disagreed, concluding that roads and sewage and drainage systems are “essential to the habitability of the residence.” The district court explained that a defect in a nonessential improvement, such as landscaping, recreational facilities, or a security system, would not render a residence unfit for its intended purpose. Aiding in this distinction, the Fifth District created the “essential services” test — is the allegedly defective “improvement providing a service essential to the habitability of the home? If [so], then the implied warranties apply.” The Fifth District reasoned that a developer is better positioned than a homeowner to discover a defective improvement that may affect habitability and, as such, should be the party responsible for the defect. The builder and developer appealed the Fifth District’s ruling.²

In direct response to the Fifth District’s holding, the Florida Legislature enacted Florida Statute Section 553.835. The statute states that implied warranties do not apply to the development of residential subdivisions. Continued on page 55
apply to “offsite improvements,” which include roads, drainage, or any other improvement “not located on or under the lot on which a new home is constructed...” In an attempt to nullify the Fifth District’s warranty liability expansion, the Legislature provided that the statute “shall take effect on July 1, 2012, and apply to all cases accruing before, pending on, or filed after that date.”3

Meanwhile, the Florida Supreme Court agreed to hear the appeal and, in a ruling released on July 11, 2013, adopted the “essential services” test. In doing so, the court expanded the definition of services “immediately supporting” a residence beyond those improvements on or under the lot on which a new home is constructed. The court further held that Section 553.835 is a substantive law rather than a procedural law and, as such, cannot be applied retroactively to prohibit accrued causes of action.4

The result of this decision creates a peculiar and short-lived shelf life for common law “essential services” test claims. It offers associations a limited window to pursue an implied warranty claim against their builders and developers, provided the claim accrued before July 1, 2012, and is filed prior to the statute of limitations deadline.5 It will likewise leave developers exposed to common law implied warranty claims — claims that had been aimed at builders. However, this period of exposure will expire along with the “essential services” test once the statute of limitations bars all claims accruing before July 1, 2012. At that time, the implied warranty will essentially be limited in the same manner as it was prior to this skirmish between the courts and Legislature. Once order is restored, parties will be able to look to Section 553.835 for guidance.

1 Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass’n v. Maronda Homes, Inc. of Fla., 48 So. 3d 902, 908-910 (Fla. 5th DCA 2010).
2 Fla. Stat. § 553.835 (2013); see also Maronda Homes, Inc. of Fla., 2013 WL 3466814 at *11-12.
3 Maronda Homes, Inc. of Fla., 2013 WL 3466814 at *16-17. In dissent, Justice Canady noted that although the majority, in dicta, found the statute violated the right of access to courts by abolishing a common law cause of action without providing a reasonable alternative, the court’s conclusion stopped short of holding that the prospective application of the statute is unconstitutional. Id. at *18.

Authors: William J. Podolsky, III, and Derek Larsen, Chaney, Phelps Dunbar, LLP

Blast from the Past

Last year’s Lawyer magazine covers featured vintage Florida postcards. If you’re feeling nostalgic and want to read past issues of the Lawyer, check them out online at www.hillsbar.com.
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.

Convenient to downtown Tampa, the Ferguson Law Center has many amenities:

• Six conference rooms of varying sizes
• Complimentary AV equipment and Wi-Fi
• 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

CHESTER H. FERGUSON LAW CENTER
1610 N. TAMPA STREET, TAMPA, FL 33602

RESERVE YOUR SPACE TODAY.
CALL (813) 221-7777 OR EMAIL EVENTS@HILLSBAR.COM.
Effective January 1, 2014, Rule 1.442(c)(2)(B), Florida Rules of Civil Procedure, has been amended. The rule, which previously required that a proposal for settlement “identify the claim or claims the proposal is attempting to resolve,” now will require instead that a proposal for settlement “state that the proposal resolves all damages that would otherwise be awarded in a final judgment in the action in which the proposal is served, subject to subdivision (F).”

In re Amendments to the Fla. Rules of Civil Procedure, No. SC13-74, --- So. 3d ---, 2013 WL 6164572, at *1 (Fla. Nov. 14, 2013) (emphasis added). The amendment makes the rule consistent with section 768.79(2), Florida Statutes, which states that “[t]he offer [to settle] shall be construed as including all damages which could be awarded in a final judgment.” Fla. Stat. § 768.79(2) (emphasis added).

