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The Brooklyn Dodgers made Vero Beach their spring training home in 1948. The Dodgers were one of the first Major League Baseball teams to hold spring training in the Sunshine State. An abandoned Naval base was transformed into the Dodgertown complex. The team, which became the Los Angeles Dodgers in 1958, used it for more than 60 years before moving to Arizona for spring practice.

The MacDill Field postcard, shown right and on page 72, features the military base in 1941. Postcards courtesy of Raymond T. (Tom) Elligett, Jr.
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Leaders and Titles

If the ability to positively influence is at the core of leadership, it is clear that a title alone does not a leader make.

On a recent bookstore trip, I came across the book You Don’t Need A Title to Be A Leader. I noted to myself that it was an interesting title, but gave it little additional thought as I was in the market for a travel book and in a hurry.

Weeks later the book name came to mind as I followed the Lance Armstrong doping scandal. At the risk of oversimplifying a situation that likely involves a layered and complex set of facts and motivations, I was struck by how meaningless a title can be. It is a peculiar twist that the intense, and illegal, efforts Armstrong put forth in his quest for a title ultimately led to that title losing all significance (at least as it pertains to him). If we consider a leader to be someone who, particularly when in a position to positively influence others, does the right thing, there appears to be limited “leadership” Armstrong exhibited during much of his cycling career.

Interestingly, Armstrong’s doping confession came just weeks after the tragic school shooting at Sandy Hook Elementary School. That incident, of course, showcased the outstanding, heroic leadership of people with no specific “hero” title at all. The contrast of the two news stories offers a lesson in the true meaning of leadership, and illustrates that status and title are not necessary to deeply influence people.

If the ability to positively influence is at the core of leadership, it is clear that a title alone does not a leader make. In a young attorney’s career, for example, influence can come just as easily from the partner mentor in the corner office as it can from the support staff who teaches the attorney the ins and outs of filing procedure. Similarly, for a student, the most prestigious professor in a university’s department might be as influential as the teaching assistant who puts in extra study session hours to help incite a real passion for the subject matter.

The HCBA Leadership Institute holds a particular significance to me, not only because I was lucky enough to serve as a member of its 2011-2012 class, but because it focuses on developing leadership skills from the core. Members forge relationships with each other and our community through volunteer outreach activities (the organization is a long-time supporter of the Lawyers for Literacy program) and educational trips to esteemed local institutions (recent trips have been to MacDill Air Force Base and the Port of Tampa). The HCBA Leadership Institute offers a true exercise in leadership-building.

I extend a huge thank you to all the leaders in our community. Happy spring!
The Incandescent, Irreplaceable Emiliano Jose Salcines

The first name is of Latin origin from the root element “Aemillianus,” used predominantly by parents of Spanish and Italian heritage when naming a son. The English, Slavic or Germanic variant is “Emil.” The name has several derivative meanings, including “to emulate” or “one who is eager,” which essentially describes the first-born son of Spanish immigrants Emiliano and Juanita Salcines, who were, respectively, from Santander on the Cantabrian Coast, and Oviedo, the capital city of the Province of Asturias to the north. The middle name, one

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which has a more customary usage among natives of the Iberian Peninsula, translates into “Joseph.”

However, when we speak of Emiliano Jose Salcines, Jr., now in his 50th year as a renowned and reputable member of our legal profession, he is primarily known throughout our fair city and state by just these two initials: “E. J.”

Born in 1938 during the tail-end of the Great Depression, E.J. was raised on Cherry Street in West Tampa. His father, an entrepreneurial gentleman who had settled in Hillsborough County after emigrating from Spain, owned and operated the retail haberdashery West Tampa Department Store, at the corner of Main Street and Howard Avenue. His mother was an excellent seamstress who worked at the shop and tailored some of the men’s clothing sold there. Young Emiliano, who was called “Junior” during his formative years by his family and friends, spent many days accompanying his parents at the department store, where he performed all types of necessary and mandatory chores.

Sadly, the Salcines family endured an unexpected tragedy when E.J.’s younger brother passed away at 5 years old from peritonitis. From that day forward, Juanita embraced E.J. in a way that only a loving mother would do when a child predeceases a parent.

Emiliano Sr., clearly had a great influence on his namesake. E.J.’s father was an engaging storyteller and as kind and generous a man as one could be to neighbors and friends who would seek his counsel and assistance. During the time E.J. was a student at St. Joseph’s Elementary School, Mr. Salcines repeatedly stressed to his son the importance of being able to perform and comfortably speak before groups of people and strongly urged Junior to attend the classes offered at the Centro de Español that would facilitate this goal. There, E.J. would learn to sing, act in children’s skits and introduce other performers. It is where E.J. Salcines began to portray what has become a lifelong role as an eloquent and in-demand public speaker.

Although Emiliano came to America with little in his pocket, he eventually became a well-respected member of the West Tampa community and beyond. During World War II, he reportedly sold the most war bonds in his community. Senior also became acquainted with the kinfolk of Tampa’s 17-term congressman, Sam Gibbons, having engaged the Gibbons’ family of lawyers to serve as his legal counsel. As a young boy, E.J. was advised by one of the Gibbons attorneys that he needed to become a lawyer, and from that day forward, E.J. would frequently announce, whether asked or not, that he intended not to become a successor in his family’s apparel shop, but rather to become an attorney.

E.J.’s family moved to South Tampa, and he attended Wilson Junior High School. He had an older cousin who had graduated from Riverside Military Academy in Gainesville, Georgia. Desirous of more independence and autonomy, E.J. notified his mother and father that he too wished to attend this same military school, much

Continued from page 4

Continued on page 6
to their consternation. They were so concerned about this decision they took him to Havana to meet with the cousin and E.J.’s uncle in a collective effort to change his mind. E.J. was not persuaded and wound up attending and graduating high school from the Riverside Academy, where he was served so much chicken during his time there that he cannot abide seeing it on his plate to this day.

Having received his bachelor’s degree at Florida Southern University in Lakeland, E.J. began his quest, declared long ago, to become a lawyer. He initially attended Stetson College of Law, where he first encountered some unforeseen and unfortunate labeling pertaining to his heritage and the aptitude to study law. At that point, through some assistance from a Stetson administrative assistant, he discovered a little-known law school situated in downtown Houston, Texas, known as South Texas College of Law, where he received his Juris Doctorate degree. E.J. has been inextricably connected with STCL for over a half-century and is its most prominent graduate and advocate. The school is sometimes affectionately referred to in these parts as “E.J. University.” Through his influence and recommendation, hundreds of area college grads have attended STCL, many of whom have returned to the Tampa Bay area to become prominent attorneys and members of our judiciary.

Achieving his childhood dream, E.J. returned to Tampa to practice law. In 1964, he was appointed by U. S. Attorney General Bobby Kennedy to be an assistant United States attorney, at which time he was the first Spanish-speaking federal prosecutor east of the Mississippi. He left that post and soon became the county solicitor when there were two prosecutorial offices in Hillsborough County — the County Solicitor’s Office, which handled misdemeanors, and the State Attorney’s Office, which was in charge of felonies. The two offices eventually merged into one criminal division, the State Attorney’s Office. E.J. was eventually elected to be Hillsborough County’s state attorney, a position he held for many years.

As state attorney, E.J. made three historically unique appointments for which he is now especially recognized and remembered: He recommended George Edgecomb to be an assistant state attorney, whose appointment was approved by Gov. Reubin Askew, where Mr. Edgecomb became the first African-American to hold that position and eventually became the first African-American jurist to sit on the Hillsborough County bench; he hired Gwynne Young, our current Florida Bar President, to be the first female prosecuting attorney in Hillsborough County; and he hired Keene Bard, who became the first handicapped assistant state attorney in the county.

After he served as our local chief prosecutor, he entered into private practice for several years, including an office sharing arrangement with Dan Perry and Mark Wolfe, now members of our circuit court bench, attorney Frank de la Grana, and yours truly.

Continued on page 7
Continued from page 6

As a grand follow-up to what had already been a stellar career, E.J. Salcines, Jr., was honorably appointed by then-Gov. Lawton Chiles to be a judge on Florida’s Second District Court of Appeal, where he served until 2008. Incredibly, E.J. has also been knighted by the king and queen of Spain.

Although we know and appreciate E.J. for his remarkable energy and sublime oratorical skills when he is asked to speak at Bar functions, investitures, weddings, and other community events, we may not know that he loves to travel and enjoys his hunting adventures with his boyhood pals and old neighborhood friends in Wyoming, Montana, Texas, and, for 32 straight years in Alabama, where he has been described to be “an excellent shot.” But first and foremost, he is a devout family man, husband and father, forever devoted to Elsa, his wife for more than five decades, and his daughters, Emily and Ellen, and their families. In that same way, he also, like his father, joyfully embraces giving of himself to others without any expectations in return other than through this simple expression: “Please don’t let me down!”

Just this year alone, in his own typically instructive and entertaining style, E.J. has spoken to a large gathering of the HCBA’s Senior Counsel Section on the topic of the renovated and recently reopened Floridan Hotel and its bygone connection to our bar association; eloquently addressed members of the AfroCuban Club in Ybor City regarding the historical legal contributions of the late attorney Francisco Rodriguez, whose descendants were also present and gratefully listened to E.J.’s well-researched biography of the man and his career; gave the introduction of Florida Supreme Court Chief Justice Ricky Polston at the Bench Bar Membership Luncheon; and parleyed with great verve to the many judges, family members, and guests in attendance at the ceremonial robing of Judge Frances Maria Perrone about the chronology and origins of the investiture protocol and its significance.

The Salcines family has been a rock in the Tampa community for several generations. When the building that housed Emiliano Sr., and Juanita’s department store was torn down during the mayoral term of Sandy Freedman, Salcines Park was erected at the corner of Main and Howard in tribute. As is befitting of the man, and taking up his same eager and ebullient manner, we might all consider emulating our own Emiliano Jose Salcines, Jr., at times, particularly when the spirit of that important occasion presents itself. Judge Perrone may have said it best at the conclusion of her judicial acceptance speech on January 24, 2013, when she thanked E.J. for his remarks and stated tenderly, “My beloved City of Tampa would not be the same without you.”

I would like to express my sincerest thanks and appreciation to attorney Frank de la Grana and Dr. Tony Castro, long-time, dear friends of Judge Salcines, for their kind assistance and back stories that contributed to the composition of this article.
The YLD encourages you to leave a mark in every child’s life that you have the ability to reach.

The Young Lawyers Division (“YLD”) is dedicated to providing unique and meaningful programs and activities to young children in the Tampa Bay area. Through its Youth Projects Committee, the YLD is able to host a variety of events benefiting our community’s youth.

On Saturday, January 12, 2013, the YLD hosted its annual Holidays in January event at Grand Prix Tampa. This event brought together foster children, foster parents, and volunteers from the YLD for a fun-filled day of activities and holiday gift giving. The YLD hosts its Holidays in January event in partnership with the Foster Angels Program and Eckerd Youth Alternatives. This year’s event benefited about 35 foster children in the Tampa Bay area. At the event, foster children and their families enjoyed lunch and received gifts that had been donated, including a number of bikes that were raffled off to the children who attended. The children and their families, along with the YLD volunteers, played miniature golf, had fun in the arcade, and raced around the grand prix track in go-karts. Members of the Youth Projects Committee organized the event and were instrumental in obtaining donations from outside vendors for food and other items, which contributed to a wonderful entertaining day for everyone.

Holidays in January provides young children a chance to receive gifts for the holiday season. For some children, the gifts they receive at the event are the only holiday gifts they receive. The YLD has participated in this event for almost a decade, and each year it gets bigger and better. We encourage you to watch for it next January and come out and volunteer. There is no better feeling than seeing the eyes of young children light up at this event.

The YLD’s next youth project is Steak and Sports Day, which is held annually in the spring and is focused on providing a day of fun for local at-need children. The Youth Projects Committee organizes this event at a local foster home, and the event typically includes steaks, hamburgers and hot dogs, kickball, flag football, rock climbing, bounce houses, petting zoos, waterslides, and much more! We are always in need of dedicated volunteers, so if you are interested in participating, please watch for emails from the YLD.

Robert A. Heinlein stated, “A child’s life is like a piece of paper on which every person leaves a mark.”

The YLD encourages you to leave a mark in every child’s life that you have the ability to reach.

Author: Melissa Mora, Senior Home Care, Inc.
one man has cut more nets than anyone in history...

You're invited by The Hillsborough County Bar Foundation to get all the inspiration and insights without any of the hard practices and sweaty drills.

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THE HCBA LEADERSHIP INSTITUTE IS NOW ACCEPTING APPLICATIONS!

HCBA Leadership Institute seeks to identify and develop young attorneys of diverse backgrounds who have the potential to develop into future leaders.

The Leadership program is designed to:
- Develop the professional and interpersonal skills necessary to succeed in a group dynamic;
- Develop the skills necessary to succeed in a leadership role in professional, service, and extra curricular activities;
- Expose and discuss issues facing legal professionals to include time management, public relations, and community involvement;
- Increase knowledge of service opportunities in the HCBA and other community outreach programs;
- Identify areas in which participants would like to provide volunteer service to their community.

Now is the time to get involved!

