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about the cover
The American Flag accompanied by the POW/MIA Flag waves in the early morning breeze over MacDill Air Force Base. Members of Team MacDill placed a wreath at the bottom of the flag to commemorate POW/MIA day during the first part of a two part ceremony. Base members will meet again during a formal retreat ceremony at the end of the duty day.
editor's message
Grace H. Yang, GrayRobinson, P.A.

Being Helpful to Each Other in our Communities

Our legal community becomes even stronger and more united if we help lift each other.

I remember seeing a bumper sticker that had the word "Community" on it. The word "unity" was emphasized in a different color on the bumper sticker. The sticker made me think about how people are united by geography, profession, schools, religion, sports teams, hobbies, charitable causes, and anything else that supplies a common link with other people. I loved the sticker’s message.

People united with a common purpose form a closer community. We are fortunate that our Hillsborough County Bar Association is a strong and active community, for example. Our members help each other learn more about legal developments and how to be better lawyers. Our members have opportunities to provide and to receive mentoring through our interactions with each other. Social events like lunches and happy hours allow members more time to meet and feel like a part of the bar community. The number of HCBA events each month amazes me.

Helping others is a very satisfying feeling. I am proud to see our members helping out in so many ways as volunteers, fundraisers, and leaders in various communities. It is great to see our judges and lawyers working together to improve our profession. Whether we are helping paying clients or pro bono clients, the ultimate goal is to help people with their legal problems.

I hope some of you will have chances to help those members in our profession facing challenges, too. I have heard from lawyers who have lost jobs. I have heard from lawyers struggling to keep their practices viable. I have heard from law students facing a bleak job market as graduation looms. As times continue to be tough for some, let us try to help identify opportunities and lend moral support to each other.

I recently attended a conference where there was much talk urging attorneys to lift as they climb. If you benefitted from others lifting you up as you climbed in your profession, please take some time to thank them. Also, think about how you might now be in a position to lift others as they climb in the profession. Our legal community becomes even stronger and more united if we help lift each other.

There is not enough space in this column for me to thank everyone who has helped me become a better lawyer, but I am thankful for each of you who has generously invested some time in me. I have no lawyers in my family by blood, so it is wonderful to have a family in the bar association.

Finally, I hope you also took the time this year to mark Administrative Professionals Week (April 24th through April 30th) and showed your gratitude to the professionals who provide critical support in our work lives. Work can be busy and stressful, but helpful and effective administrative professionals make it easier to practice law.
I just returned from a family odyssey to the wilds of West Virginia, where we returned my mother-in-law’s ashes to the place of her birth. My grown children met relatives on this trip they never knew they had. But what’s more important, they heard family stories they had never heard before. For example, they heard from an elderly cousin about their great-great-great grandmother who, as a young girl, was scalped by a raiding party and left for dead. Her mother was killed, but her baby brother survived because he was hidden under a cast iron kettle. Great-great-great-grandmother lived, but she wore a wig for the rest of her life. Tough woman.

Of course, not all of the recollections they heard were so dramatic. Some were as simple as learning about the small mountain their grandmother had to climb every day to attend a one-room schoolhouse on the other side, or how mad she was after her little brother broke her china doll because that one doll was all she had. But even these relatively

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mundane memories served to enhance my children’s appreciation of their grandmother and her family and may even have given them a deeper understanding of themselves.

What disturbs me is the fragility of these memories. While my mother-in-law knew these stories, she did not relate them to her grandchildren. Until our trip to West Virginia, these stories were housed in the memory banks of a blind, eighty year-old woman who undoubtedly had many more stories she did not have time to share with us.

My father-in-law is a similar treasure trove of memories. Although he is in excellent health, he is eighty-six years old. We have grown accustomed to hearing him wax on about family or Tampa history, but I fear we have not been paying close enough attention. I worry that when we lose him, we will lose his memories as well unless we take steps to record them for posterity.

Like a family, our bar association has a history. The significance of this history was brought home to me at our January membership meeting, when we were treated to the combined recollections of Wm. Reece Smith, Delano Stewart and the Hon. E. J. Salcines. These esteemed colleagues described a segregated Tampa, a Tampa going through the throes of desegregation, a Tampa adjusting to the entrance of women into the legal profession. Just as my children grew from hearing stories about their family, we grew as we heard their stories about our profession. From these stories, we learned how far we have come and how far we have to go. I can’t tell you how many people came up to me after that lunch to say they wished they could have heard more.

These memories, however, suffer from the same fragility. Steps must be taken to preserve them. The Young Lawyers Division is contemplating a project to do just that, and I encourage them to proceed with all haste to make this idea become reality. I look forward to the time when the HCBA can serve as a repository for the recorded recollections of our great local lawyers. We, too, need to hear the stories.

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In January of this year, YLD Board Members had the opportunity to attend the Florida Bar Young Lawyers Division’s Affiliate Outreach Conference (AOC), held in Orlando at the Walt Disney World Boardwalk Inn. One of the hallmarks of the AOC is the award of more than $40,000 to Florida Young Lawyer Affiliates to fund group projects designed to benefit Affiliates’ membership and/or the public in their local community. Represented by Richard Martin (YLD Treasurer) and Rachael Greenstein (YLD Board Member), your YLD was successful in securing a $1,600.00 grant to be used towards a new project which will be launched during Law Week 2011. We are calling the new project “Graphic Novels for Grads.”

With the grant funding, the YLD will be purchasing thousand graphic novels which will be given to area high school seniors. The graphic novels provide an innovative and engaging approach for area high school seniors to learn about our judicial system.

“Justice Case Files” is a series of three graphic novels produced by the National Center for State Courts (NCSC) in an effort to improve the public’s awareness of and knowledge about how courts work. During LAW WEEK, young lawyers will be engaging high school seniors in discussion on the various issues raised in these graphic novels.

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The YLD has always been dedicated to educating area youth. We saw this innovative tool offered by the NCSC as a great resource which will help students understand the critical role courts play in a democratic society.

The story lines and content for the "Justice Case Files" series were developed and edited by a diverse group of judges and legal professionals selected from NCSC’s Board of Directors and staff. The books were illustrated and published by Layne Morgan Media, an educational graphic-novel company. High-school social studies teachers developed comprehensive lesson plans that adhere to curriculum guidelines for each graphic novel.

“Justice Case Files 1: The Case of Internet Piracy” weaves together two story lines—one civil and one criminal - to teach students about downloading music and eminent domain. In “Justice Case Files 2: The Case of Identity Theft,” readers follow the Garcia family, victims of an Internet phishing scheme, and learn how the courts can protect victims of identity theft. “Justice Case Files 3: The Case of Jury Duty” tells the story of Matthew Foley, an 18-year-old who has been summoned for jury service. Through Matthew’s story, readers will learn how meaningful jury service is to the citizens who serve, how the jury system is a source of accountability for the courts, and how our society benefits from the right to a trial by a jury of peers.

If you would like more information about how you can get involved with the YLD’s “Graphic Novels for Grads” project, please feel free to contact me.

1 The National Center for State Courts, headquartered in Williamsburg, VA, is a nonprofit court reform organization dedicated to improving the administration of justice by providing leadership and service to the state courts. Founded in 1971 by the Conference of Chief Justices and Chief Justice of the United States Warren E. Burger, NCSC provides education, training, technology, management, and research services to the nation’s state courts. (www.ncsc.org).
Spontaneous Statement & Excited Utterance

The court ... expressly rejected earlier opinions that required a startling event as a condition precedent to the admissibility of a spontaneous statement.

Successful criminal prosecution requires dedication at every stage of the proceeding, starting with the investigating officers through the attorneys who litigate the case. It is crucial that all available and relevant evidence be utilized in trial.

Under Florida Statute section 90.803(1), a spontaneous statement is admissible in evidence. A spontaneous statement is defined as “describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.”

Not long ago, the courts had lumped this exception together with the excited utterance exception and required a startling event before admitting a spontaneous statement. This was contrary to the Florida Evidence Code, and our

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office fought hard for the admissibility of the spontaneous statement in the case against William DeParvine, who is accused of murdering a husband and wife. The defense filed a motion seeking to exclude these statements, citing Florida cases requiring a startling event as a condition precedent to admissibility of a spontaneous statement. We filed a legal brief vigorously defending the spontaneous statement exception as separate and distinct from the excited utterance exception and seeking to preserve it as an evidentiary vehicle. The trial court accepted our argument and admitted certain spontaneous statements. Using these statements and other crucial evidence, we successfully convicted DeParvine. He now sits on death row.

When the DeParvine case came to the Florida Supreme Court on appeal, the court conducted an exhaustive review of the history of the spontaneous statement exception and expressly rejected earlier opinions that required a startling event as a condition precedent to the admissibility of a spontaneous statement. The court stated that, “because we now conclude that this view requiring a startling event in order for the spontaneous exception to apply is contrary to the underlying principles embodied in section 90.803(1), we now reject this view.” Deparvine v State, 995 So. 2d 351 at 369 (Fla. 2008).

In so ruling, the Florida Supreme Court has preserved the spontaneous statement exception as one distinct from, and in addition to, the excited utterance exception. The court also noted that a response to a question may be admitted under this exception, depending on the circumstance. The statute does permit a trial judge to exclude spontaneous statements that lack trustworthiness.
The inevitable process of judicial retirements, resignations, and promotions results in judicial vacancies being more the rule rather than the exception. However, for the first time in recent memory, the Thirteenth Judicial Circuit is presently operating with its full complement of 45 Circuit Judges and 17 County Judges. This was made possible by the recent appointments of Scott Farr and Herb Berkowitz to the Hillsborough County Court.

Late last summer, Scott Farr was appointed by Governor Crist to fill a County Court vacancy created by Judge Paul Huey’s elevation to the Circuit Court. He is a graduate of Auburn University and the University of Florida College of Law. He has been an Assistant State Attorney, an

Continued on page 11
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Assistant Statewide Prosecutor, and was a partner in the law firm of Cotter, Valerino, Zelman and Farr, practicing criminal and family law. Immediately prior to his appointment, he was the Central Florida Regional Chief for the Florida Attorney General’s Medicaid Fraud Control Unit. He has been married to his wife Beth for 25 years. They have one daughter, Coulter, who has just been admitted to the University of Florida. Judge Farr is currently assigned to the County Civil and Civil Domestic Violence divisions.

