We...hold that the cap on wrongful death noneconomic damages provided in section 766.118, Florida Statutes, violates the Equal Protection Clause of the Florida Constitution.

- McCall v. United States of America, 2014 WL 959180, 1 (Fla).

This 2003 law was passed after extensive lobbying efforts by the insurance industry. As Justice Lewis notes, “Indeed, between the years of 2003 and 2010, four insurance companies that offered medical malpractice insurance in Florida cumulatively reported an increase in their net income of more than 4300 percent.”

“The issue today is the same as it has been throughout all history, whether man shall be allowed to govern himself or be ruled by a small elite.”

- Thomas Jefferson

As it has been throughout our State’s history, the Florida Supreme Court protected the rights of Florida’s families against the assault by a small elite.
An Italian flag flies high outside the Italian Club in Ybor City. L’Unione Italiana was started in 1894 to help immigrants band together as they struggled to find their place in their new country. Today, it continues to keep local Italians connected to their roots, and it hosts an array of social events and functions throughout the year.
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As lawyers, we are charged with protecting and enforcing our clients’ legal rights. We are asked to defend those who have been criminally accused and charged. We are retained to seek restitution for schemes, fraud, or wrongdoings that have caused others financial harm. We are a part of the gatekeeping system of justice. As John W. Davis is attributed as saying, “There is little of all that we do that the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men’s burdens; and by our efforts we make possible the peaceful life of men in a peaceful state.” Simply put, we are looked upon to right the wrongs. But what if the lawyer is the one who needs protecting?

Over the past several years, lawyers have increasingly become the target of financial schemes and scams. A significant portion of the scams involve an out-of-state or overseas “client” looking to collect a debt. The client ultimately desires to have a cashier’s check from the debtor deposited into the lawyer’s trust account and money wired to the client. The attorney is instructed to retain a certain amount of the funds as his fee. Inevitably, the check is deemed fraudulent and does not clear. The lawyer does not receive notice of the fraudulent nature of the check from the bank until well after he has wired the funds to the client. The client disappears and — you guessed it — is never to be heard from again.

The lawyer is left with a deficit in his trust account, possible disciplinary action from The Florida Bar, damage to his reputation and livelihood, and potential claims by the bank and other clients affected by the trust account deficit. The lawyer’s malpractice insurance may or may not provide coverage.

Why are lawyers, trained to protect others from these very types of fraud, susceptible to such schemes? One reason may be the decline in the economy and decreased business in general. More clients are apt to “slow pay” or not pay at all. A new client, quick money, and the requirement of little or no legal work may prove so enticing that certain safeguards are overlooked. Additionally, the perpetrators and their schemes have become increasingly sophisticated. Long gone are the misspelled and grammatically incorrect solicitation emails. The checks appear to be from legitimate, well-established banks. The checks may even contain an address and phone number that, when called, leads the caller directly to the perpetrator, who will undoubtedly verify the funds.

These scams continue to circulate through our legal community, with more lawyers being victimized every day. It is important that attorneys be aware of the red flags and conduct diligent research into new clients and matters. It is equally important that lawyers make sure that their teams are aware of the potential pitfalls as well. Generally, the old adage rings true: If it seems too good to be true, it probably is.
Getting a Read on Me

Books are a glimpse into who we are, what we enjoy, and the framework for our daily thoughts.

When was the last time you read a book that truly moved you, whether emotionally, through time, in memory, or simply made you contemplate tomorrow? Books are road maps that can lead us into our next adventurous outcome. They chronicle our thoughts, our reactions, our pasts, and ultimately help direct us into our futures.

Reading and my love of the written word has always shaped my life and even my hands — I can always be found with a book by my side, in

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my car, in my hands, and on my mind. Books are a glimpse into who we are, what we enjoy, and the framework for our daily thoughts. So, here’s what can currently be found on my nightstand, in my car or in my hands, as I enter this spring season:

“Eats, Shoots & Leaves” by Lynne Truss

What this book is about: This little gem highlights the importance of punctuation in writing and everyday use and how its use or, more significantly, misuse, even in the simplest of ways, can change the entire meaning of a story, a paragraph, and even a short simple sentence.