Leadership Institute
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Download the Leadership Institute application from the HCBA’s website, www.hillsbar.com. For more information, please contact John Kynes at jkynes@hillsbar.com.

“If your actions inspire others to dream more, learn more, do more and become more, you are a leader.”
—John Quincy Adams
**HCBA Leadership Institute**

The 2012-2013 HCBA Leadership Institute class recently visited News Channel 8 and the George Edgecomb Courthouse as part of learning modules. At News Channel 8, the group was briefed on media law and toured the newsroom of the local NBC affiliate. At the courthouse, judges from the Thirteenth Judicial Circuit participated in a panel discussion, then the class toured the courthouse.

Thank you to our sponsor:

![The Bank of Tampa](image)

Judge Michelle Sisco and Judge Claudia Isom, third and fourth from right on back row, and Judge Ron Ficarrotta, second from left on back row, join the Leadership Institute class at the courthouse. HCBA Executive Director John Kynes accompanied the group.

**YLD Quarterly Luncheon and CLE**

The YLD held a quarterly luncheon and CLE on February 7, 2013, at the Chester H. Ferguson Law Center. The topic of the CLE was “The ABCs of Opening Your Own Legal Practice: A Panel Discussion.” Panelists were Stuart Markman, Christina Anton Garcia, Susan Johnson-Velez and David Jennis.

Thank you to our sponsor:

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Past HCBA Presidents Leave Lasting Legacy

One constant, though, has been the high quality and integrity of the individuals who have served as president throughout the HCBA’s 117-year history.

What would Joseph B. Wall think about the Hillsborough County Bar Association today?

I sometimes ask myself that question about Wall, who was unanimously selected as the HCBA’s first president on May 13, 1896.

The day after Wall’s election, the Tampa Morning Tribune reported the Bar meeting held the previous night at Tampa’s downtown courthouse had been a “rousing success,” and “[N]early every member of the bar in the city was present....”

Like today, HCBA members then were a congenial group, and it is reported that after the second Bar meeting adjourned, “the entire party went to Tibbetts’ corner store across the way and drank delicious sodas and ices at Mr. [Peter O.] Knight’s expense.”

Continued on page 13

The past presidents of the HCBA gathered in December for the annual Past Presidents Luncheon. Lewis H. Hill, III, who served as president in 1968, was the most senior member who attended. “It’s a tribute to the organization that so many people who have served the Bar for so long choose to come and stay involved,” said President Bob Nader. “It’s like a family.”
In 1901, Wall, who was a circuit judge at the time, called a special meeting of the local Bar after he became upset about the length of time it took for the Florida Supreme Court to render a decision on a particular case—nine years in this instance.

Referring to the court’s delay, Wall proclaimed the need for an organized Bar “if for no other purpose than to demand and effect some relief from the present disgraceful condition of the state supreme court.”

This account and much of the history of the HCBA and Tampa’s legal community is documented in the fascinating book *In Pursuit of Justice*, authored by Kyle S. Van Landingham.

The book was published in 1996 by the HCBA to help celebrate the HCBA’s 100th anniversary.

Of course, things have changed dramatically in the HCBA and in Tampa since the turn of the 20th century, especially in terms of its growth and diversity.

One constant, though, has been the high quality and integrity of the individuals who have served as president throughout the HCBA’s 117-year history.

Former HCBA presidents have gone on to lead the Florida Bar, American Bar Association and the International Bar Association.

There have been politicians, judges and even a Catholic priest.

However, most former presidents go on to become senior partners in local law firms or start their own firms.

Mark Buell served as HCBA president in 1992.

During his term, he noticed many past presidents seemed to fade away after serving as president.

Recognizing the abundance of institutional knowledge and leadership talent available, Buell decided to invite all the living past presidents to a luncheon to help them stay connected to the HCBA.

“We thought it was a good idea to reach out to them and let them know what we were doing,” Buell said.

Thus began a long-standing HCBA annual tradition that began in 1992 and continues to this day.

It’s also noteworthy that Buell’s firm, Buell & Elligett, has three former HCBA presidents: Buell (1992), Tom Elligett (1997), and Amy Farrior (2010).

“It’s something we’re very proud of,” Buell said.

This past December, a group of 21 past presidents joined current president, Robert Nader, at this year’s luncheon held at the Chester H. Ferguson Law Center.

The most senior member of the group was Lewis H. Hill, III, who served as president in 1968.

Fraser Himes, who was president in 1980, also attended.

Himes’ family has a long history of service to the HCBA as three generations of his family have served as president: J. Fraser Himes (1980); John R. Himes (1940); and W.F. Himes (1926).

Himes of the firm Himes & Hearn said he did not necessarily plan to follow in the footsteps of his father and grandfather.

Said Himes: “I always understood the value of giving back to the Bar and believed in the notion that you always get more out of it than you put into it.”

Former President Tim Sullivan (1993) of Ogden and Sullivan, P.A., continues to encourage young lawyers in his firm to become actively involved and to take leadership roles in the HCBA.

“When I began the practice of law, HCBA leaders such as Tom Gonzalez (1984) and Mark Buell (1992) provided the example I followed,” Sullivan said.

“Service on HCBA committees provides a great opportunity to become acquainted with local lawyers and judges,” Sullivan added. “And working with them is an opportunity to create relationships and camaraderie within the Bar.”

Sadly, the HCBA has been hit hard in recent months with the deaths of three distinguished past presidents and highly respected community leaders: Wm. Reece Smith Jr. (1963); Bill McBride (1983); and John F. “Jack” Rudy II (1999).

They all will be sorely missed.

Current HCBA President Bob Nader said he looks forward to attending future luncheons.

“It’s a tribute to the organization that so many people who have served the Bar for so long choose to come and stay involved,” Nader said. “It’s like a family.”

See you around the Chet.
The Scales of Relevance

The state has a very high burden of proof, beyond all reasonable doubt, and the judge must decide whether the state needs this particular evidence to meet its heavy burden.

In Florida’s Evidence Code, two important rules compete with each another, and the winner determines what evidence a jury will hear. In Florida Statute § 90.402, the Code states: “All relevant evidence is admissible, except as provided by law.” This is followed by Florida Statute § 90.403, which states “[r]elevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.”

Defense attorneys often object that the state’s evidence is prejudicial to their clients. However, only when the prejudice substantially outweighs the probative value of the evidence must the evidence be excluded. This is more than a mere tipping of the scales. If the scales merely tip to one side, the evidence is admissible.

The trial judge’s first determination is whether the evidence has any probative value. The state has a very high burden of proof, beyond all reasonable doubt, and the judge must decide whether the state needs this particular evidence to meet its heavy burden. The court should next consider the degree of prejudice the evidence creates. This balancing test occurs frequently in homicide cases when the state seeks to introduce crime scene and autopsy photographs. These photographs can be gory, gruesome, and graphic. Yet, if they properly depict factual conditions relating to the crime, and they are useful in aiding the jury to determine the manner of death, then their introduction is crucial to the state’s case. The Florida Supreme Court has noted, “[w]e have consistently upheld the admission of allegedly gruesome photographs where they were independently relevant or corroborative of other evidence.” Czubak v. State, 570 So. 2d 925, 928 (Fla. 1990).

Many courts have grappled with Florida Statute § 90.403 in determining whether to admit evidence of illegal drug use. Will the jury be prejudiced against the defendant simply by virtue of drug ingestion? Does the state need the evidence to prove its case? In a DUI case, the answer is yes. The state must prove the defendant was under the influence of alcohol or controlled substances. When the defendant provides a blood sample and it shows illegal controlled substances, the court must perform the balancing test required under Florida Statute § 90.403. “(T)he fact that illegal drug use may prejudice some jurors is not in itself, sufficient to exclude the evidence.” State v. Tagnor, 673 So. 2d 57, 60 (4th DCA 1996).

My office works closely with law enforcement to develop and preserve all potential evidence. We will aggressively seek to introduce all appropriate evidence in every case. When an objection is raised, my attorneys are prepared to defend the necessity and relevance of evidence consistent with the laws of Florida.
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Entering the Era of E-Filing

If you ever had thoughts of how nice it would be to be able to file whenever you wanted (even on the weekend) or from wherever you are (even on the beach), just hold those thoughts!

After doing business the same way for so many decades, we are changing radically the way we do business throughout our entire Courts area — thanks to the implementation of e-filing.

As of this writing (January 15), the Clerk’s Office is on target to meet our mandatory statewide e-filing deadline of April 1 for our Circuit Civil, County Civil and small claims, Probate, and Family Law divisions. Currently, Probate, Guardianship, and Mental Health are 100 percent capable for e-filing in new case initiation and subsequent filings in existing cases. Circuit Civil, Family Law, and County Civil are 50 percent capable in subsequent filings to existing cases.

We are continuing to work on the system configuration to meet the October 1 deadline for the Felony, Misdemeanor, Civil Traffic, Criminal Traffic, and Juvenile divisions.

This is a radical change in the way we do business, especially considering the magnitude of court operations. During this past year, there were more than 370,000 new actions filed, and our office processed more than 8 million court documents. We handled more than 62,000 case re-openings, accepted more than 2,100 Notice of Appeals, maintained and stored more than 2.2 million case files, and we collected and disbursed more than $59 million in court fines and fees.

If you have ever had thoughts of how nice it would be to be able to file whenever you wanted (even on the weekend) or from wherever you were (even on the beach), just hold those thoughts! Once e-filing is implemented completely, you will not be restricted by the hours we are open for business in the Clerk’s Office. Our doors will be open virtually all the time.

As we go through the implementation process for e-filing, there is still a mandated hard copy requirement for court papers, but when the chief judge lifts that requirement, you can do business seven days a week, 24 hours a day, with an electronic pathway to our Courts areas.

Though some traditionalists may miss the sound of the date and time stamp in the Clerk’s Office, the benefits far exceed the restrictions of the manual processes we are discarding. And the process is still evolving. We are working toward our long-term goal of implementing a solid, unified case maintenance system as a foundation to support the transition to e-everything in the Clerk’s Office.

As I begin my third term as clerk, it is an exciting time to be here — as we become more efficient in our service to you and the public at large. Our office is here to offer you support as you transition with us. We are enhancing and expanding the current training videos available on our website, and we are planning other activities for you, so stay tuned!
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Students are awed by the thanks they receive from, and the life-changing impact on, the grateful client.

In May 2012, Thomas M. Cooley Law School (“Cooley”) expanded its facilities to Florida, and opened its doors to more than 100 students in Riverview.1 With the opening of the campus, one thing was certain: Cooley would continue its commitment to the community. At the heart of this commitment is the culture Cooley instills in its students, faculty, and staff. This culture includes a Center for Ethics, Service, and Professionalism, and more than 30 pro bono programs schoolwide.

Most notably, the culture is exemplified by Cooley’s annual Voluntary Pro Bono Pledge, where participants pledge to regard pro bono service as a personal commitment and professional obligation. By taking this pledge, in a formal ceremony administered by a sitting judge, participants commit to (1) complete at least one pro bono experience in the coming year, and (2) either continue to do so every year throughout their legal careers or to comply with or exceed the pro bono expectations of their state bar association. The hope behind the pledge is that once bitten by the pro bono bug, participants will exceed the minimum commitment. In October 2012, nearly 100 participants, including more than 80 students, as well as members of the faculty, staff, and local legal community took this pledge at Cooley’s Tampa Bay Campus.

The benefits of Cooley’s pro bono efforts are numerous. First, access to the legal system is provided to those desperately needing assistance, such as charities, the

Continued on page 19
unemployed, children, hurricane victims, veterans, seniors and those facing foreclosure. Second, when students can observe and participate in the practice of law for such clients, they are learning two lessons at once—how to practice law and how to help the under-represented access our justice system. Third, students see their professors helping others and learn from them the lawyer’s obligation and commitment to give back to the community. Finally, there seems to be no greater satisfaction for a student (or a lawyer) than that which comes from helping an indigent client. For law students, it is fun to practice law. But law students are awed by the thanks they receive from and the life-changing impact on the grateful client, who breathes a little easier because of the help.

Cooley offers the following pro bono programs in Tampa Bay: (1) the Pro Bono Junior Associate Program, where students can be matched with attorneys handling pro bono cases to assist with the cases; and (2) the Service to Soldiers Legal Assistance Referral Program, where members of the United States Armed Forces are matched with attorneys who provide pro bono representation in non-military legal cases.

Cooley’s future pro bono plans for the Tampa Bay campus include: supporting local pro bono programs in the community by connecting students, faculty, and staff with volunteer opportunities in those programs; and creating new pro bono programs based on community needs.

If you are interested in participating in Cooley’s Service to Soldiers Program, or utilizing a law student through the Pro Bono Junior Associate Program, please contact Amy Bandow, Cooley’s assistant director of the Center for Ethics, Service, and Professionalism, at bandowa@cooley.edu or (813) 419-5100, extension 5108.

