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The Alafia Banks, at the mouth of the Alafia River in Tampa Bay, are one of the most important bird-nesting sites in Florida. Residents include dense flocks of roseate spoonbills, which are sustained by the fertile shallows.

Photo courtesy of Carlton Ward Photography, www.carltonward.com
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SETTING THE BAR HIGH

He was always in control of the courtroom and had high standards for the lawyers who appeared before him.

My first contested hearing as a lawyer was before Judge James Arnold. It was a summary judgment hearing, although not a particularly complicated one. Not having argued a summary judgment motion before, I launched into what I thought was a brilliant — and, as it turns out, wholly unnecessary — exposition on the summary judgment standard shortly after making my appearance. I don’t recall precisely what he said, but Judge Arnold’s puzzled look had “this guy can’t be serious” written all over it. Before I could finish, Judge Arnold interrupted me and patiently explained how it would be more effective to focus on my substantive arguments than a legal standard the court was more than familiar with.

Although not quite the reception I was aiming for, it was one I greatly appreciated then and have come to appreciate even more over the years. Looking back, I suppose Judge Arnold could have let me ramble on and then ruled in my favor (which he eventually did) in spite of my argument. I would have felt better about the hearing, of course, but that wouldn’t have helped my professional development. Instead, the now-retired judge used the hearing as a teaching opportunity for an obviously young and inexperienced attorney, which in the long run, made me a more effective lawyer.

In many ways, it reminded me of my high school algebra teacher who once held me after class to tell me my B+ grade was not going to cut it because he had higher expectations for me. I didn’t appear in Judge Arnold’s courtroom that often after that first hearing, but when I did, that was how I always viewed him. He was always in control of the courtroom and had high standards for the lawyers who appeared before him. Because of that, lawyers knew they would have a fair opportunity to present their case or argument. At the same time, Judge Arnold was always very gracious to others.

I understand it was not unusual for a police officer to show up at Judge Arnold’s house in the early morning hours to have a search warrant signed, only to be invited in for a cup of coffee. Court reporters often talked about how Judge Arnold made sure to take breaks during trial — not an easy thing for a busy trial judge to do — so they would be more comfortable. And he always made sure to thank jurors for their service.

Over the years, Judge Arnold has had a number of high-profile cases in Tampa. In the late 1980s, he presided over a trial involving abortion protesters that was so large it had to be held in the Tampa Performing Arts Center. More recently, he presided over the Bubba the Love Sponge trial, known more for what happened outside the courthouse than what happened in it. There is a tendency, it seems to me, to remember judges for the big, high-profile cases they presided over. As for me, I’ll remember Judge Arnold for the high standards he set for lawyers who appeared before him, which will have a positive impact on this community for years to come.
As a college sports fan, one of my favorite traditions is the annual NCAA college basketball tournament. Known as “March Madness,” this short yet exciting season is once again upon us. As such, it is hard for anyone to avoid discussions involving brackets, chalk, top seeds, Cinderella teams, buzzer beaters, and other roundball nomenclature. Inevitably, one will hear hoops aficionados — often coaches or sportscasters —

**Survive and Advance: Magna Carta Madness?**

Perhaps not as fun to discuss as a bracket-buster game, Magna Carta’s significance should not be overlooked — especially by us lawyers. Indeed, Magna Carta is still widely considered to be one of the greatest political and legal sources of support for any modern-day, free society.

Continued on page 5
Continued from page 4

use the phrase “survive and advance” in reference to how teams approach each round and plan for tournament success.

While the tourney has been played for nearly 80 years, a far more significant milestone is also upon us. This year marks the 800th anniversary of Magna Carta. Perhaps not as fun to discuss as a bracket-buster game, Magna Carta’s significance should not be overlooked — especially by us lawyers. Indeed, Magna Carta is still widely considered to be one of the greatest political and legal sources of support for any modern-day, free society. Put differently, the legal thoughts and principles in Magna Carta have arguably “survived and advanced” over the years as well as any set forth in a single document.

As there is not enough space here for a deep dive into Magna Carta’s history, one will generally recall that Magna Carta was the “Great Charter” (did not need six years of Latin for that), which King John was compelled to sign at Runnymede in 1215 to assure local barons certain temporary property rights and protections. Although Magna Carta was modified and reaffirmed a few times over the next couple of centuries, it remained largely between the king and the barons. However, in the 17th century, Sir Edward Coke, an English barrister and judge, reinterpreted Magna Carta and used it to defend against certain oppressive tactics by the monarchy. This interpretation led to a more widespread application of Magna Carta such that it extended rights and freedoms to all English people.

When these English citizens and their children relocated and established colonies in America, the principles of Magna Carta survived and advanced to this land. Amid this country’s development and growth over the ensuing decades, Magna Carta’s influence not only survived but eventually advanced to all Americans. These and other principles traceable to Magna Carta are now embedded in the United States Constitution, the Bill of Rights, and, obviously, much of our case law.

Bar associations, historical societies, and countless other organizations around the globe are celebrating the 800th anniversary of Magna Carta. In fact, the American Bar Association is sponsoring a host of commemorative activities. If you are interested in learning more about them, please visit the ABA’s website at www.americanbar.org, entering “Magna Carta” as a search term. If the history buff in you wants to learn more about the origins, development, and impact of Magna Carta, I recommend that you visit www.magnacarta800th.com.

The HCBA is joining in the celebration of Magna Carta’s 800th anniversary as our theme for this year’s Law Week (March 16-20) is “Magna Carta: Symbol of Freedom Under Law.” I thank our Law Week Committee — led by Co-Chairs Amy Nath, Maja Lacevic, and Alex Haddad — which has worked so hard to assure another fabulous week this year. For more information about our Law Week events, please see Alex Haddad’s well-written article on Page 12.

Finally, as “respect for the law” is one of the principles behind our HCBA mission themed “Operation Respect and Service,” let us all recognize and be thankful for the enduring effects that Magna Carta continues to have on our freedoms, society, and ways of life. Surviving and advancing for 800 years now, perhaps the least we could do is to indulge in a little “Magna Carta Madness.”
YLD President’s Message
Anthony “Nino” Martino - Clark ♦ Martino, P.A.

YLD’s Outstanding Young Lawyer and Jurist Awards

The excellence demonstrated by both recipients provides an example that we should all aspire to in our own professional development.

In the September issue of this magazine, I wrote about the opportunities available through the Young Lawyers Division and encouraged all young lawyers to get more involved professionally to help us make a difference in Hillsborough County. In this issue, I would like to recognize two amazing local Bar members whose activities and service have furthered the interests of the legal profession, especially relating to young lawyers. The YLD wishes to again recognize this year’s winners of the Outstanding Young Lawyer Award and the Robert W. Patton Outstanding Jurist Award.

This year’s YLD Outstanding Young Lawyer Award recipient is Jacqueline Simms-Petredis, who is being recognized as exemplary in the area of professionalism and in the practice of law in her field of practice. Jacqueline performed service to the community on a personal level and has been actively involved in the HCBA’s YLD, currently serving as the immediate past-president. Jacqueline was selected as the award winner in recognition of the difference she has made in the practice of law and the community through her ethics and conduct.

This year’s Outstanding Jurist Award recipient is Judge Emily Peacock, who is being recognized as an outstanding jurist with an excellent reputation for sound judicial decisions and an unblemished record for integrity as a lawyer and judge. Judge Peacock is recognized by the YLD members as highly qualified, active in Bar-related activities, and showing a concern for and willingness to assist young lawyers while demonstrating a respect for their abilities. Judge Peacock actively serves as a mentor for young lawyers through a number of organizations and is a previous recipient of the Distinguished Judicial Service Award, which recognizes a specific commitment to support pro bono legal services.

The YLD would like to thank Jacqueline Simms-Petredis and Judge Emily Peacock for their substantial contributions to the legal profession, the HCBA YLD, and the Hillsborough County community. The excellence demonstrated by both recipients provides an example that we should all aspire to in our own professional development.

Recent & Upcoming YLD Events:
For more information on the YLD’s activities, check out our Facebook page at www.facebook.com/Hillsboroughbaryld. Please also volunteer or join us at the YLD booth at the Judicial Pig Roast on March 21; Law Week from March 16 to 20; Cornhole for a Cause on March 28; Steak and Sports Day, which is TBD; and State Court Trial Seminar on June 12. Additionally, family forms clinics will be held from 5:30 to 7:30 p.m. on April 21, May 19, and June 2 on the second floor of the George Edgecomb Courthouse. Please contact Ella Shenhav or Katelyn Desrosiers to get involved in any of the YLD’s pro bono activities.
The HCBA Young Lawyers Division hosted a quarterly luncheon on January 28 featuring Chris Morgan from Ricoh Legal, who discussed ethical considerations when using technology-assisted review. The YLD would like to thank the luncheon’s sponsor:

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Primary Trainer: Gregory Firestone, Ph.D.

Negotiating and Mediating Health Care Disputes
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ABA President-Elect Paulette Brown Encourages Inclusion at Diversity Luncheon

Also at the luncheon, Marsha Rydberg was named the HCBA’s 2014 Outstanding Lawyer, and the YLD awards were presented.

A product of segregated schools in Baltimore, American Bar Association President-Elect Paulette Brown says the only lawyer she knew growing up was TV’s Perry Mason. So she says it will be a little “surreal” when she makes history and is installed this summer as the first African-American woman to become president of the ABA. Brown also will be only the sixth female president in the ABA’s 137-year history.

“I could not have imagined that this day will come,” said Brown, who was the keynote speaker at the HCBA’s Diversity Membership Luncheon on January 22 at the downtown Hilton.

In her remarks, Brown talked about the need for greater diversity and inclusion in the legal community, the values instilled in her as a child that have helped her along in her career, and her priorities as incoming president of the ABA. Over the years, Brown has held a variety of leadership positions within the ABA, and she has been recognized by the National Law Journal as one of “The 50 Most Influential Minority Lawyers in America.”

The issue of diversity at law firms should not just be about numbers or quotas, said Brown, who is a labor and employment lawyer and chief diversity officer with the Morristown, N.J., office of Locke Lord Edwards. “Clients are requiring law firms to be more and more diverse and inclusive,” Brown told the more than 350 people in attendance.

Law firms are viewed as more progressive by young lawyers and students when they make people from diverse backgrounds feel accepted and included, she said. And firms have a responsibility to provide real opportunities — economic and otherwise — that will make diverse employees want to remain. It’s up to firm managers to help bring about greater diversity because “those in power are those who can effectuate change,” Brown said.

She also referenced recent events in the news dealing with race, such as the police shooting case in Ferguson,

Continued on page 9
LEADERSHIP INSTITUTE VISITS MOFFITT

The HCBA’s Bar Leadership Institute visited Moffitt Cancer Center on December 11 as part of the group’s learning modules for the year. The class learned about Moffitt’s efforts to fight cancer locally and nationwide. The BLI class greatly appreciates the professionals who took time out of their busy schedules to speak with the group. The HCBA also would like to thank the Bar Leadership Institute’s sponsor: The Bank of Tampa.

Continued from page 8

Mo. “Even with all the tensions going on ... more people are coalescing together for the same goals, and there is beginning to be a dialogue in this country about race relations,” Brown said. “It’s a difficult subject to talk about.”

Brown encouraged those in attendance to participate in the national discussion about race because “talking aids us in being diverse, and not just in the legal community, but society as a whole.”