Another vacancy on the County Court occurred last fall when Judge Cheryl Thomas was elevated to the Circuit Court. In late December of last year Governor Crist appointed Herb Berkowitz to fill that vacancy on the County Court. Judge Berkowitz is a 1971 graduate of the University of Wisconsin School of Law, during which time he also served in the Wisconsin National Guard and later in the U.S. Army Reserve. He served in the U.S. Department of Justice, first with the Antitrust Division, and then as an Assistant U.S. Attorney in Cleveland, Ohio. He came to Tampa in 1978 with the Organized Crime and Racketeering Section of the Criminal Division of the Justice Department. In 1980, Judge Berkowitz entered the private practice of law, concentrating in the area of civil litigation, with a primary emphasis in plaintiffs’ personal injury law. In 2000, he merged his practice with the firm of Clark & Martino P.A., where he has practiced in an Of Counsel position until his appointment to the Bench. He has been married for 42 years to his beautiful wife, Gloria, who teaches reading at the Hillel School of Tampa. Their son Peter and daughter-in-law Robin live in Louisville, Kentucky. Judge Berkowitz is currently assigned to the County Civil Division.

Changes in personnel may result in changes to existing judicial assignments, so it is always helpful to consult our official web site www.fljud13.org for the most current information on these matters.

Author: The Honorable Manuel Menendez, Jr., Chief Judge, Thirteenth Judicial Circuit

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


Mr. Ross has been recognized by his peers as one of Florida’s leading mediators, with a Martindale-Hubbell rating of AV. He was selected by the Florida Trial Attorneys for membership in Florida’s Legal Elite and Best Lawyers in America 2010. Member of The National Academy of Distinguished Neutrals.

Graduate of University of North Carolina at Chapel Hill (BA 1975; JD 1978); Phi Beta Kappa. Florida Arbitrator.

Mr. Ross is a full time mediator who has handled thousands of mediations and is qualified to handle most all civil litigation matters.

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Before the Second District Court of Appeal had a Tampa Branch, and for about half the cases since, when we left Lakeland after an oral argument to return to Tampa, we drove back west on Memorial Blvd (Highway 92) to reach the interstate. On the way, on the right side of the road for easy access, was a Dairy Queen.

If the argument went well, the Dairy Queen supplied a sweet reward. If the argument was less well received than you had hoped, you could find some small comfort in a frozen treat for the ride home. To our great dismay, the Dairy Queen closed a few years ago. It sits vacant, the sign that formerly advertised specials now only saying “for sale.”

We mourn the passing of this appellate “tradition,” but appreciate some important ones that still endure. Perhaps most notably—in this era of increasing caseloads and efforts to process the cases—is the Second District’s continued tradition of granting oral arguments in final appeals where a party requests it.

The percentage of cases in which the Eleventh Circuit, and some other intermediate appellate courts, permit argument has diminished over the years. When the Eleventh Circuit was created in 1981, it held oral argument in about 60% of its cases. By 1999, that was down to 25%. Today it is less than 20%.

But in the Second District, if any party in a final appeal requests oral argument, the Court schedules oral argument. Of course, there may be some final appeals disposed of before argument—for example, where a lack of jurisdiction becomes apparent.

In part, the Court has been able to continue this tradition because of enhanced technology and innovations in handling cases. In this era, it is difficult to imagine trying to manage 6,000 appeals a year without a computerized docketing system. The requirement that counsel submit briefs electronically saves time in the preparation of the bench summaries.

Another oral argument tradition practitioners enjoy in the Second District is the courtesy the Court...
continues...
In March, the Community Services Committee, along with the Tampa Bay Paralegal Association, organized a “Ladies Suit and Handbag Drive” for Dress for Success Tampa Bay. When the Community Services Committee needs help, members of the Hillsborough County Bar Association never fail to disappoint!

The Community Services Committee coordinated with the concierge services of several buildings around Tampa and collected over 500 suits and 100 handbags during the month of March. With the donations, numerous women will have the confidence to start a new job with business-appropriate clothing.

Dress for Success is a non-profit organization that provides professional clothing, career development tools and a network of support to struggling and disadvantaged women returning to or entering the workforce. The Dress for Success suiting program provides a crucial first step in a woman’s journey toward success.

“Success is not only about getting a job; it’s about building a career.”

— Dress for Success

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self-confidence, self-sufficiency, and ultimately, a return to the workforce. Dress for Success clients come from a variety of places on a referral-only basis. Some clients were homeless or the victims of domestic violence. Some clients have been recently released from prison or have been sidetracked from a serious illness. Numerous non-profit organizations, including prison rehabilitation services, Alpha House, Workforce, Salvation Army, Metropolitan Ministries and The Centre for Women refer clients to Dress for Success. In 2010 alone, Dress for Success Tampa Bay served more than 1,000 women by providing career services and over 700 suits.

Each client receives one suit when she has a scheduled interview. After a client finds employment, she can return to the Dress for Success boutique for a personal fitting. A trained personal shopper helps wardrobe the client with additional business apparel to mix and match for up to a week’s worth of business-appropriate outfits, a pair of shoes, and a handbag. Additionally, Dress for Success provides each client with makeup and coupons for a complimentary haircut and manicure from local cosmetology schools.

Dress for Success services do not end once a client has obtained full-time employment. Once employed, a Dress for Success client is offered membership into the Dress for Success Professional Women’s Group. This networking group is designed to make the transition from unemployment to working a smooth one. The Professional Women’s Group provides seminars and meetings to help clients understand corporate culture, manage personal finances, childcare issues, stress, and juggle responsibilities. Members of the Professional Women’s Group have access to professional resources to help further their professional and personal growth.

Kelly Falconer-Miller, a Dress for Success Board Member and Volunteer Coordinator, says it best: “Dress for Success is available to women in need only because of the generous donations of money, time, and clothing from individuals and organizations such as HCBA. Volunteer opportunities include fundraising, special events, social media marketing, clothing drives, public speaking, career center consultant, personal shopper (dress clients for interviews), office and boutique assistance, or something else that an individual or business wants to contribute.”

The Ladies Suit and Handbag Drive would not have been possible without the generous support of the Tampa Bay Paralegal Association and Jan L. Brown, paralegal at James Hoyer. Ms. Brown spent numerous hours helping me coordinate the drive and deliver donations to Dress for Success. Thank you for your generosity to such an excellent cause.

To learn more about how you can help Dress for Success and/or to schedule a tour of the boutique, send an email to volunteerdfs@gmail.com, call 813-259-1846, or visit www.dressforsuccess.org/tampabay.

Author: Stacy E. Yates
Mandelbaum, Fitzsimmons & Hewitt, PA., (with the help of Dress for Success Tampa Bay)
Experts in forensic scheduling often rely upon sophisticated computer software packages to perform the numerous mathematical calculations necessary in Critical Path Method (CPM) schedule analysis. In the domestic construction industry, the most commonly used CPM scheduling applications are Microsoft Project and the Primavera suite of applications from software developer Oracle. While Project is well suited for CPM scheduling on a host of smaller construction projects, many contractors and construction experts turn to Primavera to plan and analyze larger construction assignments.

Until recently, contractors wishing to use the powerful tools that Primavera offers could choose among several versions of the software, including Primavera SureTrak, P3, P5, and P6. As the basic mechanics of construction planning and scheduling have not changed since the introduction of P3 in the mid-1990’s, many contractors have chosen to forgo the considerable expense of purchasing updates to the program. As a result, a great many construction projects are currently being planned using 15-year-old software, a highly unusual situation in most industries. This heavy dependence on P3 within the construction industry has similarly led some schedule experts to put off the substantial costs that version upgrades entail and to continue to use the same P3 software as their clients.

Unfortunately, continued reliance on P3 is no longer a viable option for construction schedulers and schedule experts. Oracle (which purchased Primavera in 2008) has discontinued the sale of the product effective December 31, 2010, meaning that all new users seeking to do complex scheduling must purchase the Primavera P6 application. This change is extremely significant as the two applications have substantial

Continued on page 17
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differences in a number of key areas that impact forensic schedule analysis. These include substantial changes to:

- Logic-driven schedule calculations;
- Resource-driven schedule calculations;
- Baseline schedule identification and maintenance;
- Multi-project coordination and scheduling;
- Schedule calendars; and
- Date fields and date calculations.

In addition, P6 is built on a multi-user Oracle database platform that is administered very differently than the earlier Primavera P3.

Obtaining an excellent working understanding of the use and behavior of the new P6 software is vital for a schedule expert. An expert’s inadequate or incomplete understanding of the calculations being performed can leave the expert’s analysis and conclusions open to challenge. This is especially true in an industry environment where many large contractors and others working on complex projects have already begun to use the advanced features of the P6 software in order to optimize their project planning.

The result of the cancellation of the P3 application and the construction industry’s shift to Primavera P6 is that both project schedulers and schedule experts must educate themselves on the features of the new software in order to build and analyze construction schedules accurately. As the industry undergoes its transition to the new application, it is extremely important that construction attorneys take proper steps to vet their schedule experts in order to determine whether their skill sets still meet the needs of the cases under consideration.

Author: Jonathan D. Perry, PSP, Hill International, Inc.
Working in-house is, for many lawyers, the dream job. After all, there are no billable hours, and best of all, no pesky clients. Many lawyers work for years to build credentials significant enough to allow them to leave the grind of firm life and relax in the oasis of in-house practice. Interestingly enough, most of the same people who espoused the glories of working in-house also offered many words of warning about starting out there. I have, over my first year of practice, come to understand the significance of their warnings, developed a unique understanding of the benefits of skipping the traditional route, and learned that life in-house is as good as many lawyers imagine.

I was warned time and time again about all I might miss out on by beginning my career in-house. I would never be able to build a specialty. I would never be able to create a résumé that would make me marketable and help me advance my career. Almost all of those warnings proved true. There is a lot of detail that your average firm associate has learned that I haven’t and that I may never.

That is a sacrifice worth making. The nature of in-house work, at least at a large privately held company, is that it is eight miles wide and only about two inches deep. While skipping the traditional route may mean never becoming an expert at any particular practice, it also has meant exposure to a much larger number of legal issues than your average firm associate.

There are a number of considerable advantages to starting in-house. Everyday, novel challenges present themselves, and a number of those challenges require the retention of brilliant outside counsel. No matter the issue, I have been able to learn from the best and brightest practitioners in every field. The experience I’m lacking is only a phone call away.

Another great advantage of beginning in-house is the development of an entirely different set of communication and management skills that many firm associates will take much longer to gain. By being one of only a few attorneys in a company, you’re forced to take an immediate, active role in management. This immediate high level of responsibility is both maddening and empowering.