1 In addition to the Tampa Bay campus, Cooley has four locations in Michigan.

2 Students participating in the Pro Bono Junior Associate Program do not receive pay or academic credit for their work.

Author: Amy L. Bandow,
The Thomas M. Cooley Law School
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Did you know that by making a contribution to Bay Area Legal Services you can fulfill your pro bono public service responsibility? An annual donation of $350 or more to Bay Area Legal Services can satisfy your professional responsibility (Rule 4-6.1) and make a valuable contribution to our community at the same time. Law firms that contribute the equivalent of $350 for each attorney can join the many attorneys and firms who have supported Bay Area by becoming a Sustaining Law Firm. Fulfill your professional responsibility today – make a donation to Bay Area and ensure access to justice for the poor in our community.

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To make a donation or become a 2013 Sustaining Law Firm, contact: Development, Bay Area Legal Services (813) 232-1222 x 131 or e-mail: plubin@bals.org
Florida Rule of Appellate Procedure 9.400(b) provides the procedure for seeking appellate attorneys’ fees. Motions for appellate attorneys’ fees must state the grounds on which an award is sought. There must be a substantive basis for the award. That basis is usually found in the form of a contractual or statutory provision providing for the payment of attorneys’ fees to the prevailing party. See White v. White, 3 So. 3d 400, 403 (Fla. 2d DCA 2009). If your contract or statute fails to specifically mention appellate attorneys’ fees, do not despair. In the absence of express language otherwise, any statute or contract that would provide for an award of ‘prevailing party attorneys’ fees at the trial-court level must be construed to include prevailing party appellate attorneys’ fees. See Fla. Stat. § 59.46. In your motion, specify each contractual or statutory provision on which your claim relies, and attach or give the record citation for any contractual provisions.

Pay attention to the deadline set forth in Rule 9.400(b). Your motion for appellate attorneys’ fees must be filed no later than the time to serve the reply brief. This is crucial, because untimely motions for appellate attorneys’ fees can be denied on that basis alone. See, e.g., Barrett v. Barrett, 951 So. 2d 24, 24 (Fla. 5th DCA 2007). According to the Fifth District, “If a motion for attorney’s fees is untimely, why file it?” Id.

It is also important to note that a timely filed motion in the appellate court will be your only opportunity to seek appellate attorneys’ fees. Absent specific authorization from the appellate court, the trial court cannot award appellate attorneys’ fees. Real Estate Apartments, Ltd. v. Bayshore Garden Apartments, Ltd., 604 So. 2d 825, 827 (Fla. 4th DCA 1991).

If an award of appellate attorneys’ fees is made, the appellate court will generally remand the determination of the amount to the trial court. The rules do not impose a time limit for filing a motion in the trial court to seek a determination of the amount of appellate attorneys’ fees. Computer Task Group v. Palm Beach County, 809 So. 2d 10, 11-12 (Fla. 4th DCA 2002).

Because motions seeking appellate attorneys’ fees must be filed before the court determines who has prevailed, your opponent will also likely file a motion seeking fees. Rule 9.300(a) provides parties opposing a motion for appellate attorneys’ fees a right to respond within 10 days of service of the motion. You will want to file a response. A failure to respond has been treated as a waiver of the right to oppose an award. Homestead Ins. Co. v. Poole, Masters & Golds, 604 So. 2d 977 (Fla. 2d DCA 1991).

Last but not least, do not forget your costs. Rule 9.400(a) provides that costs shall be taxed in favor of the prevailing party in the appeal. Motions to tax costs must be filed in the trial court within 30 days of the appellate court’s mandate.

Author: Michael R. Bray, de la Parte & Gilbert, P.A.

Join the Appellate Practice Section for a CLE from 1 p.m. to 5 p.m. on May 2. Watch the CLE Update for details.
Collaborative Practice (“CP”) is an innovative dispute resolution process moving to a civil case in your neighborhood… Initially arising as a response to the increasingly costly, complex, and time-consuming characteristics of traditional divorce litigation, CP began in family law, providing solace for parties seeking to avoid those unnecessary costs.

While CP is growing in popularity for divorcing couples worldwide, its benefits are not limited to “litigation-avoidant” family law cases. Robert F. Cochran, professor of law at Pepperdine University College of Law, identified four reasons CP is more widely applicable as a vehicle for dispute resolution:

1. CP helps parties better circumvent the detrimental effect that litigation can have on their individual and family lives;
2. CP helps parties develop continuing working relationships after the case;
3. CP allows parties to control the tempo and outcome of their case; and
4. CP alleviates already existing emotional stress due to the nature of the conflict.1

CP is now moving from a mainstream mode of dispute resolution in family law, to use of this method in Probate, Partnership Dissolution, Real Estate, and Medical Malpractice. CP is adaptable to any practice area where the parties desire privacy, control over costs, and retention of constructive relationships. Sherry Abney, one of CP’s premier experts and author of Civil Collaborative Law, The Road Less Travelled, is a staunch advocate in the power of CP to grow into other areas of law: “Despite the fact that family law is the area that first realized the process could act as an implement to continue relationships, there are a number of disputes in other areas of the law that can benefit from a process that is able to assist the parties in redefining and mending other business and personal relationships.”2 For instance, like family law, CP could

**Continued on page 23**


3 For more information on IACT, see http://iactprogram.com/.


5 Id.

Author:
Nancy Hutcheson Harris, Harris and Hunt, P.A.

Continued from page 22

be effectively translated into probate disputes where emotionally charged events are enmeshed with close family relationships and life-altering issues such as the disposition of assets. Likewise, CP would be equally useful in medical malpractice disputes. In fact, Blue Cross Blue Shield recently sponsored a North Carolina-based program called Integrated Accountability & Collaborative Transparency (IACT), which supports the training of practitioners in the use of CP.3

With a nationwide success rate of more than 90 percent, the increasing popularity of CP as a dispute resolution mechanism is destined to impact the way lawyers practice law and how clients experience the legal process. In fact, a 2004 study of Wisconsin lawyers suggests that CP has begun to change how lawyers approach a case.4 The study showed that lawyers in collaborative cases made greater efforts to (1) be informal, respectful, cooperative, and trusting; (2) have candid conversations; (3) elicit client input; (4) voluntarily exchange information; (5) use four-way meetings and productive negotiation techniques; (6) use shared experts; (7) use mental health providers more creatively to help address the emotional aspects of the issue; and (8) use mediation.5

The transformation is imminent: CP is moving into civil law.


3 For more information on IACT, see http://iactprogram.com/.


5 Id.

Author:
Nancy Hutcheson Harris, Harris and Hunt, P.A.
Community service, and particularly pro bono work, is not only part of our ethical obligations as lawyers. It can also be a tool that sharpens our legal skills.

Continued on page 25

Judicial CLE Luncheon

Judge Claudia Isom led a panel discussion of “Guardian Advocacy for Persons with Developmental Disabilities” on February 12, 2013, at the Chester H. Ferguson Law Center. The other panelists were General Magistrate Sean O. Cadigan, General Magistrate Vicki L. Reeves and Carrie Bohning.
as motivation beyond our desires to change negative stereotypes about lawyers, and to fulfill our need to “do our civic duty.”

Though this article focuses on pro bono legal service, community service that falls outside of legal service has many of the same desired effects on a lawyer’s abilities. Tutoring, teaching people to read and providing meals or other services to the homebound and disabled can also have the desired effect.

How can pro bono work improve lawyers’ abilities? One Harvard Law School study suggests that providing community legal services can make better lawyers for several reasons:

• **Pro bono work makes us more sensitive to the needs of others and increases our understanding of other people.**
• **We become more in tune with the “attitudes and values” of our community by working with a wider variety of the people in our community.** In turn, this enhances our ability to select juries, question witnesses, negotiate settlements, and interview potential clients.
• **By expanding our perspective, we are better equipped to notice and evaluate the most comprehensive possible consequences of a possible course of action; predict the most likely public reaction to a possible course of action; explain these things to clients; and discharge our professional responsibilities not only to the client but as an officer of the court.**

So take heart. The work you are doing is accomplishing more than just giving back. It is helping you sharpen your skills as attorneys. Find a cause you believe in and volunteer during National Volunteer Week. For more information on activities in the Tampa Bay area that you can help out with, contact Sarah Glaser at (813) 314-4527.

*Authors: Sarah M. Glaser, Saxon, Gilmore, Carraway & Gibbons, P.A.; and Zachary J. Glaser, Sponsler, Bennett, Jacobs & Adams, P.A.*
You have survived the 2012 “Mayan Apocalypse” only to begin 2013 staring at a new dire situation — one where the slightest error could easily result in case dismissal, legal malpractice claims, or client sanctions in the millions. If you have been lucky enough not to have had your first experience with the rule changes affecting Electronically Stored Information (“ESI”), you likely will soon. In fact, the law affecting ESI is the fastest changing area of law in our history and has the largest financial repercussions.

On September 1, 2012, Florida adopted, in substantially similar form, the 2006 Amendments to the Federal Rules of Civil Procedure regarding ESI. The amendments to Florida Rules 1.200, 1.201, 1.280, 1.340, 1.350, 1.380, and 1.410 will affect clients and practitioners who were not thus far impacted by the federal rule changes. Florida’s construction industry is naturally impacted and faces unique factual and practical considerations.

Construction clients should be instructed to review and understand their data management practices, including auto-deletion, and should implement a document retention policy before litigation ensues, because after-the-fact reactions have resulted in spoliation findings. Document destruction should be deactivated once litigation is anticipated or sanctions are likely.

Once litigation ensues, applying industry and fact-specific analysis in preservation and collection is critical. For example, attorneys in all cases are obligated to be affirmatively involved in ESI identification and retention, but because general contractors and lower-tier subs and suppliers (typically “Claimants”)...
Continued from page 26

often have enormous amounts of
ESI, including employees’ personal
technology used in transmitting
ESI, these clients require additional
monitoring. Claimants are also
typically the plaintiffs and, thus
held to the heightened standard of
preservation, the plaintiff’s
duty to preserve. Alternatively,
insurers and sureties typically
have limited ESI, and have more
control over employee access and
transmission and, thus, counsel’s
obligations should focus on
locating sources of unanticipated
or intended loss of documentation,
such as independent agents’
documentation retention. Instead, Insurance counsel may also benefit
from aggressively seeking relevant
ESI from Claimants without fear of the effect of retaliatory demands.

Counsel should be aware that
certain contractual obligations may
further heighten the already high
legal duty to preserve and expand
the scope of discoverable financial
or project ESI, for example, agreements between a surety and
principal in construction bonds,
so contract review for heightened
requirements is recommended.

Finally, general concepts such as reasonableness, cooperation
with counsel, maintaining records of
the decision process, and active
involvement by the attorney are
recurrent themes in the cases
interpreting the laws. Where any
of these steps are missing, the
newsworthy disaster stories arise;
where counsel and clients properly
apply them, the courts have
noticed and lauded the efforts.

These basic strategies will go a
long way toward avoiding negative
results. There are also great
resources for additional information
for practitioners to hone their skills
and use them strategically.

1 The Federal Rules of Civil
Procedure had not had any major rule
changes since their inception in 1938.
2 See, e.g., VOOM HD Holdings
LLC v EchoStar Satellite LLC, 2012
NY App. Div. LEXIS 559 (2012 NY
party reasonably anticipates litigation
it must suspend routine document
retention/ destruction policy and put
in place a litigation hold...”).
3 See, e.g., Zubulake v UBS Warburg
LLC (Zubulake IV), 229 F.R.D. 422,
432 (S.D.N.Y 2004) “[A] party and
her counsel must make certain that
all sources of potentially relevant
information are identified and placed
‘on hold.’ ... [T]o do this, counsel must
become fully familiar with her client’s
document retention policies, as well as
the client’s data retention architecture
... communicating with the ‘key player’
... See also, Comment to Rule 26(f),
4 Haskins v. First American Title Ins.
Co., 2012 U.S. Dist. LEXIS 149947
5 See Sedona Conference Principles
at https://thesedonaconference.org/
judicial_resources; The Florida Bar’s
LOMAS free CLE on electronic
discovery located at http://
www.mreahce.com
/ Search?category= 4a918bef-1a73-4281-
a8fe-920e7a2e9068.

Author:
Elizabeth M. Ryan,
Kass Shuler, P.A.
Corporations serve and balance the multifarious interests of a varied group of stakeholders. Directors, majority shareholders, minority shareholders, employees, and customers all create obligations and benefits for a corporation. However, it is the directors and majority shareholders who exercise control over the corporation’s property. This is apparent when the majority owns or has the power to vote 50.1 percent of the corporation’s voting securities. Therefore, these individuals are vested with a fiduciary duty to protect the assets of the non-controlling parties in the corporation. See Biltmore Motor Corporation v. Roque, 291 So. 2d 114 (Fla. 3d DCA 1974).

Importantly, a “fiduciary owes to its beneficiary the duty to refrain from self-dealing, the duty of loyalty, the overall duty to not take unfair advantage and to act in the best interest of the other party, and the duty to disclose material facts.” See Capital Bank v. MVB, Inc., 644 So. 2d 515, 520 (Fla. 3d DCA 1994). A legal fiduciary duty may protect against the abuse of power by the controlling shareholders and may be relied upon for financial redress by minority shareholders.