The amendment is significant because it eliminates partial proposals for settlement, which, although popular because they allow litigants to cherry-pick claims, are tricky and oftentimes complicate cases pre- and post-judgment. However, it also raises an interesting issue: Will proposals for settlement be valid in actions in which plaintiffs seek both damages and equitable relief, and if so, will such proposals be deemed to implicitly carve out the equitable claims if they are drafted in accordance with amended Rule 1.442 to resolve “all damages” that would otherwise be awarded in a final judgment?

The offer of judgment statute states that it applies to “civil actions for damages.” Fla. Stat. § 768.79(1). It does not state that it applies to actions for equitable relief, or even to actions for both equitable relief and damages. Before the amendment, the Florida Supreme Court held that Section 768.79 “does not apply to an action in which the plaintiff seeks both damages and equitable relief, and in which the defendant has served a general offer of judgment that seeks release of all claims.”

Diamond Aircraft Indus., Inc. v. Horowich, 107 So. 3d 362, 374 (Fla. 2013). But what about proposals in such cases that attempt to resolve “all damages” instead of all claims? The result is unclear.

Proposals for settlement in damages-only cases will be all-or-nothing propositions under the amended Rule 1.442. Their interpretation remains to be seen, however, in cases with both damages and equitable claims.

Author:
Jaret J. Fuente,
Carlton Fields
Jorden Burt, P.A.
A little more than a year ago, the Florida Supreme Court made changes to the Rules of Civil Procedure in order to bring the rules into the digital era and to address some of the rapid developments in electronic discovery. A review of all of the changes is beyond the scope of this column, but the Supreme Court gave a short and clear statement of the changes on July 5, 2012.1 The changes apply to all pending and new civil actions.

Rule 1.280 was changed to allow litigants to request discovery of actual electronically stored information (ESI), which is “data” instead of traditional written documents.2 Given the volume and breadth of ESI created and stored in our “digital society,” adding that data to discovery is daunting.

To balance the burden of allowing discovery of ESI, the Supreme Court limited such discovery. The trial court must determine whether “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive.”3 A “write block” is a forensic copy of a drive that can be used in litigation. It captures all of the data stored on the drive, whether relevant or not. It is very invasive when sought in a business dispute between former partners.

Florida law does not require a party to permit a “write block” of its computer hard drives in discovery. The new rules highlight the need for restraint by requiring courts to balance the right to discover ESI with a consideration of the need, burden, expense, and issues at stake. Similarly, a recent case from the Fifth District holds that without proof of spoliation or “thwarting discovery,” a party does not have an absolute right to obtain ESI.4 The court noted that there was a less intrusive means of discovery and that allowing the copying of a party’s computer drives “would expose confidential communications and matters extraneous to the litigation.” The court found a departure from the essential requirements of law and irreparable harm in the trial court’s allowing the “write block” without first balancing the factors or establishing appropriate protections.

1 The Supreme Court’s written opinion is styled In re: Amendments to the Florida Rules of Civil Procedure - Electronic Discovery, No. SC11-1542, and is available at: http://www.floridasupremecourt.org/decisions/2012/sc11-1542.pdf.
2 Fla. R. Civ. P. 1.280(b)(3).
3 Fla. R. Civ. P. 1.280(d)(2).
4 Id.
5 Fla. R. Civ. P. 1.280(b)(3).
6 Holland v. Barfield, 35 So. 3d 953, 955-56 (Fla. 5th DCA 2010) (“The unlimited breadth of the trial court’s order allows Respondent to review, without limit or time frame, all of the information on Petitioner’s computer[s] … without regard to her constitutional right of privacy and the right against self incrimination or privileges…”).

Author: Morgan W. Streetman, Streetman Law
Florida Attorney General Pam Bondi visited the Hillsborough County Bar Association on December 19 to speak at the Trial & Litigation Section Quarterly Luncheon. Section Chair Brad Kimbro introduced Bondi, who took note of the many familiar faces in her hometown crowd.

Bondi discussed the accomplishments her office has made, including in the statewide fight against human trafficking. She particularly highlighted successful partnerships with federal authorities, law enforcement, the trucking industry, convenience store owners, and motel owners to raise awareness of the issue.

The attorney general also took pride in the increased protections the state has been able to offer the families of active-duty military personnel, who have been the target of scammers. To deter such activity, the state has increased penalties for those who dare to defraud members of the military or their families.