The only one of four siblings to attend college, Brown said the values ingrained in her at an early age — such as working hard to succeed, treating others with respect, and giving back — have remained with her throughout her career.

Concluding her remarks, Brown said she is looking forward to her term as ABA president. “I have a duty to do my best,” she said.

One of her main initiatives will be what she calls “Main Street ABA.” In her travels around the U.S. during her term, Brown says she intends to go to places that ABA presidents traditionally don’t visit, such as Boys & Girls Clubs, so she can encourage young people and serve as a role model.

* * * * * * * *

Also at the membership luncheon, U.S. District Judge James Moody Jr. announced Marsha Rydberg as the winner of the HCBA’s 2014 Outstanding Lawyer Award. In his introduction, Judge Moody cited Rydberg’s many accomplishments and “firsts” during her impressive career. For example, Rydberg, who has her own firm, became the first female president of the HCBA in 1991, and she was recently inducted into the Stetson University College of Law Hall of Fame.

Meanwhile, Anthony Martino, president of the Young Lawyers Division, announced two YLD awards. The 2014 YLD Outstanding Jurist Award went to Thirteenth Circuit Court Judge Emily Peacock, and the 2014 YLD Outstanding Young Lawyer Award went to Jacqueline Simms-Petredis of Burr & Forman.

Congratulations to all these outstanding award winners. See you around the Chet.
Juror expectations have risen dramatically with the popularity of forensic evidence television programming. In certain cases, the courtroom does not disappoint. The field of forensic science is rapidly expanding and innovative. Although it remains true that nothing beats good detective work, investigators today routinely turn to science when catching criminals. Forensic investigation is the art of discovering hidden clues left by a perpetrator. Although sophisticated criminals sanitize the crime scene, evidence often remains, and clues can be gleaned through the examination of blood spatter, materials analysis, and the use of advanced equipment such as laser beams.

Long before the terms “forensic evidence” and “crime scene investigator” were coined, detectives had discovered the evidentiary value of fingerprints. No two people, not even identical twins, have the same fingerprint. It is also impossible to change a fingerprint. The FBI established a national repository for fingerprint records in 1924, filing prints lifted from crime scenes according to major pattern. At the time, law enforcement could obtain only patent prints, those visible to the naked eye. A criminal can easily remove patent prints. Latent fingerprints are not readily observable and can be easily missed, but they remain behind to identify, and perhaps to convict, the perpetrator. Today, these prints are discovered with the use of electronic, chemical, and physical processing techniques that permit the visualization of invisible latent prints.

In homicide cases, prime forensic evidence is gained during an autopsy. The corpse itself is a crime scene yielding critical evidence. The autopsy may reveal the entry and exit wound of a penetrating weapon, which can be crucial evidence in supporting or rebutting a claim of self-defense. The presence of defensive wounds on a victim’s body is useful in establishing a defendant as the aggressor. Pathologists examine bodily organs and fluids to yield evidence of poisoning, drug ingestion, or malnourishment.

When the crime scene is saturated with blood, a serologist may be able to scientifically reconstruct the crime. Blood is subject to gravity, and the pattern of the blood left behind can be of great evidentiary value. The final resting place of the homicide victim may not be the location where he or she was attacked. By identifying the location of the initial attack, investigators can search this area for additional clues. This location may yield additional biological evidence necessary to establish the identification of the killer, as well as non-biological evidence such as shoe prints or weapons. When multiple stab wounds have been inflicted to the same bodily area, it is difficult to determine the precise number of stab wounds. Each time a weapon is drawn back, blood flies from the weapon, leaving a cast-off stain. A serologist will study the pattern of cast-off stains to help determine the number of strikes. This evidence may be critical in proving premeditation or self-defense.

These forensic tools are often an important part of a successful prosecution. Our office will continue to use these methods to seek justice in the courtroom.
Hillsborough County Bar Association 100 Club
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Law Week 2015: Magna Carta, the Symbol of Freedom Under Law

Today, Magna Carta has taken root as an international symbol of the rule of law and as an inspiration for basic rights Americans hold dear, including due process, habeas corpus, trial by jury, and the right to travel.

Lord Neuberger, president of the Supreme Court of the United Kingdom, once said, “Where justice is concerned, the principles of Magna Carta are a reference to which we should always return to ensure that we are proceeding in the right direction.”

On June 15, 1215, King John of England was forced to affix his seal to Magna Carta by a group of barons who wanted to ensure their rights and property against a tyrannical king. Although the interests of the

Continued on page 13
common man were not at the forefront of the drafters’ minds, there are two principles expressed in Magna Carta that resonate to this day:

“No freeman shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers or by the law of the land.”

“To no one will we sell, to no one will we deny or delay, right or justice.”

During the American Revolution, Magna Carta served as an inspiration to act in liberty’s defense. One of those rights is that no person, no matter how powerful, is above the law. Those rights guaranteed by Magna Carta were embedded into the laws of the colonists’ states and later into the Constitution and Bill of Rights. Today, Magna Carta has taken root as an international symbol of the rule of law and as an inspiration for basic rights Americans hold dear, including due process, habeas corpus, trial by jury, and the right to travel.

This year’s Law Week theme is “Magna Carta: Symbol of Freedom Under Law.” As we approach the 800th anniversary of Magna Carta, Law Week’s aim is to reflect on the importance of a citizen’s most basic rights, the rule of law, and the challenges we still face in ensuring that all Americans have access to justice.

Law Week will take place this year from March 16 through 20. Law Week volunteers will educate local youth on Magna Carta and the development of the rule of law in the United States. Law Week provides opportunities for attorneys all across Hillsborough County to break away from their daily routines to reach out to local students through three types of activities: courthouse tours, classroom discussions, and mock trials.

The courthouse tours involve leading groups of students through courtrooms and other areas of the courthouse to give them a glimpse of the rule of law in action. Classroom discussions involve traveling to a local school to lead a class or group of students in a discussion on the law and answer student questions. Finally, volunteers who participate in mock trials team up in groups of two and work with students in presenting a student-friendly case. Participating schools are located throughout the county, and volunteer attorneys are welcome to participate in any of the three activities available.

To learn more about Law Week 2015 or volunteering, please contact Young Lawyers Division Law Week Committee Co-Chairs Amy Nath (anath@shrinenet.org), Maja Lacevic (Maja.Lacevic@csklegal.com), or Alex Haddad (ahaddad@burr.com).

Author: Alexandra Haddad - Burr & Forman, LLP
An Interview with the Hon. Susan C. Bucklew

“Sometimes I think we forget how fortunate we are to have such an interesting profession.”

Q. Judge, there are probably those who have appeared before you who are not at all familiar with your background. Can you tell us a little about where you grew up and went to school?

A. Yes. I grew up in Tampa. I was actually born in Seminole Heights and raised on Clifton Street. I went to public schools: Seminole Elementary, Sligh Junior High, and Hillsborough High School. I graduated from Hillsborough in 1960.

Q. Where did you go to college?

A. Went to Florida State.

Q. After graduating from college, I understand that you actually taught school.

A. I taught for a total of five years. I was an English major and enjoyed the English classes. I love to read. Always have. When I got to be a senior, my parents said to me, “Now, what are you going to do when you graduate?” And that was a valid concern because I wasn’t really sure what I would do with an English degree. So I took enough education courses to be able to teach. I came back to Tampa the last semester of my senior year and interned at Plant High School and was then offered a job at Plant High School.

Q. Any traits that you mastered in the classroom that carry over to the bench?

A. Patience is probably the biggest thing I learned from teaching.

Q. As the first female county court judge and first female circuit court judge here in Hillsborough County, what challenges did you face trailblazing the way for women in the judiciary locally?

A. When I was appointed in 1982, Hillsborough County had nine county judges, and I was the only woman. In 1986, I was appointed circuit judge, the only woman out of about 22 circuit judges. I look back at both with fondness; I was never uncomfortable. I might have been treated differently in some ways, but I do not recall feeling discriminated against because I was a female. Overall, it was a smooth transition.

Q. Is it gratifying now for you to see women following in your footsteps and being appointed or elected to the bench?

Continued on page 15
A. Absolutely. When I graduated from law school, I went to work for Jim Walter Corporation and was lucky to have a boss who became a mentor — Jim Kynes. I remember when I was appointed to the county court, among the pieces of advice he gave me — because he was good at giving advice — was, “You better not screw up because if you screw up, there won’t be another female judge for a long time.” There still wasn’t another female judge for quite a while, but I don’t think it was because I screwed up.

Q. You served in the state court system for about 10 years and then were appointed by President Clinton to the federal district court bench in 1993. Having served extensively on both the state and federal bench, in terms of the day-to-day administration of cases, what would you say are the biggest differences?

A. I have a friend who describes the differences in the federal court and the state court like this: Walking into a state court is like walking into a circus. For example, in criminal court, at any one time, you may have a number of public defenders and defense attorneys, a number of prosecutors, spectators, and many defendants both in and out of custody. The judge is the ringmaster. Whereas, when you come to federal court, it’s like walking into a library. It is quiet and a little intimidating. There might be two attorneys, perhaps the parties or a defendant and the judge. I think the circus and the library is a pretty good comparison.

Continued on page 16
Q. Probably thousands of lawyers have appeared before you during your 30-plus years on the bench. What two or three traits do the very best lawyers all seem to share?

A. I think the best lawyers are prepared, and when I say prepared, that’s not just coming to court and making an oral presentation. That means spending the time necessary to answer the judge’s questions or anything opposing counsel might bring up. Also, the best lawyers are professional. They treat opposing counsel well, treat the judge well, and treat the courtroom personnel well.

Q. What are some of the difficulties facing the judiciary that you wished lawyers who appear before you better understood?

A. That we have more than your case. Sometimes I have a case where the lawyers inundate you with paper. By that I mean the filings are excessive and require an enormous amount of judicial time. So I think that lawyers need to understand that their case is one among many cases, and if you really want the judge to read what you have given them, then you cannot bury them with paper.

Q. You were a founding member and past president of the Cheatwood Inn of Court and an organizing member of the Herbert G. Goldburg Criminal Inn of Court. Why have you given so much to the local Inns of Court?

A. It has been an enjoyable, gratifying experience to watch the Inns of Court movement grow across the United States and in the Tampa area. It has been a fun experience for me, or I would not have stayed in for so long. The Inns of Court experience is so important for young lawyers because it gives them an opportunity to interact with experienced lawyers and judges on an informal basis, have dinner with them, play games with them, and plan programs with them.

Q. You took senior status awhile back, yet you still seem to maintain a full-time schedule on the bench. Is there really any difference between your role now as a senior status judge versus what you were before?

A. Yes, some. It has been six years since I took senior status. For me, it has been a work in progress. In the beginning, I did the same thing that I did as an active judge, but I have gradually cut down so that now I take a partial civil caseload and a full criminal caseload. I probably should cut down more than I have, but I haven’t because I still enjoy it. I still enjoy trying cases. I still enjoy the intellectual process. If I didn’t, I wouldn’t be here.

Q. Judge, I understand that you love sports. What is your favorite sport?

A. (Laughs) Well, it depends on the season. Recently, I have been watching a lot of football. Basketball season has started now so now I’m watching a lot of basketball. And in baseball season, I watch the Rays and, of course, Jesuit and little league baseball where my grandsons play. So, yes, I am a big sports fan.