Nevertheless, a breach of fiduciary duty is not a particularly easy matter to prove. “The elements of a claim for breach of fiduciary duty are: the existence of a fiduciary duty, and the breach of that duty such that it is the proximate cause of the plaintiff’s damages.” See Gracey v. Eaker, 837 So. 2d 348, 353 (Fla. 2002). Importantly, a “fiduciary relationship must be established by competent evidence, and the burden of proving such a relationship is on the party asserting it.” See Orlinsky v. Patraka, 971 So. 2d 796, 800 (Fla. 3d DCA 2007); see also Bankers Trust Realty, Inc. v. Kluger, 672 So. 2d 897 (Fla. 3d DCA 1996) (holding that the plaintiff’s case should be dismissed for failure to plead sufficient facts to demonstrate a causal connection between the fiduciaries’ actions and the plaintiff’s damages). Further, “a party must allege some degree of dependency on one side and some degree of undertaking on the other side to advise, counsel, and protect the weaker party.” See Watkins v. NCNB National Bank of Florida, N.A., 622 So. 2d 1063 (Fla. 3d DCA 1993); see also Baggett v. Electricians Local 915 Credit Union, 620 So. 2d 784, 786 (Fla. 2d DCA 1993) (finding that to “demonstrate a breach of a fiduciary duty, it must be shown that influence by one party was acquired and abused to the detriment of another party.”).

Accordingly, a fact finder must determine whether a fiduciary relationship exists and whether a breach of duty has occurred. See Gracey v. Eaker, 837 So. 2d 348, 355 (Fla. 2002).

Further, if the trial court receives substantial and competent evidence to support its finding, the appellate court is unlikely to overturn factual pronouncements. See Central Waterworks, Inc. v. Town of Century, 754 So. 2d 814, 816 (Fla. 1st D.C.A. 2000). Therefore, the fiduciary relationship between the majority and the minority shareholders can occasionally result in an intensive inquiry into the discretionary power of the majority.

Author: Caroline Johnson Levine, Office of the Attorney General

Register for the Corporate Counsel Section CLE Luncheon from noon to 1 p.m. on May 16.
The American Inns of Court Tampa Chapters invite you to apply for membership.

The American Inns of Court is a national organization designed to improve the skills, professionalism, and ethics of the bench and bar. Tampa’s civil litigation Inns are The J. Clifford Cheatwood Inn of Court, The Ferguson-White Inn, and The Tampa Bay Inn. Each Inn limits membership to approximately 80 members, who are assigned to pupillage groups of eight or nine members. Pupillage groups include at least one judge as well as attorneys of varying experience and areas of practice. The Inns usually meet monthly from September through May for dinner programs, with the pupillage groups each presenting one substantive program. Inn members usually earn one hour of CLE credit for each program attended.

Each year, the Inns invite new members to join for two- and three-year terms. Members are selected based upon their length and area of practice. Discounted memberships are available for full-time law students who wish to apply. If you are interested, please apply promptly. (Current Inn members who wish to renew membership in their present Inn need not apply.)

Name: ______________________________________________________________
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Years in practice and specialty? _________________________________________
Prior experience with any Inn of Court? _________________________________
Have you previously applied? ________ When? ________
Have you been referred to an Inn? ______________________________________
By whom? List any weekday evening you cannot attend meetings: ____________
Do you have a preference for a particular Inn? _____________________________
Please attach a current resume limited to one page in length.

Forward Application Package to:
Hillsborough County Bar Association, Attn: John Kynes, Chester H. Ferguson Law Center
1610 N. Tampa Street, Tampa, FL 33602. Fax (813) 221-7778.
Before enactment of the controversial Stand Your Ground law, Fla. Stat. §§ 776.013, 776.032, Floridians had a “common law duty to use every reasonable means to avoid the danger, including retreat, prior to using deadly force.” State v. James, 867 So. 2d 414, 416 (Fla. 3d DCA 2003). The Castle Doctrine qualified this retreat duty by not requiring retreat “from one’s residence” or by “employees in their place of employment.” Id. at 417.

Stand Your Ground expanded the Castle Doctrine. Now, anyone “not engaged in an unlawful activity” and attacked “where he or she has a right to be” has “no duty to retreat.” Fla. Stat. § 776.013(3). Instead, one “has the right to stand his or her ground and meet force with force, including deadly force” if one “reasonably believes it is necessary” to “prevent death or great bodily harm” to oneself or another or to “prevent … a forcible felony.” Id.

Importantly, Stand Your Ground is no mere trial defense. … [I]t “grants defendants a substantive right to assert immunity from prosecution and to avoid being subjected to a trial.” Dennis v. State, 51 So. 3d 456, 458, 462 (Fla. 2010). Moreover, the standard of proof for Stand Your Ground motions is mere preponderance. State v. Gallo, 76 So. 3d 407, 409 n.2 (Fla. 2d DCA 2011).

Perhaps unsurprisingly, Stand Your Ground is therefore invoked in unanticipated circumstances, has an incalculable effect on prosecutions and plea agreements, and can lead to surprising results. See Florida’s Stand Your Ground Law, TAMPA BAY TIMES, July 6, 2012, at http://www.tampabay.com/stand-your-ground-law/. But the Second District has provided guidance in three recent cases.

First, State v. Gallo involved a “gunfight between at least four men in the middle of the street.” 76 So. 3d at 408. The Second District affirmed Stand Your Ground motions.
Continued from page 30

Ground immunity because the trial court properly “held an evidentiary hearing, made determinations of credibility, weighed the numerous pieces of conflicting evidence, and set forth extensive factual findings.” *Id.*

Second, in *Leasure v. State*, a woman shot and killed her boyfriend. 2012 Fla. App. LEXIS 18491, at *1-15* (Fla. 2d DCA). The jury rejected her self-defense testimony and convicted. *Id.* The Second District affirmed the denial of her pretrial Stand Your Ground motion “because of the myriad of inconsistencies in her statements [to investigators] and the inconsistent medical evidence.” *Id.* at *17*.

Third, in *State v. Camaano*, after three officers beat and tased an arrestee, a fourth officer unnecessarily stomped him. 2012 Fla. App. LEXIS 18680, at *1-2* (Fla. 2d DCA). On writ of certiorari, the Second District rejected the stomper’s Stand Your Ground immunity. *Id.* at *7-10*. Instead, the qualified immunity statute specific to law enforcement officers trumped the more general Stand Your Ground law. *Id.* (citing Fla. Stat. § 776.05).

Criminal Bar, take note: Stand Your Ground motions require factual findings, can be undermined by inconsistent statements or medical evidence, and are inappropriate when more specific statutes govern the conduct.

Author:
*Thomas A. Burns, Burns P.A.*
LBJ REMEMBERED AS CIVIL RIGHTS GIANT
Diversity Committee
Chairs: Luis E. Viera - Ogden & Sullivan, P.A.; and Victoria N. McCloskey - Ogden & Sullivan, P.A.

January 22, 2013, marked the 40th anniversary of the death of arguably one of the most underappreciated presidents of our time: Lyndon Baines Johnson. For proponents of diversity in society, there are few more relevant presidents.

To understand Johnson, one must understand what created his conscience. As a young principal of a public school in Cotulla, Texas, with students of Mexican descent, Johnson knew the challenge of racial justice. As a New Deal congressman from Texas, Johnson championed Franklin Roosevelt’s New Deal, but as his star rose as a United States senator, Johnson drifted from his progressive roots.

However, when he became president under tragic circumstances, and then was elected to a full term in 1964, Johnson became liberated. Once, when civil rights activist James Farmer asked Johnson how he became such a liberal advocate as president after having such a muddled past, Johnson replied, “I'll answer that by quoting a good friend of yours... ’Free at last, free at last. Thank God Almighty, I'm free at last.’ ” As president, Johnson was free to champion a movement that built on the New Deal-Fair Deal economic agenda by addressing unresolved issues of race and equality.

A moment of presidential courage came on March 15, 1965, when Johnson addressed Congress and championed African-Americans and their allies, who were being beaten, tortured and, quite often, murdered in the South. The emotional slogan of these activists was “we shall overcome.” That evening, Johnson proclaimed that the cause of racial justice “must be our cause too,” because it is not just African-Americans, “but all of us, who must overcome this crippling legacy of bigotry and injustice.” And then Johnson paused and gave the authority of the office of the president of the United States of America to the words chanted by persecuted protestors throughout the South: “and we shall overcome.” That night, he gave an impassioned plea for Congress to pass the Voting Rights Act.

Suddenly, those activists who were risking their lives knew they had a sworn enemy in Johnson. While at home watching this speech, the Rev. Martin Luther King Jr. was so moved he cried.

As president, Johnson passed not only the Voting Rights Act, but the Civil Rights Act of 1964 and the 1968 Fair Housing Act. Additionally, impoverished youth received a Head Start and the Job Corps and students received, for the first time, federal education aid, seniors Medicare and the disabled Medicaid.

As we celebrate diversity, it is important to acknowledge those Americans whose courage created the systems we take for granted.

Author: Luis E. Viera, Ogden & Sullivan, P.A.
IN MEMORY OF A FOUNDER

REMEMBERING JACK RUDY

The Bush Ross family is less one very important member. Jack Rudy, one of the original founding partners of the Firm in 1981, passed away January 13, 2013.

Jack attained many remarkable achievements throughout his career. Among them, he joined the Judge Advocate General’s Department in the U.S. Air Force and served a tour of duty in Vietnam. After serving in the Air Force Reserve, he retired as a Colonel. He worked for the United States Attorney’s Office in Washington, D.C. as an Assistant U.S. Attorney for the Criminal Trial Division and Chief of the Grand Jury and Specialist Prosecutions Section. In 2000, Mr. Rudy was appointed by Governor Jeb Bush to serve as the interim State Attorney for Hillsborough County. He also served as President of the Hillsborough County Bar Association and as a member of the Board of Governors of The Florida Bar from 2001 to 2005. He received the Outstanding Lawyer Award in 2005 and the Herbert Goldburg Memorial Award in 2007. He deeply enjoyed his work and mentoring other attorneys.

Jack Rudy was a wonderful, caring husband, father and friend. He will be greatly missed.

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— Mayor Bob Buckhorn

The Hillsborough County Bar Association, Hillsborough Association for Women Lawyers, George Edgecomb Bar Association, Tampa Bay Hispanic Bar Association, South Asian Bar Association, Asian Pacific American Bar Association of Tampa Bay, Real Property Probate and Trust Law Section of The Florida Bar, and the National LGBT Bar Association held a Diversity Mixer and CLE to honor and celebrate Tampa Bay’s diverse legal and local community last fall.

The August 9, 2012, event began with a two-hour CLE presentation titled “Diversity Legislation and Unconscious Bias” at the Hillsborough County Bar Association’s Chester H. Ferguson Law Center. Dawn Siler-Nixon of FordHarrison, LLP, began the presentation by addressing whether a law firm could improve its work environment by considering whether unconscious biases exist and to what extent biases are measureable. She addressed how unconscious biases could affect an individual’s behavior and how awareness of these biases could diminish its negatives effects.

Tara Rao of The Rao Law Firm spoke about The Florida Bar’s diversity initiatives. As a member of the Bar’s Special Committee on Diversity and Inclusion, she spoke about the need for a diverse membership on committees and in important roles in the Bar. Additionally, she stated that the Special Committee has been tasked with supporting programs of voluntary bar associations by awarding $50,000 in Diversity Leadership Grants through financial support of conferences.

Continued on page 35
seminars, summits, and symposia. Importantly, the educational presentations must be designed to foster an inclusive environment that increases awareness of diversity in law firms, the judiciary, and the Bar.

The final presentation provided a historical journey of legislation in the United States that precluded diversity, which was subsequently replaced by legislation that embraced it. The tireless efforts of many activists were highlighted in an effort to demonstrate the wonderful legal achievements that have been accomplished in the development of diversity.

After the CLE, more than 100 attendees arrived at The Tampa Club to mix and mingle with members of the various bar associations that sponsored the event. The event also hosted a fundraiser for Nicholas Battles, the son of a Tampa firefighter, who was gravely injured while serving in the United States Marine Corps. Donations were submitted to the Tampa Firefighters Charity Fund, Inc., and raffle tickets were sold for more than 25 prizes.

Tampa Mayor Bob Buckhorn attended the event and spoke about Tampa’s gratitude for its firefighters and its diversity. Buckhorn said, “Tampa celebrates its diversity and is strengthened by it.” He asserted that Tampa has a wonderfully diverse history and a wealth of cultural influences that are a source of great pride in the local community.

Another diversity CLE and mixer will be held on May 29, 2013. This event will hold a fundraiser for the Tampa Firefighters Camp Hopetake. Every year, a weeklong camp is provided for pediatric burn victims to be in a supportive environment, filled with fun activities. The many bar associations that participate in these events are proud to honor Tampa’s cultural diversity and will continue to work toward diversity inclusion in all aspects of the legal profession.

Author: Caroline Johnson Levine, Office of the Attorney General

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HCBA Diversity Networking Event

About 200 students and sponsors packed the Chester H. Ferguson Law Center on February 16, 2013, for the HCBA Diversity Networking Event.

Formerly known as the Diversity Picnic, the event was revamped this year to focus on networking opportunities for students with local law firms and voluntary bar associations.

“By having significantly reformatted this HCBA hosted event, our Diversity Committee finally went down the road less traveled and got on the right track to achieve the original purpose and design of the occasion,” HCBA President Bob Nader said. “Kudos to Victoria McCloskey and Luis Viera, this year’s committee co-chairs, for their leadership and efforts in facilitating this welcome and meaningful change.”