Why I picked it: My family and friends joke about what a stickler I am for the proper use of grammar and punctuation. “Why,” my son used to ask when he was younger, “do you always correct us, mommy?” “Why,” asked my former law partner, “does it look like you just butchered a goat over our brief?” Coming as I do from a family of educators, I suppose it is my destiny. Whether I am writing, reading, proofing, speaking, or even listening, I find myself in a constant battle over grammatical misuse.

Why you (really everyone) should read it: Lynne Truss takes a dry topic, like the proper use of punctuation, and makes her readers laugh and learn, all with the hope they, like her (and me), might one day walk into a shop and ask the shopkeeper to correct the sign in his window!

What the book conjured, emotionally, in memory or otherwise: This book was enormously comforting to my inner stickler. I have never been more happy to learn that I am not alone in my fanatical war on grammatical blunders.

“Diamond Ruby” by Joseph Wallace

What this book is about: A young girl in 1920s-era New York City is forced by circumstance to support and care for her young nieces, with the help of her natural pitching talent.

Why I picked it: Spring season brings the start of baseball, a sport that will forever conjure up some of my most wonderful, heartfelt memories.

Why you should read it: A great view into 1920s America, this book highlights the social, medical, political, and economic issues of the times. Ruby’s resilience in the face of social inequalities of her time is heartwarming, poignant, and a rare learning gift for all generations.

What the book conjured, emotionally, in memory or otherwise: Any book about baseball reminds me of the special afternoons with my dad watching the Chicago Cubs while he explained all the wild gesturing of the umpire and the infield fly rule, and of finally watching baseball in person in the Houston Astrodome — the Eighth Wonder of the World. In the same breath, my memory is drawn to the baseball fields a few minutes’ walk from my house, where I spent countless hours with my son, Julian, watching him somehow find the courage to stay in the batter’s box while another 9-year-old with unreliable aim hurled a fastball in his general direction.

“The Notebook” by Nicholas Sparks

What this book is about: This beautiful story chronicles the lives and enduring love of Noah Calhoun and Allie Nelson. I fear that telling you much more than that would risk ruining the suspense (yes, I found this to be a page turner) and ultimate beauty of the story, so I will stop there.

Why I picked it: Sometimes you find some of your favorite books in the most unlikely places. I found this book in Julian’s reading pile while searching for a light read after plodding through “The Executioner’s Song,” Norman Mailer’s 1,000-page tome about convicted murderer Gary Gilmore. (I’m glad that one is off the nightstand.) My curiosity piqued — “Julian’s reading ‘The Notebook’?!” — I had to see what it was all about. Turns out his girlfriend “demanded” that he read it, and I’m so glad she did. It was just what I needed to get my head out of late 1970s’ Utah.

What the book conjured, emotionally, in memory or otherwise: Wow … he really likes this girl! (I’m glad because I do, too).

I have always encouraged my children to travel with their minds and challenge their views of the world though reading. However, I firmly believe that it is this passion for learning that makes us better, that helps us see life through a new perspective. Indeed, it has shaped me — as a mother, a friend, a daughter, an attorney, and a forever student of life!
Author Gilbert King Discusses “Devil in the Grove: Thurgood Marshall, the Groveland Boys and the Dawn of a New America”

HCBA’s Diversity Committee Welcomes 2013 Pulitzer Prize Winner to Ferguson Law Center


The storyline of John Grisham’s latest novel? In this case, tragically not.

It describes a sad but true episode in Florida’s history involving a horrific case of racial injustice. The story is outlined in meticulous detail by author Gilbert King in his book “Devil in the Grove: Thurgood Marshall, the Groveland Boys and the Dawn of a New America,” for which King was awarded the 2013 Pulitzer Prize for general nonfiction.

King discussed his book and answered questions from audience members at a luncheon and special CLE at the Chester H. Ferguson Law Center in February. The author came to Tampa from New York City at the invitation of Hillsborough County Bar Association President Susan Johnson-Velez and the HCBA’s Diversity Committee.

King said one of the motivations in writing the book was to help young people understand the Jim Crow era right after World War II and before the civil rights movement. Most young people aren’t aware of the level of oppression and “state-sanctioned white supremacy” that existed, King said.