Q. You mentioned earlier that you love to read as well. What’s the last book that you read that you really enjoyed?

A. I just finished “Big Little Lies,” which is just a fun book. But I also read a lot of fantasy fiction like the “Game of Thrones” series or the “Hunger Games” series. I made myself a promise that I would try to read more nonfiction books. I really like books that I can lose myself in. I have friends who make fun of me because I read so much fantasy fiction, but I enjoy it. What can I say?

Q. I also understand that you love to travel. Any particular trips or vacations that stand out?

A. I just got back from South Africa. It is a very large, diverse, and interesting country. I went on an incredible safari at a game preserve, but the food and wine were also wonderful.

Q. During your long and distinguished career, can you single out any particular aspect that you found to be most fulfilling or gratifying?

A. I guess the opportunity as a federal judge to work with law clerks, to watch them grow and to share their excitement in the law. Sometimes I think we forget how fortunate we are to have such an interesting profession.

Q. You’re obviously nowhere near being finished yet, but how would you like to be remembered for your time on the bench?

A. As fair, as approachable, as someone who did not take myself too seriously, and as a judge who you and other lawyers as well as my family and friends could be proud of.
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Roasts to Remember

Fabulous food, festive drinks, fun, and a few pigs have all played a part in making the HCBA’s Judicial Pig Roast/Food Festival & 5K Pro Bono River Run a success. The HCBA hosted its 1st Annual Barrister Bash Pig Roast 11 years ago on April 3, 2004. From its inception, the event was a hit with more than 400 attendees and 22 food booths. Prizes for “Best Pig Slop” and “Best Pigsty” were awarded at the first Pig Roast and made for even hungrier competition year after year. The first winners of the “Best Pig Sty” award went to Professional Placement Services for Mama Rosa’s Meatballs (Cerese Taylor, Christina Moore & Susan Etheridge). The first winners of the “Best Pig Slop” award went to Judges Raul Palomino, Manny Lopez, Ed Bergmann, Robert Foster, Debra Behnke, Jack Espinosa, Ralph Stoddard, and Walter Heinrich.

In 2009, perhaps to relieve some guilt from “pigging” out, the Pig Roast Committee added the 5K Race to the Courthouse to the feast. The hungriest, and so the fastest, runners at the first 5K race were Dan Traver and Andrea Baldwin. Judge Mark Wolfe took the prize for fastest judge, and Gray Robinson won fastest team. Four years after its inception, the 5K race became the 5K Pro Bono River Run in 2013, so as to continue encouraging lawyers to donate time and legal aid.

The Pig Roast itself evolved from the first Barrister Bash Pig Roast in 2004 to the Judicial Pig Roast 2005. Then, after eight years of endless misrepresentation complaints from the other farm animals, in 2013 the event was officially named the Judicial Pig Roast/Food Festival.

Although the Pig Roast and 5K have experienced many changes over the years, one thing has remained the same: the fun that HCBA members have when surrounded by good food and good company. The HCBA appreciates all of its members who have helped make this event a success over the years. We look forward to seeing you at the 12th Annual Judicial Pig Roast/Food Festival & 5K Pro Bono River Run on March 21!
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The harmless error standard applicable to civil cases has changed. Late last year, the Florida Supreme Court held that an error is harmless if “the error complained of did not contribute to the verdict” or “there is no reasonable possibility that the error complained of contributed to the verdict.” *Special v. W. Boca Med. Ctr.*, 2014 WL 5856384, at *1 (Fla. Nov. 13, 2014). This new test is a modified version of the standard from *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986), that applies in criminal cases.

The *Special* test places the burden of proving harmless error on the beneficiary of an error. It also places an obligation on the appellate court to examine the entire record and to focus on the effect of an error on the fact-finder. The court cannot focus solely on the outcome of a case to decide whether an error is harmless. An error is harmful unless the beneficiary of the error proves there is no reasonable possibility that the error contributed to the verdict. The harmless error analysis from *Special* is concerned with the process of arriving at a result and is not limited to the result itself.

The *Special* test supersedes the earlier harmless error standard in civil cases that applied in the Second District. The Second District Court of Appeal had previously formulated a test that focused only on the result: An error required reversal only if it was “reasonably probable that a result more favorable to the appellant would have been reached if the error had not been committed.” *Damico v. Lundberg*, 379 So. 2d 964, 965 (Fla. 2d DCA 1979). The *Damico* standard differs from the *Special* test in two ways: (1) *Damico* focused on the effect of an error on the result regardless of any effect on the fact-finder, and (2) a reversal under *Damico* required a “reasonable probability” instead of the mere “reasonable possibility” from *Special*.

At first blush, the *Special* test may increase the number of reversals. Appellate courts will now reverse when an error affects the fact-finder, even if the error had no impact on the result. And appellees will have to meet the “reasonable possibility” standard derived from *DiGuilio*, which is based on the higher burden of proof in criminal cases and reflects “the strictest formulation of the harmless error test.” *Special*, 2014 WL 5856384, at *16 (Pariente, J., concurring in part and dissenting in part). A case will now be reversed if there is any “reasonable possibility” that the error contributed to the verdict.

Further, *Special* may have an impact on motions for new trial. A trial judge ruling on such a motion effectively acts as an appellate judge, immediately correcting a prejudicial error. *Krolick v. Monroe*, 909 So. 2d 910, 914 (Fla. 2d DCA 2005). Therefore, if *Special* makes it easier to show prejudicial error, then trial courts may also be more likely to grant motions for new trial.

**Author:**
Ezequiel Lugo - Butler Pappas Weihmuller Katz Craig LLP

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HCBA PAST PRESIDENTS LUNCHEON

The HCBA was honored to host a large gathering of our past presidents and editors of the Lawyer magazine on December 8 for the annual Past Presidents Luncheon. The luncheon featured a special celebration of the magazine, which has been serving the local legal community now for 25 years.

The HCBA would like to thank the luncheon's sponsor:
The dearth of collaborative case law exists for good reason. Assuming that collaborations are successful, and most are, collaborative teams model problem-solving behaviors and communication skills so that their clients learn to resolve future disputes without resorting to the litigation process. Less trial and post-judgment litigation means less appellate litigation, which means less case law. In the typical collaborative divorce, no court is involved other than to approve the parties’ agreement.

Collaborative practice is similar to mediation. What mediation case law exists usually concerns setting aside an agreement caused by coercion or duress, which is unlikely to occur in the collaborative setting, where the entire team, both neutral and allied professionals, works together to construct an agreement acceptable to both parties.

In a recent local post-judgment case, the clients had initially collaborated their way to a marital settlement agreement (MSA). One of their collaborative attorneys later petitioned for modification. Naturally, the other party’s new lawyer moved to disqualify him.

Had the parties attempted to resolve their disagreements collaboratively? If so, why were they unsuccessful? We don’t know.

There’s no authority preventing a collaborative attorney from litigating once the original collaborative participation agreement (PA) is accomplished and a divorce finalized. Further, this collaborative MSA included the standard provision that the agreement contained the entire understanding and replaced any prior agreements between the parties. There was no exception for the PA.

Ultimately, the judge ruled that the PA was no longer in effect, and the collaborative attorney was not barred from participating in post-judgment litigation.

Practice Tip One: Ensure that your collaborative MSA specifies that it does not nullify the PA (which includes the disqualification clause) and that the disqualification clause applies to post-judgment matters.

Practice Tip Two: Ensure that your MSA provides that clients unable to compromise in later disagreements themselves return to collaboration before seeking recourse in court.

In 2012, an opposing party moved to disqualify me, contending that we had already begun the collaborative process when the parties opted for litigation instead. The parties had not retained joint neutrals, and only one had signed the PA. (My client was uncomfortable with the disqualification provision.) Our expert opined that the collaborative process had never begun because not all participants had executed the PA. Opposing counsel argued that the parties had orally agreed to proceed collaboratively, disqualifying the attorneys when the process failed. There were no statutes, local rules, or case law governing collaborative divorce; the judge was writing on a blank slate.

Ultimately, he held that I was not disqualified; there was no collaborative participation agreement signed and no meeting of the minds regarding disqualification. Because there was no appeal, the unreported opinion was consigned to law’s black hole.

Because of the negotiating lessons learned by collaborating parties, the lack of case law is likely to last. That is why it is so critical for collaborative statutes and rules to be passed. Once we pass the Uniform Collaborative Law Act in Florida, disqualification will be a matter of law.

Authors:
Joryn Jenkins and Lori Skipper - Open Palm Law

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COLLABORATIVE LAW LUNCHEON

The HCBA Collaborative Law Section hosted a panel discussion luncheon on December 19. The group discussed “When Collaborative Cases Come Before the Court ... Potential Pitfalls and How We Can Avoid Them.”

JUDICIAL CLE LUNCHEON

HCBA members learned how to “make, not break” their record on appeal during a judicial CLE luncheon on January 7. The HCBA would like to thank the judges who participated as a part of the CLE panel: Judge Kimberly Fernandez, Judge Dick Greco Jr., Judge Michelle Sisco, Judge Caroline Tesche, and Judge Samantha Ward.
Since the time that Lisa Esposito and I became involved as co-chairs of the Community Services Committee (CSC) almost two years ago, I have been humbled and amazed at the dedicated group of volunteers I have had the opportunity to work with on our numerous charity events. Amid the stress and time commitments of life, these volunteers have taken time out to truly make a difference in the lives of others. That is something the world so desperately needs right now.

After the success of the Adopt a Veteran event in October, during which volunteers gave their time so generously to fulfill the wish lists and hearts of veterans in need, countless volunteers stepped up once again to support the CSC’s Elves for Elders event in December. The CSC (due in no small part to the unwavering dedication and commitment of my co-chair, Lisa Esposito) was able to get 250 elders “adopted” this year! Without volunteer elves, these wonderful and inspiring seniors would have had no presents under their trees/ menorahs.

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

The CSC’s most challenging but deserving event to date, a Pirate Plunder Party for the children living at A Kid’s Place in Brandon, will take place in May. We will be throwing another amazing Pirate Party so these children can forget about their troubles for a day. A Kid’s Place is a 60-bed facility for abused, neglected, or abandoned children ages 2 to 17. The facility uses a live-in house-parent model, which provides the children with a family-living atmosphere and a variety of services to meet their social, educational, medical, and psychological needs. Organizing and implementing this event requires a significant amount of time and resources. We really appreciate and need any and all help that you can provide! To find out more about A Kid’s Place, please visit: www.akidsplacetb.org.

If you are interested in joining the CSC or volunteering for an upcoming event, please contact Lara LaVoie (lmlavoie11@gmail.com) or Lisa Esposito (lisa@lesposito.com).

Thank you for your generosity and support!

Author: Lara M. LaVoie - LaVoie & Kaizer, P.A.

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In Martin v. Zale Delaware, Inc., 2008 WL 5255555 (M.D. Fla. 2008), the plaintiff filed a motion to compel regarding discovery responses almost identical to the example language above, arguing that she was “confused as to which documents Defendant has withheld (if any) and why.” The court stated, “Parties are not permitted to assert these types of conclusory, boilerplate objections that fail to explain the precise grounds that make the request objectionable,” and “an objection that a discovery request is irrelevant and not reasonably calculated to lead to admissible evidence must include a specific explanation describing why.”

