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Water streams over exposed rocks in the upper Hillsborough River as it descends from its headwaters in the
Green Swamp to the top of Tampa Bay. The Alafia, Manatee, Little Manatee, Braden, and Palm Rivers also
provide the Tampa Bay estuary with life-giving freshwater.

Photo courtesy of Carlton Ward Photography, www.carltonward.com
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EDITOR'S MESSAGE
Ed Comey - Law Clerk to U.S. Bankruptcy Judge Michael G. Williamson

A Family Man

“The love of family ... is much more important than wealth and privilege.”

Not long after I started practicing, a colleague asked me where I saw myself in five years. That's a fairly standard interview question, but frankly one I hadn't given much thought to at the time. Seeing I was stumped, my colleague tried to help by suggesting that I consider how I wanted to be remembered. As the years passed, I realized I was content to be remembered as Nancy Comey's son. I've always admired my mom for many reasons (her work ethic, humility, sense of humor) but most of all for the love she has for her family and her willingness to always put her family first. What a way to be remembered, I thought! I was reminded of that story when I sat down to write this tribute to Judge Sam Pendino for his retirement.

Judge Pendino has lived a remarkable life. Born and raised in West Tampa to Italian immigrants, he watched his father, a first-generation American, labor as a carpenter in the shipyards here in Ybor City to support his family. Growing up as the son of a blue-collar worker in a house where little English was spoken, Judge Pendino realized education was the key to making a better life for himself. That led him on a journey from Stetson University in DeLand to the Cumberland School of Law, where he earned his law degree. Afterwards, he spent nearly two decades in practice until he was elevated to the bench, first as a county court judge and later as a circuit court judge. Becoming a circuit court judge in the same city where you were raised by first-generation immigrant parents is quite an accomplishment.

But when you talk to people about what is important to Judge Pendino, none of them mention his professional accomplishments — becoming a judge, presiding over interesting and noteworthy cases, or making important rulings that have affected people's lives and shaped the law. Instead, they talk about his work ethic and how much he values education. Most of all, though, they talk about how important his family is to him.

Despite all of the demands of being a lawyer and serving on the bench, Judge Pendino has always made a point to put his family first. Along the way, he raised three children — Krista, Sam, and Lydia — who have undoubtedly made their father proud. All three have taken heed of the importance he put on education. Both Krista and Sam graduated from law school. Lydia earned a degree in nursing from the University of South Florida. And if you asked them, I'm sure they'd tell you about how much it has meant to them that their dad always put family first.

As I sit here, I wonder how Judge Pendino would have answered the question “Where do you see yourself five years from now?” when he was a young lawyer. How would he have wanted to be remembered when his career was over? My guess is it would have had something to do with being a good father. People who know him say Judge Pendino has long recognized the truth of what well-known journalist Charles Kuralt once observed: “The love of family and the admiration of friends is much more important than wealth and privilege.” I'm confident nobody will be writing a tribute about me when I retire, but if somebody does, I hope I'd be remembered the same way Judge Pendino is.
A Continued Commitment to Diversity

As the HCBA continues its growth, so does the diversity of our membership. To be sure, the diversity within our Bar increasingly reflects the diversity within our area, state, and country.

As the holidays and 2014 are now but a memory, I hope everyone is well underway to a healthy and prosperous new year. I know many have made resolutions for the year, and I wish you much success in fulfilling them. Although it is a new calendar year, we are entering the second half of our Bar year, with much work and fun still before us. We have a lot of positive momentum at the halfway mark, but we still have many aspects of Operation Respect and Service — our themed mission for the year — to advance. So, what’s next?

I now want to lift up the increasing diversity within our local Bar and profession. In doing so, I only hope to continue the great work that my predecessor, Susan Johnson-Velez, so capably led in highlighting this important subject. As the HCBA continues its growth, so does the diversity of our membership. To be sure, the diversity within our Bar increasingly reflects the diversity within our area, state, and country. As this diversity evolves, we acknowledge both the progress that has been made and the positive impact it has had on our local Bar, profession, and community. As we all know and cherish, our heritage within our local community is richly and inextricably intertwined with great diversity. Of course, this is part of what makes this area we call “home” such a great place in which to live and work.

In this issue, we spotlight diversity through, among other things, a wonderful article in which HCBA Secretary Cory Person remembers the

Continued on page 5
BAR LEADERSHIP CLASS VISITS PORT

The HCBA Bar Leadership Institute class visited the Port of Tampa on October 23 to learn about the impact this economic engine has on our community. The BLI appreciates the harbor tour’s host, John Thorington, who is vice president of Port Tampa Bay in charge of government affairs and board coordination. The HCBA also appreciates this year’s BLI sponsor:

Continued from page 4

Honorable George E. Edgecomb and his enduring legacy. We also showcase our local legal profession’s significant Hispanic roots and ties via Luis Viera’s well-written article featuring the Tampa Hispanic Bar Association. The HCBA values, and benefits from, the strong and collaborative relationship it has with our smaller but no less important local voluntary bar associations such as the Hillsborough Association for Women Lawyers, GEBA, THBA, and various others too numerous to mention.

Our next General Membership Luncheon on January 22 will also be devoted to diversity. In keeping with our lineup of diverse speakers this year, we are very excited to welcome Paulette Brown as our guest. Ms. Brown currently serves as ABA president-elect and will soon be the first African-American woman to serve as ABA president. If you have not already done so, please register for this event.

Then, on Saturday, February 21, our HCBA Diversity Committee — led by superstar Co-Chairs Amanda Buffinton and Jessica Goodwin Costello — will host the Diversity Networking Social at the Chester H. Ferguson Law Center. This event will provide law students from across the state with opportunities to meaningfully interact with lawyers and others working within Tampa Bay’s legal market. It aims to connect these students with potential mentors from local firms and area voluntary bar associations and to educate them on the professional development opportunities available in our area.

In resolving to kick off 2015 by continuing our Bar’s strong commitment to diversity, we simultaneously advance another key component of Operation Respect and Service. Indeed, diversity remains a vital part of our Bar’s mission “to inspire and promote respect for the law and the justice system through service to the legal profession and to the community.”

1 Although I have not been a consistent setter of New Year’s resolutions, I did commit this year to run the Gasparilla half-marathon on February 22. I will be running in support of Hope For The Warriors, one of this year’s official charity partners of Gasparilla Distance Classic. If you would like information about this wonderful organization and its mission, please visit www.hopeforthewarriors.org. If you would like to join me and other lawyers on a team in support of Hope For The Warriors, email me at ben.hill4@hwhlaw.com.
“Zealous Representation” Is Not an Excuse

Being technically correct does not justify unprofessional or discourteous behavior and will actually undermine the client's cause and hamper the administration of justice in that your opponent will almost certainly respond in kind.

A virtue taken too far can become a fault. The concept of zealous representation has a long tradition in the profession; however, the term “zeal” should not be conveniently misconstrued to mean “zealotry” in an attempt to excuse unethical or otherwise unprofessional conduct carried out in the name of furthering a client’s interests.

Where the lines are drawn and where the boundaries are between zealous representation and zealotry may not always be clear, but remember that competent and diligent representation of a client does not bind a lawyer “to press for every advantage that might be realized for a client.” The question should always be asked whether the action/opposition (“advantage”) actually advances the client’s cause through the pursuit of truth, not whether it is simply an available means permitted by law that will make the opponent’s life more difficult. Being technically correct does not justify unprofessional or discourteous behavior and will actually undermine the client’s cause.

Continued on page 7
and hamper the administration of justice in that your opponent will almost certainly respond in kind.

Zeal requires only that the client’s interests are paramount. This objective professional commitment to a client is compatible with civility, courtesy, and fair dealing. Although it is true that zealous representation includes strategy, the tactics used to advance that strategy are in the sole province of the lawyer. Civility is also a virtue, not a shortcoming. Willingness to temper zeal with respect for society’s interest in preserving responsible judicial process will help preserve it.

Ultimately, the effective representation of your client is not a zero-sum game rendering professional courtesy obsolete. In fact, a failure to adhere to these principles will almost certainly be a disservice to you and your clients in the long run, not to mention your reputation. The highest manifestation of professionalism is the exercising of dispassionate judgment without losing sight of legal and ethical boundaries.

When in doubt, simply remember your oath: “I will maintain the respect due to courts of justice and judicial officers ... I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor ... To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.”

Recent & Upcoming YLD Events:
The YLD’s Pro Bono Committee recently held a luncheon at the HCBA building showcasing a multitude of pro bono opportunities available to the young lawyers of Hillsborough County. (See photos on Page 29.) Additionally, family forms clinics are planned for January 6, February 17, March 3, April 21, May 19, and June 2 from 5:30 to 7:30 p.m. on the second floor of the George Edgecomb Courthouse. Please contact Ella Shenhav or Katelyn Desrosiers to get involved in any of the YLD’s pro bono activities.

1 See Comment (1) to ABA Model Rule of Professional Conduct 1.3.
2 See Oath of Admission to The Florida Bar.
Chief Justice Jorge Labarga’s Long Journey from Cuba to Tallahassee

“A constitution, no matter how well written it is, and the protections it provides or promises, at the end of the day, is just words on paper.”

— Florida Supreme Court Chief Justice Jorge Labarga

Florida Supreme Court Chief Justice Jorge Labarga’s keynote address to Hillsborough County Bar Association members was one of the highlights at the 18th Annual Bench Bar Conference, Membership Luncheon, and Judicial Reception held on October 30 at the Hilton Tampa Downtown.

Installed this past June as Florida’s first Cuban-American chief justice, Labarga, in his remarks, recalled celebrating the Cuban Revolution in 1959 as a young boy in Cuba by riding around town in his father’s Chevy Bel Air and honking the horn. In a sad twist, however, Labarga said his father fled Cuba in 1961 in fear for his life because he was considered a threat to the new Marxist government under Fidel Castro.

After the Cuban Missile Crisis in 1962, and a detour for a time in Mexico City, Labarga and his other family members were reunited with his father in America in 1963 in the small South Florida sugar mill town of Pahokee. Labarga said the dramatic events he witnessed as a young boy helped him develop a “sense of democratic ideals and a respect for the rule of law.”

“I knew at age 11 that I wanted to be a lawyer,” said Labarga, who got his undergraduate and law degrees from the University of Florida.

Appointed to the Supreme Court in 2009 by then Gov. Charlie Crist, Labarga reminded the more than 500 people in attendance about the crucial role lawyers have in safeguarding democracy. “It is important that we not lose sight of the significant, if not vital, role the American lawyer has played, and must continue to play, in advancing our democratic ideals and in the furtherance of the preservation of the rule of law,” Justice Labarga said.