On the topic of scams, Bondi warned the crowd of a trend in business-to-business scams that target law firms, car dealerships, and other frequent advertisers. The scammers replicate print ads the businesses are running and then submit them to the businesses’ accounting department along with invoices for payment. Bondi urged the audience to pay close attention to their invoices and report anything suspicious.

Throughout her talk, the attorney general stressed the importance of keeping open lines of communication with her office. “We can’t fix it unless we know about it,” she pointed out.

The HCBA Trial & Litigation Section would like to thank The Bank of Tampa for sponsoring the luncheon!
The Florida Workers’ Compensation Act excludes coverage for any injury covered by the Longshore Act or its extensions, such as the Defense Base Act (DBA). Fla. Stat. § 440.09 (2). These questions of jurisdiction are not waivable. As the federal statute and case law changes, the proper forum for litigation is changing, and in some cases there may be no United States coverage available.

In 2009, the president and Congress reduced Longshore coverage by excluding shipbuilders who build recreational vessels less than 65 feet in length, 33 U.S.C. Section 902 (3)(F) (amended 2009) (supp. 2011). In Czikowsky v. Ocean Performance, BRB No. 13-0108 (2013), the ALJ found that a hearing loss claim in April 2009 by a man working for a company that manufactured recreational vessels was excluded from coverage. The extension was held to apply even though the manufacturer also sold the vessels to fire departments and charter boat businesses. On appeal, the Benefits Review Board reversed, holding that a hearing loss claim is a repetitive trauma and exposure claim, and because some of the

Continued on page 61
Continued from page 60

man’s work and exposure occurred before the act was changed, the injury was covered. An employer must maintain both coverages in the near future to cover repetitive trauma claims.

In Delgado v. Air Serv, BRB No. 12-0283 (2013), the Benefits Review Board reversed an ALJ who dismissed a Defense Base Act claim from a man injured working on humanitarian transportation in Chad, Africa, as not covered by the act. The general rule had been that a DBA claim required that the employer be under a contract to provide service to the United States government, but in Delgado, the Benefits Review Board held that if the United States government provides even partial funding for services and approves employment contracts, there is DBA coverage.

The employment contract is becoming more important to the issue of appropriate jurisdiction and coverage in Florida and elsewhere. In Owens II v. CCJ Transport, OJCC 07-0342000 (2/11/10), the claimant was from Tampa, was retained by a company from Utah to drive trucks from state to state, sometimes drove through Florida, and was injured in Georgia, but there was no employment contract addressing workers’ compensation coverage. It was held that Florida did not have jurisdiction. The claimant in Owens II was not prevented from filing a claim in Georgia, but what if this injury had occurred while the claimant was driving a truck in Mexico or Chad, Africa?

The Longshore recreational vessel exclusion only applies if there is state workers’ compensation insurance available to cover the injury, so the injured worker is not left with nothing. What is more troubling is the possibility that a Florida worker could travel to a job overseas only to find no DBA coverage and no Florida jurisdiction. An employee traveling to a job overseas should be counseled to get language on workers’ compensation coverage in an employment contract, and an employer who puts such language in such an agreement will have better control over claims.

Author: Anthony V. Cortese, Anthony V. Cortese, Attorney at Law
Jolyon D. Acosta, Charles Evans Glauser, and Bryan D. Hull have been named shareholders of Bush Ross, P.A. Acosta is a certified public accountant. His practice focuses on estate planning and administration, wills, trusts, corporate law, partnership law, and federal and state taxation. Glauser’s practice focuses on the representation of corporate clients in real estate matters involving complex real estate litigation and real estate transactions. Hull’s practice focuses on the representation of clients in business disputes involving contracts, fraud, employment matters, trademark and copyright issues, and professional liability defense.

Lee Atkinson, formerly of Forzis & Dogali, P.A., has joined STYMCO Technologies, LLC, a national durable medical equipment company in Tampa, as its general counsel.

Marci Britt has joined the Tampa office of Fisher & Phillips LLP, a national labor and employment law firm. As an associate, she will represent employers in all areas of labor and employment law, including discrimination, harassment and retaliation claims, wage and hour disputes, whistleblower claims, and family and medical leave issues.

Jacob T. Cremer of Smolker, Bartlett, Schlosser, Loeb & Hinds in Tampa led a panel discussion, “Where Do Property Rights Fit into Sustainability: Developments Affecting Planners,” at the American Planning Association’s Florida annual conference. He was also selected by the Tampa Bay Business Journal as a 2013 “Up and Comer.”