Most importantly, however, the court stated: “Additionally, it is common practice for a party to assert boilerplate objections and then state that ‘notwithstanding the above,’ the party will respond to the discovery request, ‘subject to or without waving the objection.’ Such an objection and answer preserves nothing and wastes the time and resources of the parties and the court.”


Therefore, whether you agree with the courts’ rationale regarding waiving objections, use caution when using form objections and answers in responding to written discovery. In this day and age of overcrowded court dockets, courts may become increasingly unsympathetic to counsel who raise these types of objections. To avoid this situation, provide a detailed basis for any objection — and remember, object and answer “subject to your objection” at your own risk.

Author:
Erin E. Banks - Carlton Fields Jorden Burt, P.A.
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Dealing with marijuana issues in the workplace is increasingly becoming a dicey proposition. If you are like me, your preference would be to handle this issue in the workplace just like you handle it at home, which in my case, with four teenage sons, means zero tolerance, no questions asked. If I find out you are smoking marijuana, if left to me, you would be fired (or grounded for life, in the case of my boys). However, much to my regret, “the times, they are a changin’.”

I recently ran across a case from the New Mexico Court of Appeals, *Maez v. Riley Industrial*, 2015 WL 178359 (N.M. Ct. App. Jan. 13, 2015), which held that marijuana was a compensable drug in a workers’ compensation case where the use of medical marijuana will be debated. These state laws vary on whether an employer can terminate an employee for a positive drug test result. In states such as Arizona, Delaware, Connecticut, and Rhode Island, medical marijuana users are protected from discrimination for their use of marijuana. So, if your company has a standard zero tolerance policy and operates in several locations, it would be wise to research state law before terminating an employee who tests positive for marijuana.

1. Zero tolerance policies.

There are at least 23 states that recognize the use of medical marijuana. Several more states may introduce legislation this year where the merits of medical marijuana will be debated. These state laws vary on whether an employer can terminate an employee for a positive drug test result. In states such as Arizona, Delaware, Connecticut, and Rhode Island, medical marijuana users are protected from discrimination for their use of marijuana. So, if your company has a standard zero tolerance policy and operates in several locations, it would be wise to research state law before terminating an employee who tests positive for marijuana.

2. ADA protection issues. Under the Americans with Disabilities Act (ADA), the use of illegal drugs as defined by federal law is not protected. Marijuana remains illegal under federal law because it is classified as a Schedule 1 drug under the Controlled Substances Act (21 U.S.C. § 801 et seq.). Therefore, employers are not required to accommodate an employee’s use of marijuana for medical purposes in the workplace or during working hours. So, if Mr. Maez (from the case above) comes back to work and wants to use marijuana in the workplace, the employer does not have to accommodate this request. However, assuming Mr. Maez is disabled, other ADA reasonable accommodations would have to be considered.

3. Recreational use can be prohibited. Medical marijuana laws, in general, require the user to obtain a card or other documentation justifying use. In cases where employees are just smoking marijuana for recreational purposes, employers remain free to enforce drug-free workplace laws.

In summary, the days of “Just Say No to Drugs” seem to be a thing of the past. However unfortunate you (or I) think this may be, the fact is that in-house counsel need to stay up to date on the changing legal landscape involving these issues.

Author: John W. Bencivenga - Helios
CRIMINAL LAW SECTION CLE

The HCBA Criminal Law Section welcomed Todd Foster to a CLE luncheon on "The Use and Admissibility of Social Media and Electronic Evidence in the Criminal Trial" on January 16. Foster discussed the strategies associated with electronic and social media evidence, as well as advising clients on their social media use. The section would like to thank the sponsor: Sober101.com.

HEALTH CARE LAW CLE

The HCBA Health Care Law Section hosted a CLE luncheon featuring guest speaker Nathaniel Lacktman, a partner and health care lawyer with Foley & Lardner LLP, on December 3. Lacktman discussed the current law in Florida for telemedicine; comparisons of other state rules, law, and policy; and key legal issues for advising telemedicine clients. The section would like to thank the luncheon’s sponsor:
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n the last edition of the Lawyer magazine, we addressed the Florida Supreme Court’s amendment of Florida Rule of Criminal Procedure 3.220 regarding disclosure of informant witnesses. In re Amend. to Rule of Crim. Proc. 3.220, 140 So. 3d 538 (Fla. 2014). Among the information to be disclosed is whether the informant witness has received, or expects to receive, anything in exchange for his or her testimony, as well as the informant witness’s prior history of cooperation, in return for any benefit, as known to the prosecutor. Id. at 539. Identifying all potential inducements to the informant witness is a critical part of preparing an effective cross-examination, and the rule compels a broad range of material.

In considering the benefits afforded an informant, the term “anything” includes but is not limited to any deal, promise, inducement, pay, leniency, immunity, personal advantage, vindication, or other benefit that the prosecution, or any person acting on behalf of the prosecution, has knowingly made or may make in the future. Id. at 539-540. A promise “knowingly made” would seem to eliminate from disclosure expectations an informant may unilaterally hold. However, the text of the rule contemplates benefits the witness “expects to receive.” If you are able to depose an informant witness, consider questions about the witness’s personal expectations because they may differ from those disclosed by the state and may be based on something unknown to the prosecutor but known to law enforcement or the like.

Importantly, the benefits to be disclosed are not just those related to the present case in which the witness is expected to testify. The state is obligated to disclose benefits it “may make in the future,” which denotes benefits that are being contemplated but not yet offered to a witness. This could also include anticipated benefits for assistance in future cases. Often, the benefits available to an informant may be intangible benefits such as a one-time or a continuing relationship with law enforcement. State v. Fernandez, 141 So. 3d 1211, 1221 (Fla. 2d DCA 2014). The rule also requires disclosure of past cooperation and benefits. By including past and future benefits, the rule reaches all inducements that could influence the witness’s testimony.

As discussed in the previous article, distinguishing between a confidential informant and an informant witness significantly alters the disclosure required. The state has historically owned a limited privilege to withhold the identity of confidential informants, those who provide law enforcement officers with information about criminal activity. State v. Burgos, 985 So. 2d 642, 644 (Fla. 2d DCA 2008). The burden is on the defendant claiming an exception to the rule to demonstrate that an informant’s identity or the content of the informant’s communication would be relevant and helpful to a specific defense or “essential to a fair determination of the cause at issue.” Id.; see also Fla. R. Crim. P. 3.220(g)(2). Mere speculation or bare allegations justifying disclosure are insufficient to overcome the privilege. Burgos, 985 So. 2d at 645. However, if the defendant is faced with the Catch-22 of not knowing the relevance of the informant without the information protected by the privilege, consider asking the court to require the state to produce the informant for an in-camera hearing at which the trial court could evaluate whether disclosure of the informant was essential to a fair determination of the cause. Id.

Author: Matt Luka - Trombley & Hanes, P.A.
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COFFEE AT THE COURTHOUSE

Young attorneys and judges gathered to grab a bite and get to know each other at the YLD’s Coffee at the Courthouse & Judicial Shadowing Day on December 2. After breakfast, the attorneys spent the morning shadowing judges to learn more about a typical “day in the life.”

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FLORIDA BAR PRO BONO AWARDS

Several local legal professionals were recognized during the 2015 Pro Bono Service Awards ceremony on January 29 at the Supreme Court of Florida. Local recipients were:

- **Distinguished Judicial Service Award:**
  The Honorable Ashley B. Moody,
  Thirteenth Judicial Circuit
- **Young Lawyers Division Pro Bono Service Award:** Sara Alpert
- **The Florida Bar President’s Pro Bono Service Award:** Elizabeth L. “Betsey” Hapner
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HCBA members celebrated diversity and inclusion on January 22 during a Membership Luncheon featuring ABA President-Elect Paulette Brown. Brown shared some of the lessons she has learned about inclusion, as well as her goals for the ABA during her term as president. Also at the luncheon, Judge James Moody Jr. presented the HCBA’s Outstanding Lawyer Award to Marsha Rydberg, and YLD President Anthony Martino presented the Robert W. Patton Outstanding Jurist Award to Judge Emily Peacock and the Outstanding Young Lawyer Award to Jacqueline Simms-Petredis. The HCBA would like to thank the luncheon’s sponsor:
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TOAST & ROAST RECEPTION FOR CHIEF JUDGE MENENDEZ

The Hillsborough County Bar Association and Hillsborough County Bar Foundation hosted a Toast & Roast Reception on December 4 to honor retiring Chief Judge Manuel Menendez Jr. The evening featured former U.S. Attorney Bobby O’Neill as the master of ceremonies, along with special tributes and presentations by HCBA President Benjamin Hill IV; HCBF President Bill Schifino; Florida Supreme Court Chief Justice Jorge Labarga; Senior U.S. District Judge Susan Bucklew; Sheriff David Gee; County Commissioner Sandy Murman; Terry Smiljanich; Ron Cacciatore; Richard Martin; and Christine Menendez. The HCBA and HCBF appreciate the support Judge Menendez has shown the Bar during his years of service.
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Florida is one of 15 states (plus the District of Columbia) with direct file statutes. Under Florida’s direct file law, prosecutors have the ability to try juveniles as adults. The direct file process allows a state attorney to use his or her “judgment and discretion” to transfer children age 16 or 17 (at the time of the alleged offense) to adult court when the public interest requires that “adult sanctions be considered or imposed.”

Not everyone is aware that prosecutors wield this power. Approximately 98 percent of juvenile cases transferred to adult court in Florida are a result of the direct file statute. Florida has the dubious distinction of having transferred more children into the adult system than any other state. This is problematic for several reasons.

The statistical data indicates that the discretionary nature of Florida’s direct file statute has a disturbing, disproportionate impact on minority children. Human Rights Watch analyzed Florida data from fiscal years 2008-09 to 2012-13. It discovered that, while only 27.2 percent of arrested youth were black males, 51.4 percent of the youth transferred into the adult system were black males. By comparison, during the same time period, 28 percent of the total youth arrested were white males, but only 24.4 percent of them were direct filed.7

The Thirteenth Judicial Circuit (Hillsborough County) had the highest transfer of children to adult court from fiscal years 2009-10 through 2012-13.8 For the 2013-14 fiscal year, the Thirteenth Circuit was ranked third in the state behind the Seventeenth and Sixth Judicial Circuits.9 In the Thirteenth Circuit, 36.3 percent of the youth arrested in the fiscal year 2013-14 were black males, while 56.4 percent (57/101) of the youth transferred to adult court were black males.10 During the same time period in the Thirteenth Circuit, 20.1 percent of the youth arrested were white males, and only 12.9 percent (13/101) of those direct filed were white males.11

Transferring juveniles into the adult system is both detrimental to the public and devastating to the children transferred. It is harmful to the public because “transferring youth to the adult criminal system is more likely to aggravate recidivism than to stop it.”12 Children remaining in the juvenile system are less likely to commit crimes upon release. Juveniles in adult facilities are at increased risk of being victimized. Children in adult prisons are more likely to be physically and sexually assaulted than those in juvenile facilities.13

Juveniles also lose the ability to receive educational and vocational services, behavioral and mental health treatment services, and substance abuse and sex offender treatment services, when needed.14 Denying these vital educational and rehabilitative services to children transferred into the adult system makes them less productive members of society upon re-entry from the penal system.