“A constitution, no matter how well written it is, and the protections it provides or promises, at the end of the day, is just words on paper,” he said. “It is up to ‘we the people’ of this country to make it work.”

Concluding his remarks, Labarga said that during his term as chief justice he intends to focus on increasing access to justice for all Floridians, including working-class citizens who can’t afford to hire a lawyer and who don’t qualify for legal aid.

* * *

The theme for this year’s Bench Bar Conference was “The Future Is Now: Law Meets Technology.” Thirteenth Judicial Circuit Judges Caroline J. Tesche and Samantha L. Ward were the conference co-chairs.

Both judges worked for months with other dedicated Bench Bar Committee members, HCBA CLE Director Monique Lawson, and other HCBA staff members planning the conference.

“This year’s Bench Bar Conference proved to be truly exceptional,” Tesche said. “We owe special thanks to all the stellar presenters and panelists who put so much effort into making their sessions both substantive and timely.”

There were a record number of attendees at the various CLE breakout and plenary sessions held throughout the day. The afternoon plenary session featured noted Florida
State University Law Professor Charles Ehrhardt, who spoke on evolving evidentiary issues.

In addition, after the afternoon plenary session, Ben Hill III and current HCBA President Ben Hill IV introduced a special video tribute to the group of local judges who retired in 2014.

Later in the day, more than 400 HCBA members enjoyed the camaraderie provided at the annual Judicial Reception at the Hilton.

“I think the record number of attendees shows the commitment our local legal community has to enhancing collaboration and professionalism between the Bench and Bar,” Ward said.

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

Planning is already underway for another great conference next fall.

See you around the Chet.
In my office, my attorneys conduct in-person witness interviews with victims of violent felony offenses. These witnesses receive a subpoena to appear at our Victim Assistance Program, where they are placed under oath and interviewed by an assistant state attorney about the facts of the case. Not only does this interview give us an opportunity to learn about the case and assess our witness’ ability to testify, but it also gives the witness an opportunity to ask questions about the court process and provide input about future dispositions.

To keep the citizens of Hillsborough County safe, my attorneys take the legal actions necessary to assess and build strong cases. In conjunction with the hard work done by our law enforcement partners, my investigative authority through the use of subpoena powers allows my office to pursue justice for the people of Hillsborough County.

In the criminal justice system, the people are represented by two separate yet equally important groups: the police, who investigate crime; and the district attorneys, who prosecute the offenders.”

This clear-cut distinction is well-known to anyone who has ever watched the opening sequence of an episode of “Law & Order.” Of course, in real life, this distinction is not always so clear. Although law enforcement completes the bulk of every criminal investigation, it may be necessary for the state to conduct a follow-up investigation with witness interviews.

Under section 27.04, Florida Statutes, the state attorney is empowered to summon witnesses “to testify before him or her as to any violation of the law.” This statute is very broad and allows the state to conduct an investigation to determine whether criminal activity has occurred. The state may exercise this power through a subpoena for the testimony of live witnesses or through the use of a subpoena duces tecum.

An assistant state attorney is authorized to administer oaths to these witnesses, and law enforcement may be present for a witness interview pursuant to this section. No right to counsel attaches to such an interview; although an attorney for the witness may be present if he or she does not interfere with the investigation. If the state has served a subpoena on a witness to testify as part of an investigation, section 914.04 may be triggered, providing the witness with immunity for statements made in response to the subpoena. Immunity would not extend to any perjured testimony provided by the witness.
TERRY BRADSHAW HAS TAKEN ON LIONS, BEARS, VIKINGS AND GIANTS. SURELY HE CAN HANDLE A ROOM FULL OF LAWYERS.

AN INSPIRING EVENING WITH LARGER THAN-LIFE PERSONALITY TERRY BRADSHAW

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Dash and Then Dine at the 5k and Pig Roast on March 21

Not a runner or walker? You can still get involved by volunteering or sponsoring the event.

The countdown has begun for the Seventh Annual HCBA 5k Pro Bono River Run on Saturday, March 21! Get ready for a fantastic family-friendly event. The event has grown by leaps and bounds over the past few years and will be open to the first 350 people who register.

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! Race day check-in begins at 4 p.m. at the Chester H. Ferguson Law Center, and the race begins promptly at 5:30 p.m. Check-in will also be available at the Ferguson Law Center from 9 a.m. to 6 p.m. on Friday, March 20. You can register for the 2015 River Run through the HCBA website. Early registration for the race will end March 5. The early registration fee is $35 for adults and $15 for youths (ages 12 and younger).

More importantly, we hope to better the 1,672 pro bono service hours that were pledged last year. Pro bono service is at the heart of this race and provides a tremendous service to the many people in our community who do not have the funds needed to obtain legal representation. In addition to runners who are pledging hours, we are hoping to get others in our legal profession to support the race by pledging their own pro bono hours on behalf of a runner. This gives everyone a great opportunity to support the race in a very meaningful way, even if running 3.1 miles is not high on your “to-do” list.

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 event. 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 or the Pig Roast 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!
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A Legacy That Lasts: George E. Edgecomb

“Good friend, in the path I have come,” he said,
“There followed after me today
A youth whose feet must pass this way.
This chasm that has been as naught to me
To that fair-haired youth may a pitfall be;
He, too, must cross in the twilight dim;
Good friend, I am building this bridge for him!”

— from “The Bridge Builder” by Will Allen Dromgoole

In Florida, one becomes accustomed to the sight of bridges. Indeed, bridges are everywhere across our fair state, allowing travelers to cross expanses of water, vast or small, to arrive at our intended destination. Rarely noticed or noted are those who came before to build the bridge, across which so many have traveled. Every so often, however, a bridge is built so exceedingly well that its builder must be etched in history. Such is the case of the late Honorable George E. Edgecomb.

A native of West Tampa, Edgecomb graduated from George S. Middleton High School with honors in 1960, where he served as president of the student body. Leadership would be a theme of Edgecomb’s life, both as a student and law professional.

After high school, Edgecomb attended Clark College in Atlanta, where he served as president of the freshman class, sophomore class, and ultimately president of the student body. It was during this time that he met Tampa attorney Delano S. Stewart.

“I did not know George at the time, but my parents knew of him and asked that I find George when I started classes at Morehouse,” Stewart says. Taking his parents advice, Stewart sought out Edgecomb, and the two established an enduring friendship.

“God creates people for a purpose. He [Edgecomb] was president of the freshman class, sophomore class, and the student body president for two years. He was respected and admired by his peers. He was destined to do what he did swiftly — that was his destiny,” Stewart says.

The destiny Stewart refers to began in 1968, when Edgecomb received his Juris Doctorate degree from Howard University School of Law. After graduation, Edgecomb returned to Tampa and began his legal career as an attorney working with Stewart.

Continued on page 15
On January 29, 2004, the Thirteenth Judicial Circuit Court dedicated the George E. Edgecomb Courthouse in honor of Hillsborough County’s first African-American judge. Inside the courthouse, this sculpture depicts Judge Edgecomb “rising out of rock to symbolize his reputation as a man of deep integrity based upon the fundamental and timeless principles of freedom and equality for all. He is holding a book of Law, the foundation upon which these ideals rest,” according to the county’s website. This photograph of the sculpture was featured on the cover of the Lawyer magazine in 2011.

Continued from page 14

Edgecomb did not consider his only obligation as that owed to his clients; he felt a great obligation to serve his community. Accordingly, he served on the Greater Tampa Urban League Board of Directors and received multiple awards for his service to Tampa’s underserved communities.

On August 13, 1973, George Edgecomb was invested as a county judge, becoming the first African-American judge in Hillsborough County. He was also the first African-American chief assistant county solicitor and Hillsborough County’s first African-American assistant state attorney.

Judge Edgecomb passed away on January 22, 1976. In 1982, Judge Edgecomb’s friends and colleagues created the George Edgecomb Bar Association (GEBA) to preserve his legacy. Today, GEBA boasts a membership of more than 100 lawyers, judges, and law students.

Though I began practicing law 30 years after Judge Edgecomb’s passing, I have walked across the bridge that he and other trailblazers have built. I have been a member of GEBA since I arrived in Tampa in 2006; I was sworn in as a lawyer at the George E. Edgecomb Courthouse. It is likely that the view and capacity of African-American lawyers in our community have been shaped, in part, by Judge Edgecomb’s varied accomplishments in the legal profession.

There is no doubt that any success I and other African-American lawyers may claim would not be possible without the planks that were laid down, the towers that were erected, and the cables that were suspended by the late Honorable George E. Edgecomb.

Author: Cory J. Person
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Failing to ensure that sensitive information is not filed publicly could result in irreparable harm. Despite broad sunshine laws, Florida law protects social security numbers, medical records, trade secrets, and other private and sensitive information. See Fla. R. Jud. Admin. 2.420(c)(9). Before the electronic age, such documents would simply be filed in a sealed envelope. Since the implementation of mandatory electronic filing, however, the written procedures don't quite mesh with filing realities. Thus, it is critical for the filing attorney to ensure such information is not inadvertently made available to the world for review. Do not wait until the deadline to file your brief because it will likely take some time to ensure that information is filed under seal.

James Birkhold, clerk of the Second District Court of Appeal, has provided some helpful guidance for attorneys wishing to file documents under seal in the Second District.

In proceedings involving review of a final order, the lower court clerk prepares the record and is responsible for informing the district court clerk of any sealed information contained in the record pursuant to Rule 2.420(g)(8). Issues for attorneys will mainly arise in the review of non-final orders because the attorney must prepare an appendix. If there is already an order from the lower court sealing the information, then isolate the information you are seeking to seal from the other documents in the appendix. Next, alert the appellate court of the lower court’s order sealing the information. This can be accomplished by selecting the confidential option in the e-portal and then filing the information with a cover letter with bold and large font stating that the document must be sealed. The cover letter should cite to the lower court’s order sealing the information, and the order should be attached.

If there is not already an order from the lower court sealing the information, then you will need to file a motion with the appellate court under Rule 2.420(g), Florida Rules of Judicial Administration. This rule sets forth strict parameters for sealing information in the court’s file. Do not file your sensitive information until the district court has ruled on your motion to seal. If the court grants your motion, a separate appendix should be prepared with the sealed information. If the confidential information is of a nature that the other side should be restricted from accessing it as well, do not electronically file the sealed appendix because it will be electronically served on the opposing party automatically. Clerk Birkhold suggests instead filing a motion in which you request court approval to email the district clerk the confidential portion of the appendix.