The Diversity Committee promoted the event to law schools throughout the state.

In addition to networking with the sponsors, the students enjoyed a panel discussion with representatives from various voluntary bar associations. Panelists were Christine Derr, representing the Hillsborough Association for Women Lawyers; Jason Liu, representing the Asian Pacific American Bar Association; Cory J. Person, of the George Edgecomb Bar Association; Victoria Cruz-Garcia, of the Tampa Bay Hispanic Bar Association; Kim Byrd, past president of the National LGBT Bar Association; Richard Asfar, of Saxon Gilmore Carraway & Gibbons P.A.; and Navin R. Paseem, representing the South Asian Bar Association.

The HCBA awarded two $500 scholarships. The winners were Meghan Highfield, a student at Florida State University College of Law, and Joshua Corriveau, who attends the University of Florida Levin College of Law. Nicola Larmond-Harvey, a Stetson University College of Law student, won a review course donated by Barbri.
Thank you to the Sponsors of the HCBA Diversity Networking Event

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Bubba Huerta Award

Zuckerman Spaeder attorney Jo Ann Palchak was awarded the Marcelino “Bubba” Huerta III Award for pro bono service and the pursuit of equal justice on February 19, 2013. Along with Palchak’s friends, family, and colleagues, in attendance were previous recipients Jim Felman, Eddie Suarez, and Michael Maddux. Bubba’s wife, Terri, also attended the event.

The award is given annually by the HCBA’s Criminal Law Section.

Left to right: Jim Felman, Eddie Suarez, Terri Huerta, Jo Ann Palchak, and Michael Maddux. Felman, Suarez and Maddux are past recipients of the award, which was created in memory of Huerta, a local defense attorney who passed away in 2009.

Around the Chet

The Chet has been the place to be in 2013, with events such as the American College of Trial Lawyers’ seminar on “Effective Trial Advocacy” and section and judicial CLE luncheons.
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Proper care and supervision of Florida's ecological resources is of paramount importance in order to protect all of its wildlife and its citizens. See Fla. Stat. § 380.502. Accordingly, Florida’s environmental laws have evolved to provide citizens with civil remedies, which may prevent physical damage created by pollution, by not requiring a demonstration of causation or injury in litigation against polluters.

The Florida Constitution provides that “it shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.” See Florida Constitution, Article II, § 7 (a).

In an effort to preserve Florida’s natural environment for the benefit of its citizens and wildlife, the law has evolved to provide broad standing for a private cause of action for damages against polluters.

Importantly, Florida’s Environmental Protection Act of 1971 provided that citizens, environmental groups, and other government agencies could recover damages and seek to enjoin polluters, unless the defendant had complied within the standards of a validly issued permit. See Fla. Stat. § 403.412(2).

However, the “citizen’s” right to standing was diminished in 2002, when the act was amended, to require that in order for a citizen to pursue administrative remedies or intervene in licensing proceedings, he or she must demonstrate a “substantial interest in the proposed activity,” which arguably was preventing the “petitioner’s use or enjoyment of air, water, or natural resources.” See Fla. Stat. § 403.412(5).

Environmental groups containing at least 25 members were exempted from this requirement. See Fla. Stat. § 403.412(6); see also Environmental Confederation of Southwest Florida, Inc. v. State Department of Environmental Protection, 886 So. 2d 1013 (Fla. 1st DCA 2004).

In order to enhance “citizen” preservation efforts, the Florida Supreme Court found that Florida Statute § 376.313 created a private right of action for damages by finding that the statute “creates a cause of action for strict liability regardless of causation.” See Aramark Uniform and Career Apparel, Inc. v. Easton, 894 So. 2d 20 (Fla. 2004).

Aramark purchased property contaminated by chemical solvents and agreed to clean contaminated groundwater that migrated onto adjacent properties. The plaintiff, who would be required to avoid contact with his property’s groundwater for decades, sued Aramark, and the court found that a “defendant can be held liable even without proof that it caused the pollutive discharge.”

Subsequently, the Supreme Court broadened the right to damages without requiring an evidentiary showing of injury. See Curd v. Mosaic Fertilizer, LLC, 39 So. 2d 1216, 1228 (Fla. 2010). Curd was a fisherman who believed that a pond containing phosphate waste damaged marine life and had the potential to reduce fishing profits. The court found for Curd in holding that the defendant’s pollution of that pond “created an appreciable zone of risk within which Mosaic was obligated to protect those who were exposed to harm” from hazardous contaminants.

Author: Caroline Johnson Levine, Office of the Attorney General

Register now for the Environmental & Land Use Law Section CLE luncheon from noon to 1 p.m. on April 24.
RESERVE YOUR BOOTH TODAY (Booths are complimentary)

FIRM/COMPANY NAME: _________________________________________________________________

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BOOTH TYPE: Please check one and provide a description.

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ELECTRICITY: ___YES ___NO (Electrical power is limited, and the use will be strictly enforced. 
Requests for power must be received by March 15.)

BRINGING TENT/CANOPY: ___YES ___NO (Not provided by HCBA).

Tents/Canopies cannot be larger than 10’ X 10’.

SUBMIT FORM AS SOON AS POSSIBLE BY EMAIL TO MICHÉLE@HILLSBAR.COM OR FAX TO 
(813) 221-7778, ATTN: MICHÉLE REVELS. DEADLINE TO RESERVE A BOOTH IS MARCH 20, 2013.

JUDICIAL PIG ROAST/FOOD FESTIVAL BOOTH QUESTIONS

Date and Time: Saturday, March 23, 2013, 6 P.M. TO 8 P.M.

Place: On the grounds of The Stetson Tampa Law Center, 1700 N. Tampa Street, Tampa

• WHY SHOULD I GET INVOLVED? This will be the 10th year of the Judicial Pig Roast. It is an excellent 
opportunity to meet the judges and promote your firm. Prizes will be awarded for Best Pig Slop 
(food) and Best Pig Sty (most creative booth).

• HOW MANY PEOPLE SHOULD I PREPARE FOR? Please prepare sample-size portions for 350 people.

• WHAT DO I HAVE TO PROVIDE? EVERYTHING except the table. We will provide a standard 30” x 8’ 
table. You are responsible for providing all other materials necessary, such as plates, napkins, 
flatware, cups and decorations.

• WHAT IF MY BOOTH NEEDS ELECTRICITY? You must request electrical power by March 15. Electrical 
power is limited.

• WHAT TIME SHOULD I ARRIVE? Tables will be available for setup by 2 p.m. All booths should be 
complete by 5:30 p.m.

• DO I HAVE TO PERSONALLY PREPARE THE FOOD? No. You are free to commission a local restaurant 
or business, friend or family member to handle catering.

• HOW SHOULD I DECORATE MY BOOTH? The wackier the better! The Best Pig Sty award is for the 
most creative booth. Be as creative and extravagant as possible.

• BOOTH ATTENDANTS: All names of booth attendants should be emailed to Michele Revels at: 
michelle@hillsbar.com or faxed to (813) 221-7778 no later than March 20.
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In an effort to keep families together and to streamline and regulate the approval of waivers of inadmissibility, the Department of Homeland Security issued new regulations allowing the filing of a provisional waiver for certain inadmissible persons, starting March 4, 2013.

Basically, this provisional waiver is for illegal entrants from Central and South America who have been in the United States without permission for longer than one year (immigrants present in the United States after being legally admitted who get married to a citizen get their green cards in the United States without too much trouble). To qualify to file for the waiver in the United States, the applicant must be present in the United States, and the only ground of inadmissibility he is subject to must be based on unlawful presence. Unlawful presence is remaining in the United States without authorization. The applicant must have an approved immediate relative petition from a husband or wife, his case must be pending at the National Visa Center after the immigrant visa processing fee was paid, and the applicant must prove extreme hardship to a United States citizen spouse or parent.

You will be happy to know that United States Citizenship and Immigration Service considers separating a husband and wife to be hardship. For extreme hardship, an alien must typically show that according to the following criteria the hardship in the case would be extreme:

- The presence of lawful permanent resident/United States citizen family ties in the United States;
- the alien applicants family ties outside the United States;
- country conditions in the country of relocation and the qualifying relative’s (should be the spouse who applied for the waiver) ties to that country;
- the financial impact of departure;
- significant health conditions, particularly when tied to unavailability of suitable medical care in the country of relocation.

The waiver will be filed on the yet-to-come form I-601A available at www.uscis.gov. It will be filed and adjudicated in the United States, and processing times are optimistically projected at six months, which is a vast improvement on waivers in the past.

Because of these changes, citizens who are married to illegal entrants and are living with them in the United States will no longer be separated while having the waiver considered. They may file the I-130 and get it approved. The case will be transferred to the National Visa Center, and they will make a choice of agent, and pay the immigrant visa fee, then file the I-601A waiver. Once the provisional waiver is approved, immigrant visa processing would resume as usual, scheduling the interview at the embassy abroad and sending the client to get his or her green card.

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A party accused of patent infringement, or concerned about future infringement claims, may seek the opinion of counsel about whether its product or service infringes existing patents. Recent amendments to the patent laws in the America Invents Act prevent a party from offering the accused infringer’s failure to obtain advice of counsel as evidence of willful patent infringement or inducement of infringement.1 This recent amendment does not eliminate the value of an opinion of counsel. An opinion of counsel can guide future business conduct and minimize litigation risks.

A finding of willful patent infringement can have significant consequences, including enhanced damages and an award of attorneys’ fees in “exceptional” cases.2 A 2004 study found willful infringement was alleged 92 percent of the time, was rarely if ever decided on summary judgment, and was proven only in 2 percent of cases.3 Of cases that went to trial, though, willfulness was found in 53 percent of bench trials and 67 percent of jury trials, with such findings affirmed on appeal more than 80 percent of the time.

Good faith reliance upon an opinion of counsel is a defense to a willfulness charge. Asserting the defense waives the attorney-client privilege between the opinion counsel and his or her client, requiring disclosure of all communications related to the opinion. The scope of the waiver is frequently litigated, and opinion counsel is usually deposed. Firewalls are created between opinion counsel and trial counsel.

A line of cases beginning in 2004 and culminating in the Federal Circuit’s 2008 decision in In re Seagate Technology, abandoned decades of precedent that had imposed a duty on a party accused of infringement to determine whether the conduct was infringing by obtaining a qualified opinion of counsel.4 Case law had even imposed an adverse inference where no opinion was obtained.5 Seagate expressly held there was no affirmative duty to seek an opinion of counsel. Instead, Seagate held willfulness was governed by a standard of objective recklessness, that the accused infringer acted despite an objectively high likelihood its actions infringed a valid patent.

The America Invents Act, in 35 U.S.C. § 298, adopts the Seagate rationale that failure to obtain an opinion of counsel should not be considered in deciding willfulness.1 This recent amendment does not eliminate the value of an opinion of counsel. An opinion of counsel can guide future business conduct and minimize litigation risks.

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The America Invents Act, in 35 U.S.C. § 298, adopts the Seagate rationale that failure to obtain an opinion of counsel should not be considered in deciding willfulness. The legislative history indicates the amendment was intended to protect the attorney-client privilege and reduce the pressure on accused infringers to obtain opinions of counsel for litigation purposes. Congress made a policy choice that the probative value of an opinion of counsel is outweighed by harm that coercing a waiver of the privilege inflicts on the attorney-client relationship.

Seeking an opinion is still a good idea. Thanks to the amendments, a party can now seek that opinion without fear of being pressured to disclose it in subsequent litigation.

4 In re Seagate Technology, LLC, 497 F.3d 1360 (Fed. Cir. 2008).

Author: Richard H. Martin, Akerman Senterfitt, LLP
On November 20, 2012, the federal government released a number of important proposed rules implementing the Affordable Care Act (“ACA”).

Wellness programs are authorized under the ACA as an exception to the general prohibition on health status underwriting by plans, which takes effect on January 1, 2014. Wellness programs may grant rewards or impose surcharges based on an enrollee’s medical condition, if certain requirements are met. The proposed rules set out these prerequisites in detail.

The proposed rules distinguish between two types of wellness programs. “Participatory wellness programs” are programs made available to all similarly situated individuals and either do not offer a reward or do not condition a reward on an individual satisfying a health status requirement. An example might be reimbursement for the cost of a gym membership. Such programs are not limited by the ACA.

By contrast, “health-contingent wellness programs” condition the receipt of a reward on meeting a health status standard, such as not smoking. These programs may also grant a reward for those who fail to meet the biometric target, but take certain actions.

Under the proposed regulations, rewards may include premium discounts or rebates, reductions or waivers of cost-sharing, or the absence of a surcharge. Health-contingent wellness programs that offer rewards or impose surcharges must meet five requirements. First, the plan must be designed to be available to all similarly situated individuals, who must be given a chance at least once a year to qualify.

Second, the size of the reward cannot exceed 30 percent of the total cost of coverage, including both the employer and employee’s contribution. If dependents may participate in the wellness program, the reward cannot exceed 30 percent of the cost of family coverage. The proposed rule would also allow a 20 percent additional reward (for a maximum 50 percent of cost of coverage total) for smoking cessation or reduction.