Starting in-house also affects your outlook on the provision of legal services. The foundation I’ve gained in-house will always cause me to see the practice of law from the client’s perspective first. This type of client-centered view will be invaluable throughout any business or legal career.

Finally, for all of those dreamers, sitting in a dimly lit firm, trying hard to bill that 2,000th hour, an in-house job really is as good as you imagine. In-house, you create the objectives, and your focus is always on one seminal goal; increase and protect the production and profitability of the enterprise. The in-house practice is one of building something and empowering those around you to succeed.

Author: Cal D. Everett, Ideal Image Development Corp.
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INVESTMENT MANAGEMENT  TRUST SERVICES  ESTATE SETTLEMENT
Jeremiah and Alex can attest to Maddux’s unwavering support. Jeremiah, a full-time college student, met Maddux eight years ago through Big Brothers/Big Sisters. He still regularly visits Maddux and his family. Alex met Maddux four years ago through the Guardian ad litem program. Then, Alex was an eleven-year-old Tampa Bay Academy student who struggled with psychological, academic, and fitness issues. Maddux devoted himself to Alex, taking the time to earn his trust and help him to overcome his difficulties. Maddux bought Alex book series to pique and hold his interest in reading and introduced him to physical fitness through good old-fashioned bribery by paying him pennies for push-ups and sit-ups. Alex is now in a therapeutic foster home. He is excelling as a student athlete and was accepted...
Continued from page 20

into the high school ROTC scholarship program.

Service to the bar and his community appears to be a regular part of Maddux’s daily activities. Maddux spent a recent Friday afternoon assisting a colleague to prepare for oral argument before the United States Supreme Court. He left in time to pick up a bus and shuttle attendees to a concert his church hosted to raise funds for the homeless. At one time, he might have returned home to a seemingly unlikely roommate: an indigent client. Indeed, Maddux once took a client, an unemployed carpenter, into his home for several months. Maddux reached out to his contacts and found work for the man. The man was able to build a strong network and is now self-sustaining.

Finally, not even Maddux’s vacation time is exempt from volunteer work. On three occasions in the last seven years, Maddux has volunteered a week to help some of the world’s most impoverished people. In Honduras, he installed basic plumbing in a village and laid cement floors in huts. In Haiti, he provided support to a rural hospital, triaging 250 patients in seven days and monitoring the post-op recovery. In Malawi, Africa, Maddux worked in a “crisis nursery” run by the Ministry of Hope. The nursery provided the only alternative for children whose parents had died, sick children whose parents could not care for them, and infants whose were either unable to breast feed or could not due to HIV.

In reflecting on his numerous legal and non-legal charitable activities, Maddux remained modest, stating simply, “It brings me great joy to work with people in need … many folks have never had anyone stand up for them.” Like Mr. Huerta, Maddux leads by example.

1 See www.madduxattorneys.com.

In addition to state and federal criminal defense, Maddux concentrates primarily in the areas of civil rights and personal injury litigation.

Author:
Rachel May Zysk,
Carlton Fields, PA.

HCBA Lawyer Referral Service

HCBA’s Lawyer Referral Service handles more than 14,000 calls a year. With over 140 attorney members, averaging 10 years of legal experience in over 90 areas of law, the LRS is ready and able to serve you and your clients. Please refer your clients to the Hillsborough County Bar Association LRS when the case involves an area of law you do not practice.

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This month, the Hillsborough County Bar Association (HCBA) proudly profiles Lansing C. Scriven, the first African-American lawyer from the Thirteenth Judicial Circuit to serve as our circuit’s representative to the Florida Bar Board of Governors. Known to most as “Lanse,” he is currently serving his second elected term in that position. Before being elected to the Board of Governors, Lanse distinguished himself as the first African-American President of the HCBA for the 2005-2006 term. His most memorable event from that year is that the HCBA broke ground on the Chester H. Ferguson Law Center. Lanse also served for three terms as president of the George Edgecomb Bar Association and for one term as president of the Florida Chapter of the National Bar Association. Additionally, Lanse served as

“...Lanse stands as a model for what young lawyers can achieve if they make the effort to strive for excellence in their professional and personal pursuits.”

Continued on page 23
Chair of the Business Litigation Committee of the Florida Bar’s Business Law Section.

The notion of being a “first,” however, is not a novel concept to Lanse as he notes that his own father was one of several “firsts,” including being appointed the first African-American chief of police for the Duval County Sheriff’s Office in 1973 and in 1975 being appointed as the first African-American member of the Florida Parole and Probation Commission. Real progress will come, Lanse believes, when we reach a point “when there is nothing left to which to be selected as the first African American.”

A native of Jacksonville, Florida, Lanse graduated from Duke University in 1984 with a B.A. in Public Policy. He is a 1987 graduate of Florida State University College of Law, with Honors, where he served as an editor of the FSU Law Review and a member of the moot court team. After graduating from Duke, Lanse clerked for the Honorable Joseph W. Hatchett, former Chief Judge of the United States Court of Appeals for the Eleventh Circuit. Lanse looks back on his clerkship with great fondness as he considers it an honor to have clerked for a jurist widely regarded as a trailblazer in the profession. Following his clerkship, Lanse joined Trenam, Kemker, Scharf, Barkin, Frye, O’Neill & Mullis, P.A. as the firm’s first African-American lawyer. Lanse went on to become a shareholder.
and hiring partner at Trenam Kemker, where he practiced for 12 years before establishing his own practice in 2001.

His firm, Lansing C. Scriven, P.A., one of the preeminent small firms in our community, handles a diverse range of business and commercial litigation matters for businesses, governmental and quasi-governmental entities, and individuals. Lanse’s reputation for excellence in the profession, both in legal ability and professionalism, has been recognized by his AV Martindale-Hubbell rating and his consistent selection to Florida Trend’s Legal Elite, Florida Super Lawyers, and as a Fellow of the American Bar Foundation.

Florida Bar President-Elect Scott Hawkins has worked with Lanse on the Florida Bar Board of Governors. Scott notes that Lanse is thoughtful, reflective, and measured in his words. Lanse has taken courageous positions on the Board. It was obvious he thought through his positions, and consequently the other Board members carefully considered his views. Scott says Lanse has the potential to be a statewide leader, and in some ways already is, given the respect he garners on the Board. Scott has such respect for him that he asked Lance to co-chair the Florida Bar Convention a year from this June.

Lanse cites Marvin Barkin as a mentor. Marvin says Lanse is a good solid lawyer and citizen. Marvin continues: “He’s done well, and he is well intentioned.” Marvin said he had no anecdotes to relay about Lanse because Lanse is always under control.

Attorney Eddie Suarez has known Lanse since they were in law school. He lauds Lanse’s genuine integrity, adding he is a great individual and family man.

Julie Sneed explains Lanse’s influence on her and other young lawyers, “Lanse has been an excellent mentor for me over the years. He was a partner at my first law firm at Trenam. From my perspective as a young associate, he was at the pinnacle of his career. He worked hard, had great relationships with the lawyers at the firm and was well regarded as an excellent lawyer. Lanse was and remains a consummate professional. He was also the only other African-American lawyer at the firm at that time. His presence and mentoring let me know that it was possible to be successful. As a mentor, Lanse never sugar coated anything. He was quick to say that first year lawyers don’t know anything. This was a big knock to the bright-eyed, bushy-tailed high achievers that we all were as first year lawyers, but how true it was. His frank advice let us know that there was a lot to learn and that we would always continue to learn something new.”

Although he is considered a lawyer’s lawyer, Lanse also devotes considerable time to serving the community at large. He has served as president of the Board of Directors of the Gasparilla Festival of the Arts, president of The Tampa Club, and on the boards of directors of Tampa General Hospital and the Tampa Housing Authority. He has also served as legal counsel to the Greater Tampa Chamber of Commerce Board of Directors.

When not preoccupied with the practice of law or serving the community, Lanse enjoys working out; collecting art; and traveling on country roads without an itinerary with his wife of 23 years—Mary Scriven, United States District Judge for the Middle District of Florida. During his first day on campus at Duke, Lanse met then fellow freshman Mary Stenson. What initially began as a close platonic relationship eventually blossomed into a lifelong partnership after she asked him out (he claims) during their senior year at Duke.

The couple has four children: Tyler, Jessica, Sarah and Charles. If Lanse seems to disappear for the entire month of March, that is because he is an avid —though some might say rabid— Duke basketball fan. Shown in this article with his father at a recent game at Cameron Indoor Stadium on Duke’s campus, one can see he is most relaxed when he is watching Duke win or watching anyone beat the North Carolina Tar Heels. Lanse proudly notes that daughter Sarah, a high school senior in

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the IB program at Hillsborough High School, was recently accepted to Duke.

Among the accomplishments of which Lanse is most proud is a men’s fellowship group he and a close friend started last year. Lanse describes the group’s purpose as men encouraging each other to become men of stronger Godly character.

That friend is Dr. Lee Green, who as a boy attended the church where Lanse’s father was the pastor, and grew up with Lanse. When both left for college, they lost contact for 26 years. When Lee moved to Tampa four years ago to practice at Moffitt Cancer Center, they picked up as if they had never lost contact.

Lee describes Lanse as a tremendous family man, with the highest ethics, and a true friend—which are really hard to find—the one person in his life who will have his back. Together they created a men’s group and serve as mentors to younger men in the community who may be experiencing difficulties. Dr. Green notes that as busy as Lanse is, he takes the time to give back.

Lanse Scriven’s leadership in our legal community and our broader community have benefitted both in multiple ways. Beyond that, Lanse stands as a model for what young lawyers can achieve if they make the effort to strive for excellence in their professional and personal pursuits.