The electronic filing system is evolving and will eventually have a method to replace the traditional sealed envelope method. Until then, it is always best to contact the clerk of the district in which you are filing well before the filing deadline for guidance, as each district will likely have different methods and preferences.

Author:
Jessica Dareneau – Weekley Schulte Valdes, LLC

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If patient safety was managed like airline passenger safety — with a collaborative process led by an outcomes-oriented oversight agency — thousands of lives and millions of dollars could be saved.

Look at the numbers: Air travel has become the safest mode of transportation in America — after decades of oversight by the FAA and the NTSB. In 2013, according to the latest estimates from the NTSB, there were only two fatalities out of nearly 9 million U.S. commercial airline flights. Contrast this with the medical industry. A 2013 study reported in the *Journal of Patient Safety* revealed more than 200,000 deaths are associated with preventable harm in hospitals annually. That is the equivalent of three commercial planes crashing every day with no survivors.

Why doesn’t the medical industry have a better record? The simple answer is the lack of a centralized system to investigate, solve, and improve these outcomes.

Imagine a world where doctors, patients, and families freely discuss medical “events” and work together to reduce the incidence of medical errors, which in turn would reduce medical malpractice premiums and, ultimately, the cost of health care.

Chesley Sullenberger, the U.S. Airways pilot whose 2009 emergency splash-landing of an A320 saved the lives of 155 passengers, has become a crusader in the cause of saving patients’ lives by reducing medical errors and accidents. His approach highlights a major medical industry deficiency: Information about medical accidents and errors is not pooled and mined to identify systemic issues.

Sullenberger envisions making American hospitals safer by “applying all the things we’ve learned for decades in aviation and making them transferrable to medicine.” He advocates forming a medical accident investigation board to oversee a formal “lessons-learned” process where the findings are widely disseminated but locally actionable. The board would also enforce a doctor’s “checklist manifesto” similar to the ones pilots use.

Information related to medical errors and accidents must be shared. The FAA and NTSB require complete access to crash sites, evidence, records, survivors, and anything else they deem necessary to understand causes, effects, and solutions. All parties must be forthcoming. Only when the investigation is complete, and remedies are made to mitigate future occurrences, can the parties pursue civil action.

In medicine, civil hostilities will remain a critical impediment unless there are changes to the method of settling these disputes. Enter the collaborative process, which would enable a medical investigation board to uphold fairness and civility in dispute resolution. The collaborative process differs from traditional mediation by contractually prohibiting lawyers and other professional intermediaries from representing parties if the process breaks down. This is an inducement for the entire professional team to make the process work.

We should encourage non-adversarial collaboration to achieve common good: reduced medical errors resulting in lives saved; elimination of defensive medicine; and reduced settlement amounts, litigation, and malpractice premiums. The collaborative process can improve the medical malpractice field. Imagine the positive effect on other civil practice fields. Please consider how the collaborative process can improve outcomes for your clients and your practice.
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Community Services Committee
Chairs: Lisa Esposito - Law Offices of Lisa Esposito, P.A.; and Lara M. LaVoie - LaVoie & Kaizer, P.A.

W
hen Lara LaVoie and I agreed to chair the Community Services Committee (CSC) two years ago, we did it to make a difference. We wanted to have a positive impact in our neighborhoods, to help change the negative perception many people have about our legal community. Thanks to our members’ generosity, we are doing just that: making a difference!

For example, the CSC just chaired Make a Difference Day, Adopt a Veteran, and it was a huge success! For the second year, we adopted every veteran on the James A. Haley Veterans’ Hospital’s hardship list. In fact, the list almost doubled from last year, but the CSC was undaunted. We got to work, ensuring every veteran was adopted.

For those who are unaware of this amazing project, these veteran heroes sadly have no family and live in small group homes, as they can no longer take care of themselves. They have limited funds, so with the help of generous volunteers, gifts are assembled for delivery to each of them. In fact, many of you said that reading these soldiers’ wish lists brought tears to your eyes. We agree. Their wishes are simple — a shirt, some socks, perhaps a puzzle — but their needs are great.

It wasn’t just purchasing gifts that allowed us to make a difference; it was the time we spent with them. The hours we spent meeting these soldiers and hearing their stories left its mark, not only on them but on us, too.

More than 50 volunteers got up super early on a Saturday, all to make a difference, and it was definitely worth it. (In our defense, Lara and I did bring some tasty doughnuts). Lawyers and paralegals came; Gators, Bulls, and Noles came; parents brought their children — all to honor our American heroes.

I personally had the honor of meeting two veterans, one was in WWII, and the other was in both Vietnam and Korea. Andy refueled ships during WWII. Can you imagine? He lost his wife and only son but still has a positive outlook. Andy was almost 90 but still feisty and quick with a retort. He got a deck of cards in his care package and informed me he would be playing poker later, even hinting it may be the lose-an-article-of-clothing type of poker. I didn’t press it. I moved on. Walter was career Navy, did 20 years. While in the Navy, he traveled to many locations but loved Spain the most, at least what he could disclose as some things were still classified.

The soldiers we spent time with smiled that day, delighted to have someone to reminisce with, and we got to learn about their experiences and history. In reality, we thought we gave to them, but we walked away realizing that we got much more.

Author: Lisa A. Esposito - Law Offices of Lisa Esposito, P.A.

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On the morning of June 25, 1876, Lieutenant Colonel George A. Custer and the 7th Cavalry charged into battle against the Lakota Sioux and Northern Cheyenne Tribes. Custer underestimated his adversary, went into battle unprepared and was overwhelmed. The massacre at Little Big Horn ranks among the worst defeats in U.S. Military history.

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Pictured from left to right: Stacy O. Blank, Joseph H. Vann, III, and Bradford D. Kimbro
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As a construction litigator, you have likely seen your fair share of large, complex case management orders. Some orders are better than others, and although no order is perfect, below are provisions of case management orders that have proven very useful in complex construction cases.

**Deposition Holds:** These provisions specify days each month that parties hold open for depositions, and they are useful in scheduling the numerous depositions necessary for complex construction disputes (usually involving a large number of deponents). Without deposition holds, it is near impossible to schedule all depositions at mutually agreeable times for all parties involved. The most successful deposition hold provisions also mandate notice periods, which allow the holds to be released if no depositions are noticed within a specific timeframe. This notice period allows attorneys to keep calendars in check and prevents parties from being “blind-sided” by depositions without time to prepare.

**Court Reporter and Exhibit Requirements:** Ordering the use of a single court reporting company helps significantly in processing transcripts and keeping a running, sequential exhibit list. In doing so, the court reporting company will bring a copy of the list and exhibits to each deposition. Using the same reporting company reduces confusion during depositions, motion practice, and, ultimately, trial.

**Set Hearing Times:** Pre-scheduling hearing times with the court, and allowing any party to notice motions or matters within those times, prevents the nightmare of trying to coordinate dates and times with numerous attorneys and promotes the expeditious hearing and resolution of motions.

**Project File Production:** Construction cases are usually document-intensive, and numerous requests for production will be filed in the course of discovery. Ordering all parties to produce their project files within a certain timeframe reduces discovery filings and facilitates parties efficiently obtaining all necessary documents. This approach, similar to initial disclosures in federal court, greatly increases the efficiency of the discovery process and typically reduces fees/costs associated with formal discovery.

**Newly Added Parties:** Frequently, complaints are amended by adding new parties after entering a case management order. Therefore, it is advisable to include a provision requiring the plaintiff to provide the order to new parties within a certain timeframe of the new parties appearing in the action.

**Mediation:** Recently, Judge Paul L. Huey of the Thirteenth Judicial Circuit has proposed a standard Mediation Referral Order that may soon be incorporated into many case management orders. This mediation order includes useful provisions such as requiring carriers to disclose coverage issues before mediation and potentially requiring coverage counsel to attend mediation, if necessary. The order also creates a Mediation Organizing Committee to handle mediator selection, scheduling, format, and to determine discovery necessary prior to mediation. At this time, it is not clear whether the mediation order will become a standard for construction litigation; however, its contents and intent are very useful in managing mediation, an extremely important aspect of construction litigation.

Although no case management order is infallible, these elements have proven useful in tailoring the order to the needs of each case.

**Author:** Lindsay G. McCormick - Marshall, Dennehey, Warner, Coleman & Goggin

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Companies offering internships have recently been confronted with whether unpaid interns are “employees” entitled to minimum wage and overtime under the Fair Labor Standards Act (FLSA). 29 U.S.C. § 201, et seq. The FLSA does not clearly define employee status, but the U.S. Department of Labor (DOL) excludes interns from coverage when certain criteria are met. Those criteria are: (i) The internship, even though including actual operation of the employer’s facilities, is similar to training in an education environment; (ii) the internship experience is for the intern’s benefit; (iii) the intern does not displace regular employees but works under existing staff’s direct supervision; (iv) the employer providing training derives no immediate advantage of the intern’s activities, and on occasions its operations may actually be impeded; (v) the intern is not necessarily entitled to a job at the internship’s conclusion; and (vi) the employer and intern understand the intern is not entitled to wages for the internship. Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act (April 2010).

These factors’ significance is subject to debate. The Eleventh Circuit describes these factors as “a body of experience and informed judgment to which courts and litigants may properly resort for guidance.” Kaplan v. Code Blue Billing & Coding, Inc., 504 F. Appx 831, 835 (2013), cert. denied, 134 S. Ct. 618 (2013). They have been relied upon when disposing of intern claims. Demayo v. Palms West Hosp., Ltd. P’ship, 918 F. Supp. 2d 1287 (S.D. Fla. 2013); Schumann v. Collier Anesthesia, P.A., 2014 WL 2158505 (M.D. Fla. May 23, 2014). But other circuits have been less deferential to the DOL factors in favor of “primary benefit” analysis. Thus, the level of DOL deference, how much weight each factor receives, and whether all factors must be met are unclear among federal appellate courts.

That issue is now before the Eleventh Circuit on appeal in Schumann, which involves a suit by interns in a clinical training program supervised by Collier Anesthesia but part of Wolford College’s nurse anesthesia master’s degree program. Schumann’s significance stems from use of the DOL factors without it being necessary to resolve each in the defendants’ favor. Rather, by using the factors to determine whether the economic realities supported finding an employment relationship, a defense summary judgment was granted even though only three factors were conclusively established for the defendants.

Private companies using unpaid interns should examine the academic nature of their intern activities, the onsite supervisor’s role, whether academic credit/other benefits are given to interns, and how to best create a qualifying mutually beneficial relationship. Greater risk exists in programs without educational institution support to formulate the academic components. But governmental/nonprofit internships have been unaffected because they operate under an FLSA exclusion for volunteers. 29 U.S.C. § 203(e)(4); Hill v. Watson, Feb. 4, 2014 WL 440371, n.1 (N.D. Ill. 2014); WH Op. Ltr. FLSA2008-14 (Dec. 18, 2008). With proper structure and oversight, private internships can remain viable, too.