The impact of being sentenced as an adult has lifelong ramifications. Children who have been transferred to the adult system face impediments to voting; obtaining gainful employment, public assistance, and driver’s licenses; and preventing access to their criminal records.15 It is encouraging that direct file numbers are on the decline and that the Thirteenth Circuit is no longer ranked first in the state for direct files, but it is deeply troubling that the percentage of minorities direct filed is increasing. If, as they say, the children are our future, then shouldn’t we be encouraging their rehabilitation?

Continued on page 47
through the juvenile system, rather than dooming them to victimization and a lifetime of lost potential in the adult system?

3 Id.
4 Human Rights Watch, supra note 1, at 19.
6 Human Rights Watch, supra note 1, at 29 tbl.2.
7 Id.
9 Id.
10 Id.
11 Id.
14 Circuit Judge Ralph Stoddard, Direct File Transfer to Adult Court: Juvenile Sanctions for Youth Prosecuted as Adults, Powerpoint presentation at Conference on Continuing Judicial Education for Circuit Court Judges in August 2013.

Author: Amanda Buffinton – Bush Ross, PA.

Bay Area Legal Services’ Legal Information Center (LIC) provides support and assistance to individuals representing themselves in a Hillsborough County family law case. The LIC, located in the George Edgecomb Courthouse, assists pro se litigants by providing tools and guidance to help them resolve their legal issues. Since its inception in October 2000, several supporters have joined BALS to fund the LIC, including Buchanan Ingersoll & Rooney PC/Fowler White Boggs, Carlton Fields Jorden Burt, Holland & Knight, and TECO Energy. To learn about adding your name to the LIC’s list of supporters, please contact Development Director Rose Brempong at (813) 232-1222, Ext. 131, or Rbrempong@bals.org.
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Spring is just around the corner! As we switch gears to a new season, we would like to take this opportunity to share what occurred during our first meetings of 2015 and to update you on the lineup of speakers for the rest of the 2014-2015 year.

Our first speaker of 2015 was scheduled to be Dale Krause of Krause Financial Services; however, due to bad weather and flight delays, Dale was unable to attend the meeting. Instead, the meeting went forward as an open forum, which was well attended and very well received. Topics discussed included gifting-exempt assets, a complex SSI case study, and use of contingent SNTs in wills. Since this format worked so well, we may wish to consider scheduling at least one open forum meeting each year so that we can discuss complex issues that each of us is facing.

On February 5, Travis Finchum, a co-trustee of Guardian Pooled Trust, instructed us on SSI rules and lesser-known Medicaid programs such as QMB, SLMB, QI1, and Medically Needy. Travis also answered questions regarding special-needs trusts. On March 13, April Hill and Javier Centonzio gave us an insider’s overview of the VA health care system, as well as VA Pension and Aid & Attendance, service-connected compensation, and other VA benefits. April (Hill Law Group) is a frequent lecturer on these topics, and Javier (also of Hill Law Group) is a former clerk for the Federal Court of Appeals for Veterans’ Claims.

On April 23, Tae Kelley Bronner, a renowned expert on the subject of homestead, will be the speaker for a joint luncheon between our section and the Real Property, Probate & Trust Law Section. Tae will provide us with a review of the relevant law regarding the constitutional homestead exemption from claims of creditors and the impact of trusts on the availability of that exemption.

Dale Krause has been rescheduled and will appear at our final meeting of the year on May 29 to provide us with an overview of Medicaid and VA compliant annuities, options available to deal with noncompliant annuities, and the use of annuities in personal service contracts.

Each luncheon qualifies for one hour of CLE credit and provides the opportunity to visit and network with elder law attorneys and other professionals.

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In an unpublished decision in the final days of 2014, the United States District Court for the Southern District of Florida found that Florida’s health care system for needy and disabled children violated several federal laws.

The action in *Florida Pediatric Society v. Dudek* was initiated in 2005 by the Florida Pediatric Society, the Florida Association of Pediatric Dentists, and on behalf of several children in the Medicaid program by their parents or legal guardians. The defendants included the Florida Agency for Healthcare Administration (AHCA), the Florida Department of Children and Families (DCF), and the Department of Health (DOH).

AHCA is the agency responsible for providing oversight of Florida’s Medicaid program and is authorized to make payments for Medicaid-covered goods and services; DCF is responsible for making Medicaid eligibility determinations; and DOH administers Florida’s Children’s Medical Services program, which is responsible for ensuring that certain Medicaid patients with special health care needs receive Medicaid services.

Among its findings, the court stated that these agencies violated federal law because Florida’s Medicaid program had not compensated primary care physicians or specialists at competitive rates as compared with rates paid by Medicare or private insurance payors.

The federal Medicaid statutes require that medical assistance be furnished with reasonable promptness to all Medicaid-eligible individuals (the “Reasonable Promptness” provision). Such medical assistance includes “early and periodic screening, diagnostic, and treatment services” (EPSDT).

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FEDERAL JUDGE RULES FLORIDA MEDICAID PROGRAM VIOLATES U.S. LAWS
Health Care Law Section

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Services) for Medicaid-eligible individuals younger than 21.1 The court reasoned that the state’s structure for setting physician reimbursement failed to account for statutorily mandated factors, including sufficient compensation to assure an adequate supply of Medicaid physicians to meet the EPSDT Services requirement.2

Other factors the court relied upon to find an improper deprivation of rights to EPSDT Services included violations (often the result of bureaucratic error) of continuous Medicaid eligibility requirements3 and the failure of AHCA and DCF to promptly work together to ensure that when appropriate, newborns of Medicaid-eligible mothers were also Medicaid-eligible.4 The court explained that failure in this “baby of” process resulted in delayed activation of the child’s Medicaid number, which in turn delayed the child’s receipt of EPSDT Services (and violated the Reasonable Promptness provision) or his or her provider’s receipt of payment.5

The court also found that Florida’s physician reimbursement-setting practice resulted in artificially low Medicaid rates for certain physician services without consideration of physician-incurred costs or what is needed for sufficiently competitive rates to attract providers.6 In support of its finding, the court pointed to AHCA’s process for determining Florida Medicaid rates for certain services; to achieve budget neutrality, AHCA used a conversion factor to convert Medicare’s reimbursement rates to lower rates for use in the Florida Medicaid program.7

The defendants raised mootness points in response to the plaintiffs’ arguments, and as of the submission date for this article, a hearing is pending for further briefing with the parties on these points.8 The discussions on Medicaid expansion in Florida, as well as Medicaid physician reimbursement under the Affordable Care Act, continue in 2015. It will be interesting to see how these discussions are colored by the points raised in the Florida Pediatric Society case.

2 Id. at 144.
5 Florida Pediatric Soc’y, Doc. No. 1294 at 144.
6 Id.
7 Id. at 145.
8 Id. at 74-75, 145.
9 Id. at 144.
10 Id. at 59, 143.
11 Id. at 133.

Author:
Amy Nath - Shriners Hospital for Children

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CONDUCTING AN INTERNAL I-9 AUDIT

Immigration & Nationality Section
Chair: Maria del Carmen Ramos - Shumaker, Loop & Kendrick, LLP

Since 2009, there has been a dramatic change in Immigration and Customs Enforcement’s (ICE) workforce enforcement strategy. Before 2008, ICE focused its enforcement efforts almost exclusively on illegal workers. In 2009, however, ICE shifted its focus from illegal workers to employers who knowingly hired unauthorized workers. As part of its strategy of targeting employers, ICE began setting up centers across the country that are fully dedicated to worksite inspections.

Under the Immigration Reform and Control Act of 1986 (IRCA), employers are required to verify that an employee is authorized to work in the United States by completing and maintaining a completed Form I-9 for each employee hired on or after November 6, 1986. ICE enforces employers’ obligations under IRCA by, among other things, inspecting their I-9 forms.

Each I-9 violation can carry a penalty of $110 to $1,100 per form. Of course, the easiest way for employers to avoid potential fines is to make sure they are complying with their I-9 obligations — before they get audited. But employers should also consider conducting a self-audit to minimize the potential for fines. Here are five things to consider when conducting an I-9 self-audit:

1. Review Current I-9 Procedures. Review your verification system and policies to ensure that your policies satisfy IRCA and are being followed in practice.

2. Compare I-9 Forms with Payroll Records. Prepare a computer printout of all employees hired since November 6, 1986, containing the date of hire and date of termination for all such employees, to ensure there is an I-9 form for each employee.

3. Review How I-9 Forms Are Maintained. Make sure the I-9 forms are separated from employees’ personnel files and maintained in a separate I-9 file (or maintained electronically in compliance with the specific controls for electronic retention).

4. Correcting and/or Replacing a Form I-9. If the employer needs to correct the I-9 form, the new information should be inserted, signed, and dated as of the time of the insertion. If the omission or mistake was in Section 1 of the I-9 form, the employee should also sign and date the correction. Above all, the form should not be backdated.

5. Completing an Audit. Prepare a file memo that includes, at a minimum, errors discovered, corrections made, actions taken, any changes in policies, or training to undertake.

More than ever, employers should be particularly diligent when it comes to complying with their Form I-9 obligations. Remember, an employer faces civil and potential criminal liability for hiring undocumented workers (regardless of whether it was done knowingly). At the same time, an employer opens itself up to discrimination charges for not hiring newly documented workers who previously presented fraudulent documents.

Going forward, worksite enforcement inspections are only expected to increase. So being proactive and conducting a proper self-audit will be key to minimize potentially substantial fines.

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

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The HCBA Diversity Committee presented a lunch with the judges and a CLE on Diversity, Inclusion and the Effect of Implicit Bias on December 5 at the George E. Edgecomb Courthouse. The luncheon featured a panel presentation related to emerging legal issues in fairness and diversity from the practitioner’s perspective. The panel was moderated by Judge Scott M. Bernstein, chair of the Florida Supreme Court Standing Committee on Fairness and Diversity. After the luncheon, Professor Rachel Godsil, co-founder and director of research for the Perception Institute, discussed the challenges of achieving diversity and inclusion in the legal profession and how implicit bias plays a factor for women and minority attorneys. The Diversity Committee would like to thank the luncheon’s sponsor:
When the issue is not addressed by a written contract, sellers are generally deemed to have sold goods subject to an implied warranty of noninfringement.

In the electronic age, purchases move fast and often without a contract. The parties to a transaction may give little thought to allocating the risks involved. Even when the parties do enter a written agreement, with so many terms to negotiate and consider, the risk of intellectual property infringement might seem too remote to address.

So what happens then if the buyer or seller is accused of infringing the intellectual property rights of a third party? The answer to this question can have serious consequences. The mere threat of infringement can drive buyers to a different supplier. And the cost of litigating intellectual property disputes can be substantial. A 2013 American Intellectual Property Law Association survey reported that the average cost of litigating a patent-infringement suit through trial was $930,000 for cases where the amount of damages at stake was less than $1 million. The average cost of litigating even the smallest copyright, trademark, or trade secret disputes can range from $373,000 to $581,000.

When the issue is not addressed by a written contract, sellers are generally deemed to have sold goods subject to an implied warranty of noninfringement — that is, sellers warrant that the goods are free from any “rightful” infringement claim. Sellers may be responsible to indemnify a buyer for damages, as well as the attorneys’ fees and costs of defending an infringement claim. In some cases, this can be akin to giving buyers carte blanche to defend the claim, and sellers might even be on the hook for settlements entered by a buyer.