Author: Raymond T. (Tom) Elligett, Jr., Buell & Elligett, P.A.
2011 Judicial Pig Roast & 5K Run 
April 9, 2011

BOOTH RESULTS
• Best Pig Slop: Trenam Kemker
• 2nd Place Pig Slop: Tie between Judges of the 13th Judicial Circuit and Adams & Reese LLP
• Best Pig Sty: Trenam Kemker
• 2nd Place Pig Sty: Adams & Reese LLP

5K RACE RESULTS
Most Pro Bono Hours Raised
• Individual: Hannah Brannan, 95 Hours
• Team: Bay Area Legal Services, 90 Hours

Team Winners
• Convingtons Krewe
• BTD Warriors
• Thompson, Sizemore, Gonzalez, Hearing

Fastest Runners
• Todd Aidman, Ford & Harrison LLP
• Trish Cohen, State Attorney’s Office

Join the Celebration - Connie’s Soiree 
(CONNIE PRUITT’S RETIREMENT PARTY AND FAREWELL)

Thursday, June 9, 2011 from 5:30 - 7:30 p.m. 
The Chester H. Ferguson Law Center 
1610 N. Tampa Street 
Please RSVP at 813-221-7777 or hcbarsvp@hillsbar.com
In recognition of his profound and everlasting contributions to our country as president, statesman and Founding Father, the theme for Law Day 2011 is John Adams’ career as a lawyer, with special focus on his defense of Captain Thomas Preston and the other British soldiers criminally charged in the deaths of the five Massachusetts citizens in what is historically known as the Boston Massacre.

The Boston Massacre occurred the same year that Adams turned 35. He had been in practice 12 years and was considered one of the leading trial lawyers in Boston. He had represented John Hancock, one of the colony’s wealthiest men, when the English seized his ship The Liberty for failure to pay import duties. He also defended four Irish seamen charged with killing an English naval officer who attempted to impress them into service, a practice hated by the colonialists.

Boston was a hotbed of political activity. The English parliament had enacted laws that imposed heavy taxes on the colonies. The townspeople of Boston resisted collection efforts, often violently. After countless provocations, British troops were sent to restore order to the disruptive colony.

The troops arrived in Boston in 1768 and were greeted with a hostility that never waned. They were unsuccessful in quelling the resistance to English rule. By March 5, 1770, tension in the town had reached its peak. Groups of citizens and soldiers clashed with each other throughout the evening. The fatal encounter took place in front of the Customs House on King Street. In it, four members of a mob confronting eight British soldiers were shot dead, and a fifth later died of his wounds. The soldiers were charged with murder. They sought in vain to obtain counsel. Adams and his young associate Josiah Quincy were approached by friends of Captain Preston, the officer who commanded the accused troops, and both lawyers.

In time, he considered his role in the case one of the finest services he ever performed for his country.

Continued on page 29
agreed to represent Preston and his men. They worried about the impact of their undertaking on their families, their careers, and even their lives, given the level of hostility the townspeople displayed toward the soldiers.

The colony’s loyalist leadership reluctantly agreed to withdraw all British troops from Boston. A nervous calm prevailed while the town, expecting guilty verdicts, awaited the trials. They were to begin in May but were postponed to let tempers cool. Preston’s trial took place in September and the enlisted men’s in November.

No official record exists of Preston’s trial, but contemporary accounts show that Adams and Quincy adopted an effective and sophisticated trial strategy. They used their challenges to the venire to exclude all but two jurors from Boston and to seat five loyalists. The charge against Preston, that he had ordered the troops to fire on the civilians, was weak from the outset and grew weaker as the Crown presented its case. On cross-examination, Adams and Quincy picked apart the testimony of the adverse witnesses and

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then in argument carefully distinguished the harmful testimony to cast it in a light favorable to Preston. Even opposing counsel acknowledged that Adams’s final argument was brilliant. Preston was acquitted.

The enlisted men’s trial in November posed a greater challenge for Adams and Quincy. Preston’s acquittal had left Boston with a greater appetite for vengeance, and the troops were the target. A record exists of this trial, so the effectiveness of the defense strategy becomes more apparent. They used their challenges to eliminate all Bostonians from the jury panel. Their defense was that the troops faced an increasingly violent mob, giving them no choice but to fire to protect themselves. The testimony of the prosecution’s witnesses had weaknesses that the two lawyers capitalized on to great advantage. Conversely, key defense witnesses were exceptionally strong, leaving little room for doubt about the mob’s violent intentions.

In their arguments, Adams and Quincy sought to separate the jury from the immediate pressures they felt, with the town clamoring for murder convictions, and to emphasize their duty to administer justice fairly. Adams’ argument wove a fine line through the testimony of the witnesses, distinguishing that which

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was harmful and focusing on the contradictions. He characterized the mob as outsiders and troublemakers, not good townspeople. He eloquently emphasized to the jurors their duty to put aside all but what they saw and heard and to adhere to their duty to render justice in spite of the public sentiment.

Only two of the soldiers were convicted and not of murder but of the lesser offense of manslaughter. They avoided potential death sentences by pleading benefit of clergy, a practice by which a prisoner convicted of a crime less than murder would be branded on his thumb.

Initially Adams’ law practice suffered because of his defense of the soldiers, but eventually his reputation as a skilled lawyer and colony leader soared. In time, he considered his role in the case one of the finest services he ever performed for his country. He believed that conviction and execution of the soldiers would have been a miscarriage of justice and contrary to the principles of a democratic nation.

Adams went on to be one of the most influential and prominent leaders in the Continental Congress, securing the adoption of the Declaration of Independence; serving as an envoy and ambassador to Europe; and becoming our first Vice-President under George Washington.

Author: Michael Foster, Michael Foster, P.A.
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On April 13, 2011, a judge, law firm, two organizations, and ten attorneys were honored for their exceptional pro bono contributions at the fourth annual Pro Bono Service Awards Ceremony. Award nominations were submitted to the Thirteenth Judicial Circuit Pro Bono Committee, which is chaired by Circuit Judge Ashley B. Moody. The Awards Ceremony was sponsored by the Thirteenth Judicial Circuit Pro Bono Committee, Bay Area Legal Services Volunteer Lawyers Program (BAVLP), and the Hillsborough County Bar Association.

**Hillsborough County Bar Association's Jimmy Kynes Pro Bono Service Award**

The Honorable James M. Barton, II, a Hillsborough County Circuit Court Judge, is known for both his distinguished legal career and his dedication to the availability of legal services to the poor. For more than two decades, Judge Barton has tirelessly worked to improve access to the legal system in Hillsborough County, and throughout Florida. Elected to the bench in 1991, Judge Barton was chosen in 1993 to lead the newly created Thirteenth Judicial Circuit Pro Bono Committee. Judge Barton enthusiastically and steadfastly led the Committee for 17 years, making it one of the most effective pro bono committees in Florida.

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In 2009, the Florida Bar Foundation and the Florida Bar Standing Committee on Pro Bono Legal Service launched the ONE Campaign to increase pro bono participation by every Florida attorney. A member of the Standing Committee, Judge Barton traveled throughout the state speaking to attorneys about the Campaign and inspiring them to participate in pro bono services. In conjunction with the launch of the ONE Campaign in this county, Judge Barton convinced the Hillsborough County Board of County Commissioners to pass a resolution declaring the last week of October in 2009 to be “Pro Bono Week.” Judge Barton was also instrumental in organizing the annual Thirteenth Judicial Circuit Pro Bono Service Awards Ceremony.

**Outstanding Pro Bono Service by a Law Firm**

**Carlton Fields, P.A.** has a rich tradition of support for pro bono service. Local Carlton Fields attorneys who have long taken the lead in promoting pro bono service throughout the state and across the nation include William Reece Smith, Jr., Sylvia Walbolt, Gwynne Young, and Kathleen McLeroy. Currently, two of the firm’s lawyers, Leslie Schultz-Kin and Kevin McCoy, serve on the Bay Area Legal Services board, with Ms. Schultz-Kin as its president.

Attorneys at the firm are encouraged to donate at least 50 hours per year of pro bono legal services. They handle pro bono matters in family, landlord-tenant, real property, and appellate law (including death row cases), and provide assistance to nonprofits. Carlton Fields attorneys provided pro bono representation in the recent landmark case involving adoptive parents in a same sex relationship, establishing that Florida courts...
must honor valid same sex adoptions from other States. In 2010, attorneys and paralegals in Tampa contributed 4,446 hours of pro bono service.

**Outstanding Pro Bono Service by an Organization**

*Are You Safe, Inc.* is an all-volunteer Hillsborough County nonprofit that provides pro bono legal services to victims of domestic violence. Volunteer attorneys assist petitioners during the injunctive process by reviewing petitions, and providing advice and representation in court. Dedicated to ensuring that every victim has a voice in court, Are You Safe’s attorneys (more than 25) have provided over 500 hours of pro bono service since 2009.

The Tampa Bay Hispanic Bar Association (TBHBA) is a local volunteer bar association comprised of community members of Hispanic origin, and others who support its mission. Pro bono service is TBHBA’s top priority. It’s pro bono projects include recruiting volunteers to assist BAVLP’s Spanish speaking clients, collaborating with the BAVLP to develop and staff the Family Forms Clinic in Spanish (FFC en Español), and translating the instructions to all of the court approved family law forms into Spanish (42 packets of forms!). TBHBA obtained a grant to translate the instructions and members donated over 60 hours of pro bono service to complete the project. In 2010, TBHBA attorneys provided 91.5 hours of pro bono service at monthly FFC en Español clinics; and, individually, members provided countless pro bono hours to help eliminate barriers to justice.

*Continued on page 37*
Outstanding Pro Bono Service by a Lawyer

O. Kim Byrd has been practicing for 21 years, currently with the Givens Law Group. His areas of practice include family law, estate planning, and criminal defense. He is president of the National LGBT Bar Association, and an attorney with the National Center for Lesbian Rights, and Lambda Legal. Since 2007, Mr. Byrd has donated 64 pro bono hours to the BAVLP Family Forms Clinic (FFC), in addition to his pro bono service through the BAVLP Case Referral Panel, Client Intake Clinic and Mentoring Project.

J. David Gallagher has been practicing for 29 years, and is a partner with Gallagher Keenan, P.A. He is board certified in civil trial law. His practice areas include personal injury, malpractice, construction and commercial law, and business litigation. AV rated by Martindale-Hubbell, in 2008 he was named a Florida Super Lawyer. Since 1988, he has donated over 190 pro bono hours representing 14 BAVLP clients in the areas of auto negligence, contracts, warranties and other issues.

Joanna Garcia is a shareholder with Carlton Fields, P.A., practicing with its Business Litigation & Trade Regulation and Real Property Litigation practice groups. A past president of the Tampa Bay Hispanic Bar Association (TBHBA), Ms. Garcia volunteers regularly for the BAVLP/TBHBA Family Forms Clinic en Español and the Center for Refugee and Immigrant Children. She initiated efforts to develop the FFC en Español and obtained funding to translate the court-approved family law forms and instructions into Spanish. Since 2008, she has donated over 300 pro bono hours to these projects.