Author: Deborah C. Brown - Thompson, Sizemore, Gonzalez & Hearing, P.A.
CONSTRUCTION LAW SECTION CLEs

The HCBA Construction Law Section welcomed guest speaker Christopher Baidenmann, senior construction associate with MC Consultants, for a CLE luncheon on October 16. Baidenmann discussed emerging technology in construction defect litigation. For its November program, the section hosted a CLE on "What Really Works in Construction ADR: Mediators and Arbitrators Speak!" Panelists Charles W. Ross, Paul J. Ullom, and John S. Vento discussed effective upfront preparation for construction ADR and effective and noneffective uses of experts in construction ADR.

The section would like to thank the sponsor of both luncheons:

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A jailhouse informant testifying to a defendant’s purported confession is often the most powerful evidence in a criminal trial. After all, how can we expect a jury to ignore the defendant’s own words? Such witnesses can be difficult to cross-examine, particularly without a sufficient opportunity to prepare.

According to the Innocence Project, of the exonerees released from death row, 45.9 percent were convicted, in part, due to false informant testimony. In re Amend. to Fla. R. Crim. P. 3.220, 140 So. 3d 538, 540 n.3 (Fla. 2014). Further studies have shown that informant perjury was a factor in nearly 50 percent of wrongful murder convictions. Id.

In response to that troubling reality, the Supreme Court of Florida recently amended Florida Rule of Criminal Procedure 3.220 to include more detailed disclosure requirements for informant witnesses. Id. at 539. The amendment adds as a new subset of Category A witnesses: informant witnesses, whether in custody or not, who offer testimony concerning the statements of a defendant about the issues for which the defendant is being tried. Id. at 540 (Appendix). This amendment encompasses not just “jailhouse informants” but any informant who testifies about a defendant’s statement.

In addition to the identity and address of the informant witness, the state must disclose whether it has “any material or information that has been provided by an informant witness,” which includes: (i) the substance of any statement allegedly made by the defendant that the informant witness may testify about; (ii) a summary of the informant witness’s criminal record; (iii) the time and place the defendant’s alleged statement was made; (iv) whether the informant witness has received, or expects to receive, anything in exchange for his or her testimony; (v) the informant witness’s prior history of cooperation, in return for any benefit, as known to the prosecutor. Id. at 539.

The amendment is not intended to limit in any manner the discovery obligations otherwise provided for under Rule 3.220. Id. at 539. Because informant witnesses are Category A witnesses, Rule 3.220(h)(A) permits a deposition of the witness without leave of court. However, the Rule 3.220(g) confidential informant privilege still applies. This could create conflict between the two sections of the rule depending on how the state uses the informant.

One question that may arise is whether the state has an obligation to identify an informant witness if the witness is not expected to testify at trial but provided information that led to the discovery of other evidence such a probable cause for a search warrant. Typically, an informant who only provides supporting information, such as probable cause for a warrant, does not need to be disclosed absent a showing by the defendant of an exemption to the confidential informant privilege. See State v. Powell, 140 So. 3d 1126, 1131 (Fla. 5th DCA 2014). However, the Second District Court of Appeal recently held that the state’s discovery obligation for Category A witnesses is not limited to witnesses and evidentiary materials that it intends to present at trial. State v. Fernandez, 141 So. 3d 1211, 1222 (Fla. 2d DCA 2014). Although the “informant witness” amendment is limited to witnesses “who offer testimony,” an accuser who makes a formal statement to government officers, even if out-of-court, also offers testimony. See Crawford v. Washington, 541 U.S. 36, 51 (2004).

The answer to this question may lie in Florida’s adherence to the purpose and spirit of the discovery rules to avoid surprise and trial by ambush. Scipio v. State, 928 So. 2d 1138, 1144-45 (Fla. 2006) (citations omitted).

Author: Matt Luka - Trombley & Hanes, P.A.
YLD HOSTS PRO BONO LUNCHEON

The HCBA Young Lawyers Division hosted more than a dozen pro bono groups at its quarterly luncheon on October 15 as part of an effort to match volunteers with the people who need them. The event had an excellent turnout, and many attendees found pro bono projects to take on.

Groups participating included Are you Safe?, Aging Solutions, the Bankruptcy Court Pro Bono Project, Bay Area Legal Services, Best Buddies of Tampa Bay, Big Brothers Big Sisters of Tampa Bay, Crossroads for Florida Kids, the Guardian ad Litem Program, HCBA Lawyer Referral & Information Service, HCBA Military & Veterans Affairs Committee, H.E.L.P. (Homeless Experience Legal Protection), Hillsborough Association for Women Lawyers, Hillsborough Education Foundation, The Spring, and Wills for Heroes.

The YLD would like to thank the luncheon’s sponsor:
TAMPA HISPANIC BAR ASSOCIATION GROWS IN COMMUNITY

Diversity Committee

Chairs: Amanda B. Buffinton - Bush Ross, P.A.; and Jessica Goodwin Costello - Florida Attorney General's Office of Statewide Prosecution

In our community, the THBA plays an important part in the house we all live in, Tampa.

Though we have many wonderful voluntary Bar associations, few are as unique as the Tampa Hispanic Bar Association (THBA), and few are as uniquely Tampa.

In 2006, a group of attorneys, including THBA founding President Luis “Tony” Cabassa, met at the old Valencia Gardens Restaurant on West Kennedy Boulevard to found the THBA, which would grow to more than 100 active dues-paying members. For me, three facts make the THBA unique.

First is the THBA’s community involvement. The THBA’s monthly Spanish Family Forms Clinic, presently led by board member Karla Faviola Gonzalez-Acosta, assists Spanish-speaking individuals, free of charge, with family law form packets. For these efforts, the THBA was awarded our Circuit’s Pro Bono Service Award (2011) and the Florida Supreme Court’s Statewide Voluntary Bar Association Pro Bono Award (2013). Also, there is the THBA Court Interpreter Program for pro-se litigants, which provides free court-certified interpreters, and the annual college scholarship program.

Second is our diverse leadership. There is Immediate Past President Victoria Cruz-Garcia, whose father served in the Puerto Rican 65th Infantry Regiment in the Korean War; President Miriam Velez-Valkenburg, a former Drug Enforcement Agent in intelligence and litigator; and President-Elect Vivian Cortes Hodz, a family lawyer who is the first person in her family to attend college. Board member Jenay Eunice Iurato’s work in combating human trafficking is exemplary; Secretary Andres Oliveros is a Marine and Iraq War veteran; and board member Lourdes Bernal-Dixon and Treasurer Doris Del Castillo are proud daughters of Cuban exiles. Board member Rene Hernandez came to the United States at the age of 16 on the Cuban Mariel Boatlift and is now corporate counsel at Florida Travelers, and board members Steve Barbas, Hernando Bernal, and Rick Fueyo are proud Jesuit High School graduates who never forget the Jesuit Catholic principles they learned.

Third are the THBA’s organizational values. This is an organization that our ancestors, who struggled as immigrant “strangers in a strange land,” can be proud of. The THBA honors the struggles of our families who came from all over the world to not only the United States, but Tampa, as Latinos and became proud Americans. Tampa’s heritage uniquely reflects the American value of pluralism through a rich Latino influence. From the Spanish immigrants who made West Tampa their homes to the heroism of Lt. Baldomero Lopez and great names like Mayor and Gov. Bob Martinez, Judge Virginia Covington, and “Mr. Latino” himself, Judge E.J. Salcines, Tampa is a city of Latino achievement and history. Tampa stands as a symbol of the American Dream for Latino Americans, and the THBA builds on this legacy by paying tribute to our families’ history. The stories we were told by our parents of their struggles, day after day at our kitchen and family tables, define the THBA’s DNA.

As Latino Americans in Tampa, our families’ stories may have different beginnings, but all have the same conclusion: with us being proud Americans, here in Tampa. These stories form important bricks in what songwriter Abel Meeropol called “the house I live in,” or the house of the United States. And in our community, the THBA plays an important part in the house we all live in, Tampa. I am proud to be a member and hope you can join in support.

Author:
Luis E. Viera - Ogden & Sullivan

To join the HCBA Diversity Committee, call (813) 221-7777.
The CLE drew a great crowd, and the section would like to thank the CLE’s sponsor:

**ENVIRONMENTAL AND LAND USE SECTION CLE**

Charles E. Klug, chief legal officer for the Port of Tampa Bay, addressed the HCBA Environmental and Land Use Section during a CLE on October 7. Klug, who has served as general counsel for the Tampa Port Authority since 2004 and also served as interim port director in 2012, discussed environmental permitting and land use issues involving the port, such as permitting of marine construction, submerged land management, and master planning of lands owned by the port.

**“PROFESSIONALISM 101” LUNCHEON**

The HCBA hosted a Judicial CLE Luncheon featuring Chief Judge Manuel Menendez Jr. and Ken Turkel of Bajo, Cuva, Cohen & Turkel P.A. on October 8. As part of their “Professionalism 101” presentation, Judge Menendez discussed courthouse etiquette and Turkel talked about the lawyer persona. Thanks to everyone who attended this great luncheon!
As we begin a brand new year, we would like to update you on our final meetings of 2014, our first meeting of 2015, and to keep you informed about the exciting speakers that we have lined up until the summer break.

Each luncheon qualifies for one hour of CLE credit and provides the opportunity to visit and network with elder law attorneys and other professionals. Networking begins at 11:30 a.m., with luncheons beginning at noon. All luncheons are held in the Chester H. Ferguson Law Center.

So please join us at our meetings, and as always, if you have suggestions or ideas or would like to submit an article for publication in the Hillsborough County Bar Lawyer magazine, please contact Elizabeth P. Allen – eallen@gibblaw.com or (813) 877-9222 – or Debra L. Dandar – Debra.Dandar@TampaBayElderLawCenter.com or (813) 282-3390.

We look forward to seeing you and wish each of you a very happy, healthy, and successful 2015!

Author: Debra Dandar - Tampa Bay Elder Law Center

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The lack of bone marrow or hematopoietic stem cell (HSC) donors is a continuing problem across the globe. Currently only four out of 10 patients in need of a transplant will ever find a matching donor.\(^1\) One possible but controversial idea to increase the donor pool is through donor financial incentives; however, there is a question of whether remuneration is legal under the National Organ Transplant Act (NOTA).