Importantly, proof of infringement isn’t necessary to breach the warranty, and a seller’s duty to indemnify a buyer arises upon receiving notice of the infringement claim. Court opinions vary on what constitutes a “rightful” infringement claim triggering the duty to indemnify, but under the most lenient standards, a rightful claim is any nonfrivolous claim having a significant impact on a buyer’s ability to use purchased goods. In short, sellers might be on the hook to indemnify a buyer even when the claim is relatively weak, and the monetary penalties can be substantial.

Sellers can try to protect themselves by disclaiming the warranty of noninfringement, as well as other warranties. Disclaimers must be in writing, reasonable, and conspicuous. It is a best practice to disclaim specific warranties by name. For obvious reasons, buyers might not accept a warranty disclaimer. And in some cases, the parties might exchange differing contract forms that “knock out” any warranty disclaimers.

The best way to avoid these problems is for the parties to negotiate a signed agreement. The parties should consider their options in allocating infringement risk, such as requiring a judgment based on a contested claim before indemnity is triggered, adding the right to negotiate a license, refunding the purchase price or cost of a substitute product, or an option for the seller to defend infringement claims. Negotiation can be time-consuming and expensive, but it is the best way to avoid surprises and ensure an enforceable agreement.

Author: Jeff Fabian - Shumaker, Loop & Kendrick, LLP
On December 11, the National Labor Relations Board (NLRB) reversed its prior position and held that employee use of email for activities directed to terms and conditions of employment must presumptively be permitted by employers who have given employees access to their email systems. The board’s decision in *Purple Communications, Inc.*, 361 NLRB 126 (2014), means that employees have the legal right to use company email for non-business-related reasons, including union organizing, and will require most employers to revise their electronic communications policies. The shift in the board’s opinion reflects the change in its political makeup, with its three Democrats reversing prior precedent and its two Republicans dissenting.

The *Purple Communications* decision is troublesome for employers because it is essential for most employers to provide employees with access to email systems for business purposes. Previously, in *Register-Guard*, 351 NLRB 1110 (2007), the board held that an employer may completely prohibit employees from using its email system for non-business purposes, provided it did not apply the ban discriminatorily. In *Purple Communications*, the board decided this analysis was “clearly incorrect,” focusing too much on employer property rights and too little on the importance of email to workplace communication. The majority opinion found email to be akin to the “new water cooler,” a “natural gathering place” for employees. Because an employer may not ban discussions on its property during non-working time, an employer may likewise not ban conversations occurring through email.

The board characterized its decision as “carefully limited” in two ways, neither of which provides much comfort to employers. First, the decision only applies to employees who have already been granted access to email systems, and employers are not required to grant access; however, most already do. Second, in undefined and “special circumstances,” an employer may justify a total ban on non-work use of email to maintain production or discipline.

An employer is permitted to apply limited, uniform, and consistently enforced controls over the email system, such as prohibiting mass emails and large attachments or audio/video segments. Further, “[a]n employer’s monitoring of electronic communications on its email system will similarly be lawful so long as the employer does nothing out of the ordinary, such as increasing monitoring during an organizational campaign, or focusing monitoring on union activists.” Additionally, an employer may continue to notify employees that it monitors email for management reasons and that there is no expectation of privacy in employee use of the email system.

The board continues to increasingly govern the non-union workplace. Although the decision will likely be appealed to federal court, employers are urged to immediately review their handbooks and consider revising them to come into compliance with the new standard. As a final note, the *Purple Communications* decision came just one day before the board implemented its long-anticipated “ambush election rules.” Now many union elections will occur within a mere 10 to 21 days after a union requests a vote.

Authors: Scott T. Silverman - Akerman LLP and Dee Anna D. Hays - Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
There is a saying: “It’s not the years in your life but the life in your years.” Often we hear this when we are mourning the loss of someone who was taken too soon, who did not get the chance to rack up enough years. The Marital & Family Law Section was hit hard this year with the unexpected passing of Alberto Romero. He was loved and respected by all and lived life to its fullest, savoring every one of the few years he had while making a memorable impact on our community.

One of the most difficult tasks as a family law attorney is to be professional while advocating for our clients given the high emotions most cases involve. Alberto was seen by his peers as always being professional, courteous, and displaying the utmost of ethics in every case he handled. He was a great lawyer, going the extra mile to become board certified. No case was too difficult, and he always took the challenge. He was a mentor to so many of us and was often consulted by his colleagues regarding issues in family law cases.

He is described by many as a “class act.” Alberto’s smile brightened every room he entered, no matter the situation he was walking into. When Alberto made an appearance in one of your cases, you knew the battle was going to be bearable. You also knew that whatever Alberto presented and represented was going to be honest and truthful. He always presented his arguments in an eloquent way. He was wise beyond his 39 years.

He was a great friend to many of us, never too busy to take a phone call or chat about an issue or problem you may have had — both professional and personal. He was trustworthy, and you knew it the minute you met him. Those of us who were close to him remember his contagious laughter. We remember his impeccable and classy style. He always had a positive attitude, and when we were stressed or sad, he knew what to say to help us get through that emotion. Alberto was very special, and he made each one of us feel very special as his friend.

It can never be said that Alberto didn’t “live.” Alberto loved to travel and experience culture. He was never afraid to go to a new place, meet new people, try new cuisine. He lived his life to the fullest and is an example to us all. He never let the job get in the way of truly living and doing the things he loved with those he loved. Alberto was one of a kind. He will truly be missed, not only as a colleague, a great family law attorney, but also a great friend. He leaves a void in our community that cannot be filled. We will forever remember Alberto.

Authors: Amber Boles - Phipps and Boles, PA; Courtney Bowes - Bowes Law Group; Natalie Baird - Baird Law Group
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The initiative has built a roster of mediators who agree to mediate federal cases on a pro bono basis. To qualify, mediators must be certified pursuant to Middle District Local Rule 9.02. Middle District judges and magistrates, as well as lawyers and parties involved in pro bono cases, have access to the roster. These users contact mediators directly to schedule mediation. When contacted, roster members are not obligated to accept the mediation, allowing a mediator to decline a case he or she does not feel comfortable mediating, such as a case involving unfamiliar or complex subjects or legal concepts.

Bankruptcy Court Judge Catherine McEwen, past chair of the Thirteenth Judicial Circuit’s Pro Bono Committee, was instrumental in creating the initiative and has used the roster in cases that have come before her. Some examples of the types of cases where she has assigned mediators from the roster include contract, fraud, and securities fraud cases. She often assigns mediators from the roster in cases where there is a pro bono attorney or where one side has an attorney and the other is pro se. The initiative provides a meaningful opportunity for pro se or other indigent litigants to participate in mediation and get its benefits, namely: (1) containing costs, (2) eliminating the unpredictability of judges, and (3) allowing litigants to control their own destiny.

In addition to benefiting underprivileged litigants, the initiative provides benefits to the mediators on the roster. While satisfying professional responsibility goals, the initiative provides opportunities for mediators to build or expand their practices. From a professional development perspective, it is an opportunity for mediators to gain mediation experience. From a marketing perspective, it gives mediators exposure to lawyers, judges, and parties who may hire them in the future for paying cases. And who knows, it just might make you really happy!

If you are interested in being included on the roster, please email your name, contact information, and a brief description of the types of cases you have experience handling as a lawyer or mediator to tamargomediation@gmail.com.

Author:
Amy Mahan
Tamargo - Tamargo Mediation, PLLC

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TRIAL & LITIGATION SECTION HONORS RETIRING JUDGES

The HCBA Trial & Litigation Section honored the retiring judges at a special luncheon on December 11. Section Chair Kevin Napper presented Chief Judge Manuel Menendez Jr., Judge James Arnold, and Judge Sam Pendino with plaques, and the judges shared some of their favorite stories and answered questions from the audience. Also at the luncheon, Thirteenth Judicial Circuit Pro Bono Committee Chair Rosemary Armstrong spoke to the crowd about how children in the foster care system need help from pro bono attorneys. The section would like to thank the luncheon’s sponsor:
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LEND AN EAR, LEND A HEART: THE MISUNDERSTOOD AFFLICTION OF PTSD
Military & Veterans Affairs Committee
Chair: Bob Nader - Nader Mediation Services; Military Liaison: Lt. Col. Christopher Brown - 6th Air Mobility Wing

Your cherished loved one steps back on American soil, fresh home from the battlefield or military service thousands of miles away. Inside you burst with joy and relief. Outside you brim with smiles and exultation. Normalcy has returned. The family is back in tact. All is right in the world. Wait just a minute please. Not so fast. Your homebound veteran may not feel the same inside.

Nearly every returning military veteran who has been exposed to danger or lived in a threatening environment will suffer some form of Post-Traumatic Stress Disorder, or PTSD. They do not necessarily have to have been involved in combat. They may not experience it the minute they arrive at our shores. The indices of PTSD may not be readily apparent, but they lurk within, and you can ultimately see it. You should realize it and try to understand the extent of its debilitating grasp. You should ask about it in a tender, loving, non-confrontational way.

Dr. Michael Maher, a medical doctor board-certified in psychiatry with a practice in south Tampa, says ultra-sensitivity to risk and danger is normal for a returning veteran and can last up to six months. Concern may be warranted after three months if your vet appears stuck or moving backward. After six months, if your vet has not adapted and cannot go out at night, has a heightened sensitivity about safety, is jumpy, can’t make reasonable judgments about what really constitutes a danger, has sleep disturbance, suffers from extreme worry, has hostility in or withdraws from relationships, shows an inability to function, stays disconnected, or displays anger or anxiety, he or she likely has reached the threshold of PTSD, and it’s time to get help. Other signs include hypervigilance, mistrust, alienation, flashbacks, nightmares, and guilt. When parents return from military service and will not attend their kids’ baseball or softball games, PTSD is full blown, and loved ones must act.

PTSD is disabling and potentially life threatening. It needs attention and care. PTSD has nothing to do with being strong or weak, and it may not be in proportion to the danger to which a veteran was exposed.

“It’s not a big mystery like you might think,” says Dr. Maher. “You should be on the lookout for it.” Dr. Maher says it’s OK to ask questions like: “I know you are back; how are you doing? Is there anything I can do for you? I know it can be a tough time, and I appreciate this can be a hard thing. If I can help you in any possible way, please let me know.”

Avoidance of the subject by family and friends is absolutely the wrong response, Dr. Maher says. Giving your veteran space is appropriate, and you should never

Continued on page 65
pressure him or her into talking. However, simple, caring questions like those above will help the vet ease into the assistance he or she needs. Often, veterans or other people suffering from PTSD are in denial, not so much that they were in a rough and dangerous place but more so in thinking, “I can handle it” or “It’s not really getting to me.” Loved ones should always express “I’m here for you” and be open to their issues. Be patient, as they may want to recount the same things repeatedly.

Dr. Maher says the best therapy for PTSD is having someone to talk with and understand what the veteran has been through. Engage the veteran in a meaningful discussion of his or her experience, with compassion and respect. Both professional help through cognitive therapy and dialogue with family and friends are invaluable. Medical therapy is secondary. The dual approach of professional and family/friend help is the ticket to healing. Relaxation techniques, support groups, family group therapy, exercise, being outdoors, and getting involved in church, school, or volunteer organizations are also beneficial.