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James A. “Tony” Julian served as the attorney for the Navajo Nation Office of Prosecutor and as a deputy district attorney in Gallup and Santa Fe, NM. He was licensed in Florida in 1985 and is currently an assistant state attorney in Hillsborough County. Since 2004, Mr. Julian has donated 50 pro bono hours to the BAVLP Client Intake Clinic.

David C. Lanigan, a sole practitioner licensed in Florida in 1981, holds a Master of Laws in Taxation. His practice includes estate planning, probate, income tax and business law/litigation matters. Since 1994, he has donated over 155 pro bono hours to assist 14 BAVLP clients with probate issues.

Marian P. McCulloch, a managing partner with Allen Dell, PA, is board certified in marital and family law, and is a certified family law mediator. Licensed in Florida in 1980, Ms. McCulloch was named one of the Top 50 Women Attorneys in Florida in 2010. Since 1991, she has handled more than 11 BAVLP cases, and contributed over 150 pro bono hours.

Michael J. Peacock is currently a partner in the Peacock Law Firm and Administrative Counsel for the Hillsborough County Public Defender’s Office. Licensed in Florida in 1980, Mr. Peacock’s practice includes class actions, civil litigation, and mediation. Since 2007, as a volunteer lawyer for the ACLU of Florida, he has represented over 22 young clients in Judicial By-Pass cases and trained other lawyers to handle these cases. He has spent approximately 500 hours on pro bono representations.

Jennifer G. Roeper is a shareholder in the Tampa office of Fowler White Boggs, PA., practicing in the firm’s International and Immigration Practice Group. She is board certified in immigration and nationality law. Since 2004, Mr. Roeper has contributed 365 pro bono hours for matters including assisting a family defend a deportation, helping a terminally ill child’s Guatemalan grandmother obtain a visa for a U.S. visit, and many other significant immigration and asylum cases.

Melissa D. Seagraves is a senior staff attorney with Heart of Florida Legal Aid Society in Polk County where she practices family law, focusing on victims of domestic violence. Since 2006, she has been a dedicated volunteer for the BAVLP Client Intake Clinic, donating 60 hours providing advice to clients on various legal matters.

Amanda Uliano was licensed in Florida in 2003 and practices in the area of business law. She is also the CLE Director for the Hillsborough County Bar Association. Ms. Uliano was one of the first volunteers for the BAVLP Family Forms Clinic when it began in 2006, and has donated 54 hours of pro bono service to the project. She also assists individual clients through the BAVLP Case Referral Panel.

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The 2011 Florida Bar Pro Bono Service Awards

Each year, the Florida Bar and the Supreme Court of Florida recognize attorneys, judges, law firms and professional groups that have provided outstanding pro bono service. On January 27, 2011, the following were honored in Tallahassee:

Hillsborough County Circuit Court Judge Susan G. Sexton was presented the statewide Distinguished Judicial Service Award for her contributions in establishing the Elder Justice Center and initiating a program for guardian advocacy. This award recognizes outstanding and sustained service to the public by a member of the judiciary, especially as it relates to support of pro bono legal services.

Rachel May Zysk, an associate in the Tampa office of Carlton Fields, P.A., received the statewide Florida Bar Young Lawyers Division Pro Bono Service Award. Ms. Zysk is a member of the firm’s White Collar Crime and Government Investigations Practice Group. Since 2007, Ms. Zysk has contributed more than 850 pro bono hours representing criminal defendants, including an oral argument before the Eleventh Circuit, a two week trial in federal court, and representation of a death row inmate in post-conviction proceedings.

Rosemary Armstrong received the Florida Bar President’s Pro Bono Service Award for the Thirteenth Judicial Circuit, an award she previously received in 1988. The 2011 award was presented in recognition of her more than 25 years of pro bono service, including more than 1000 hours assisting hundreds of people in need.

These attorneys also were recognized for pro bono service:

Donation of 100 pro bono hours or more

Rosemary Armstrong, Esq.
Ryan Carey, Esq.
Russell Buhite, Esq.
Sarah Laflou-Amine, Esq.
A.J. Musial, Esq.
Jo Ann Palchak, Esq.

Donation of 50 pro bono hours or more

Danelle B. Barksdale, Esq.
Robert Blasotti, Esq.
O. Kim Byrd, Esq.
Thomas Caufman, Esq.
Jeanne Coleman, Esq.
Kamala Corbett, Esq.
L. Carina Cutter, Esq.
Dionne Ferguson, Esq.

Donation of 20 pro bono hours or more

Jamel Aleem, Esq.
Dale Appell, Esq.
Natalie Baird, Esq.
Richard Becker, Esq.
Ronald Biduelli, Esq.
Anita Brannon, Esq.
Michael Broadus, Esq.
Nancy Brouder, Esq.
Alex Caballero, Esq.
Edward Campbell, Esq.
Gayle Carlson, Esq.
Daun Chapman, Esq.
Johnathan Comnes, Esq.
Jennifer D’Angelo, Esq.
Ronald Darrigo, Esq.
Joseph Gardner Dato, Esq.
Christine Herr, Esq.
Fentrice D. Driskell, Esq.
Migdalia Figueroa, Esq.
Christophe Fiori, Esq.
Michael Fluke, Esq.
Jamie Gomez, Esq.
Patricia Gomez, Esq.
Lee Gunn, Esq.
John Guyton III, Esq.
Elizabeth Hapner, Esq.
Shawn Harrison, Esq.
Elizabeth Herd, Esq.
Lisa Hoppe, Esq.
Thomas Neucomb Hyde, Esq.
Ann Joslin, Esq.
William Jung, Esq.
Victoria Knight, Esq.

Robert J. Scanlan, Esq.
Leslie Reicin Stein, Esq.
Stephen J. Szabo, Esq.
Lara J. Tibbals, Esq.
Rachel May Zysk, Esq.

Steve Hurwitz, Esq.
J. Derek Kantaskas, Esq.
Kristin Kirkner, Esq.
James McKee, Esq.
William Muniz, Esq.
Birdy Vanasupa, Esq.
Jess J. Yado, Esq.
Katherine Yanes, Esq.

Jamel Aleem, Esq.
Dale Appell, Esq.
Natalie Baird, Esq.
Richard Becker, Esq.
Ronald Biduelli, Esq.
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Patricia Gomez, Esq.
Lee Gunn, Esq.
John Guyton III, Esq.
Elizabeth Hapner, Esq.
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Elizabeth Herd, Esq.
Lisa Hoppe, Esq.
Thomas Neucomb Hyde, Esq.
Ann Joslin, Esq.
William Jung, Esq.
Victoria Knight, Esq.

Author:
Susan Steinberg Sandler,
Pro Bono Manager,
Bay Area Volunteer Lawyers Program, Bay Area Legal Services, Inc.
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Like other types of workplace diversity—including gender, race, ethnicity and sexual orientation—age diversity presents unique challenges for organizations, and promises rewards to those that focus on the issue and develop creative strategies for managing it well.” Mary Carmel Kaczmarek, “Generational Diversity in the Legal Profession: Addressing the Challenges and Reaping the Rewards” (2007).

There is a special dimension to incorporating age diversity into our profession. The fact is, no matter how good legal education can be, the legal profession is one with apprenticeship at its core. Our profession strongly relies on all generations engaging each other.

Now, more than ever, legal employers need to go through a period of self-evaluation to determine to what extent they embrace age diversity as a goal. Law firms and legal employers re well served to have a diverse range of ages of lawyers and legal professionals.

Below are three efforts by voluntary bar associations to foster age diversity in our profession:

**ABA Business Law Section Fellows Program**

The program is intended to increase “the participation of young lawyers in Section activities” because “the cost of attending Section meetings combined with a perceived lack of opportunity to be an active participant in the substantive work of the Section have been identified as major reasons why despite a number of outreach efforts the Section continues to have few young lawyers who are meaningful participants in Section activities.” See http://apps.americanbar.org/buslaw/committees/CL715000pub/fellows.shtml. In return, the Section expects young lawyers “to participate actively in the substantive work of the Section and to grow into future leadership positions within the Section.” Id.

**HCBA Judicial Shadowing Program**

“This program is about getting young lawyers the benefit of direct interaction with the judiciary in a way that may not be available early in a young lawyer’s career.” Anthony “Nino” Martino, HCBA Young Lawyers Division Board of Directors.

All generations must be engaged in a conversation, and these programs are structured to ensure lawyers at all levels can benefit from each other. “There is both an art and a science to becoming a good lawyer.” Charles B. Wolf, “The Foundation of a Good Lawyer,” *Firm Leadership: Leading Lawyers on the Art and Science of Managing a Law Firm* (Aspatore Books, 2003) I encourage you to take advantage of such age diverse efforts in a quest to enhance the profession as a whole and to become the best lawyers we can be.

**The Florida Bar Young Lawyers Division**

According to its mission, the purpose of the Young Lawyers Division is, among other things, “to serve as a medium for fostering discussion and free interchange of ideas relative to the duties, responsibilities and problems” of young lawyers. See http://www.flayld.org.

An intergenerational conversation is necessary to our profession and is a medium by which all generations can learn from each other in order to serve clients effectively.

**Author:**

*Jason Goitia, The Goitia Law Firm*
3,000 hours
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A District of South Carolina case appears to be the first to interpret the bona fide prospective purchaser defense to liability under CERCLA.

Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., Civil Action No. 2:05-cv-2782-MBS, 2010 U.S. Dist. LEXIS 104772 (D.S.C. Sept. 30, 2010) involves a multiparty contaminated site. Part of the case addresses a brownfields developer’s attempt to establish the “bona fide prospective purchaser” (BFPP) defense to liability under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The court found that Ashley was not a BFPP.

The legal and business communities are aware of the need to conduct “all appropriate inquiries” (AAI) before purchasing real property. One purpose of AAI, among others, is an attempt to establish the “innocent landowner” defense to CERCLA liability (other requirements also apply). That defense is not available, however, if the purchaser knows or has reason to know of hazardous substance disposal on the property.

In 2002 Congress passed the Small Business Liability Relief and Brownfields Revitalization Act, which included the BFPP provision to protect purchasers of contaminated property. (Note: This article does not address state or local laws or other federal laws.)

The BFPP defense to liability under CERCLA is found in 42 U.S.C. § 9607(r), while the BFPP definition is in 42 U.S.C. § 9601(40). The definition contains eight elements, including AAI, and some have multiple parts. The person claiming BFPP status must prove all eight elements by a preponderance of the evidence.