Bone marrow or HSC transplants are used to treat patients with life-threatening blood cancers, diseases that result in bone marrow failure, and other immune system or genetic diseases.\(^2\) There are two methods to donate: apheresis or traditional bone marrow extraction. Under the traditional method, patients undergo general anesthesia, and marrow is extracted from the hip. With the apheresis method, donors remain awake while blood is removed, the stem cells are extracted, and the blood is returned to the body.

Although NOTA explicitly prohibits remuneration for HSC donation using the traditional method, it is unclear whether NOTA covers the apheresis method. In 2012, the Ninth Circuit held in *Flynn v. Holder* that individuals who donate HSC via apheresis may be remunerated.\(^3\)

The *Flynn* plaintiffs developed a pilot program to incentivize HSC donors through the provision of $3,000 in the form of a scholarship, housing subsidy, or donation to a charity of the donor’s choice.\(^4\)

The plaintiffs initially set forth two arguments: (1) NOTA’s ban on selling HSC violates substantive due process protections of the Constitution because when an individual needs a transplant to survive and another individual is willing to supply it for a fee, the government cannot interfere with the transaction, and (2) NOTA violates the Equal Protection Clause of the Fourteenth Amendment of the Constitution because there is no rational basis for permitting remuneration for blood, sperm, and ova while prohibiting it for HSC.\(^5\) The district court rejected both arguments on those grounds, and the Ninth Circuit affirmed.\(^6\) The courts identified several rational bases for prohibiting the sale of HSC, including that poor people could be coerced into donating; the rich would be advantaged; and that donors would be incentivized to provide inaccurate medical history to appear healthier and desirable.\(^7\)

On appeal, the Ninth Circuit considered a third argument: that the term “bone marrow” does not include stem cells obtained through the apheresis process.\(^8\) It is on this ground that the Ninth Circuit ruled for the plaintiffs.\(^9\) The court determined that Congress could not have intended to address the apheresis process because it did not exist at the time NOTA was passed.\(^10\)

The attorney general declined to petition the Supreme Court to review the *Flynn v. Holder* decision.\(^11\) However, in 2013, the Health Resources and Services Administration issued a proposed rule to explicitly incorporate apheresis-extracted HSC in NOTA’s definition of “bone marrow.”\(^12\) As of the time of this writing, the final rule had not been issued but was expected in December 2014.

It is unclear how many groups or institutions have taken advantage of this loophole to provide some form of remuneration to HSC donors. However, should the final rule indicate that HSC are explicitly included in the NOTA ban on remuneration, the point will be moot, for now, and donor remuneration for any method of stem cell donation will be prohibited.

\(^1\) [Delete Blood Cancer](https://www.deletebloodcancer.org/en/about-blood-cancer) (last visited November 14, 2014).

*Continued on page 35*
CHILLED TO THE MARROW: THE LEGAL RAMIFICATIONS OF REMUNERATION OF STEM CELL DONORS

Continued from page 34

3 Flynn v. Holder, 665 F.3d 1048, 1059 (9th Cir. 2011).
5 Flynn, 665 F.3d at 1053.
6 Cohen, supra note 4 at 1055-56.
7 Id.
8 Id.
9 Flynn, 665 F.3d at 1057.
10 Id.
12 42 CFR § 121.

Author: Erica Mallon - Carlton Fields Jorden Burt, P.A.

A MOMENTOUS OCCASION

The Tampa Hispanic Bar Association’s annual gala in November featured Mayor Bob Buckhorn, U.S. Rep. Kathy Castor, and keynote speaker Florida Supreme Court Chief Justice Jorge Labarga. But even with the excellent lineup of speakers, the real excitement came after the event, when Chief Justice Labarga swore in Jose Manuel Godinez-Samperio as a member of The Florida Bar. This was a momentous occasion as Jose had previously been denied entry into The Florida Bar based on his status as an undocumented immigrant.

CORPORATE COUNSEL CLE

The HCBA Corporate Counsel Section hosted a CLE luncheon on October 29 featuring guest speaker Sacha Dyson, a partner at Thompson, Sizemore, Gonzalez & Hearing, P.A. Dyson discussed “Interns and the FLSA – What Corporate Counsel Needs to Know.”

The section would like to thank the luncheon’s sponsor:
YLD GOLF TOURNAMENT

The HCBA Young Lawyers Division had a record turnout and gorgeous weather for its Golf Tournament on October 17. More than 90 golfers gathered at the Temple Terrace Golf & Country Club for the YLD’s signature fundraising event. Congratulations to the winning team: Justin Petredis, Cameron Frye, Jason Will, and Kevin Ninja. The YLD would like to thank this year’s generous sponsors:

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Bench Bar Conference, Membership Luncheon & Judicial Reception

The HCBA Bench Bar Conference, Membership Luncheon & Judicial Reception had a record turnout this year, with about 300 people attending the conference and about 500 at the membership luncheon on October 30.

The conference began with an Ethics Breakfast, followed by six breakout sessions presented by an array of special guests. Florida Supreme Court Chief Justice Jorge Labarga was the keynote speaker at the Membership Luncheon, where Hillsborough County Bar Foundation President Bill Schifino also presented three local charities with checks totaling $50,000. After the luncheon, attendees chose from four “View Towards the Bench” sessions, followed by a plenary session on “Social Media and Electronic Information: Sources and Evidentiary Foundation.” The final session was presented by Florida State University Professor Charles Ehrhardt, who discussed the importance of relevant and reliable testimony.

The conference wrapped up with a ceremony for the retiring judges — Chief Judge Manuel Menendez Jr., Judge James D. Arnold, Judge James M. Barton, and Judge Sam D. Pendino — followed by the Judicial Reception in the evening. The HCBA would like to thank the members of the Bench Bar Committee for all their hard work. A special thanks also goes out to all of the event’s sponsors, particularly our Diamond Sponsor.
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LIVING WELL: MAKING A DIFFERENCE IN OUR COMMUNITY
Immigration & Nationality Section
Chair: Maria del Carmen Ramos - Shumaker, Loop & Kendrick, LLP

When I think of Florida (and the Tampa Bay area in particular), I think of beaches and palm trees. Beaches and palms, trees, to me, are symbols of peace and serenity. They also remind me of my childhood in Puerto Rico, carefree times when I was unburdened by all the responsibilities of adulthood. The guest speakers at our November section lunch, however, painted a much different picture of Florida.

Lurking behind our tranquil Bay area community lies a little-known secret. Tampa Bay is a den for human trafficking. Did you know that Florida ranks as high as third (by some measures) for this rapidly growing crime that most people would prefer not to talk about? Each year, countless men, women, and children are forced against their will into trafficking — a modern-day version of slavery. They are bought, sold, and discarded in our own backyard. Initially, it was hard not to get discouraged at the thought that children are being bought and sold in the very same community where I raise mine.

But any thoughts of despair quickly gave way to hope as I learned of extraordinary efforts by local attorneys — Stacie B. Harris, Brent A. Woody, Jenay E. Iurato, and Sophia Lynn, among others — to make our communities safe. For instance, Stacie Harris, an assistant United States attorney, was named prosecutor of the year in large part due to her success prosecuting human trafficking cases, including securing the first life sentence for sex trafficking (one of only 10 in the country). Brent Woody, a local attorney, launched the West Florida Center for Trafficking Advocacy to assist trafficking survivors. And Jenay Iurato and Sophia Lynn both provide legal assistance to human trafficking survivors. In fact, Jenay recently received the Luis “Tony” Cabassa Award for her human trafficking advocacy. Efforts by local attorneys — including Stacie, Brent, Jenay, and Sophia — to fight human trafficking in our community are nothing short of impressive.

As I thought of our guest speakers, I couldn’t help but be reminded of a favorite quote of mine by Ralph Waldo Emerson: “The purpose of life is not to be happy. It is to be useful, to be honorable, to be compassionate, to have it make some difference that you have lived and lived well.” There is no question Stacie, Brent, Jenay, and Sophia (and others fighting human trafficking) are honorable and compassionate people who are truly making a difference in our community — albeit with little fanfare. They are also an inspiration to the rest of us. If I learned one thing from our November luncheon, it is (at the risk of sounding trite) that you should never underestimate the difference one person can make in the lives of others. If enough of us focus on “living well,” I am confident that our community can return to the peaceful and serene place many of us hope it to be.

Author: Maria del Carmen Ramos - Shumaker, Loop & Kendrick, LLP

Keep up with the latest legal news and events at HCBAtampabay.blogspot.com.
HEALTH & WELLNESS EXPO

HCBA members and their staff took part in the inaugural Health & Wellness Expo at the Chester H. Ferguson Law Center on November 7. Attendees received free flu shots, donated blood, enjoyed chair massages, and visited with more than 20 exhibitors. The HCBA Health Care Law Section also presented a Lunch & Learn featuring Dr. Denise Edwards from the USF Healthy Weight Clinic and Dr. Daniel Plasencia from St. Joseph’s Children’s Hospital. We would like to thank all of our vendors and attendees for contributing to the success of our first expo!

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It’s not often that the Florida Supreme Court weighs in on issues affecting intellectual property cases. However, this summer, the court answered an important certified question from the Eleventh Circuit regarding patent licenses in a decision likely to affect not only patent licensing but also copyright and trademark licensing. The certified question was: “Does Florida recognize a ‘bright-line rule’ to distinguish an assignment of a license agreement from a sublicense?” *MDS (Canada) Inc. v. Rad Source Technologies, Inc.*, 143 So. 3d 881, 882 (Fla. 2014). The court answered the question in the negative and instead held the interpretation of a license to be a mixed question of law and fact that depends on the language of the license agreement, the substance of the interest actually transferred, and whether the licensee retained any substantial rights in the license agreement.

**Assignment Versus Sublicense - Why Does It Matter?**

The case in federal court arose from a dispute between a patent owner and its licensee. The license contract prohibited the licensee from assigning the patent license to a third party without the owner’s written consent but allowed the licensee to grant sublicenses without consent. The licensee sold off the portion of its business that used the patent to a third party, but the owner refused to consent to assignment, so the licensee and its buyer entered into a “sublicense agreement” granting the buyer all of the rights under the license agreement, minus one day. When the three parties later had a dispute about a related product, the licensee sued for breach of the license’s non-compete clause, and the owner counterclaimed that the “sublicense” breached the assignment clause of the contract, invalidating the non-compete. The federal district court ruled the buyer had entered into a prohibited assignment, and the Eleventh Circuit certified the contract interpretation question. Citing Florida contract law governing real property transactions from the 1930s, the Eleventh Circuit reasoned that the form of an assignment is immaterial and that the court should instead determine its legal effect. *MDS (Canada) Inc.*, 143 So. 3d at 885. The dissent argued in favor of a bright line rule that distinguished an assignment from a sublicense when the licensee transfers less than the entire interest, even by one day.