Outward, demonstrable signs like fear, crying, and depression may not always be apparent. Whether deployed as active-duty personnel or through the reserves, whether in the Army, Navy, Air Force, Marines, or Coast Guard, veterans with PTSD may not display such obvious symptoms. Thus, the need to ask is imperative... as well as to lend an ear and, most importantly, lend a heart.

Author: George E. Nader - Trenam Kemker
The Florida Supreme Court has been vested with the exclusive jurisdiction to discipline members of The Florida Bar. See Article V, § 15, Fla. Const. The Rules of Ethics provide the disciplinary guidelines used by the court to determine whether an attorney can be disciplined. When the Supreme Court determines the appropriate discipline for an attorney, it issues an opinion establishing its jurisdiction, the applicable rules, and its factual findings for sanctioning an attorney.

In Florida Bar v. Ross, 140 So. 3d 518 ( Fla. 2014), the Supreme Court considered whether Ross committed ethical violations. Count 1 charged that Ross “was paid a $10,000 retainer from which [Ross] would be paid based upon billing at an hourly rate.” Id. at 519. Subsequently, the client terminated Ross and made numerous requests for an accounting and final bill. After three years, Ross returned $5,000 to the client without a final accounting. Count 2 charged that Ross forged the signature of a California attorney in order to file an action on behalf of himself and four relatives against a conservator and trustees who were managing a trust for his aunt.

The Florida Bar began a disciplinary action against Ross for violating Rules 4-1.4, 4-1.16, 4-3.3, and 4-8.4. The referee recommended that Ross should be suspended from the practice of law for six months. However, the Supreme Court entered an order suspending Ross for three years, finding that Ross “engaged in serious misconduct” for refusing to return client funds and “knowingly fil[ing] a fraudulent document in court.” Ross, 140 So. 3d at 521; see also Fla. Bar v. Kickliter, 559 So. 2d 1123 (Fla. 1990).

The Supreme Court declared that “[m]isrepresentations and dishonesty warrant severe discipline.” Ross, 140 So. 3d at 522; see also Fla. Bar v. Hall, 49 So. 3d 1254 (Fla. 2010) (entering an order of disbarment for an attorney who recorded a forged document with the clerk of court). Further, “[d]ishonest conduct demonstrates the utmost disrespect for the court and is destructive to the legal system as a whole.” See Fla. Bar v. Head, 27 So. 3d 1, 8 (Fla. 2010). Additionally, the court affirmed that a “lawyer is required to promptly deliver to a client any funds that a client is entitled to receive.” Ross, 140 So. 3d at 523; see also Fla. Bar v. Grosso, 760 So. 2d 940 (Fla. 2000).

The Supreme Court may impose austere sanctions in disciplinary actions because the “discipline [imposed] must protect the public from unethical conduct, must be fair to a respondent yet sufficient to sanction the misconduct and encourage reformation and rehabilitation, and must be severe enough to deter others who might be prone or tempted to become involved in like violations.” Ross, 140 So. 3d at 523 (emphasis in original); see also Fla. Bar v. Jasperson, 625 So. 2d 459 (Fla. 1993). Accordingly, an attorney’s easily avoidable conduct in one or two matters can result in substantial consequences, including losing the ability to practice law.

Disciplinary sanctions must protect the public from unethical conduct.

Author: Caroline Johnson Levine - Office of the Attorney General
VACANT AND ABANDONED PROPERTY REGISTRATION
Real Property, Probate & Trust Law Section
Chairs: Stephanie Adams Caldwell - Shutts & Bowen, LLP; Michael Kangas - Phillip A. Baumann, P.A.

Vacant and abandoned property is recognized as a significant barrier to the revitalization of central cities. There have been numerous U.S. studies on its effects on communities. Researching the topic online produces many informative articles. What’s the bottom line from all these surveys? Findings show that vacant and abandoned property is perceived as a significant problem by residents and elected and appointed officials in the nation’s largest central cities, especially those with large populations.

Think about your experiences and feelings when you see vacant property in the neighborhood you happen to be in. Usually, the emotion isn’t a pleasant one. The reason for the vacancy or abandonment could be circumstances such as a lost job, illness, mismanagement of finances, death of the bread winner in the family, reset of mortgage interest rates, foreclosure, eviction, etc. Studies have shown that single- and multi-family housing, retail properties, and vacant land are the most problematic types for most cities. Properties that have been abandoned and allowed to become overgrown, and those whose structures are left open and unsecured, not only have a negative impact on community value but also can create conditions that invite criminal activity and foster an environment that is unsafe and unhealthy for our communities. It is for these reasons that abandoned properties must be maintained so as not to create these nuisance conditions.

Cities and counties use a variety of registration ordinances, regulations, and innovative techniques to address this problem, including aggressive code enforcement, tax foreclosure, eminent domain, and cosmetic improvements. In Florida, regulations, codes, and ordinances outline which properties need registration.

Purposes for vacant property registration ordinances are threefold:
1. To ensure that owners of vacant properties are known to the city and other interested parties and can be reached if necessary;
2. To ensure owners of vacant properties are aware of relevant codes and regulations;
3. To ensure owners meet minimum standards of maintenance for vacancies.

A fourth purpose, although not always stated, is to motivate owners to use the properties.

Ordinances should include the following elements: a clear definition of which properties and which parties must register; requirements and procedures for registering, including information required of the owner or lienholder; the fee structure; the obligations of the owner, with respect to maintaining the property; and the penalties for failing to register in a timely fashion. Fee structures vary and could include covering basic maintenance costs to motivate owners to restore and reuse vacant properties.

Best practices include: providing the owner or agent phone number and mailing address within the state (if a Post Office box is used, it must be accompanied by a physical address); certifying and documenting the property has been inspected; designating and retaining an individual or property management company responsible for the security and maintenance of the property; and remembering things change — for example, in one Florida county, the code changed for regulating acceptable grass height.

It’s always best to consult with local counsel for any questions.

Author:
Jennifer Lima-Smith - Gilbert Garcia Group, P.A.
The Second Circuit concluded that an all-inclusive and mandatory forum selection clause superseded the FINRA arbitration rule.

The U.S. Court of Appeals for the Second Circuit recently considered whether a forum selection clause defeated a customer’s right to arbitrate under the Financial Industry Regulatory Authority (FINRA) rules. In Goldman, Sachs & Co. v. Golden Empire Schools Financing Authority, 764 F.3d 210 (2d Cir. 2014), the Second Circuit concluded that an all-inclusive and mandatory forum selection clause superseded the FINRA arbitration rule, precluding customers from arbitrating their claims through the FINRA dispute resolution process.

In Golden Empire, two public financing authorities retained two financial services firms to underwrite issues of auction rate securities (ARS) through written underwriting agreements. The underwriting agreements were silent as to arbitration. In separate written broker-dealer agreements, the public financing authorities also retained the financial services firms to manage the auctions for the securities issued, among other services. The broker-dealer agreements contained forum selection clauses that required “all actions and proceedings” related to the transactions between the parties to be brought in the United States District Court for the Southern District of New York. The broker-dealer agreements also contained merger clauses stating that they and any other agreements executed in connection with the ARS contained the entire agreement between the respective parties to those agreements.

The public financing authorities brought FINRA arbitration proceedings against their respective financial services firms, alleging that the FINRA-member firms had fraudulently induced the public financing authorities to issue the ARS. Both financial services firms sued in federal district court to enjoin the FINRA arbitrations, arguing in part that the forum selection and merger clauses in the broker-dealer agreements superseded the FINRA rule that required arbitration. Finding that the forum selection clauses in the broker-dealer agreements overrode the FINRA rule governing arbitration, the district court granted the financial services firms’ motions for preliminary injunction.

The Second Circuit affirmed, first noting that FINRA’s arbitration rule, Rule 12200, supplied written agreements to arbitrate between the financial services firms and the respective public financing authorities. As such, the financial services firms would be required to arbitrate the public financing authorities’ claims if their agreements were not otherwise superseded. The appellate court observed that an agreement to arbitrate is superseded by a later-executed agreement containing a forum selection clause if the clause specifically precludes arbitration, although the forum selection clause need not mention arbitration to specifically preclude it. Rather, to supersede the default obligation to arbitrate under FINRA Rule 12200, the forum selection clause need only be “sufficiently specific to impute to the contracting parties the reasonable expectation that they would litigate any disputes in federal court.” Id. at 216 (quoting Goldman v. City of Reno, 747 F.3d 733, 744 (9th Cir. 2014)).

The Golden Empire court found the forum selection clause at issue, which stated “all actions and proceedings ... shall be brought” in the Southern District of New York, to be all inclusive and mandatory. As such, the court concluded that the forum selection clause, buttressed by a merger clause, superseded the FINRA arbitration rule.

Author: Lonnie L. Simpson – Shutts & Bowen, LLP
Bay Area Legal Services has operated a Low Income Taxpayer Clinic (LITC) since 2002 with funding provided by the Taxpayer Advocate Service of the Internal Revenue Service. The LITC provides legal services to all eligible residents of Hillsborough and Pasco counties. Individuals who are at or below 250 percent of the poverty level are eligible, and in compelling circumstances, services can be provided to clients above that level. If you encounter clients who are having problems with the IRS, please have them contact us directly at (813) 232-1343.

When the IRS finds a problem with a return, its first notice gives the taxpayer an opportunity to send more documentation to explain why the taxpayer believes the tax return as prepared is correct. If the taxpayer ignores this notice or fails to provide sufficient documentation, the IRS issues a Notice of Deficiency. This second notice gives the taxpayer 90 days to file a petition in Tax Court. An appeals officer and/or IRS counsel will contact the taxpayer prior to the court hearing to try to come to agreement on some or even all of the issues in the case. Instead of Tax Court, the taxpayer can elect to go through an appeals process, which is designed to be fair and impartial to both the IRS and to the taxpayer. If the appeals process does not resolve the issues, the taxpayer can request mediation as long as the case is not filed in Tax Court.

Unfortunately, some taxpayers do not respond to these initial contacts from the IRS, nor do they seek assistance until after the IRS places a lien or levy on their income and/or assets. Some will qualify for “Currently Not Collectible” status due to low income and lack of resources. Once the IRS agrees that the taxpayer cannot pay the debt at this time, the IRS suspends collection activities, but the interest and the debt continue to grow. Another option is to submit an Offer in Compromise documenting all assets and resources and asking the IRS to agree to allow the taxpayer to pay less than the total amount of the debt in installments within two years. If the IRS accepts the offer and the taxpayer makes all of the payments, then the debt is considered paid. If the IRS rejects the offer, the taxpayer still has the option of requesting mediation. Taxpayers can also ask the IRS to put them on an installment agreement allowing them up to six years to pay back the tax debt and interest.

Most clients we see at the LITC feel overwhelmed by their tax problems and appreciate the assistance we provide. The LITC welcomes members of the Bar who would like to assist low-income residents on a pro bono basis. For attorneys who do not practice tax law, we plan to offer a training session with members of the HCBA Tax Law Section as instructors. For more information about volunteering, go to www.bals.org and click on the “Give Help” tab to register to become a volunteer.

Author:
Nancey G. Penner - Bay Area Legal Services
Residential mortgage foreclosures remain a minefield for the unwary practitioner. Without much notice and over the holiday season last year, the Florida Supreme Court made fast-track out-of-cycle changes to the pleading requirements for mortgage foreclosures.