Ashley II of Charleston addressed each of the eight elements in detail, finding that Ashley failed to meet three. The court first concluded that Ashley did not prove that no disposals occurred on the site after its acquisition because Ashley’s demolition activities likely caused disposals of hazardous substances.

The court then found that Ashley did not exercise appropriate care with regard to hazardous substances. For example, demolition procedures may have exacerbated site conditions by failing to address “recognized environmental conditions” identified in the Phase I reports, and other “housekeeping” failures indicated lack of appropriate care.

Of most concern, however, is the court’s finding that Ashley failed the requirement of no

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affiliation with other potentially responsible parties (PRPs). Although Ashley had no direct or indirect familial relationships with other PRPs and was not the result of a reorganization of a PRP, the court seemed troubled by Ashley’s release and indemnification of several parties from environmental liability as part of the site purchase. The court noted Ashley’s attempt to persuade the Environmental Protection Agency (EPA) not to take enforcement action to recover for any harm at the site caused by the indemnified parties. The court stated that Ashley took the risk that the indemnified parties might be liable for response costs and said, “Ashley’s efforts to discourage EPA from recovering response costs covered by the indemnification reveals just the sort of affiliation Congress intended to discourage.” 2010 U.S. Dist. LEXIS 104772 at *166-68. The case does not cite any legislative history concerning Congressional intent, however.

While this case analyzes all the BFPP elements, the finding of affiliation through the indemnification and release is likely to be of most interest to those purchasing contaminated properties. Whether other courts will interpret indemnification and release as an affiliation remains to be seen. In the meantime, this case is instructive to those negotiating and documenting transactions.

Author: Gayle B. Carlson, Gayle B. Carlson, PA.
after massive public discourse, 2010’s health care reform remains the law of the land! In the last issue, a short primer on changes implemented from 2010 to 2012 was provided. In this article, the reform changes scheduled for 2013 through 2018 will be examined.

In 2013, provisions intended to raise revenue for health reform are:
- Medicare tax for high-Income earners increases 0.9% for earned income over $200,000 (individuals), $250,000 (families)
- Medicare surtax of 3.8% for unearned income on high-income individuals; applied to Modified Adjusted Gross Income (MAGI) over $200,000 (individuals) and $250,000 (families)
- Flexible Spending Account contributions capped at $2,500 per participant
- Limits deduction for executive compensation to $500,000
- Medical device manufacturers pay a 2.9% sales tax

In 2014, the transition takes several large steps toward changing health care policies.
- States mandated to operate “health care exchanges,” either alone or thru a non-profit agency, must create a marketplace where consumers can price and acquire coverage. This creates competitive rates for those who can’t afford or acquire coverage. Because they are self-employed or unemployed, they earn too little or have conditions that prevent them from employer provided coverage.
- Plans must offer “essential benefits” (initially defined as emergency services, hospitalization, maternity, newborn care, mental health and substance abuse, prescription drug, preventative and wellness services, chronic disease management, pediatric, oral and vision care)

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• Prohibition on annual limits or lifetime maximums on “essential benefits”
• Individuals required to obtain “essential health coverage” or pay penalties
• Employers with 50+ employees pay up to $2,000 per uncovered employee over a 30 count.
• Health providers pay a portion of 8 billion fee
• Employers report health care information on IRS returns (waiting periods, employee information, plan coverage, premiums and penalties)

Finally, in 2018, those with high cost plans are taxed on the excess. The “Cadillac Tax” is a 40% nondeductible excise tax on plans with premium costs in excess of $10,200 for individual coverage and $27,500 for family coverage.

Although attempts on the Hill are geared toward repeal (even if only symbolic), rather than amendment of the law, recent statements by the President’s administration have shown an intent to compromise on important facets of the law. On February 28th, President Obama indicated he would sign legislation giving states the power to opt out of the mandated insurance/exchange requirements if the state(s) can prove their option provides insurance to previously uninsured that is as comprehensive and affordable as the current law without increasing the federal deficit.

In addition, a bi-partisan Congress repealed the requirement that employers file a 1099 for each business they pay more than $600.

The two Acts comprising health care reform are meant to overhaul the health care system. These articles give just snippets of information. Hopefully they will assist in understanding changes coming to domestic health care or help participation in lively dinner party conversation!

Author:
Barbara L. Sanchez-Salazar, Fowler White Boggs PA.
Members gathered for the Intellectual Property CLE on March 16th.

MISAPPROPRIATION OF “IDEA”: ANOTHER HURDLE FOR PLAINTIFFS

Intellectual Property Section

Florida law recognizes a cause of action for “misappropriation of idea.” The key elements are:
1. The “idea” must have been novel;
2. The “idea” must have been disclosed to the recipient in confidence; and
3. The recipient must have adopted and used the “idea.”


Decisions from other states hold that the claimed “owner” of a novel idea, by his gratuitous and unilateral act of disclosure, may not impose upon the recipient a confidential relationship. Keane v. Fox Television Stations, Inc.

But, under at least one Florida appellate decision, a confidential relationship may be inferred from the relationship of the parties and the testimony of the claimed “owner,” All Pro Sports Camp, Inc., supra; this view of confidentiality is consistent with the rule in “trade secrets” misappropriation cases that the “existence of a confidential relationship ... gives rise to an implied obligation not to use or disclose,” Dotolo v. Schouten,

and Florida law recognizes “implied confidential relationships.” Bateman v. Mnemonics, Inc.

Although the Florida common law continues to recognize that the existence of a confidential relationship, such as that between an employer and an employee, gives rise to an implied obligation not to use or disclose a “trade secret” without authorization of the owner of that secret, current Florida statutory law is much

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MISAPPROPRIATION OF “IDEA”: ANOTHER HURDLE FOR PLAINTIFFS
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more strict in the case of non-trade secret information.
In 2006, the Florida Legislature enacted Section 501.972, Fla. Stat.: §501.972. Actions based upon use of a creation that is not protected under federal copyright law

(1) Except as provided in subsection (2), the use of an idea, procedure, process, system, method of operation, concept, principle, discovery, thought, or other creation that is not a work of authorship protected under federal copyright law does not give rise to a claim or cause of action, in law or in equity, unless the parties to the claim or cause of action have executed a writing sufficient to indicate that a contract has been made between them governing such use.

(2) Subsection (1) does not affect or limit:

(a) Any cause of action based in copyright, trademark, patent, or trade secret; or
(b) Any defense raised in connection with a cause of action described in paragraph (a).

That section in effect provides that, for an “idea, procedure, process, system, method of operation, concept, principle, discovery, thought, or other creation” to be protectable, its purported “owner” must disclose it pursuant to a written agreement signed by the recipient of the information in question unless:

1. The information is a “work of authorship protected under federal copyright law; or
2. The misappropriation of that information gives rise to a “cause of action based in copyright, trademark, patent, or trade secret.”

Put simply, then, the purported owner of an “idea, procedure, process, system, method of operation, concept, principle, discovery, thought, or other creation” must:

A. Have a written confidentiality or non-use/non-disclosure agreement signed by the recipient of that information; or
B. Have a claim or “cause of action based in copyright, trademark, patent, or trade secret” against the recipient of that information.

Otherwise, the recipient’s unauthorized use or disclosure of that information creates no cause of action on behalf of the purported “owner” of that information against the recipient.

1 333 F.2d 672 (5th Cir. 1974).
3 764 So.2d 8 (Fla. 4th DCA 1999).
4 727 So.2d 363 (Fla. 5th DCA 1999).
5 558 So.2d 79 (Fla. 3d DCA 1990).
7 426 So.2d 1013, 1015 (Fla. 2d DCA 1983).
8 79 F.3d 1532, 1550 (11th Cir. 1996).

Authors: Thomas T. Steele and Zachary G. Oseland, Steele Law Group, PA.

HCBA Senior Council Luncheon

Right: E.J. Salcines and Richard Woltmann

Judge E.J. Salcines provided “A Brief History of Ybor City” for the Senior Council attendees on March 15th.
T he Florida Supreme Court recently issued an important opinion in Kaaa v. Kaaa, Fla. L. Weekly (Fla. Sept. 30, 2010), deciding that passive appreciation of non-marital real property should be treated as a marital asset subject to equitable distribution where marital funds reduced the mortgage note on the property and the non-owner spouse made contributions that enhanced the value of the property. Id.

The First and Second District Courts of Appeal were in conflict on this issue, with the Second District holding in Kaaa, 9 So. 3d 756 (Fla. 2d DCA 2009), that such passive appreciation is a non-marital asset, while the First District held in Stevens v. Stevens, 651 So. 2d 1306 (Fla. 1st DCA 1995), that such passive appreciation is a marital asset. The Supreme Court approved the First District’s decision in Stevens and quashed the Second District’s ruling in Kaaa.

When does the holding in Kaaa apply? First, the Court must find passive appreciation of a non-marital property during the marriage. Second, marital funds must have been used to reduce the mortgage note on the property. Third, the non-owner spouse must have contributed funds or labor to the property which enhanced its value.

How will the trial court calculate the marital portion of the passive appreciation?
To calculate the marital asset subject to equitable distribution, the amount of encumbrance should be divided by the value of the asset at the time of the marriage, which fraction should then be applied to the passive appreciation, less the unpaid mortgage balance. The Court provided an example:
“If...one party brings to the marriage an asset in which he or she has an equity of fifty percent, the other half of which is financed by marital funds, half the appreciated value at the time the petition for dissolution was filed...should be included as a marital asset... reduced by the unpaid indebtedness marital funds were used to service.” Id.

Passive appreciation of non-marital real property should be treated as a marital asset where marital funds reduced the mortgage and the non-owner spouse made contributions that enhanced the value.

Questions Created by Kaaa:
(1) Are both or either forms of marital contribution by the non-owner spouse, i.e., funds and/or labor, required for passive appreciation of a non-marital property to be considered marital? See paragraph in the opinion entitled “Determining an Award of Passive Appreciation” requiring findings of fact: “… that marital funds were used to pay the mortgage and that the non-owner spouse made contributions to the property.” (Emphasis added)
But see the last sentence of the paragraph entitled “Stevens” where contributions were defined as: “… contributions need not be strictly monetary and may include marital funds or the efforts of either party.” (Emphasis added)
2) Can the “contributions” in addition to the mortgage reduction be satisfied by either spouse rather than the non-owner spouse?
(3) If marital funds pay a mortgage but the non-marital property decreases in value, would that depreciation be a marital liability? The opinion is silent on this issue.