**The State Law Contract Analysis**

The Florida Supreme Court cautioned against relying on precedent in the real property context, pointing out that the physical limitations of subleases in real property do not apply to intellectual property, where rights can be simultaneously licensed to numerous parties. The court instead embraced the reasoning set out by the U.S. Supreme Court and Federal Circuit in other patent cases and held that courts interpreting patent licenses have to discern the meaning of the license based upon its plain language and the parties’ intent.

This case-by-case analysis is likely to apply to license agreements in all intellectual property fields. In interpreting licenses, the courts will use state contract law principles to determine the scope and meaning.

**Author:** Dineen Pashoukos Wasylik - DPW Legal

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RPPTL SECTION LUNCHEON

The HCBA’s Real Property, Probate & Trust Law Section met on October 9 for a luncheon featuring J. Richard Caskey, who discussed “The Exploitation of Vulnerable Adults — Recovering Assets for the Elderly.” The section would like to thank the luncheon’s sponsor: Synovus Bank.

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It is important for family law attorneys to be aware of the potential federal support requirements that arise when a U.S. citizen marries a foreign national. Under the U.S. Citizenship and Immigration Services’ application process, a U.S. citizen who marries a foreign national is required to execute an I-865 affidavit of support to obtain lawful permanent residence for the foreign spouse. In this affidavit, the U.S. citizen must promise to “provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable.” 8 U.S.C.S. § 1183a. (1)(A) (2014). Currently, this means an obligation of paying $1,216 per month to the estranged or former spouse should the marriage fail.

Under section 1183a(e), the affidavit may be enforced by the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable.” 8 U.S.C.S. § 1183a. (1)(A) (2014). Currently, this means an obligation of paying $1,216 per month to the estranged or former spouse should the marriage fail.

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MARITAL & FAMILY LAW LUNCHEON AND CLE

The HCBA Marital & Family Law Section hosted a luncheon on November 19 featuring guest speaker Kim Byrd, who discussed the U.S. Supreme Court’s denial of review in seven same-sex marriage cases, as well as the status of same-sex marriage recognition in Florida. After the luncheon was a CLE focusing on “Winning Trial Techniques: In-Depth Coverage of Family Law Issues.” Guest speakers Mathew Thatcher, Fred Pollack, Nancy Harris, General Magistrate Jon Johnson, and Richard Mockler discussed alimony cases, child support, equitable distribution, and understanding the court’s contempt powers.

Thanks to the luncheon’s sponsor:

APPELLATE SECTION LUNCHEON

The HCBA Appellate Section gathered on November 12 for a luncheon featuring guest speaker Judge Edward LaRose.

The section would like to thank the luncheon sponsor:
As a mediator, I avoid asking about a party’s “best number” because most parties consider this information to be private and strategic. Although communications with the mediator during private caucuses are confidential in Florida mediations, parties may fear that the mediator will inadvertently signal the “best number” to the other side and thereby harm the chances of achieving settlement. If the mediator raises this issue, it may place the lawyer and client in an awkward position and make them uncomfortable about declining a mediator’s request.

Another reason that asking for a best number is dangerous lies in the honest recognition that, in most cases, the party’s articulated best figure is not completely truthful. Most parties hold back some amount to allow for “wiggle room” at the end of the negotiations, and I do not want to put lawyers or clients in the difficult position of losing face when additional changes are essential to reaching a negotiated settlement.

Further, if the parties reveal their anticipated numbers, especially early in the process, it can be discouraging to both the parties and the mediator. Because these targeted figures almost never succeed, they can cast a negative pall over the mediation and cause parties and their counsel to give up too soon. Patience and persistence are extraordinarily important to successful mediating, and “best number” dialogues do not favor those objectives.

The last reason I believe that “bottom line” figures should not be disclosed to a mediator is that an experienced mediator will almost always discern the actual settlement numbers toward the end of the process without being told. The negotiation process, and information exchanged both privately and to the other side, will generally predict a settlement range without any need for revealing best numbers.

Mediation can often bridge the final settlement divide when parties perceive the progress they have achieved, the benefits of settlement, and the relatively small gap remaining as compared to the distance they traveled to reach it.

Author: Charles W. Ross - Charles W. Ross, Esq.
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After World War II, there were few causes with greater relevancy to post-war America than the saga of Private Felix Longoria, a Mexican-American and World War II hero from Three Rivers, Texas.

Today, few remember what is termed the Longoria Affair, which was one of the earliest post-war civil rights struggles for veterans.

Like so many brave Americans, Private Longoria left behind a wife and child to serve a greater cause for a great country and people. And like so many others, he paid the ultimate price: On June 15, 1945, Private Longoria, while on the Island of Luzon in the Pacific Theatre, was killed by a Japanese sniper.

When Private Longoria’s remains were returned in 1949, his widow, Beatrice, sought to have the wake services at the local funeral parlor. The owner of the funeral home allegedly refused Beatrice a wake service for her Mexican-American husband because he believed “the whites would not like it.” The Texas of 1949 was a Texas where strict racial lines — often enforced through violence — existed.

After this dispute, Beatrice took action, and her protests — aided by the late Dr. Hector Garcia of the American G.I. Forum — caught the attention of then Sen. Lyndon Baines Johnson. Johnson, a man whose conscience on racial and social justice would not be fully exhibited until he became president, had the remains of Felix Longoria buried with his fellow heroes in Arlington National Cemetery. On February 16, 1949, Sen. Johnson and his wife joined the Longoria family for the Arlington funeral.

The Longoria Affair is a story of many heroes. But there are many heroes bearing names we may never know. As one of Private Longoria’s family members once remarked, “How many Felix Longoria cases must have gone unheard of?”

Indeed, one of the injustices that prompted President Harry S. Truman to desegregate the military were stories of African Americans — returning home from heroic World War II service — being attacked in Jim Crow states for violating local customs. Many of the great names in the civil rights movement — such as Medgar Evers — were World War II heroes who returned to seek a more compassionate nation.

This past July, I took my 7-year-old son, Luis Jr., on a trip that I had been planning since I found out I was going to become a father: to Washington, D.C. While in D.C., I took my son to Arlington National Cemetery and visited, among others, the grave of Private Longoria. He rests there along with other Americans who, while in their youth, gave all for humanity in World War II. Few today know the symbolic significance of this man’s legacy.

Longoria’s story has a unique connection to the values of the HCBA’s Military & Veterans Affairs Committee. I am proud to support this committee as it allows us to, in our time, do right by today’s returning veterans who, like Felix Longoria, have overlooked needs. And these are needs created by their heroic service to us.

In honoring those who serve, we should pay special attention to the story of Private Longoria. Here, the poor in spirit and those who mourned and thirst for righteousness were peacemakers and were ultimately comforted.

Author:
Luis E. Viera - Ogden & Sullivan
The Thirteenth Judicial Circuit’s Committee on Professionalism honored Deborah Werner with its inaugural Thirteenth Judicial Circuit Professionalism Award in October at the HCBA’s 18th Annual Bench Bar Conference Membership Luncheon. The Professionalism Committee had sought nominations to recommend a member of The Florida Bar practicing within the Thirteenth Judicial Circuit for at least 15 years and meeting the following nomination criteria: an attorney who has consistently demonstrated honesty, integrity, fairness, courtesy, and an abiding sense of responsibility to comply with the standards and rules of professionalism in the practice of law and who has earned the highest respect among local lawyers and judges for his or her commitment to professionalism.

Werner has served the legal community for more than 30 years, focusing her practice on probate, trust administration, estate planning, elder law, and real estate transactions. She has been an active member in the Hillsborough Association for Women Lawyers (HAWL), including helping found HAWL’s Mentoring Program that pairs attorneys with students at Stetson and Thomas Cooley law schools.

She has received numerous professionalism awards, serves as a guest lecturer at local law schools and universities, and sits on several boards, including the HAWL Board of Directors, the Tampa Bay Estate Planning Counsel, and the Alzheimer’s Association Board of Directors. When asked whether the Professionalism Committee found the right person to present its first award to, the Honorable Claudia Isom replied: “Deb stood out head and shoulders above the rest of us because Deb, before the rest of us even understood the mentorship movement, was there advocating for HAWL to be involved in mentoring, serving as a professional role model, bringing young lawyers into her office, giving them the opportunity to see how she practiced law and giving them the opportunity to network with other attorneys.”

In 1998, the Florida Supreme Court issued an Administrative Order directing the chief judge of each circuit to create and maintain a Circuit Committee on Professionalism. Following that administrative order, the Thirteenth Circuit created its Professionalism Committee, which is made up of members of the judiciary and representatives of the circuit’s voluntary bar associations and sections, committees, and divisions of the Hillsborough County Bar Association. This year, the Professionalism Committee, operating under the direction of Executive Chair the Honorable Ashley B. Moody, decided it should issue its own professionalism award. When asked why the legal profession needs to issue another professionalism award, the Honorable Lamar E. Battles responded: “One of the biggest issues facing our profession today is professionalism. Any time we can recognize it and encourage it and get out there and try to bring attention to it, then that’s worth doing.”

The Professionalism Committee plans to issue the award annually with the hope that it will continue to promote professionalism within the circuit by recognizing and honoring those attorneys possessing the qualities the award is designed to embrace.

Author: Katelyn Mae Desrosiers – Butler Pappas Weihmuller Katz Craig LLP
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Treasury officials, alarmed by continued devaluation of GSE loan portfolio, GSE weak capital reserves, potential investor sell-off, and impact on global markets, persuaded the GSEs to consent to conservatorship in September 2008. The Housing and Economic Recovery Act, enacted in July 2008, created the Federal Housing Finance Agency, the GSEs' conservator since 2008.

Fannie and Freddie dominate the secondary mortgage market: They have more than $5.6 trillion in obligations and owned about 61 percent of all new residential mortgage loans in the
United States in 2012. Only $5.2 billion in residential mortgage-backed securities were issued without government support in the same time period.

Freddie and Fannie received a $188 billion bailout from the Treasury, which has been paid back. They continue to be profitable, and, along with the Federal Housing Administration (FHA), own nearly 90 percent of all residential mortgages.

Both ends of our political spectrum agree that GSE reform is required: Sens. Bob Corker, R-Tenn., and Mark Warner, D-Va., introduced a bill in June 2013 that would replace the GSEs with federal insurance for mortgage, similar to FDIC-insured bank deposits. A government insurance program assuages the concerns of consumer and trade groups, which prefer the status quo, about the availability of mortgages, the mission of Fannie and Freddie.