The Groveland case itself and the stunning series of events surrounding it were set into motion in July 1949 when four young black men were accused of raping 17-year-old Norma Lee Padgett of Groveland, Fla., located in the heart of citrus country in Lake County. Three of the “Groveland Boys”—Sam Shepherd, Walter Irvin and 16-year-old Charles Greenlee—were apprehended and thrown in jail. A fourth, Ernest Thomas, fled and avoided arrest for several days until he was hunted down by a sheriff’s posse of 1,000 armed men and killed about 200 miles northwest in a chase through the swamps of Lake County.

The KKK quickly gathered and went to the jail. The angry mob threatened violence and called for the lynching of the accused men. After retreating, they took their anger out by burning homes in the black section of Groveland. National Guard troops were called in to restore order.

Sheriff Willis McCall—who reigned over Lake County with an iron fist—and his deputies then systematically tortured the three remaining Groveland Boys to secure confessions. Only one, Irvin, refused to confess.

Meantime, national press accounts of the case and the intense local violence helped get the attention of Thurgood Marshall, who was then special counsel at the National Association for the Advancement of Colored People. In his luncheon remarks, King said that by the late 1940s, Marshall, the future U.S. Supreme Court justice, had already helped cement his reputation as “Mr. Civil Rights” after logging many thousands of miles travelling by train to appear in Southern courtrooms.

Continued on page 7
Continued from page 6

The original trial was “basically a travesty,” King said, based in part on the lack of medical evidence presented, and that jurors were handpicked by the prosecution. The defendants, Shepherd and Irvin, were sentenced to death. Greenlee, because of his age, was sentenced to life in jail.

In 1951, after appeal, the U.S. Supreme Court overturned the verdict on grounds that blacks had been improperly excluded from the jury. Then a stunning turn of events occurred.

Sheriff McCall was transporting Shepherd and Irvin by himself in his vehicle for the retrial. He pulled off on a secluded road, claiming his vehicle was having tire trouble, and then proceeded to shoot the defendants, who were handcuffed together.

McCall, in a deposition afterward, said the prisoners tried to escape, and he had no choice but to shoot them both. One prisoner, Shepherd, died at the scene. The other, Irvin, played dead but survived.

The next day, Irvin shockingly recounted to FBI investigators in his hospital room that Sheriff McCall had shot them both without provocation. And, he continued, one of McCall’s deputies who had come to the scene had shot Irvin while he was on the ground after noticing he was still alive.

In the retrial in Marion County, Marshall personally represented Irvin, but the jury again found Irvin guilty. After appeal, the U.S. Supreme Court ultimately declined to hear the case.

The author also discussed the immense pressure after the trial in 1955 on newly elected Florida Governor LeRoy Collins to commute Irvin’s sentence to life in prison.

Spoiler alert: Collins did.

In announcing his decision, Governor Collins said, “The state did not walk that extra mile — did not establish the guilt of Walter Lee Irvin in an absolute and conclusive manner.”

King, in his luncheon remarks, also read a passage from his book about Marshall’s towering influence: “Southern juries might be stacked again blacks, and the judges might be biased, but Thurgood Marshall was demonstrating in case after case that their work was not the last, that in the U.S. Supreme Court the injustice in their decisions and verdicts could be reversed. ... No wonder that across the South, in their darkest, most demoralizing hours, when falsely accused men sat in jails, when women and children stood before the ashy ruin of mob-torched home, the spirits of black citizens would be lifted with two words whispered in defiance and hope: ‘Thurgood’s coming.’”

See you around the Chet.
It is estimated that Florida is home to more than 1.5 million veterans. Our community is fortunate to be home to many of these veterans. Unfortunately, there are times when we have veterans charged with committing criminal acts. In some of these circumstances, the veteran suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problems. These problems may have played a role in the criminal act itself or may impair the veteran’s ability to comply with court-ordered sanctions.

The Florida Legislature has recognized that an appropriate manner for handling some of these criminal cases is through the creation of veterans court programs. Florida Statute § 948.16 authorizes circuit courts to create misdemeanor pretrial veterans’ treatment intervention programs. These programs are to be modeled on therapeutic jurisprudence principles, similar to drug court programs. The program may include sanctions for noncompliance. If the defendant successfully completes the program, the court dismisses the criminal charges.