Authors:
Nancy Hutcheson
Harris & Katherine
C. Scott, Harris & Hunt, PA.
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in Florida, there is certainly a policy favoring the enforcement of arbitration agreements. However, in a recent case, Florida’s Fourth District Court of Appeal found that a class action waiver in an arbitration agreement violated public policy and upheld the denial of a motion to compel arbitration.

This case is significant because the Fourth District Court of Appeal had previously upheld the validity of a similar arbitration clause’s class action waiver in a class action lawsuit which, like the recent case, was based upon Florida’s Deceptive and Unfair Trade Practices Act (FDUTPA). The difference in the recent case was that counsel for the members of the class had produced testimony at the trial court level that showed they could not find competent counsel to represent them on an individual small claim basis. By presenting the testimony, the plaintiffs were able to establish an argument that the arbitration clause class action waiver provision was contrary to public policy because the inability to find competent counsel to bring a class action lawsuit “would eviscerate the remedial purposes of the relied upon [FDUTPA] statute.” This was in direct contravention to the finding in the prior case with regard to the same statute.

In addition, the Court found that the provision also was invalid because it would potentially prevent a claimant from joining a “government initiated enforcement action, thus eviscerating a potent enforcement mechanism put in place by the Legislature to deter deceptive or unfair trade practices.” The Court also provided an extensive review of the law on class action waivers and ultimately certified a question to the Florida Supreme Court to determine whether class action waivers in cases involving a claim based upon a remedial statute violate public policy. We can presume that there is more to come on this issue.

When attempting to determine the validity of an arbitration agreement, it is important to look beyond the language of the agreement and any included waiver provisions to the effect that the provision will have upon the claims of the parties against whom the motion to compel arbitration is directed. The case also reminds us of the reality of all litigation: no matter how sure we may be about whether the law is on our side or the side of our opponent, the facts of each particular case are of great significance in how we present our facts and how a more complete record can change the law—especially with regard to public policy issues.

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1 Seifert v U.S. Home Corp., 750 So. 2d 633 (Fla. 1999).
2 McKenzie, et. al v. Betts, ___ So. 3d ___, 36 Fla. Law Weekly D241, Nos. 4DO8-493 and 4DO8-494 (Fla. 4th DCA February 2, 2011).
3 See Fonte v. AT&T Wireless Services, Inc., 903 So. 2d 1019 (Fla. 4th DCA 2005)
4 McKenzie at p. 6.
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**FOR YOUR FIRM TO BE LISTED HERE, CONTACT DAWN McCONNELL, DAWN@HILLSBAR.COM**
I n 2008, Florida passed a law requiring notification to the county property appraiser of any change in control or ownership of real property that is assessed for ad valorem taxes. This change is significant because it authorizes property appraisers to reassess the value of real property if a change of ownership or control occurs within a legal entity that owns real property regardless of whether title to the property changes hands.

Section 193.1556(1), Florida Statutes, provides in relevant part:

Any person or entity that owns property assessed under s. 193.1554 or s. 193.1555 must notify the property appraiser promptly of any change of ownership or control as defined in ss. 193.1554(5) and 193.1555(5). The definition of “change of ownership or control” that appears in Sections 193.1554(5) and 193.1555(5) reads as follows:

“…any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value[.]”

By way of example, if a limited liability company that owns real property in Florida transfers more than 50% of its membership interests or there is a change in managing member or other controlling person, a “change of ownership or control” has occurred.

To effectuate notification, the Florida Department of Revenue published Form DR-430, which is available on the Florida Department of Revenue website. When a change in ownership or control occurs (other than by deed or other recorded instrument), a completed Form DR-430 should be sent to the property appraiser in the county where the real property is located.

In 2010, Florida’s Legislature enacted an important amendment to Sections 193.1554(5) and 193.1555(5). Previously, there was no change in ownership if:

(i) transfer of title was to correct an error; (ii) transfer was between legal and equitable title; or (iii) transfer was between husband and wife, including a transfer to a surviving spouse or due to a dissolution of marriage. The 2010 amendment provides for a further exception relating to publicly traded companies. There is no change of ownership if:

For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity that owns the property occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to a transfer made through a merger with or acquisition by another company, including an acquisition by acquiring outstanding shares of the company.

If Section 193.1556 is not complied with, the penalties are severe. The property appraiser has 10 years to look back and determine whether property was improperly reassessed. The property owner may be subject to the taxes avoided plus 15% interest each year and a penalty of 50% of the taxes avoided. In addition, the property appraiser may record a notice of tax lien on the property of anyone claiming the limitation cap without qualifying.

Author:
Lauren Goldberg Raines,
Quarles & Brady LLP
HILLSBOROUGH COUNTY BAR ASSOCIATION
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- **GUARDIAN LIFE INSURANCE COMPANY** The Nation’s Premier Individual Disability Income Policy for Attorneys is now available to HCBA Members... with an exclusive 10% permanent discount! Long recognized as the nation’s premier disability income protection plan for attorneys, The Guardian Individual Disability plan leads the industry with its “true own occupation” definition of disability, high benefit limits and other forward thinking features that will ensure your peace of mind now and as your practice grows. To learn more, contact Jeffrey D. Brown, Program Coordinator, at the Guardian’s West Central Florida agency (813) 289-8500.

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- **SALTMARSH, CLEAVELAND & GUND** Saltmarsh, Cleaveland & Gund is now a HCBA Benefit Provider! Saltmarsh offers HCBA members a 10% discount off standard hourly rates on all Litigation Support and Business Valuation Services. Founded in 1944, Saltmarsh is a large regional full-service accounting and consulting firm, which has developed a special niche in providing services to attorneys and law firms. www.saltmarshcpa.com Regulated by the State of Florida. Contact Lee Bell (813) 287-1111.

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- **Trial Consulting Services, LLC (TCS)** provides wide-ranging services and solutions to support every aspect of your case. Our services include exhibit boards, trial graphics, animation, medical illustrations, electronic trial presentation, video depositions, DVT, mock trials, CLE seminars and more. Our expert team is experienced in all practice areas of law. Visit our website at www.trialcs.com for a complete listing of services and testimonials. All HCBA members receive a 10% discount on all trial research including mock trials.

- **YTB TRAVEL SERVICES** Book your travel where it makes a difference! Visit the Hillsborough County Bar Association travel website: www.ytbtravel.com/hillsbar • You’ll find the same airlines, hotels, rental cars, cruises and more. • You’ll get deeply discounted travel prices! • Each time you book travel, a portion of the travel commissions will go to HCBA! It’s that simple! www.ytbtravel.com/hillsbar. Use this website for all your travel needs as well as sending flowers and gift baskets and purchasing concert and event tickets.
As long as firms have marketed online, most have focused primarily on maximizing the number of visitors to their website and converting as much of that traffic into clients as possible. The assumption is that more traffic and higher conversion rates lead directly to more clients and more success. This isn’t necessarily accurate.

The key to building an effective web presence — one that grows your practice and leads to long term success — is first to understand who is actually visiting your site. Generally visitors can be broken down into two categories: qualified and unqualified. Qualified visitors are those who are specifically looking for you or your firm, usually by name. Unqualified visitors are those who are looking for, well, almost anything else.

Most firms, web developers and search engine experts focus on attracting as much traffic as possible, which means they end up with mostly “unqualified” traffic. Most visitors attracted through these techniques have no need for an attorney, no interest in hiring an attorney, or are poor prospects who have been turned down by multiple firms. Higher traffic may make your website seem more effective, but it often actually represents a drain on your time, effort and money.

We believe that to lay the groundwork for long-term success you must first get the most value out of your qualified traffic. In the short term, the most valuable qualified visitors to your site are potential clients with a bona fide need for legal advice who have already been to your office, been given your name by a trusted source or been influenced by one of your branding efforts in the community. These visitors are highly motivated and don’t need to be sold with bold statements, fancy video introductions and large calls to action. They already have a good impression of your brand. They believe that you are professionally competent, connected to your clients and concerned about your community. Instead of being re-sold, they only need to be reassured that what they already know about your firm is true.

Potential clients are also just a portion of the qualified visitors who will come to your site. Referral sources — your professional networks, current and former clients, friends and contacts in the community — will also be exposed to your firm’s message. Reporters (from both traditional and new media outlets) will visit to learn more about what motivates your actions and gauge your suitability as a source for a story. Insurance adjusters, opposing counsel, judges and jurors may scrutinize how you present yourself to try and determine your character and the character of the clients you represent.

Each of these qualified visitors wants to learn more about your firm, and each can be a valuable part of your firm’s success and contribute to your good reputation. Presenting only one message designed to capture only a tiny fraction of your audience — those who have never heard of you but might need legal services — not only trivializes all the other different kinds of visitors to your site, it also very likely alienates the ones who might otherwise be willing to hire or recommend your firm.

Author: Tom Young, Law Office of Thomas L. Young, PA.
# HCBA Calendar of Events

## June 2011

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1. **June 1, 2011**
   - 12:00 - 1:00 pm
   - Health Care Law Luncheon

2. **June 2, 2011**
   - 7:00 - 9:00 am
   - Channel 13 Ask A Lawyer

3. **June 3, 2011**
   - 5:00 - 6:30 pm
   - Leadership Institute Reception

4. **June 5, 2011**

5. **June 6, 2011**

6. **June 7, 2011**

7. **June 8, 2011**

8. **June 9, 2011**
   - 5:30 - 7:30 pm
   - Connie Pruitt Farewell Party

9. **June 10, 2011**
   - 1:00 - 5:00 pm
   - State Court Trial CLE (Edgecomb Courthouse)

10. **June 11, 2011**

11. **June 12, 2011**

12. **June 13, 2011**

13. **June 14, 2011**

14. **June 15, 2011**

15. **June 16, 2011**

16. **June 17, 2011**

17. **June 18, 2011**

18. **June 19, 2011**

19. **June 20, 2011**

20. **June 21, 2011**

21. **June 22, 2011**

22. **June 23, 2011**

23. **June 24, 2011**

24. **June 25, 2011**

25. **June 26, 2011**

26. **June 27, 2011**
   - 5:30 - 7:30 pm
   - Installation of Officers

27. **June 28, 2011**

28. **June 29, 2011**

29. **June 30, 2011**

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**RSVP for events online at** [www.hillsbar.com](http://www.hillsbar.com), by calling 813-221-7777 or emailing [hcbarsvp@hillsbar.com](mailto:hcbarsvp@hillsbar.com).