Third, wellness programs must provide a “reasonable alternative standard” or waiver of the health-contingent standard for individuals who find it unreasonably difficult to meet the otherwise applicable standard because of their medical condition, or for whom it is medically inadvisable to attempt to satisfy the standard.

Fourth, health-contingent wellness programs must be reasonably designed to promote health or prevent disease, not be overly burdensome, and not be a subterfuge for health status discrimination. A program would have to offer a different, reasonable means of qualifying for the reward to any individual who does not meet the standard based on the measurement, test, or screening.

Finally, the program must notify employees of the opportunity to seek alternative qualification standards for an incentive reward or the possibility of waiver. This notice is not required if plan materials merely mention the availability of a wellness program without describing it. New, simplified language for employee notices is provided in the proposed regulations.

Wellness programs are a good idea for employers seeking to control health insurance costs and are being encouraged in the implementation of the ACA. Counsel should discuss such issues with their clients.

Author: Scott T. Silverman, Akerman Senterfitt, LLP
Each year Law Week provides the opportunity to focus the principles of our nation and legal system. In celebration of the 150th anniversary of the issuance of the Emancipation Proclamation, the 2013 Law Week theme is “Realizing the Dream: Equality for All.” This theme pays tribute to the words of Abraham Lincoln and the Rev. Martin Luther King Jr. Recall Lincoln’s words in his 1863 Gettysburg Address when he issued a plea for a “new birth of freedom” in a nation conceived in liberty and dedicated to the proposition that all men are created equal. Also recall King’s words 100 years later in 1963 when he stood in front of the Lincoln Memorial to deliver his inspirational “I Have a Dream” speech. Today Lincoln’s and King’s visions remain relevant, and their words continue to encourage us on our trajectory toward equality, fairness, and the elimination of all forms of discrimination based on race, gender, gender identity, ethnicity, national origin, religion, age, disability, and sexual orientation.

Although we have come a long way since Lincoln’s and King’s speeches, there is still a lot of work to be done in rectifying injustice in our nation. Women and minorities remain grossly underrepresented in positions of real power. A great disparity in pay still remains when comparing genders in the workplace with female full-time workers making on average only 77 cents for every dollar earned by men. Also, modern-day slavery, in the form of human trafficking, still exists within the borders of our country. This year’s Law Week theme provides us with the opportunity to come together to fight this injustice by promoting and educating our community on the aspirations expressed by Lincoln and King.

Law Week is an exciting event that sends volunteers to our courthouse to lead student tours, and to classrooms across Hillsborough County to speak to children about the Law Week theme and conduct mock trials. Law Week will conclude with the presentation of awards to local law enforcement officers, student-peer mediators, and student artists.

Law Week 2013 will take place throughout the week of April 29. Reserve space on your calendars now to ensure you have time to celebrate and further the “dream” of liberty and equality for all.

Should you have any questions about Law Week or the exciting activities that comprise Law Week, please feel free to contact your Young Lawyer Division Law Week Committee Co-Chairs: Amy Nath at amy.nath@baycare.org and Kevin Elmore at ElmoreKevinB@gmail.com.

Remember to mark your calendars for the week of April 29th now!

1 Sources: Bureau of Labor Statistics and Institute for Women’s Policy Research

Author: Kelly A. Zarzycki, Shumaker, Loop & Kendrick, LLP
EQUITABLE DISTRIBUTION IS NOT ALWAYS EQUAL
Marital & Family Law Section
Chair: Alexander Caballero - Mason Black & Caballero, P.A.

When it is time to distribute debt in an equitable distribution scheme, many clients inquire about the equity of equally dividing debt incurred as a result of a spouse’s wasteful spending. Sometimes this debt is not discovered until a dissolution of marriage case is filed. Unfortunately, lawyers are faced with the difficult task of delivering the news to our client that he or she will be forced to absorb one-half of this debt because it was incurred during a marriage, even when he or she derived no benefit from such debt.

However, there are mechanisms by which such debt can be distributed in a more equitable manner, so that the party who incurred the debt (and derived the concomitant benefit) will be required to bear all of the responsibility for the debt. Specifically, Section 61.075(1)(i) gives the trial court the authority to consider the “intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition.” Florida courts, including the Second District Court of Appeal, have defined the term “dissipation” to mean “‘where one spouse uses marital funds for his or her own benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown.’”

In such cases, the trial court has the authority to establish an equitable distribution scheme that is unequal in favor of the “innocent” spouse. In order to do so, the trial court must make clear and specific factual findings.

Interestingly, as it relates to the time frame for a dissipation claim, Florida courts have not limited the time frame in which a party can be charged with dissipation or waste to the two-year time frame set forth in Section 61.075(1)(i). In fact, a party can claim that marital assets were dissipated for several years during the marriage before the commencement of a legal action, provided that there is sufficient evidence to support the claim. This makes sense, because a contrary ruling would encourage parties to unnecessarily deplete marital assets for their sole benefit, then wait two years before initiating a legal action, thereby barring his or her spouse from any legal remedy.

Although an equitable distribution of the marital estate is often an equal distribution, when it can be shown that one party used marital funds solely for his or her benefit, and for a purpose unrelated to the marriage when the marriage was undergoing an irreconcilable breakdown— even if this time frame extends beyond the two years set forth in Section 61.075—an equitable distribution is not an equal distribution. This achieves a more equitable result.

1 Romano v. Romano, 632 So. 2d 207, 210 (Fla. 4th DCA 1994) (other citations omitted); see also Roth v. Roth, 973 So. 2d 580, 585 (Fla. 2d DCA 2008)  
2 Beers v. Beers, 724 So. 2d 109 (Fla. 5th DCA 1998); see also Amos v. Amos, 37 FLW D2315 (Fla. 1st DCA October 3, 2012).

Author:
Michelle R. Brinner, Older & Lundy

Attend the Marital & Family Law Section CLE from 1 p.m. to 3 p.m. on March 28.
THE CHALLENGE OF GOOD FAITH MEDIATION IN FLORIDA
Mediation & Arbitration Section
Chairs: Charles Wachter - Holland & Knight LLP; and Stephen Tabano - Trenam, Kemker, Scharf, Barkin, Frye, O’Neill & Mullis, Professional Association

In advisory opinion 2012-005, Florida Supreme Court’s Mediator Ethics Advisory Committee (“MEAC”) stated a certified mediator may disclose that a party failed to negotiate in good faith or willfully failed to appear at a court-ordered mediation as required by the local rules of the U.S. Bankruptcy Court for the Middle District of Florida. The MEAC opinion relied on the Florida Rules, which state “a mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation” [Rule 10.520]. Mediators were advised to highlight in their opening statement that the federal bankruptcy court’s requirement of good faith is an exception to the parameters of mediation confidentiality found in Florida court rules. With the advent of this significant MEAC opinion, this...
article is written to heighten awareness of some concerns to certified mediators.

In the practice of mediation, good faith has been an ambiguous concept defying precise definition. Florida’s Middle District Bankruptcy Court is silent as to whether or the extent to which a mediator has an affirmative duty to probe into or verify the good faith conduct of the parties.

Nevertheless, the court did impose an added mediator responsibility, adjudicative in nature, which challenges the mediator’s ability to otherwise remain impartial, maintain the appropriate level of confidentiality, preserve self-determination, encourage open and effective communication, and foster continued trust in both the mediator and the process. All the while, the mediator may not appear to exert a coercive influence upon the parties to settle.

Such “good faith mediation” has been ordered by the Bankruptcy Court without explicit guidelines. Thus, necessity leads the mediator to rely on personal judgment and experience, to be circumspect, and conclude a finding of lack of good faith must be formed from objectively identifiable and convincing fact, not influenced by emotion, surmise, or personal bias. A report of bad faith cannot be based on a subjective view of a party’s level of participation, willingness to make a reasonable offer, negotiating behavior, substantive bargaining position, active listening, or open mindedness.

As to the Bankruptcy Court’s order to report a party who willfully failed to appear (and perhaps the mediator never met), it seems the mediator may assume the mere reported failure to appear will be presumed by the court to be “willful”. However, as to every other issue of appearance, it is the mediator’s responsibility to ascertain good faith on a case-to-case basis. This even includes when all parties personally appear with full settlement authority coupled with indicia of a prior exchange of adequate information (the court never stated such is conclusive evidence of good faith). The mediator also must ascertain the good faith of every party who appears without actual or purported full settlement authority (the court did not require the mediator to report such conduct or characterize it as good or bad faith).

For more than a decade, nationwide, legislatures and the judiciary have mandated good faith mediation in the belief that the threat of sanctions promotes more productive participation and thereby reduces the backlog of cases. Their authority to mandate good faith mediation is not in dispute. Nor is there any dispute about the separation of judicial and legislative powers, which provide the U.S. Bankruptcy Court inherent power to override Florida’s Mediation and Confidentiality Act. It appears mandated good faith mediation is here to stay.

The hybrid process of mandated “good faith mediation” and the mediator’s role therein differ fundamentally from mediation as promulgated in Florida. There are important reasons to expressly distinguish the difference, not the least of which is to preserve the public perception of the core values of traditional mediation in Florida.

Author: Patrick J. Mastronardo, Patrick J. Mastronardo, LLC

Congratulations YLD!

The HCBA’s Young Lawyer Division recently received The Florida Bar Young Lawyers Division Affiliate of the Year Award at the Annual Affiliate Outreach Conference held January 18-19, 2013, at The Shores Resort in Daytona Beach Shores. The award recognizes excellence in public service, member service, and creative use of resources.

Right: YLD President Rachael Greenstein and Florida Bar YLD President Paige Greenlee are joined by Adam Myron.
and civility issues before judicial or Florida Bar intervention becomes necessary. It was created in 1996 by HCBA President Richard Gilbert and the Professional Conduct Committee Chair Bill Kalish. Since that time, the program has served as a model for our state and other voluntary bar associations. It was also endorsed by the judges of the Thirteenth Judicial Circuit in Administrative Order S-29-97-104.

Who Should Participate?

If you have an objection to a fellow lawyer’s conduct in Hillsborough County, the Peer Review Program may be an ideal resource. Your opposing counsel engaging in unprofessional conduct? Would you consider the conduct below the standards we expect from lawyers practicing in Hillsborough County — but not so egregious that The Florida Bar’s formal disciplinary process is warranted? The Hillsborough County Bar Association’s Peer Review Program may be able to help.

What is Peer Review?
The Peer Review Program is an informal program created to improve professionalism and correct behavior which, although not so egregious to invoke formal disciplinary process or sanctions or unethical conduct, falls below the high standards expected of attorneys in Hillsborough County and the HCBA Standards of Professional Courtesy. The program is voluntary, confidential, and non-punitive. It is designed to help attorneys resolve professionalism and regarded lawyer in the same legal field and a judge in the Thirteenth Judicial Circuit. The intention of the peer review is directed toward a non-punitive, constructive resolution to the professionalism dispute.

Why Peer Review?

We value professionalism in our community. This program allows us to help uphold those standards in a collegial way. By intervening at the earliest stage, obstinate, unprofessional conduct can be curbed.

Please call the HCBA office at (813) 221-7777 or the Professionalism and Ethics Committee to learn more about the Peer Review Program.

Authors:
William Kalish, Akerman Senterfitt, LLP; and Julie Sneed, Akerman Senterfitt, LLP

HCBA LAWYER REFERRAL & INFORMATION SERVICE
Interested in participating in the Lawyer Referral & Information Service program? Contact LRIS Director Lupe Mitcham at (813) 221-7783 or email lupe@hillsbar.com.
KOONTZ, THE U.S. SUPREME COURT’S LATEST TAKE ON TAKINGS
Real Property Probate & Trust Section
Chairs: Eric Page, Hill Ward Henderson; and Katie Everlove-Stone, Everlove Legal, PLLC

A case emerging out of the swampy wetlands of Florida has been taken up by the United States Supreme Court and may significantly impact takings jurisprudence nationwide. In 1994, landowner Koontz sought permits from the St. Johns River Water Management District (the “District”) to allow dredging of wetlands and development of property within a protected zone. District staff recommended approval if Koontz agreed to certain conditions, performance of offsite mitigation miles away. Koontz rejected the offsite mitigation proposal. In turn, the district denied his permit requests.

The questions presented are twofold: (1) does a taking occur when the government refuses to issue a permit because an applicant rejected a permit condition that, if applied, would violate the essential nexus and rough proportionality tests articulated in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994); and (2) do the Nollan/Dolan tests apply to a land-use exaction in which the government demands dedication of personal property to a public use. Nollan provides that no taking occurs where a permit condition “serves the same governmental purpose as the development ban.” 483 U.S. at 837. Dolan added that conditions must bear a “rough proportionality” between the condition and the impact of the proposed development. 512 U.S. at 390-391.