On August 12 in Hillsborough County, the Misdemeanor Veterans Treatment Court (Veterans Court) was created by Administrative Order S-2013-054. Veterans Court is designed to work with veterans who suffer from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or other psychological problems. This court is a diversion program and is only available to veterans who have been charged with specified misdemeanor offenses. The veterans in the program are assisted in accessing the appropriate services available to them through the Veterans Administration (VA) or other community-based resources. Those services may include counseling, medical treatment, housing assistance, or education. The veteran may also be required to complete sanctions related to their criminal charge, such as the payment of restitution.

Veterans are also paired with mentors who are themselves veterans. These mentors can provide support and guidance regarding challenges faced by former service members.

The defendant works with the VA to develop treatment goals; progress toward those goals is monitored during monthly court hearings. The services provided to the veteran by the VA are benefits that the veteran is entitled to due to his or her past military service. The ultimate goal of Veterans Court is to prevent these individuals from returning to the criminal justice system.

As your state attorney, my goal is to keep our community safe. This is not always accomplished through punishment alone. In the case of certain veterans charged with criminal acts, the veteran may have already earned benefits that can help reduce recidivism. By helping the veteran access those benefits while holding them accountable for their actions, we can make our community safer and stronger.

2 Florida Statute § 948.16(2), 2013.
3 Id.
4 Id.
5 Id.
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Judge Moody Goes Off the Record

The following is an edited excerpt of an interview with the Hon. James S. Moody Jr., U.S. District Court judge, conducted by Mike Hooker.

Q. Judge, I know that you are from Plant City. Did you grow up there?
A. I was born and raised in Plant City.

Q. Now, you practiced law in Plant City before becoming a judge, as I understand it.
A. Yes.

Q. What kinds of work did you do?
A. I was a small-town trial lawyer. By that I mean I tried all kinds of cases except medical malpractice because all the doctors in town are your friend so you don’t do medical malpractice. I did very little bankruptcy mainly because of Judge Paskay, who would chew anybody up if they weren’t, you know, frequent practitioners of bankruptcy. And I did some criminal work as a young lawyer, but not a whole lot. But I did every other kind of civil trial that you can imagine, which actually serves me well as a judge because I know a little bit about a lot of different things.

“My advice is that remember that you need to enjoy what you’re doing, and if you’re always arguing with another lawyer, that’s hard to enjoy. So try to get along and try to work together toward getting your case to trial.”

Continued on page 11
Q. You have an impressive history of community and civic involvement, and I’m just going to mention a few because it’s a very long list. You served on the board of directors of the United Way, the board of directors of Hillsborough County Bar Foundation, you were president of the Hillsborough County Bar Association, chair of the Children and Families Work Group, president of the Lions Club, served on the University of Florida Law Center Association Board of Trustees. That’s an impressive list, but the thing that I find most interesting and little bit unusual is that you continued that involvement in civic and community affairs even while sitting on the bench. Why is that?

A. Well, I just think that is important. And I did that more as a state judge than I do as a federal judge. I just don’t seem to get asked as frequently as a federal judge to get involved. Although, I think I was on the bar foundation board for a while as a federal judge. Maybe it’s because I’m getting older now that I’ve slowed down in that regard, but I just always thought that civic contribution is important.

Q. I saw in your bio that you’ve actually taught a lot. You taught a number of courses over the years at various judicial educational conferences, and you’ve also taught at the University of Florida and served as a mock trial judge with Stetson College of Law. Do you like teaching?

A. Well I do enjoy that and, as a matter of fact, when I take senior status, that’s one thing I probably will consider is doing some teaching. The University of Florida has talked to me some about that. Part of that was when I was a state circuit judge teaching courses at our annual educational conferences, and then some of it, I’ve been doing some internship programs with the students at University of Florida once a year, and I’ve enjoyed that student involvement. And then during the summers I have student interns come in and work here in the courthouse. I work with them on legal writing and drafting, that sort of thing.

Q. I know that you were a state judge for about five years before being appointed to the federal court?

A. Almost six years.

Q. What would you say is the biggest difference between serving as a state judge and now as a federal judge?

A. The biggest difference for me is the contact with lawyers. I understand things have changed since they have the new state courthouse, but when I was a state judge, lawyers would just drop in and say hello and sit down and chat. We’d have hearings and a lot of times you could joke with the lawyers, and I enjoyed that. If I ever felt like I was sitting in my office and wanted to go talk to somebody, you could just walk out in the hallway.
and there were always lawyers out in the hallway. Well that’s not the way it is in federal court. Lawyers are rarely in federal court, not out in the hallway in front of your courtroom. They very rarely come by to say hello. We just ... we’re much more cloistered here, I suppose. Bill Levens tells me that the new state courthouse is almost the same now.