Walk-ins are charged an additional $5 fee, and seating is not guaranteed for walk-ins.

**Please note: Events may change from time of print. Call 813-221-7777 for updated event information.**

All events held at the Chester H. Ferguson Law Center unless otherwise noted.
Many attorneys and judges serve our community by working with §501(c)(3) organizations. Last month, we reviewed Florida’s requirement that many charities register with the Florida Department of Agriculture and Consumer Services, the IRS reporting requirements applicable to §501(c)(3) organizations, and director indemnification provisions in the organization’s bylaws. In this Part 2, we will review the rules applicable to §501(c)(3) charities on prohibited activities, public disclosure requirements, and unrelated business taxable income.

Prohibited Activities
There are several prohibited activities that will result in the loss of a §501(c)(3) organization’s tax-exempt status, including:

• Devoting a substantial part of the organization’s activities to lobbying, or encouraging members of the organization to contact their legislators about a particular issue; however, the organization may conduct voter registration drives and non-partisan voter education activities, including presenting public forums and publishing voter education guides;
• Participating, intervening in, or contributing to a political campaign supporting (or opposing) a candidate for public office;
• Allowing net earnings to inure to the private benefit of insiders of the organization;
• Providing a substantial benefit to the private interests of an individual or organization, i.e., the organization’s beneficiaries must be recognized objects of charity, such as the poor or distressed, or the community at large;
• Having a purpose or participating in activities that are illegal or violate fundamental public policy; and
• Failing to file a tax return for three consecutive years.

Disclosure Requirements
§501(c)(3) organizations must make certain records available for public inspection, including their

By being prepared to spot these issues, we can better serve our community by protecting charities from inadvertently running afoul of the requirements facing tax-exempt organizations.

Continued on page 59
Continued from page 58

Unrelated Business Taxable Income (UBTI)

UBTI is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis for the organization’s exemption. Exempt organizations may produce income unrelated to their tax-exempt purpose, as long as the income-producing activities are not a substantial part of the organization’s activities.

Generally, rents from real property, capital gains, interest and dividends are not considered UBTI unless they are financed with borrowed money. Whether income is UBTI depends on the facts and circumstances, but examples of UBTI include income from advertising in publications and from the sale of merchandise unrelated to the organization’s exempt purpose. An organization with more than $1,000 of annual gross UBTI must file Form 990-T in addition to the Form 990. Income that is UBTI is subject to standard income tax rates.

By being prepared to spot these issues, we can better serve our community by protecting charities from inadvertently running afoul of the requirements facing tax-exempt organizations.

Author: Katie Everlove-Stone, Akerman Senterfitt

HCBA Service to Soldiers

More than 70 attorneys attended the launch of The Thomas M. Cooley Law School expansion of its Service to Soldiers: Legal Assistance Referral Program on February 17th. A “Basic Training” session sponsored by the Hillsborough County Bar Association covered some of the basics of representing military clients, including estate planning, family law, the Servicemembers Civil Relief Act (SCRA), and the Uniformed Services Employment and Re-employment Rights Act (USERRA). The Service to Soldiers program offers referrals to appropriate local, pro bono attorneys who assist members of the military in resolving legal issues.

Speakers included (top photo from left to right) Colonel John Odom; John Nussbaumer, associate dean and Cooley professor; Heather Spielmaker, director of the Center for Ethics, Service and Professionalism at Cooley; Amy Timmer, associate dean of students and professionalism and professor at Cooley; Brigadier General Michael McDaniel; and, Lt. Colonel George McHugh.

The session was led by Brigadier General Michael McDaniel and Colonel John Odom.
New Civil Jury Instructions Improve Organization and Clarity

Trial & Litigation Section
Chair: Ronald P. Hanes, Trombley & Hanes, P.A.

Past issues of this magazine have examined the new standard civil jury instructions approved by the Florida Supreme Court. This article in the series offers practitioners a brief explanation of how to use the new civil jury instruction book.

Find the Right Instruction
Before creating a set of instructions, practitioners should obtain the most current version available at www.floridasupremecourt.org/civ_jury_instructions/index.shtml. The Florida Supreme Court has not expressed an opinion as to the correctness of the instructions, so it is critical to verify that instructions used reflect the current state of the law. Parties may challenge the legal accuracy of an instruction and may propose alternative instructions to the Court.

The Book’s Organization
The new instruction book is more intuitive than past versions. Substantive instructions are now grouped by cause of action and are listed by subject matter in the table of contents and by name in the index.

The book comprises four primary sections: substantive instructions; damages instructions; substantive instructions-general; and closing instructions. The sequence reflects how the judge will instruct the jury. Other sections address oaths, preliminary matters, evidence, model instructions, and verdict forms.

Preparing a Set of Instructions
Follow the format and sequence of the standard instructions. Consult the model instructions. Always refer to instructions by number for ease and consistency of reference. The judge is responsible for selecting and giving appropriate final instructions to the jury.

The Court must provide the instructions to each juror in writing, ideally before the judge reads the instructions aloud. Fla. R. Civ. P. 1.470(b).

The instructions addressed in the book apply to causes of action that arise frequently. At times, practitioners will need to modify the standard instructions substantively. Florida Rule of Civil Procedure Form 1.985 gives the judge authority to change the standard instructions when “an applicable form of instruction is erroneous or inadequate.” In that event, the parties must provide the Court with a complete and correct set of proposed instructions. The judge must “state on the record or in a separate order the manner in which . . . the standard form [is] erroneous or inadequate and the legal basis of that finding.” The Court may also add or delete minor, non-substantive words to improve an instruction’s clarity.

Signals
The standard instructions include signals to aid the parties and the Court. Boldface text should be read aloud by the judge. [Bracketed text] denotes alternative words to be read aloud. (Parentheses) tell the reader to insert a proper name, element, or other variable. Italicized instructions are for use by the judge only.

The new instructions are the first significant revision to the standard civil jury instructions since their original publication in 1967. They are designed for ease of use and, ultimately, to improve juror communication and understanding.

Continued on page 61
For The Month of: December 2010.
Judge: Richard A. Nielsen.
Parties: Park Place Condo vs. State Farm.
Attorneys: For Plaintiff: Peter Cardillo; For Defendant: Theodore Corless.
Nature of Case: Termite collapse claim under Plaintiff’s property insurance.
Verdict: Settled $1.1 million.

For The Month of: December 2010.
Judge: Hon. James M. Barton, II.
Parties: Constance R. Ramos & James Ramos vs. Emory Alan Rowe & Gulf Coast Transportation, Inc.
Nature of Case: Plaintiff struck by Defendants cab driver, suffered non-displaced Tibia Fracture.
Verdict: For plaintiff, $713,391.58, before PIP set off and 10% comparative fault reduction.

For The Month of: April 2011.
Judge: Honorable Bernard Silver.
Parties: Kristen Depew vs. Casualty Insurance Co.
Attorneys: For Plaintiff: Weslev Straw & Matt Emerson; For Defendant: Brandon Scheele & Michael Bird.
Nature of Case: Plaintiff struck by car while crossing the street outside the crosswalk. Plaintiff suffered a broken back, injured neck and left knee.
Verdict: $27,900 for Plaintiff after 90% comparative negligence applied.
Tracey K. Jaensch of Ford & Harrison LLP, was recognized by the National Diversity Council as one of Florida’s “Most Powerful Women” at the 2nd Annual Florida Diversity & Leadership Conference.

Kunkel Miller & Hament is pleased to announce that Lydia N. Brassington has joined the firm in the Tampa office as an associate.

Kim Byrd of Givens Law Group was elected President of the National LGBT (Lesbian, Gay, Bisexual and Transgender) Bar Association during its annual board meeting in Atlanta, GA.

Bob Rasmussen, a founding shareholder and Managing Director of Glenn Rasmussen Fogarty & Hooker, P.A., has been elected Vice Chair of Lowry Park Zoological Society of Tampa and appointed to the Audit Committee, Executive Committee, and Nominating and Governance Committee of the Board of Trustees.

Luis Viera of Ogden, Sullivan & O’Connor, P.A. in Tampa was elected President of the Lawyers for Autism Awareness Foundation.

James E. Felman of the law firm of Kynes, Markman & Felman, P.A., is the recipient of a 2011 American Bar Association Grassroots Advocacy Award.

The Law Firm of Barr, Murman & Tonelli, P.A. announces that Paula W. Rousselle has joined the firm as a Partner. Ms. Rousselle will continue to practice in all areas of casualty defense including medical malpractice, automobile, product liability, premises liability, bad faith and general insurance litigation.

The law firm of Shumaker, Loop & Kendrick, LLP is pleased to announce that Julio C. Esquivel, Partner in the Tampa office, has been named to the Board of Directors of Tampa Theatre Foundation.

The law firm of Marshall, Dennehey, Warner, Coleman & Goggin is pleased to announce that Russell S. Buhite, shareholder, and Kathleen S. Massing, associate, have joined the firm’s Professional Liability Department.

The 2012 U.S. News & World Report has again ranked Stetson University College of Law the top law school in the nation for trial advocacy and number three for legal writing.

Circuit Court Judge Gregory P. Holder has been presented with the 2010/2011 Running Shoe Award by the Gasparilla Distance Classic Association in recognition of his 23 years of participation in, and service to, its annual running events.

Holland & Knight is pleased to announce that Tampa Partner Leonard H. Gilbert is the 2011 recipient of the Distinguished Service Award, the highest honor awarded by the American College of Bankruptcy.

Wiand Guerra King is pleased to announce the addition to the firm of Jared Perez. Mr. Perez concentrates his practice on general commercial litigation with a focus on financial services and securities matters.

Bay Area Legal Services is pleased to announce the officers of its Board of Directors for 2011: President, Leslie Schultz-Kin of Carlton Fields; President-Elect, Luis A. Cabassa of Wenzel Fenton Cabassa; Secretary, Cerese Taylor of the Florida Attorney General’s Office; and Treasurer, John A. Guyton, III of Rywant, Alvarez, Jones, Russo & Guyton.

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David Rieth was looking for a solid bank that would be compatible with his law practice specializing in family wealth transfer, wealth preservation, and estate planning. “In my type of practice, I need a bank with a full-service trust department,” says Rieth. “I wanted a bank that was willing to build a relationship with me. In times when other banks have had financial stability issues, The Bank of Tampa is strong and secure.”

To discover a bank that has been chosen by more than 450 law firms, visit any of our nine offices or call us at 872-1200.

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