On the other end are advocates of a free market system. They propose winding down the GSEs while legislating the definition of a prime loan that would be the standard for a private finance market.

Almost everyone agrees that something needs to be done with the GSEs and recognizes that this will be a complex undertaking in our housing and financial markets. Work on GSE reform is ongoing, though serious housing reform will not occur until after national elections.

Continued from page 60

Author:
Michelle Garcia Gilbert - Gilbert Garcia Group, P.A.
Being armed with this information, are you necessarily in a better position to determine whom to select? If so, what would you look for in selecting the trier of fact?

Peter King, an experienced securities defense lawyer with the Tampa firm of Wiand Guerra and King, says that he looks for lots of zero awards hoping this shows a predisposition to favor the respondents. He also looks for experienced panel members. These people, he says, have a context for the evidence they hear. They might be able to judge that the evidence, even if bad for the broker, is not necessarily egregious.

King also likes to see lawyers on the panel, at least as the chair. He says lawyers can better control the flow of evidence. He also likes to see more than one lawyer on the panel when there are multiple legal issues to resolve.

Claimant’s securities attorney David Anton, of the Anton Legal Group, says he normally prefers not to have lawyers on the panel. Since FINRA rules provide that the panel is not required to follow the state or federal rules of evidence, he says lawyers will be more likely to want to do so. Having the burden of proof, claimants do not want to be limited to only entering evidence that would be admitted in court.

Anton looks for experienced panel members who have a history of favorable claimant’s awards. Most significantly, Anton likes to select arbitrators who believe in social justice. He will focus on their work history and look for attorneys from academia or arbitrators who have held social jobs such as educators.

Securities attorneys will spend many hours reviewing the award history and biographical information about each potential arbitrator. Since the awards list the names of the attorneys involved in each case, you can contact those lawyers to learn more about their experience.

The selection process can be the most critical phase of the arbitration. Therefore, it is worth the time and effort to drill down into the massive quantity of information to make the best decisions possible.

Author: Eric E. Ludin - Tucker & Ludin
# Hillsborough County Bar Association 100 Club

Law firms with 100% membership in the HCBA

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Thirty-four states and the District of Columbia have passed laws permitting the use of marijuana in some form. Although Amendment 2 recently failed this November, the Florida Legislature passed the Compassionate Medical Cannabis Act of 2014 (MCA) in June, which permits non-euphoric, low Tetrahydrocannabinol (THC) and high Cannabidiol (CBD) cannabis. States can authorize medical marijuana, but it remains illegal at the federal level. The Controlled Substances Act (CSA) federally criminalizes all forms of cultivation, distribution, and possession of schedule I controlled substances, including marijuana. Operating and servicing marijuana-related businesses therefore implicate numerous federal and state banking and taxation concerns.

For example, section 280E of the Internal Revenue Code instructs that no deduction or credit shall be allowed for any amount paid or incurred in relation to a trade or business that involves trafficking a schedule I substance. 21 U.S.C. § 801, et seq. Thus, while other businesses can deduct payroll, rent, utilities, and other business expenses, medical marijuana businesses generally cannot. The initial court decisions applying section 280E have generally favored the government. See Olive v. Commissioner, 139 T.C. 2 (2012). However, the scope of section 280E generally does not apply to the cost of goods sold.

The inability to deduct these operating expenses could result in marijuana businesses effectively being taxed at a higher rate than the top corporate income tax bracket of 35 percent. The disallowance of these deductions can in turn impact other tax provisions, including basis for depreciation calculation (§ 167), capitalization (§ 263A), cost allocation (§ 460), inventory (§ 471), and others.

Corporations that distribute medical marijuana or otherwise promote medical marijuana might desire to seek tax-exempt status under section 501(c)(3), which applies to those organized for charitable, scientific, or educational purposes. The IRS has ruled that because manufacturing and distributing marijuana remains illegal at the federal level, organizations whose purpose is to advocate and engage in activities that contravene federal law do not serve a substantial nonexempt federal purpose and do not qualify for an exemption under section 501(c)(3). IRS Priv. Ltr. Rul. 2012-24-036 (Mar. 19, 2012).

Although medical marijuana laws provide new business opportunities, the legal and tax environment leaves many questions unanswered.

These tax issues also impact individuals. Notably, individuals are generally entitled to deduct unreimbursed medical expenses that exceed 10 percent of their adjusted gross income on their federal income tax returns. However, the IRS has determined that individuals may not deduct controlled substances as medical expenses. IRS Pub. 502 (2013). For individuals who own marijuana businesses, the inability of the business to deduct operating expenses might increase the individual’s base for computing self-employment taxes.

Other issues abound, including obligations under the Bank Secrecy Act (BSA) to report marijuana-related business activity, state sales tax treatment of medical marijuana sales, and whether attorneys can ethically advise clients on operating a business that is legal under state law but remains illegal under federal law. Although medical marijuana laws provide new business opportunities for savvy entrepreneurs, the evolving legal and tax environment leaves many questions unanswered for the both the owners and their advisors.

Authors: Adam R. Maingot and Brian R. Harris - Akerman LLP
Once each year, the American Bar Association designates a week to celebrate pro bono legal service. It is a week when legal communities across the nation strive to not only help those who cannot afford much needed legal assistance but also to bring awareness to the need for such services and recognize the great efforts of its members. The ABA designated October 19-24, 2014, for the National Pro Bono Celebration.

The Thirteenth Judicial Circuit’s legal community got a head start on the celebration by kicking off its activities on October 7 with a Business Law Advice Clinic for Nonprofits. The event took place at the Judge Don Castor Community Law Center, a project of the Bay Area Volunteer Lawyers Program. The event provided an opportunity for nonprofit organizations to have a free consultation about transactional matters. The celebration continued with a Wills for Heroes event at the Hillsborough County Bar Association on October 11. At the event, attorneys and paralegals came together to prepare wills and estate planning documents for first responders. The following week, the Board of County Commissioners for Hillsborough County issued a proclamation declaring the week of October 19, 2014, to be Pro Bono Week in Hillsborough County. During the proclamation presentation, the Thirteenth Judicial Circuit’s Pro Bono Committee unveiled a new pro bono recruitment video featuring local attorney Betsey Hapner and one of her very appreciative pro bono clients. The video was created — pro bono — by Larry Wiezycki, a member of the media team at the law firm of James, Hoyer, Newcomer & Smiljanich, P.A. Additionally, the HCBA’s Young Lawyers Division hosted a luncheon focused on pro bono and community service opportunities. The George Edgecomb Bar Association also got a head start on Pro Bono Week by hosting a Legal Redress Workshop for the public on October 18. At the workshop, GEBA members taught one-hour courses on several topics.

Pro Bono Week featured, among other events, an information table in the George Edgecomb Courthouse. Bay Area Legal Services staffed the table to distribute information about local pro bono programs to members of the public seeking assistance and attorneys interested in donating their time and talents. Pro Bono Week also included a kick-off reception for a new initiative — the Tampa Bay Pro Bono Partnership — which provides an opportunity for in-house counsel to team up with attorneys from private law firms and perform pro bono legal service.

Continued on page 67
bono service together. Additionally, the Tampa Hispanic Bar Association hosted a seminar and pro bono case adoption event about domestic violence. The week concluded with a Regional Training for Guardian Advocate Cases, which was hosted by a collaborative team of organizations, including the Bay Area Volunteer Lawyers Program, Community Law Program, Legal Aid of Manasota, and Bay Area Volunteer Lawyers Program Northwest. The training was offered free to attorneys willing to accept a pro bono guardian advocate case.

Last but not least, Crossroads for Florida Kids extended the Pro Bono Week Celebration into November and hosted a free training/CLE seminar regarding representing children in dependency and delinquency proceedings.

If you are interested in participating in the Thirteenth Judicial Circuit’s Pro Bono Committee or learning more about the committee’s member organizations mentioned in this article, please contact Committee Chair Rosemary Armstrong at rosemary@crossroadssfakids.org.

1 The Wills for Heroes program was established by the Hillsborough County Bar Foundation, in conjunction with the national Wills for Heroes Foundation, and is often largely staffed by the Real Property, Probate & Trust Law Section of the Bar, with assistance from the Tampa Bay Paralegal Association.

Author: Amy L. Bandow, Western Michigan University Thomas M. Cooley Law School

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**RPPTL SECTION’S NOVEMBER CLE LUNCHEON**

The HCBA Real Property, Probate & Trust Law Section welcomed guest speaker David Churchill Barrow, underwriting and claims liaison counsel for Fidelity National Title Group, at a CLE luncheon on November 13. Barrow discussed “Judgment Liens on Real Property: How to Perfect Them If Playing Offense, and How to Avoid Them on Defense.” The HCBA would like to thank the luncheon’s sponsor:
The Judicial Conference recently approved a proposed amendment to Rule 37(e) intended to establish greater uniformity in the ways federal courts respond to the loss of electronically stored information (ESI) and to address reports of costly over-preservation of ESI undertaken for fear of sanctions. The proposed amended rule provides:

(e) Failure to Preserve Electronically Stored Information. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

Under the proposed amended rule, when addressing a lost ESI dispute, a court first determines whether reasonable steps were taken to preserve the lost ESI. This includes consideration of the resources that were available and the proportionality of the efforts to preserve the ESI, as well as a party’s litigation sophistication. If ESI is lost because a party failed to take reasonable steps to preserve it, then the focus shifts to whether the ESI can be restored through additional discovery. If it cannot, and if a court finds a party is prejudiced by the loss, then pursuant to subsection (e)(1), the court may order measures no greater than necessary to cure the prejudice. If a court finds that the party that lost the ESI acted with the intent to deprive another party of the information’s use in the litigation, however, then pursuant to subsection (e)(2), the court may presume the lost information was unfavorable to the party, instruct the jury accordingly, or dismiss the action or enter a default judgment.

Subsection (e)(2)’s “intent to deprive” requirement is similar to a bad-faith standard, which, as the advisory committee noted, is more appropriate, in part, because negligently lost ESI may be favorable or unfavorable to the party that lost it. The advisory committee further noted that permitting an adverse inference for negligence creates incentives to over-preserve, often at great cost, the avoidance of which was one of the goals for amending the rule. In addition, subsection (e)(2) resolves a circuit split on when a court may give an adverse-inference instruction for the loss of ESI, which some circuits permit on a showing of negligence or gross negligence, while others require a showing of bad faith.

The proposed amendment is now pending Supreme Court review. If it is adopted and submitted to Congress before May 2015, the proposed amendment should become effective in December 2015.