Q. Federal court is much more paper-driven, at least from my standpoint. Most motions are not heard but decided on the briefs. What are the pluses and minuses of that approach as opposed to the state court system?

A. Well, under the federal rules, every motion has to be accompanied by a legal memorandum, and a lot of times that’s unnecessary, but it does help the judge get prepared for what the issue is. Once you’ve read a memo on both sides, there is not much need, at least that’s how most judges think about it, there is not much need for an oral argument. I still like having hearings, so I’ll still have hearings in a lot of my cases. As a matter of fact, I think you’ve had hearings in my courtroom. I do my hearings down at the counsel table.

Q. Well, I do remember that. You come right down and sit with the lawyers. Why do you do that?

A. Well, the first day I had a hearing as a federal judge, it just happened to be a hearing that only one side showed up. So I’ve got a lawyer on one side, an empty chair on the other, and I’m sitting up on the bench in my robe. And so I’m asking the lawyer about the case, what’s going on with it, and he’s so nervous that his voice is quavering.

Q. So anyway, I ordered visitation with Harvey, so she picked up Harvey and took him for half a week or whatever and then brought a parrot back. Two weeks later, we had another emergency hearing. This time it was the husband saying that she didn’t bring back Harvey. She had brought back another parrot. So I asked her about that. I put her under oath and asked her, she said, “Oh no, that’s Harvey, I brought the parrot back like you ordered me to.” And so I turned to the husband and said, “Well what makes you think this isn’t Harvey? Is it the same kind of parrot?”

“Does he look like Harvey? Is it the same size? So what makes you think it’s not Harvey?”

“Well, this parrot likes me and Harvey never liked me.”
So he said he wanted a DNA test. I said, “You can’t be serious!”

“Yes, I want a DNA test.”

I said, “You know, I do child support hearings, paternity hearings, and I know that DNA tests cost about $700. My guess is this parrot didn’t cost $700, and now, even if it’s not Harvey, you’ve got another parrot.”

“I want Harvey, and I want a DNA test.”

Well, I said, “If this is not Harvey, what are you going to do a DNA test on?”

He said, “I still have Harvey’s cage, and the feathers fall out from time to time, and so I’ve got some of Harvey’s feathers.”

I said, “Ok, I’ll allow you to do a DNA test.”

So he paid for a DNA test, and it was not Harvey! So then we had a contempt hearing. So here comes Ray Alley, my former law partner, representing this meek and mild — most of the time — female bank vice president knowing that she’s getting ready to go to jail.

Q. For switching the bird. I was going to ask you next what’s the funniest thing that happened in your courtroom — that might have been it.

A. That was the funniest thing that’s ever happened.

Q. I attended a seminar that you spoke at a few years ago, and you mentioned that it seemed like every other brief you were getting, one lawyer was accusing the other lawyer of being “disingenuous.” That seemed to be the word du jour. Are there any things that you see lawyers doing on a routine basis that you wish you weren’t seeing?

A. Well, what you just asked about is a good example. When you read a memorandum, it seems like the first three or four pages is all about all the bad things the other lawyer has done, but that’s really something that’s irrelevant to the decision that I’m trying to make so why waste three or four pages? You’ve only got a certain limited number of pages. So if they would just leave out telling me all of the bad things the other lawyer has done, it would help me get to the issue more quickly, and I could read the brief more quickly.

Q. When they built this courthouse, they obviously built in the capacity to use a lot of technology at trials. What kinds of technology do you like to see being used when you try a case?

A. Actually, the best one is the document presentation with the computer system through the overhead projector. A lawyer can scan all the documents and have them on the computer, and when he questions the witness, say “Let me show you document 323,” somebody at the table pushes a button and document 323 comes up on the screen instead of the lawyer coming over to the table with banker boxes full of documents, fumbling through to pull 323, and then you’ve got to worry about getting document 323 back in the right place in the box or else you know you’ve lost it forever.

Q. Judge, what kinds of hobbies or interests do you have? What do you like to do when you’re not here?

A. Well, I like to play golf, and my wife and I go snow skiing about once a year. I love doing things with my children and grandchildren; like last night we had a cookout at my son’s house. Most of the time we’ll have a cookout at my condo, but I’ve got five grandchildren now so we’re a pretty large crowd when we get together for our cookouts. The crowd has just about outgrown my condo.