Mark J. Criser, shareholder in the litigation group at Hill Ward Henderson, has been selected to participate in Leadership Florida’s 32nd class. A statewide community of leaders actively engaged in understanding and serving our state, the Leadership Florida program is highly competitive, accepting 40 to 70 leaders throughout the state each year.

Alberto “Al” F. Gomez, Jr., has been named a partner in the Tampa office of Johnson, Pope, Bokor, Ruppel & Burns, LLP. The majority of his practice is in the area of bankruptcy law, insolvency, assignments for the benefit of creditors, and all other aspects of debtor/creditor law.

Gail Golman Holtzman, head of Tampa law firm Kass Shuler’s Labor and Employment Practice Group, was recently elected at the American Bar Association’s annual meeting in San Francisco as vice chair (employer) of the ABA’s Section of Labor and Employment Law. Holtzman is in line to become chair of the section in 2016. The section, which has more than 25,000 members, represents all perspectives of labor and employment law and is committed to a balanced discussion of employment issues throughout the world.

Gregg Hutt, a shareholder in Trenam Kemker’s Tampa office, was one of six attorneys selected by the American Bar Association Forum on the Construction Industry to present at its regional program, entitled “Fundamentals of Construction Law,” on November 8 in Tampa. The ABA Forum on the Construction Industry is the largest organization of construction lawyers in the world.

Kari K. Jacobson of La Cava & Jacobson, P.A., has been invited to join the prestigious Claims and Litigation Management Alliance, a nonpartisan group composed of thousands of insurance companies, corporations, corporate counsel, litigation and risk managers, claims professionals, and attorneys. Through education and collaboration, the organization’s goals are to create a common interest in the representation by firms of companies and to promote and further the highest standards of litigation management in pursuit of client defense. Attorneys and law firms are extended membership by invitation only based on nominations from CLM fellows.

Ajay Malshe has joined Hill Ward Henderson as an associate in the firm’s Corporate and Tax Group. His practice encompasses a broad range of corporate transactional matters, including venture capital and private equity, joint ventures, partnerships, and securities.

Victoria McCloskey, a shareholder at Bush Ross, was named runner-up to receive the Community Leadership Award presented by the University of South Florida’s Women in Leadership & Philanthropy for her service to the Hillsborough County Bar Association, Hillsborough Association for Women Lawyers, and dedication to various local civic and community organizations. Twenty women were nominated for the award — the most nominees ever received in one year.

Eric D. Nowak, an associate with de la Parte & Gilbert, P.A.,...
has been appointed to the Board of Directors of the Florida Justice Association (FJA) Young Lawyers Section. The FJA is dedicated to upholding and strengthening Florida’s civil justice system and protecting the rights of its citizens and consumers. Membership in the Young Lawyers Section provides networking opportunities for new lawyers and provides a support system as they enter the practice of law.

T. Cole Peterson has joined Moffitt Cancer Center as associate general counsel. Peterson will report to David de la Parte, executive vice president and general counsel. Peterson most recently served as general counsel, chief regulatory officer, privacy officer, and management representative at United Orthopedic Group, an international 600-employee bracing manufacturer and multi-state service company.

Laura Prather has joined Akerman LLP as a partner in the Tampa office, where she brings nearly two decades of trial experience representing management in all facets of labor and employment law, enhancing Akerman’s capabilities in complex litigation and class actions.

Brett J. Preston, a shareholder at Hill Ward Henderson, has been elected to the Board of Directors for The Federation of Defense and Corporate Counsel (FDCC), an international, invitation-only defense organization. The FDCC is composed of recognized leaders in the legal community who have achieved professional distinction. It is dedicated to promoting knowledge, fellowship, and professionalism of its members as they pursue the course of a balanced justice system and represent those in need of defense in civil lawsuits.

Jeffrey Shear, a shareholder in Gunster’s Tampa office, has been elected to the Tampa Theatre Foundation board. Shear’s practice primarily involves commercial and residential real estate development and land use, commercial leasing, mortgage lending, and purchase and sale transactions.

Stacy Estes Yates has joined full-service law firm Pennington, P.A., as a partner. Yates focuses her practice on general civil litigation, insurance defense litigation, physician and pharmacist professional liability defense, health care compliance, and criminal defense.

Fisher & Phillips LLP won first place in the social/interactive media category of the Legal Marketing Association Southeastern Chapter’s Your Honor Awards for its FMLA Leave Calculator App. One of the nation’s leading labor and employment firms representing employers, Fisher & Phillips created the app, which allows employers to calculate basic leave requests and determine how much Family and Medical Leave Act time an employee has available.