In re Amendments to the Florida Rules of Civil Procedure, 153 So. 3d 258 (2014), the court adopts the amendments effective immediately, without the usual 60-day comment period preceding such changes. Though not explicitly stated in the opinion, the comment period appears to have been suspended until after adoption in an effort to more timely conform the Florida Rules of Civil Procedure to the legislative mandate of Chapter 2013-137, Laws of Florida.

The court adopts the new Rule 1.115, which relates only to pleading mortgage foreclosures. The verification requirement has been moved from Rule 1.110, the general pleading rule, into the new Rule 1.115 with a slight change in wording. The verification has been changed from being under “penalty” of perjury to being under “penalties” of perjury, though the legal effect of such a change is not clear. The Supreme Court also adopted new forms to comply with the new rule, which make it relatively straightforward for practitioners to comply with the changes.

Essentially, the amendments require the plaintiff in a mortgage foreclosure case to specifically allege the location, possession, ownership, and condition of the mortgage and note. The new forms indicate that case-specific facts are required to establish the right to foreclosure where a plaintiff is acting under an entitlement of law or a delegation of authority, as required by the statutory changes. See § 702.015(2)-(5), Fla. Stat. (2014).

The Legislature enacted section 702.015, Florida Statutes, to help relieve Florida courts of the backlog of foreclosure cases by streamlining the issues and procedure for handling those cases. As it states, “The Legislature intends that this section expedite the foreclosure process by ensuring initial disclosure of a plaintiff’s status and the facts supporting that status, thereby ensuring the availability of documents necessary to the prosecution of the case.” § 702.015(1), Fla. Stat. (2014).

The changes to the Rules of Civil Procedure apply to all mortgage foreclosures filed on or after July 1, 2013, and have taken immediate effect. Practitioners should review their pending matters to address any unwaived pleading deficiencies, and they should remain vigilant in checking The Florida Bar’s website for the most up-to-date rules and forms.

The Florida Supreme Court just adopted fast-track out-of-cycle changes to the pleading requirements for mortgage foreclosures.
In *Giamo*, when the doctor whose opinion was relied upon to sustain apportionment “was asked how he arrived at the percentages attributable to Giamo’s pre-existing condition and those attributable to the workplace injury, he explained that ‘when I was asked and thought about it, that is the answer I came up with.’” *Id.* The court declined to further elaborate on what is needed to meet the standard but held that the testimony here was inadequate to support an affirmative defense. The expert’s opinion here gave no basis whatsoever for the apportionment percentages, which is not acceptable under the new standard.

What this means for future cases is that experts will have to better explain the basis and reasoning for the percentages of medical causation attributed to various causes in order to survive a *Daubert* challenge. The question of exactly how the standard is to be applied to doctors and other experts is yet to be determined in workers’ compensation cases, but this is a new standard that will have to be considered and interpreted in future cases.

**Author:** Anthony V. Cortese - Anthony V. Cortese, Attorney at Law
Joseph N. Alexander has joined attorneys Jeffrey P. Lieser and Ghada M. Skaff to form Lieser Skaff Alexander, PLLC.

Adam L. Bantner II, an attorney with Brandon Legal Group, has been elected vice president of the Hillsborough County Association of Criminal Defense Lawyers. Bantner is a litigator with the firm who focuses his practice in the areas of criminal defense, juvenile delinquency, juvenile dependency, and family law.

Richard M. Blau, a shareholder in the GrayRobinson Tampa office, was named to the Academy of Hospitality Industry Attorneys Board of Directors. Blau is the chair of GrayRobinson’s Alcohol Beverage and Food Department and presides over the firm’s Alcohol Industry Team. He and his colleagues focus on the rules, regulations, and business practices that govern the marketing, sale, and consumption of licensed beverages.

Robyn A. Bonivich has joined The Law Firm of Chris E. Ragano, P.A., as an associate for the firm. Bonivich concentrates her practice on marital and family law matters.

Justin L. Dees of Trenam Kemker has joined the firm as a shareholder. Dees focuses his practice on complex commercial litigation.

Heather Fesnak has been named a new partner in the Tampa office of Akerman LLP. Fesnak is a part of the Consumer Finance Litigation & Compliance Practice Group at the firm.

Jerry M. Gewirtz, chief assistant city attorney for the City of Tampa, has been reappointed by the United States District Court to serve an additional term as a member of the Local Rules Advisory Committee of the U.S. District Court Middle District of Florida.

Judge Dick Greco Jr. of the Hillsborough County Court has joined the teaching ranks at Western Michigan University’s Tampa Bay campus. Greco, who will teach Florida county court practice, began teaching in January.

Gregory A. Hearing, a shareholder and managing partner at Thompson, Sizemore, Gonzalez & Hearing, was elected as a trustee of the Florida Supreme Court Historical Society. The society is committed to ensuring an understanding of the importance of a strong, independent judiciary in our governmental balance of power. Hearing focuses his practice on management labor and employment law.

Benjamin H. Hill III, a founding shareholder of Hill Ward Henderson, is the recipient of The Fellows 2015 Outstanding Service Award. The award is given annually to a fellow of the American Bar Foundation who has, in his or her professional career, adhered for more than 30 years to the highest principles and traditions of the legal profession and to the service of the public. Hill’s practice is focused on the areas of complex litigation including professional liability, products liability, and general commercial matters.

Peter B. King, a founding member of the Tampa-based law firm of Wiand Guerra King, recently participated on a panel presentation at the Florida Office of Financial Regulation's 2014 Division of Securities Enforcement Training Program in Orlando. King practices commercial and complex litigation.

Judge Matthew Lucas and Samuel Salario have been appointed by Governor Rick Scott to the Second District Court of Appeal. Lucas served as a Thirteenth Judicial Circuit Court judge, and Salario had practiced with Carlton Fields Jorden Burt since 2002.

Kathleen S. Mc Leroy and Gwynne A. Young of Carlton Fields Jorden Burt were included as members in the establishment of the Florida Commission on Access to Civil Justice. Members of the commission will work in a coordinated effort to identify and remove economic barriers to civil justice. Mc Leroy focuses her practice on representing creditors in disputes with debtors and representing individuals in real property disputes. Young focuses her practice on complex state and federal litigation.

Kristin Y. Melton has become a shareholder with the Tampa law firm of de la Parte & Gilbert, P.A. Melton practices primarily in the areas of administrative, environmental, water, government, and sports law.

Anne-Leigh Gaylord Moe, a shareholder at Bush Ross, has been appointed to a Merit Selection Continued on page 74
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Carlton Ward Jr is a conservation photographer and eighth generation Floridian focused on Florida's living heritage. His limited edition photographs are available in sizes ranging from 10x15 to 40x60" and up to 28x84 for panoramic images. The Carlton Ward Gallery also offers portfolio collections including Florida Wildlife Corridor, Tampa Bay, Gulf Coast and Florida Frontier. A selection of custom frames is available for all photographs. The gallery also sells Carlton’s recent books including Florida Wildlife Corridor Expedition and Florida Cowboys. Please visit our gallery in Tampa’s Hyde Park Village.

Carlton Ward Photography
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Panel for the United States District Court, Middle District of Florida. Moe focuses her practice on employment disputes, professional liability, medical negligence, and construction law.

Harold “Hal” Mullis, president of Trenam Kemker, will be inducted into the 2015 Tampa Bay Business Hall of Fame. Mullis is a member of the Corporate Transactions Practice Group, and his practice areas include general corporate representation, mergers and acquisitions, tax controversies, and tax-exempt and charitable organizations.

Steven A. (“Rusty”) Nisbet and Lee Ann Tranford have joined Smolker, Bartlett, Schlosser, Loeb & Hinds, P.A. Nisbet joins the firm’s Litigation Practice Group after a long and distinguished career as a trial attorney, assistant U.S. attorney, and deputy chief of the Civil Division for the U.S. Attorney’s Office, Middle District of Florida. Tranford focuses her practice on commercial real estate with an emphasis on complex real estate transactions and lending.

Anthony J. Palermo, an associate at Holland & Knight, was selected to be the next president of the Harvard Club of the West Coast of Florida. The Harvard Club of the West Coast of Florida is a 501(c)(3) nonprofit organization that serves the interests of Harvard University, its graduates, and students in the greater Tampa Bay metropolitan area. Palermo practices litigation and dispute resolution at the firm.

Jared J. Perez, a member of Wiand Guerra King, received an “AV Preeminent” rating from Martindale-Hubbell, the highest possible rating for professional excellence and ethics from one of the country’s leading peer-rating services for lawyers. Perez concentrates his practice on complex commercial litigation.

Woodrow H. “Woody” Pollack, a shareholder at GrayRobinson, P.A., has been named to Leadership St. Pete, Class of 2015. Leadership St. Pete is a six-month experience designed to promote community leadership through an in-depth introduction to social, economic, business, and political issues in the St. Petersburg area. Pollack is a registered patent attorney who regularly litigates patent, trademark, copyright, trade secret, and other intellectual property disputes.

William J. “Josh” Podolsky III has been made partner at Phelps Dunbar LLP’s Tampa office. Podolsky concentrates in real estate, commercial transactions, banking, finance, general business, and corporate and partnership matters.

Sandra Ransdell, an associate at Hill Ward Henderson, was recently elected to the Board of Directors for the St. Petersburg Arts Alliance. Ransdell focuses her practice on institutional lending, real property purchase and sale transactions, commercial development, and commercial leasing.

Amanda Uliano of the Law Office of Amanda M. Uliano, P.A., was elected president of the Board of Directors for Dress for Success Tampa Bay for the 2015 calendar year. Dress for Success Tampa Bay is dedicated to improving the lives of Bay area women by providing professional clothing, employment retention programs, and ongoing career support. Uliano focuses her practice on business and commercial litigation.

Luis Viera of Ogden & Sullivan in Tampa was appointed to the Tampa Bay Buccaneers Hispanic Advisory Council. Viera focuses his practice on personal injury, professional negligence, and automobile liability at the firm.

Josh Webb, an associate at Hill Ward Henderson, was recently elected to the Board of Directors of Bok Tower Gardens in Lake Wales. Webb focuses his practice in commercial litigation, representing clients in a variety of business disputes involving contract and tort claims.

Robert “Bert” Savage, Brenda Combs, and Alfred Villoch III have formed Savage, Combs & Villoch, PLLC, a boutique law firm in downtown Tampa.

Akerman LLP has been selected by the Florida Guardian ad Litem Program as the Community Advocate of the Year for the Thirteenth Judicial Circuit.

Carlton Fields Jorden Burt has received a perfect score — 100 percent rating — on the Human Rights Campaign (HRC) 2015 Corporate Equality Index (CEI) for the sixth consecutive year. Carlton Fields Jorden Burt is one of 89 law firms in the country that scored 100 percent.
For the month of: November 2014

**Judge:** Hon. William P. Levens  
**Parties:** McKinley v. Bargo  
**Nature of case:** Automobile personal injury; plaintiff alleged defendant was owner of vehicle involved in crash with plaintiff  
**Verdict:** Defense verdict

**For the month of:** December 2014  
**Judge:** Hon. Gilbert Smith  
**Parties:** Patricia Jones v. Gordon Walters  
**Nature of case:** Rear-end accident with knee surgery and spine injections  
**Verdict:** Defense verdict

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To submit news for Jury Trial Information, email rita@hillsbar.com.

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