Koontz filed suit claiming inversion condemnation by improper exaction. Relying upon Nollan/Dolan, the trial court agreed. The Fifth Circuit confirmed the trial court finding. The Florida Supreme Court reversed, finding the Nollan/Dolan test inapplicable absent dedication of land or conditions imposed upon the land. St. Johns River Water Management District v. Coy A. Koontz, etc., 77 So. 3d 1220, Fla. 2012. “... [W]e decline to expand [the Nollan/Dolan test] beyond the express parameters for which it has been applied by the High Court.” Id. at 1230. The court refused to apply Nollan/Dolan to a non-real property exaction and opined that, regardless, Koontz’s exaction must be rejected because the district did not issue permits. Id. at 1231. The court noted that nothing was taken from Koontz, echoing the Fifth Circuit dissent: “[i]n what parallel legal universe or deep chamber of Wonderland’s rabbit hole could there be a right to just compensation for the taking of property under the Fifth Amendment when no property of any kind was ever taken by the government and none ever given up by the owner?” Id. at 1231 and 1225 (quoting Koontz IV, 5 So. 3d at 20 (Griffin, J., dissenting).

The United States Supreme Court’s decision may have broad-reaching effects, and a finding for Koontz could transform common practices regarding government-issued permits. Interested parties who have submitted briefs include the Pacific Legal Foundation, the National Association of Home Builders, the American Civil Liberties Union and the State of California.

As of the date of this article’s authorship, the United States Supreme Court has heard oral arguments in Koontz and a decision is forthcoming. The author will provide an update and discussion at the May 9, 2013, Hillsborough County Bar Association luncheon.

Author:
Katherine O’Donniley, Singer & O’Donniley, P.A.
HOW DOES THE BP OIL SPILL RELATE TO ME, MY FIRM AND MY CLIENTS?
Solo/Small Firm Section
Chairs: James A. Schmidt - James A. Schmidt, P.A.; and S.M. David Stamps, III - S.M. David Stamps, III P.A.

(Part 1 of a 2 Part Series)

When Florida’s tourism industry lost billions in 2010 revenue as a result of the BP spill, the ripple effect on nearby economies resulted in many non-tourism bottom lines being affected…and BP has taken responsibility for it all. At the urging of all parties, the federal judge presiding over this class action approved the detailed settlement agreement providing monetary relief to claimants in Louisiana, Mississippi, Alabama and, every Florida Gulf Coast county…that’s correct — every Florida Gulf Coast county, (present readership included).

Your law firm and its local business clients could qualify for recovery under the agreement.

BP has shown its willingness to cooperate with the court-appointed claims administrators by paying more than $1 billion in claims to date. Additionally, BP has shown financial ability to comply with the terms of this agreement by setting aside more than $13 billion dollars for proper claims; however, no cap is set.

Generally speaking, here is what you should know:

1. If you are there – it is fair. Identify whether you (or a client) are located within a zone of recovery. If yes, move on to the next step for a proper claim.
2. Contact local counsel to assist. Choose one who:
   • is familiar with the terms of the agreement;
   • has a well-informed, forensic accounting team (keen to the details);
   • will follow the court’s rule of a maximum 25 percent contingency fee;
   • will personally file your claim, not refer it out of state; and
   • will recognize referral fees as promulgated by The Florida Bar.
3. Organization pays off. Businesses, using profit and loss statements, and individuals, using monthly pay period information that match respective annual tax returns, are in a much better position to determine eligibility.
4. Pass the test. Unless in Zone A, you must pass one of three causation tests. (V-test, Modified V-test or Decline-only test). It is not necessary to show that the spill caused you direct or indirect harm; your financials will evidence your causation test results.
5. Determine the damage. Compare monthly 2010 revenue with parallel periods of previous years as benchmark; add applicable “premiums” and total your claim.
6. Package and submit. Your chosen counsel will advise you on appropriate measures taken to maximize your claim, organize materials in claims administrator-friendly format, submit, and follow the life of your claim.

(More details to follow in next month’s article.)

This is a one-of-a-kind opportunity for you and your clients. They will appreciate your insight and information.

Attend the Solo/Small Firm Section CLE luncheon from noon to 1 p.m. on April 17.
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The American Taxpayer Relief Act of 2012, along with the Patient Protection and Affordable Care Act, implemented “permanent” changes to the application of income as well as estate and gift taxes.

**Income Tax Changes:**

For taxable income, the top tax rate has increased to 39.6 percent for income in excess of $400,000 for individuals and $450,000 for married couples filing jointly. In addition to the top rate, a 3.8 percent unearned Medicare surtax applies to the lesser of net investment income or the excess of modified adjusted gross income (“AGI”) over $200,000 for individuals and $250,000 for married couples filing jointly. For compensation or self-employment income, an additional Medicare tax rate of 0.9 percent applies to such income in excess of $200,000 for individuals and $250,000 for married couples filing jointly.

For capital gains, the rate is increased to 20 percent for those with taxable income in excess of $400,000 for individuals and $450,000 for married couples filing jointly. The capital gains rate is unchanged for taxpayers with income under those thresholds. Qualified dividends will continue to be taxed at capital gain rates.

Personal exemptions and itemized deductions will be phased out for those with AGI in excess of $250,000 for individuals and $300,000 for married couples filing jointly. Personal exemptions will be completely phased out when income exceeds the threshold amount by $125,000. The maximum reduction in itemized deductions under this limitation is 80 percent. The itemized limitation does not apply to investment interest, medical expenses or casualty losses (although medical expenses must now exceed 10 percent of AGI to be deductible).

The reduced rate of 4.2 percent for the employee portion of Social Security was allowed to expire. Therefore, for 2013, the tax rate will revert to 6.2 percent.

For 2012 and 2013 only, charitable distributions from individual retirement accounts (“IRAs”) are reinstated. Individuals older than 70 and a half can make direct distributions (up to $100,000) to charity from an IRA and exclude these distributions from their income (although no charitable deduction is allowed).

Several deductions and credits were extended only through 2013. One such extension allows taxpayers to claim state sales taxes paid as an itemized deduction in lieu of state income taxes paid, which is particularly attractive for Florida residents.

**Estate, Gift, and Generation-Skipping Transfer (“GST”) Taxes:**

The maximum transfer tax rate is increased to 40 percent. While this is an increase over 2012 rates, it still represents a decrease from the maximum rate of 55 percent that would have applied had Congress not acted.

The applicable exclusion amount is made permanent at $5 million, indexed for inflation. As a result, the exclusion amount for 2013 will be $5.25 million. In addition, the gift, estate, and GST exemptions are permanently unified meaning the applicable exclusion amount is available for all three taxes.

Further, any applicable exclusion amount that is unused by a spouse at death is permanently portable, meaning that the unused amount will, in some circumstances, be available upon the death of the second spouse.

**Author:**

Christopher Pegg,
Wells Fargo
Private Bank
Normal or Abnormal?

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On January 14, 2013, President Obama signed H.R. 4212, the “Drywall Safety Act of 2012” (the “Act”), titled as “An act to prevent the introduction into commerce of unsafe drywall, to ensure the manufacturer of drywall is readily identifiable, to ensure that problematic drywall removed from homes is not reused, and for other purposes.” The Act includes the following pertinent provisions:

“SEC. 2. SENSE OF CONGRESS. It is the sense of Congress that —

(1) the Secretary of Commerce should insist that the Government of the People’s Republic of China, which has ownership interests in

the companies that manufactured and exported problematic drywall to the United States, facilitate a meeting between the companies and representatives of the United States Government on remedying homeowners that have problematic drywall in their homes; and

(2) the Secretary of Commerce should insist that the Government of the People’s Republic of China direct the companies that manufactured and exported problematic drywall to submit to jurisdiction in United States Federal Courts and comply with any decisions issued by the Courts for homeowners with problematic drywall.”

“SEC. 3. DRYWALL LABELING REQUIREMENT. (a) Labeling Requirement. — Beginning 180 days after the date of the enactment of this Act, the gypsum board labeling provisions of standard ASTM C1264-11 of ASTM International, as in effect on the day before the date of the enactment of this Act, shall be treated as a rule promulgated by the Consumer Product Safety Commission under section 14(c) of the Consumer Product Safety Act (15 U.S.C. 2063(c)). . . .”

Only time will tell whether this legislation is effective and whether and how the Chinese government will react to it.

Continued on page 63
Continued from 62

“SEC. 4. SULFUR CONTENT IN DRYWALL STANDARD.
(a) Rule on Sulfur Content in Drywall Required.—Except as provided in subsection (c), not later than 2 years after the date of the enactment of this Act, the Consumer Product Safety Commission shall promulgate a final rule pertaining to drywall manufactured or imported for use in the United States that limits sulfur content to a level not associated with elevated rates of corrosion in the home.

(c) Exception.—
(1) Voluntary standard.—Subsection (a) shall not apply if the Commission determines that —
(A) a voluntary standard pertaining to drywall manufactured or imported for use in the United States limits sulfur content to a level not associated with elevated rates of corrosion in the home;
(B) such voluntary standard is or will be in effect not later than two years after the date of enactment of this Act; and
(C) such voluntary standard is developed by Subcommittee C11.01 on Specifications and Test Methods for Gypsum Products of ASTM International.
(2) Federal register.—Any determination made under paragraph (1) shall be published in the Federal Register.

“SEC. 5. REVISION OF REMEDIATION GUIDANCE FOR DRYWALL DISPOSAL REQUIRED. Not later than 120 days after the date of the enactment of this Act, the Consumer Product Safety Commission shall revise its guidance entitled “Remediation Guidance for Homes with Corrosion from Problem Drywall” to specify that problematic drywall removed from homes pursuant to the guidance should not be reused or used as a component in production of new drywall.”

The full text of the Act, and prior versions, can be found at: http://beta.congress.gov/bill/112th-congress/house-bill/4212/text?=drywall safety act. The Act is Congress’ attempt to address years of imported drywall-related issues and litigation. Only time will tell whether this legislation is effective and whether and how the Chinese government will react to it.

Author:
Jaret J. Fuente,
Carlton Fields, P.A.
Creating Common Ground

Thirty years of active legal practice not only brings an appreciation for the nuances of the law but also insight into the art of dispute resolution. It is with this experience that attorney Clark Jordan-Holmes has established Mediation Fla, LLC. Clark is a certified circuit court mediator, qualified family law & residential mortgage mediator as well as a Martindale Hubbell AV peer review rated trial attorney. For your next mediation assignment, please call.

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- **AGW CAPITAL ADVISORS** is an investment consulting firm with a focus on advising professional service firms on their 401(k) and defined benefit retirement plans. AGW serves several well-established law firms in the Tampa Bay area, providing them with expertise on fund menu design, investment manager due diligence, record-keeper search and selection, ongoing performance measurement and evaluation, and fiduciary oversight. AGW offers HCBA members a 20% discount for a comprehensive investment review and fee analysis of their firm’s retirement plan. For more information, please contact Jay Annis, PJ Gardner or Paul Whiting, Jr. at (813) 254-4700 or visit AGW’s website at http://www.agwcap.com.

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- **C1 BANK** is a proud HCBA benefit provider, and committed to “clients first...community first.” With almost $1 billion in local assets, C1 Bank is the fastest growing bank in the Tampa Bay area and the official bank of the Tampa Bay Buccaneers. Our Emerald Banking group was created to be your financial resource, with sophisticated lending and treasury products and creative solutions to meet the everyday and extraordinary banking needs of your practice and family. We measure success by the kind of relationship we build with you. For HCBA members, we are proud to offer our Value checking account package with direct deposit with no charge and no minimum balance. Partners are eligible for our exclusive Emerald checking at no charge as well. For more information on practice or personal banking, please contact Brooke Melendi at 813-259-3961, or email us at HCBA @C1Bank.com.

- **FIRM SOLUTIONS, LLC** is a business consulting firm specializing in customized outsourcing solutions for the legal industry as well as internal business process optimization. Our firm’s partners have over 30 years of combined experience in the legal profession, serving clients nationwide. Originally developed to host large law firms in the mortgage banking arena, our team has progressively developed process enhancing initiatives designed specifically for small to medium size law firms. With our services, our clients have the opportunity to outsource key business practices as a means to increase process efficiency as well as time management. These practices range from e-filing pleadings with the Clerk of the Court through CourtXpress, Human Resource services, Training, Flexible workforce/staffing, Accounting functions, and document management through our Virtual Mail Room. Our team strives to provide quality services while alleviating unnecessary burdens from our clients, allowing them focus on their core competencies. At Firm Solutions, we let lawyers practice law.

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- **LNS TECHNOLOGIES** is a leader in IT & Network Systems infrastructure services and solutions. Since 1994, LNS has consistently provided our legal clients with the latest technology and support tools allowing their businesses to operate efficiently. LNS Technologies’ scalable, IT solutions and services increase productivity, reduce costs, and optimize asset utilization to derive maximum value from your IT investment. All HCBA members receive a FREE computer and network system health check upon request. Contact Sales at (813) 221-1315, or email your request or requirement to: info@LNSTech.com. Visit our website at: http://www.LNSTech.com.

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Because workers’ compensation is a creation of statute, fraud involves different procedural and substantive standards.

An employer must provide compensation to an employee injured during the “course and scope of employment.” See Fla. Stat. § 440.09(1). However, employers may avoid paying benefits if they can establish that an employee has misrepresented or omitted facts in pursuit of workers’ compensation benefits.

The Florida Legislature had clearly stated that entitlement to compensation benefits can be forfeited if the employee makes “any false, fraudulent, or misleading oral or written statement for the purpose of obtaining or denying any benefit or payment under this chapter” or if the employee presents “any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to any provision of this chapter, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim.”