The Law Offices of Cynthia N. Sass, P.A., in 2013 celebrated the firm’s 20th anniversary of representing employees in labor and employment law matters.

Tampa-based Stichter, Riedel, Blain & Prosser, P.A., has opened a second satellite office, this one in Destin. The firm also has an office in Fort Myers.

For more HCBA news, go to www.facebook.com/HCBAtampabay
To submit news for Around the Association, email Corrie Benfield at corrie@hillsbar.com.
For the month of:
September 2013
Judge: Honorable Peter A. Dubensky
Parties: Allen Young vs. The L.E. Myers Company
Attorneys: For plaintiff: Marc Matthews and Lisha Bowen; for defendant: Michael Reed, William Hyland, and Michael Siegel
Nature of Case: Wrongful death; defendant was found negligent for failing to implement traffic control
Verdict: The jury awarded $1,200,000 for pain and suffering, loss of parental companionship, instruction, and guidance of Allen Young, Jr. The jury awarded $9,800,000 as punitive judgment damages owed by The L.E. Myers Company. Final verdict is pending.

For the month of:
October 2013
Judge: Honorable Charles E. Bergmann
Parties: Emigdio Rojas vs. State Farm Insurance
Attorneys: For plaintiff: Julian A. Sanchez; for defendant: Evelio Garcia and Lizandra Miranda
Nature of Case: Motor vehicle accident; defendant disputed causation and plaintiff’s proposal for settlement of $37,000 in damages; defendant’s proposal for settlement was $7,500
Verdict: $167,110; plaintiff motion for fees and cost pending

Nature of case: Rear-end automobile collision; plaintiff sustained permanent injuries including a right brachial plexus (nerve) injury, temporomandibular joint injuries, right shoulder impingement syndrome, and disk injuries at multiple levels of the cervical spine
Verdict: For the plaintiff in the amount of $3,414,000

To submit news for Jury Trial Information, email Corrie Benfield at corrie@hillsbar.com.
Safeguard your clients’ current and future public benefits.

The Centers provides a wide range of services designed to meet the compliance needs of law firms while mitigating their liability.

Our knowledge of public benefits combined with professional administrative services brings peace of mind to Attorneys, Beneficiaries, and their Families.

- Settlement Optimization™
- Lien Resolution
- Medicare Set Aside Services
- Life Care Planning
- Special Needs Trust Administration
- Fiduciary Support Services
- Public Benefits Compliance
- Structured Settlements
- Investigative Services

Learn more about how to fully protect your clients.

www.centersweb.com | (855) 233-1602

THE CENTERS
Our Prime Home Equity Credit Line

A readily available resource with an annual percentage rate based on the prime rate.*

The Bank of Tampa Prime Home Equity Credit Line at a Glance

• Annual percentage rate based on the prime rate
• Minimum credit line is $10,000
• A maximum loan to value ratio of 80%
• Instant access to funds, just by writing a check for $100 or more
• 10-year draw period
• No application or membership fees
• No closing fees on credit lines … period

HCBA members are entitled to our premier Minaret Diamond relationship package with no monthly service charges and minimum requirements. Call or visit any of our offices to apply.

*Subject to credit approval. The APR may change and is based on The Wall Street Journal prime, subject to a minimum APR of 3.75%. The Wall Street Journal prime is 3.25% as of December 1, 2013. The maximum APR is 18%. The Bank of Tampa will pay all bank-required closing fees on Prime Home Equity Credit Lines. Property and flood insurance may be required. Available to consumers living in the greater Tampa Bay area, which includes Hillsborough, Pinellas, Pasco, Manatee and Sarasota counties. The line of credit must be secured by a first or second mortgage on the borrower’s principal residence or their second/vacation home (excluding investment/rental property). Maximum loan to value ratio of 80% on first $1 million of home valuation; 70% maximum loan to value on amount of home valuation in excess of $1 million. An early payoff fee of up to $750 may be imposed if you terminate your home equity line within 12 months of opening.

You may be eligible for significant tax benefits, which we encourage you to discuss with your tax advisor.

The Bank of Tampa
Banking • Investments • Trust

Locally connected • personally committed*

813-872-1200
www.bankoftampa.com

HCBA Benefit Provider since 2005.

Assets over $1.3 billion Member FDIC