Q. What would you consider your most substantial, personal or non-professional accomplishment? That’s a hard one.

A. What I’m most proud of is that I’ve raised four children — all have jobs and never were on drugs and never been in jail, so I guess that’s my number one.

Q. Judge, do you have any advice for young lawyers entering the profession?

A. My advice is that remember that you need to enjoy what you’re doing, and if you’re always arguing with another lawyer, that’s hard to enjoy. So try to get along and try to work together toward getting your case to trial. If you can remember that the ultimate goal is going to trial, not fussing and fighting with the other lawyer, hopefully it will make your life more enjoyable.
Helping the Youngest Foster Children Find Safety and Permanence

Three siblings, all age 5 or younger, had to be removed from their home because of their parents’ mental health and domestic violence problems. After spending more than a year under the care of foster parents, the oldest, speaking for the three, said that if they could not be reunited with their parents, they wanted to be adopted by their foster parents.

However, after parental rights were terminated, the community agency contracted by the Department of Children and Families developed a plan to place the children with a single woman in her 60s who had adopted 25 children, one of whom was a half-sibling unknown to the other three.

Continued on page 15

We thank all the organizations and individuals who have made the L. David Shear Children’s Law Center a success. With your financial support, the center can continue to provide high-quality legal representation for children in the foster care system.
Unfortunately, the devastating impact of low interest rates on revenue from Florida’s Interest on Trust Accounts (IOTA) program has drastically reduced the funds available for all of the foundation’s grant programs, including Children’s Legal Services. Although the L. David Shear Children’s Law Center is doing important and often life-changing work on behalf of children such as the siblings described above, the project was among those that, regretfully, will not receive Children’s Legal Services funding from the foundation for 2014. The foundation will continue to help fund Bay Area Legal Services through general support and salary supplementation grants, as well as law school loan repayment assistance for its staff attorneys.

Beyond the foundation’s funding, the L. David Shear Children’s Law Center has received support from the Hillsborough County Bar Foundation and private donations. We thank all the organizations and individuals who have made the L. David Shear Children’s Law Center a success. With your financial support, the center can continue to provide high-quality legal representation for children in the foster care system.

Author: Hala Sandridge - Buchanan Ingersoll & Rooney/Fowler White Boggs
Second District Court of Appeal Chief Judge Charles A. Davis Jr. gave a detailed report on the state of the court at the Hillsborough County Bar Association’s annual breakfast with the Second District Court of Appeal in March. Despite — or maybe in part because of — the advent of electronic filing using the state’s eFiling Portal, Chief Judge Davis reported that the state of the court is, in a word, busy.

Indeed, since September 23, attorneys have submitted more than 14,000 electronic filings, and that number does not count pro se papers filed in hard copy and scanned by the clerk.

These numbers are reflective, in part, of the large number of cases initiated before the court. For fiscal year 2012-13, the court had 6,081 cases initiated. In 1994 — the last year the Legislature added a judicial seat to the Second District — there were only 4,625 cases initiated. So the court is dealing with a 31 percent increase in caseload without any additional judges to help shoulder that load.

The court’s heavy caseload stretches the judges to their limits, even when taking into account the relative difficulty of each case. The Florida Supreme Court has a system for weighting the judicial caseload for difficulty, and although the system recommends that an appellate judge have a weighted caseload of no more than 280 cases, Continued on page 17

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Contact David Anton – (813) 443-5249
Continued from page 16

for 2012-13 the weighted caseload per Second District judge was 350 cases. Because of this, the Florida Supreme Court this year has certified to the Legislature the need for two additional judgeships for the Second District. If the additional judgeships came through, the court would still be maxed out with a 284-cases-per-judge weighted caseload. Although the Legislature did not act on several previous requests for additional judgeships for the Second District, the court is hopeful that this year’s request will have political traction.

The increased caseload can’t be attributed to one specific kind of case, either. Over the past five years, the court has seen an 18 percent increase in civil filings, of which many can be attributed to foreclosure litigation; a 14 percent increase in post-conviction proceedings; and an 11 percent increase in family law filings. The diversity of cases means the judges don’t often see the same issue twice, and it contributes to the turnaround time for decisions.