See Fla. Stat. § 440.105(4). The penalty for a violation is harsh — a total denial of the case and forfeiture of all benefits, even if the misstatement or omission is a minor one that was not material to the case.

In the civil courts, with regard to dismissal of actions based upon fraud, courts have consistently applied the common law concept of fraud and held that dismissal for fraud should only be “cautiously and sparingly exercised.” Young v. Curgil, 358 So. 2d 58, 59 (Fla. 3d DCA 1978). This is so because courts prefer cases to be decided on the merits and any inconsistent statements could be fleshed out during cross-examination of the witness making the statement. Cross v. Pumpeo, Inc., 910 So. 2d 324, 328 (Fla. 4th DCA 2005). In a civil court setting, the requisite fraud on the court occurs where “it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense.” Arzuman v. Saud, 843 So. 2d 950, 952 (Fla. 4th DCA 2003) Further, a rigid standard of “clear and convincing evidence” is required of the moving party.

Because workers’ compensation is a creation of statute, fraud involves different procedural and substantive standards. First, there is no procedural requirement that fraud be pled with particularity. Some argue that this places injured workers at a disadvantage and in the “dark,” as the carrier need not specifically identify the offending statements or state the place or manner in which they were made.

For a substantive standpoint, “fraud” in workers’ compensation eliminates the common law elements of materiality and

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reliance. Village of North Palm Beach v. McKale, 911 So. 2d 1282 (Fla. 1st DCA 2005) (where the court stated that it is not necessary that a false or misleading statement be material to the claim). Further, the carrier in a workers’ compensation case need prove fraud only by a preponderance of the evidence. Thus, an arguably minor misstatement, such as an illegal alien supplying a false Social Security number at the time of initial treatment, might result in all benefits being denied. Some believe that the Legislature’s adoption of the civil court standard for fraud would allow cases to be tried on their merits, with many false statements managed through effective use of cross-examination and traditional discovery sanctions. Some also argue for a legislative mandate that the defense of fraud be pled with particularity and that the fraud be proven by the higher “clear and convincing evidence” standard.

Authors:
Mike Winer,
Law Office of
Michael J. Winer,
P.A.; and Caroline
Johnson Levine,
Office of the
Attorney General

Statewide Pro Bono Awards

Hillsborough County was well-represented in the 2013 statewide pro bono awards.

Jeanne T. Tate received the Tobias Simon Pro Bono Service Award, the highest statewide pro bono award. Since law school, Tate has been involved with Bay Area Legal Services, donating hundreds of hours as a volunteer, pro bono attorney, financial contributor, mentor and resource to attorneys and staff. She is also active in the Hillsborough County Bar Association, the Hillsborough Association for Women Lawyers and the Bay Area Volunteer Lawyers Program.

Judge Claudia Isom, of the Thirteenth Judicial Circuit, received the Distinguished Judicial Service Award, which honors outstanding and sustained service to the public, especially in the support of pro bono services. Isom co-chairs the HCBA 5K Pro Bono River Run and estimates she has spent more than 250 hours promoting and coordinating the race since 2010.

The Tampa Bay Hispanic Bar Association received the Voluntary Bar Association Pro Bono Award, recognizing the voluntary bar association that has made a significant contribution in the delivery of pro bono legal services. Its volunteer clinic, translation of legal forms, and scholarships led its pro bono efforts.

The law firm of Clark & Washington, P.C., received the Law Firm Commendation. The award honors significant contributions in the delivery of pro bono legal services. Bankruptcies were the focus of the firm’s pro bono work.

The awards were presented by Florida Supreme Court Chief Justice Ricky Polston on January 31, 2013, in Tallahassee.
Save the Dates

10th Annual Judicial Pig Roast/Food Festival
5K Pro Bono River Run
Saturday, March 23
6 p.m. to 8 p.m. Pig Roast
5:30 p.m. 5K Race
On the grounds of the Stetson Tampa Law Center

YLD and Diversity Committee Unveiling Event for the Historical Narrative Documentary
Wednesday, April 10
5:30 p.m. Reception | 6:30 p.m. Program
Tampa Bay History Center

Florida Bar New Admittee Ceremony
3 p.m., Friday, April 19
George E. Edgecomb Courthouse

Law Day Membership Luncheon
Tuesday, May 21, Noon
Hotel Tampa
(formerly downtown Hyatt Regency)

LEARN MORE ABOUT HCBA EVENTS AT WWW.HILLSBAR.COM

THANK YOU TO THE ATTORNEYS WHO PARTICIPATED IN ASK-A-LAWYER IN FEBRUARY 2013

- Dale Appell
- Mark Aubin
- Tom Hyde
- William Schwarzc
- Stan Musial
- Rinky Parwani
- Linda Faingold
- Chip Waller
- Brent Rose
- Kemi Oguntebi
- Lawrence Samaha
- Jesus Elizarraras
- Brian Esposito
- Chris Debari
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To volunteer for the Ask-A-Lawyer programs, please contact the HCBA Lawyer Referral & Information Service at 813-221-7783.
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Adams and Reese is pleased to announce that Ken Curtin, resident in the firm’s Tampa and St. Petersburg offices, has been elected to partner. Curtin is a member of the Litigation Practice Group in the Tampa and St. Petersburg offices.

Vivian Arenas-Battles has been appointed as an adjunct professor in the Urban & Regional Planning Program at the University of South Florida. She is teaching a graduate level “Land Use Law” course. Arenas-Battles is a shareholder with de la Parte & Gilbert, P.A. and practices in the areas of eminent domain, environmental and land use law, and administrative law.

Carlton Fields is pleased to announce the recent election of 12 new shareholders at the firm’s 2013 annual Shareholder Meeting held in Miami. Tampa associates elected to shareholder:

- Lori Baggett is a member of the firm’s Construction, Labor and Employment, Business Litigation and Trade Regulation, and Appellate Practice and Trial Support practice groups.
- Dana R. Blunt is a member of the firm’s Real Property Litigation and Real Estate and Finance practice groups.
- Fentrice D. Driskell is a member of the firm’s Business Litigation and Trade Regulation practice group.
- Amanda Arnold Sansone is a member of the firm’s Business Litigation and Trade Regulation and Health Care practice groups.

Carlton Fields is pleased to announce that four of the firm’s Tampa attorneys were honored as 2013 “Lawyers of the Year” by The Best Lawyers in America:

- Nathaniel L. Doliner, shareholder - Mergers & Acquisitions Law
- C. Douglas McDonald, Jr., shareholder - Copyright Law
- Gary L. Sasso, president and CEO - Appellate Practice
- Wm. Cary Wright, shareholder - Litigation-Construction

The Florida Venture Forum, the oldest, largest, and most prestigious statewide support group for venture capitalists and entrepreneurs, announced that David S. Felman, leader of the Corporate and Tax Group for Hill Ward Henderson in Tampa, will be 2013 board chair of the Florida Venture Forum’s Board of Directors.

Adam B. Cordover, of the Law Firm of Adam B. Cordover, P.A., has been elected to serve as the vice president of the Collaborative Divorce Institute of Tampa Bay (“CDITB”). The CDITB is composed of attorneys, mental health professionals, and financial professionals dedicated to helping families focus on the future and develop creative, sensible, and private settlements.

Givens Law Group founder Stann Givens recently announced two new partners to the firm and a new name — Givens Givens Sparks. Chris Givens, son of Stann Givens, has been working with the firm since 2005. Chris Givens is active in the executive board of the Family Law Section of the Hillsborough County Bar Association. Robert Sparks joined Stann and Chris in 2006 after serving as an assistant state attorney for the Thirteenth Judicial Circuit, and working in a large insurance defense firm.

Hill Ward Henderson shareholder R. Craig Mayfield was presented with the Defense Research Institute (“DRI”) Leadership Award by DRI’s outgoing president Henry Sneath. Mayfield received this honor for his outstanding leadership and unselfish efforts to support and improve the standards of the defense bar and the administration of civil justice. This award was given in recognition of his work as Chair of DRI’s Young Lawyers Committee.

Hill Ward Henderson is pleased to announce the election of P. Prestin Weidner as shareholder. This election brings the firm’s total number of shareholders to 58. Weidner is in the firm’s Corporate & Tax Group.

Andrew W. Lennox and Casey Reeder Lennox are pleased to announce that they have opened Lennox Law, P.A. The firm’s offices are at 4905 S. Westshore Blvd., Tampa. The husband-and-wife team will continue to practice in the areas of commercial litigation, creditors’ rights, and bankruptcy.

Judge Catherine Peek McEwen has been appointed chair of the Thirteenth Judicial Circuit Pro Bono Committee, for a two-year term, by administrative order of the Hon. Manuel Menendez, Jr., chief judge of the Thirteenth Judicial Circuit.

Shumaker, Loop & Kendrick, LLP is pleased to announce that Duane A. Daiker, partner in the Tampa office, received recertification as an Appellate Practice Specialist from the Florida Board of Legal Specialization and Education. He has been certified since 2007. Duane is one of only 172 lawyers in Florida with this certification.

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Shumaker, Loop & Kendrick, LLP, is pleased to announce that Maria del Carmen Ramos and Mindi M. Richter have been named partners in the firm’s Tampa office. Ramos devotes a substantial portion of her practice to counseling clients on immigration and employment issues. Richter has counseled clients in the areas of trademark selection, registration and protection, as well as trade secrets, copyright, patent, and Internet matters.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that Erin Smith Aebel, partner, and Malinda R. Lugo, associate, were invited to speak to the University of South Florida College of Medicine residents and fellows on December 18, 2012, regarding preventing malpractice lawsuits, contract negotiations and Health Law 101. Also, Lugo spoke at the annual meeting of the Gulf Coast Health Information Management System on January 16. Lugo discussed HIPAA compliance and best practices and HIPAA breach assessments and notifications.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that Julio C. Esquivel, a partner in the Tampa office and a member of the firm’s national management committee, has been elected to the Board of Trustees of the Tampa Museum of Art.

Thompson, Sizemore, Gonzalez & Hearing is pleased to announce the addition of a new associate. Cullan E. Jones received his B.A. in political science, cum laude, from the University of Florida and his J.D. from Florida State University College of Law.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that Steven M. Berman, partner in the Tampa office, was a guest lecturer at the University of Florida College of Law Advanced Bankruptcy Seminar on January 11, 2013.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that Timothy C. Garding, associate in the Tampa office, has been appointed to the Board of Directors of TEMPUS PROJECTS, a non-profit organization comprised of local artists and professionals dedicated to nurturing established and emerging local, national, and international artists.

Shutts & Bowen LLP is pleased to announce that Eric Page has joined its Tampa office as a partner. Page is a seasoned litigator with experience in a multitude of areas, including real estate, land use, taxation, and zoning matters.

Shutts & Bowen LLP is pleased to announce that Olga M. Pina has joined the Tampa office as a partner. Pina is a veteran corporate transactional lawyer with more than 20 years’ experience in corporate, securities, international business, and export compliance matters.

Shutts & Bowen LLP named seven new partners at its recent annual meeting, four of whom are women. C. Mark Stevenson is a partner in the Tax & International Law Practice group in the Tampa office. He focuses his practice on matters relating to limited liability companies, partnerships, and other pass-through entities and the taxation of those entities. Janelle A. Weber is a partner in the Tampa office and a member of the Business Litigation Practice Group. She focuses her practice on commercial litigation, real property litigation, and insurance class action defense.

T. Truett Gardner has been selected as a 2013 Top Rated Lawyer in Land Use and Zoning law by American Law Media and Martindale-Hubbell. Gardner is a founding partner of Gardner Brewer Martinez-Monfort, P.A.

Thompson, Sizemore, Gonzalez & Hearing is proud to announce that managing partner Gregory A. Hearing has been selected by Best Lawyers as Lawyer of the Year in Labor Law - Management.

For the month of: January 2013
Judge: Honorable John Schaefer
Parties: Jo Ellen Conforti vs. Steak & Shake Operations, Inc.
Attorneys: For Plaintiff: Jodie Leisure, Stephanie Valentine; For Defendant: George Nader
Nature of Case: Slip and fall with injuries to back and neck
Verdict: Defense verdict.

For the month of: January 2013
Judge: Honorable Charles Bergman
Parties: Walter Aye vs. Healthsouth Corporation
Attorneys: For Plaintiff: Richard Bokor, Susan Lawson; or Defendant: Christopher Schulte, Marshall Schaap.
Nature of Case: Medical malpractice action in which Mr. Aye claimed that physical therapy following a multi-level cervical fusion caused him to suffer a new disc herniation.
Verdict: Defense verdict.
Tampa was home to two major Army Air Corps bases during World War II. MacDill Field, later MacDill Air Force Base, was established in 1939. In 1941, Drew Field Municipal Airport, which opened in 1928, was converted to a military base and renamed Drew Army Airfield. In 1943, Dale Mabry Highway was built to link the two military bases.

Postcards courtesy of Raymond T. (Tom) Eligett, Jr.
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The BP spill was a disaster, not only for Florida’s environment, but also its economy. Now, after 2 years of litigation, the broad indirect economic impacts of this disaster on all types of businesses and consumers have finally been acknowledged.

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

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