Author:
Jaret J. Fuente - Carlton Fields Jorden Burt, P.A.
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While appeals on claimant attorney fees are pending, practitioners must still monitor rulings on other subjects.

Cases involving claimant’s attorney’s fees are before the Florida Supreme Court and should be decided soon. While these appeals are pending, practitioners must still monitor appellate rulings on other subjects, some of which will be addressed below.

Oral argument was recently heard on the leading case on attorney’s fees, Castellanos v. Next Door Co., which has been joined with Diaz v. Palmetto General Hospital and Richardson v. Aramark for consideration. Resolution of this issue will determine the future of benefits for injured workers under the act. Absent a finding in favor of injured workers on this issue, many believe the only opportunity for justice for injured workers would be a ruling affirming the decision in Padgett v. State of Florida that the entire act is unconstitutional and should not prevent an injured worker from pursuing a civil action in tort against an employer.

In another case on claimant’s attorney’s fees, the First District affirmed a denial of attorney’s fees under section 57.105, Florida Statutes, in a workers’ compensation claim but reversed the denial of costs. Phillip Lane v. Workforce Business Solutions, 2014 WL 5836805 (Fla. 1st DCA Nov. 12, 2014). However, in Juan Rivas v. Oasis Outsourcing, 147 So. 3d 670 (Fla. 1st DCA 2014), the court reversed a ruling, refusing to grant a medical-only fee to be paid by the employer/carrier to the claimant’s counsel by agreement of the parties after initial litigation.

In Flores-Orellana v. Circle-K, 2014 WL 4629209 (Fla. 1st DCA Sep. 16, 2014), a settlement agreement in a labor case was used to try to deny benefits in a workers’ compensation case. After workers’ compensation litigation was initiated, under the facts of the case, the settlement agreement was set aside in the labor case, and the carrier reinstated workers’ compensation benefits. The judge of compensation claims then refused to grant a medical-only hearing in the workers’ compensation case and was reversed on the basis that the right to have claims adjudicated is a clear, indisputable right. The mediation settlement agreement was not set aside in Taylor v. CVS and Gallagher Bassett, 2014 WL 5420690 (Fla. 1st DCA Oct. 27, 2014); it was held enforceable when it contained an agreement to sign a “general release/separation of employment,” even though the parties later disagreed on the language of the general release. The lesson of these cases is do not sign settlement agreements that are not clear and specific.

In Hancock v. Suwannee Cnty. Sch. Bd., 2014 WL 5487123 (Fla. 1st DCA Oct. 31, 2014), the court ruled that the claimant cannot be required to pay the employer/carrier’s IME doctor a fee to have a videographer at an IME. The two-dismissal res judicata rule was clarified and limited in Moreno v. Palm Beach Cnty. Sch. Bd., 146 So. 3d 530 (Fla. 1st DCA 2014). The right to an advance of $2,000 was clarified and upheld in Bonner v. Miami Dade Public Sch., 148 So. 3d 152 (Fla. 1st DCA 2014).

The ruling in Guerra v. C.A. Lindman, Inc., 146 So. 3d 527 (Fla. 1st DCA 2014), clarified the limitations on appointment of an expert medical advisor, ruling that the only issues that can be submitted to an advisor are issues where there is current conflicting evidence of a “disagreement in the opinions of the health care providers” regarding an issue in dispute.

Author: Anthony V. Cortese - Anthony V. Cortese, Attorney at Law

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**JURY TRIAL INFORMATION**

**For the month of: August 2014**

**Judge:** Honorable Mark Carpanini  
**Parties:** Kenneth and Margaret Forbes v. Tower Hill Prime Insurance Company  
**Attorneys:** For plaintiff: David C. Murray and Howard W. Weber; for defendant: Jonathan T. Hall and Robert T. Shulte  
**Nature of case:** First-party insurance – sinkhole claim  
**Verdict:** For the plaintiffs in the amount of $216,000 policy limits

**For the month of: August 2014**

**Judge:** Honorable Patricia V. Thomas  
**Parties:** John Carson Campbell v. Corrections Corporation of America d/b/a Citrus County Detention Facility  
**Attorneys:** For plaintiff: William G. Osborne and Christopher R. Turner; for defendant: John A. Schifino and Alexandra Haddad  
**Nature of case:** Medical malpractice action in which plaintiff alleged defendant failed to diagnose compartment syndrome and failed to provide appropriate treatment to plaintiff  
**Verdict:** For defendant; defendant’s motion to tax costs and attorneys’ fees is pending.

**For the month of: September 2014**

**Judge:** Honorable Patricia V. Thomas  
**Parties:** Mark and Rhonda Wagner v. Florida Peninsula Insurance Company  
**Attorneys:** For plaintiff: Howard Weber and David Murray; for defendant: Hal Weitzenfeld and Robert Swift  
**Nature of case:** First-party insurance – water damage claim  
**Verdict:** For the plaintiffs in the amount of $71,123.79

**For the month of: October 2014**

**Judge:** Honorable Patricia Doherty  
**Parties:** Francis Singh vs. Florida Softball Cricket Association  
**Attorneys:** For plaintiff: Bradley Laurent and Carlus Haynes; for defendant: Adam Kantor and Terry Ford  
**Nature of case:** Negligent security/shooting trial with demand of $2,653,000  
**Verdict:** Outright defense verdict on liability

**For the month of: October 2014**

**Judge:** Honorable Donald Mason  
**Parties:** Terry and Barbara Tallent v. Pilot Travel Centers  
**Attorneys:** For plaintiff: Geoffrey Morris and Joseph Parrish; for defendant: Anthony Petrillo and Joseph Kopacz  
**Nature of case:** Slip and fall in a diesel fuel spill  
**Verdict:** Net $44,525 expected to be reduced to zero after post-trial setoffs

**For the month of: November 2014**

**Judge:** Honorable Anthony Rondolino  
**Parties:** Lisa Rein v. Florida Gulf Coast Transportation and James E. William  
**Attorneys:** For plaintiff: Brian Hoag and Carey Blaxberg; for defendant: Anthony Petrillo and Jennifer Seitz  
**Nature of case:** Auto accident with four level laser diskectomy procedure  
**Verdict:** $34,553.13 minus an agreed $9,855.44 PIP setoff

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Erin Smith Aebel of Shumaker, Loop & Kendrick, LLP, has received the American Diabetes Stop Diabetes SHARE Leadership Award. The award recognizes an individual volunteer who has demonstrated a significant and ongoing ability to recruit, train, and motivate local volunteers. Aebel is a partner at the firm and the co-chair of the Tampa Health Law Department.

Carter Andersen, shareholder at Bush Ross, P.A., has been reappointed to the Thirteenth Circuit Judicial Nominating Commission. Andersen’s practice includes civil litigation matters in both state and federal courts and in alternative dispute resolution settings, including arbitration and mediation.

Adam L. Bantner II of the Brandon Legal Group has been elected to the Board of Directors of the Greater Brandon Chamber of Commerce. Bantner practices criminal defense, personal injury, and immigration law.

Edward J. Carbone of Roig Lawyers presented the Medical Malpractice Update Course to insurance adjusters at the Division of Rehabilitation and Liquidation for the State of Florida on October 15. Carbone specializes in medical malpractice, health care law, appellate litigation, and business litigation.

Michael L. Forte of Rumberger, Kirk & Caldwell, P.A., recently presented “Public Records and Sunshine Law” to a gathering of police chiefs from the Tampa Bay area. Forte has also been named a “40 under 40 Up & Comer” by the Tampa Bay Business Journal. Forte is a litigator who practices in the areas of retail and hospitality, government, and products liability.

Erica Gooden and Alyse Latour have joined Holland & Knight as associates. Gooden practices commercial litigation and dispute resolution, and Latour practices securities law.

Rachel B. Goodman of Shumaker, Loop & Kendrick, LLP, spoke to the Professional Association of Healthcare Office Management on September 17. Rachel’s topic was “Health Law 101: The Basics Your Doctors Need to Know to Protect Their License and Liberty.” Goodman practices health law at the firm.

Lee D. Gunn IV, founder and president of Gunn Law Group, was the 20th recipient of the Florida Justice Association’s EAGLE Centurion Award. Participants in EAGLE (the Endowment for Association Giving to Law and Education) have become leaders and advocates for public service, setting an example and leaving their mark by protecting access to Florida’s courts. The Centurion Award recognizes those who have contributed $250,000 to the Endowment for Association Giving to Law and Education.


M. Elizabeth “Liz” Lanier has joined Gunn Law Group’s litigation team. Lanier focuses her practice on medical malpractice, nursing home liability, and serious personal injuries.

Jordan D. Maglich, an attorney with Wiand Guerra King, was recently appointed to serve on the Editorial Board of the Federal Bar Association.

Judge Stevan Northcutt, of the Second District Court of Appeal, recently exhibited “CorgiModern,” his series of photographs juxtaposing cardigan Welsh corgis with mid-century-modern furniture, in a gallery show at Beth Kokol Arts in Tampa.

W. Jan Pietruszka, partner at Shumaker, Loop & Kendrick, LLP, was a panelist at the Accounting & Financial Women’s Alliance group on October 24, at International Plaza, where he discussed navigating effective performance reviews to avoid HR and legal issues. Pietruszka’s practice includes defending corporations and management from claims of discrimination, sexual harassment, workplace torts, breaches of employment contract, and unpaid wages.

William K. “Bill” Thomas has joined Hill International Inc. as vice president of its Claims & Consulting Group. Thomas focuses his practice on forensic accounting and fraud investigations both in and outside of the construction industry.

Burton W. Wiand, a founding member of Wiand Guerra King P.L., was elected to the Board of Directors of the National Association of Federal Equity Receivers. Wiand has served as an equity receiver on numerous occasions, having been appointed at the suggestion of the SEC, FTC, and also in state court by the Florida Office of Financial Regulation.

Gregory C. Yadley, partner at Shumaker, Loop & Kendrick, LLP, has been reappointed to serve as a member of the U.S. Securities and Exchange Commission’s Advisory Committee on Small and Emerging Companies. Yadley was also acknowledged by the American Bar Association in Chicago for his service as chairman for the past three years of the ABA Business Law Section Middle Market and Small Business Committee. Yadley practices corporate and securities law at the firm.
SEcurities Law Section Luncheon

The HCBA’s newly launched Securities Law Section got off to a great start with about 70 people attending its first luncheon on October 15. Moderator Burton Wiand led a discussion with panelists Elisha L. Frank, Dawn Calonge, Pamela P. Epting, and Lee Kell, who talked about recent enforcement efforts and the current focus of securities law. The Securities Law Section would like to thank the luncheon’s sponsor: CHASE
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