Due to the difficulties of transitioning to an all-electronic system, both the judges and the court staff have had to put in many more hours than usual to handle this caseload. Although the clerk’s office is no longer creating file wallets, for example, the staff instead is working overtime to ensure the systems are in place to route electronic cases appropriately. In addition, the clerk still sends out opinions and orders on paper and interacts with prisoners and pro se litigants by paper.

Chief Judge Davis reported that the judges are slowly but steadily adapting to reading everything on screens rather than paper. He also credited the court’s collegiality for its success in making the transition work.

Author: Dineen Pashoukos Wasylik - DPW Legal
The collaborative practice of law is a voluntary dispute-resolution process in which the parties, their lawyers, and joint neutral experts follow procedures designed to promote an amicable resolution. The parties agree to litigate with new counsel and experts only if the collaborative process fails. The collaborative law movement has developed, grown, and gained momentum since its birth in the 1980s. A Uniform Collaborative Law Act was drafted in 2009, versions of which have been enacted by seven states and the District of Columbia.

Florida circuit courts in Hillsborough, Orange and Osceola, Miami-Dade, and Brevard counties have administrative orders formalizing the law process within their jurisdictions. To date, Florida does not have a statewide collaborative rule or law, nor any collaboratively focused rules of professional conduct.

The Family Law Section of the Florida Bar began considering a statewide collaborative rule or law around 2008 and has thereafter been working on collaborative legislation. The section has a standing position supporting the statutory recognition of collaborative law as a form of alternative dispute resolution in family law cases and the establishment of a privilege regarding the disclosure of information related to collaborative proceedings.

Collaborative law bills were introduced for Florida’s 2014 legislative session in the Senate (Bill 1190) and the House of Representatives (Bill 1397). At the time this article was written, the bills were still pending subject to revisions. The bills, if passed, would amend Chapter 61 effective July 1, 2014, to establish definitions, procedures, and a privilege for the collaborative law process. The privilege would permit a party or non-party participant to

Continued on page 19
refuse to disclose any collaborative law communication except in the event of a written waiver of privilege, threats of bodily injury or crime, malpractice actions, child or adult abuse, neglect or exploitation, or in a rescission or reformation proceeding of a collaboratively reached contract. The proposed legislation does not address the mandatory disqualification of the collaborative attorney. Other state legislatures with similar proposed legislation include Illinois, Massachusetts, Michigan, New Jersey, Oklahoma, and South Carolina.9

The Florida Bar Rules Committee previously proposed a family law collaborative rule of procedure on which the Supreme Court declined to take action in light of “pending legislative efforts.” It is assumed that if the bills pass, the Supreme Court will take up review of the proposed rule.


Author: Sarah E. Kay – Mason Black & Caballero P.A.
“Child abuse casts a shadow the length of a lifetime.”
— Henry Ward

A Kid’s Place in Brandon is a state-of-the-art facility that houses about 75 children (up to age 17) at any one time. The children living there have suffered abuse, neglect, and abandonment and have been in horrible situations that many of us could never imagine. To help these amazing children feel like kids for a day, the Community Services Committee (CSC), in conjunction with A Kid’s Place, will be throwing them their very own Pirate Party on Saturday, May 3.

“I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone’s cause for lucre or malice. So help me God.”
— Oath of Admission to The Florida Bar

To make this event a success, CSC needs any amount of donations that can be spared. However, by the time this article is published, the Pirate Party may have already taken place. If you are reading this article and there is still time to donate...

Continued on page 21
for this party, please consider doing so for the sake of these children. If the party has already taken place, please consider helping these wonderful kids in any way you can! They really appreciate your support and generosity. For more information about A Kid’s Place, please visit: www.akidsplace.org.

* * *

“I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone’s cause for lucre or malice. So help me God.” — Oath of Admission to The Florida Bar

This promise included in the attorney’s oath taken by every Florida lawyer is often forgotten in the busyness of our lives and careers. As Chief Justice Peggy A. Quince has reminded us, “Pro bono legal services provided free to the poor are part of an overall obligation attorneys assume when they take the oath of attorney.” I have to admit that I have not fulfilled this obligation to the best of my ability, and every year that I look at my Florida Bar fee statement, I am starkly reminded that I have no meaningful hours to enter in the pro bono section. Sure, I have spent some significant time helping friends and family members with legal issues and paperwork, but I don’t think I have truly done what we are asked to do when we take the oath.

Fortunately, being part of the CSC has enabled me to not only serve the community as a volunteer in non-legal ways, but it has also allowed me to take advantage of the opportunity to engage in meaningful pro bono work. By the time this article is published, the CSC will have undertaken its first pro bono project for this year in conjunction with Bay Area Legal Services. We hope that this is the first of many pro bono projects that we can participate in as a group to fulfill this professional obligation. Great ideas and volunteers are welcome!

For more information about joining the CSC, or to volunteer, please contact CSC Chairs Lisa Esposito, (813) 223-6037 or lisa@lesposito.com, or Lara LaVoie, (813) 638-1357 or lmlavoie11@gmail.com. Thank you in advance for your help and support!

Author: Lara LaVoie - LaVoie & Kaizer, P.A.
Florida attorneys kept in limbo by conflicting appellate opinions concerning the application of the relation-back doctrine have received new guidance. In Caduceus Properties v. Graney, the Florida Supreme Court held that naming a party who had previously been a third-party defendant as a party defendant in an amended complaint relates back to the filing of the third-party complaint for statute of limitations purposes. The Supreme Court was reviewing Graney v. Caduceus, LLC, 91 So. 3d 220 (Fla. 1st DCA 2012), where an owner had filed direct construction defect claims against an engineering firm (KTD) and the engineering firm’s principal (Graney) over a defective HVAC system. The complaint came four years after KTD and Graney had third-party complaints filed against them by the architect of the HVAC system in the same matter and five years after the owner initially discovered the HVAC issue. KTD and Graney alleged that the five-year gap between the discovery of the HVAC issue and the direct complaint against KTD and Graney violated a four-year statute of limitations. The Supreme Court made its ruling after weighing the decisions made in two conflicting Florida appellate opinions. In Graney, the First District Court of Appeals held that direct claims brought against an existing third-party defendant after the expiration of the statute of limitations did not relate back to the filing of the original complaint. This holding was in direct conflict with a previous decision by the Fifth District Court of Appeals in Gatins v. Sebastian Inlet.

The effects of this decision will assuredly have an impact on parties in complex and protracted multi-party litigation, some of whom may find themselves facing claims they previously believe long expired.
Tax Dist., 453 So. 2d 871 (Fla. 5th DCA 1984), where a third-party claim was not barred by the statute of limitations because the third-party defendant was in the lawsuit before the statute of limitations expired and the plaintiff’s claim related to the same issues raised in the third-party complaint.

The Supreme Court’s decision, authored by Justice Barbara J. Pariente and heavily influenced by the dissent in *Graney* written by Judge William A. Van Nortwick Jr., adopted the rationale of the Fifth District, stating that allowing third-party claims to relate back for purposes of timeliness was more in line with the intent of the relation-back doctrine in Fla. R. Civ. P.1.190(c). Justice Pariente wrote, “Permitting relation back in this context is also consistent with Florida case law holding that rule 1.190(c) is to be liberally construed and applied,” and she added the main concern of the relation-back doctrine is providing “fair notice” to parties who may be blindsided or prejudiced by unexpected claims.

The court went on to state that the key inquiry now for lower courts shall be (1) whether the third-party complaint was filed before the statute of limitations expired, and (2) whether the plaintiff’s claims in the amended complaint relate to the same “conduct transaction, or occurrence,” set forth in the previous third-party complaint. This inquiry, the court explained, is preferable over the *Graney* rationale, which was “inconsistent with … the policy underlying the Florida Rules of Civil Procedure that cases should be resolved on the merits whenever possible.”

The effects of this decision will assuredly have an impact on parties in complex and protracted multi-party litigation, some of whom may find themselves facing claims they previously believed long expired.

Authors: J. Derek Kantaskas and Elizabeth Lester - Carlton Fields Jorden Burt, P.A.
Federal Fraud Statutes: A General Counsel’s Nightmare
Corporate Counsel Section
Chair: Patricia Huie - Intelident Solutions, Inc./Coast Dental Services, Inc.

The federal criminal fraud statutes — covering mail and wire fraud, health care fraud, bank fraud, and securities fraud — create enormous potential liability for corporations and their employees. They also present considerable challenges for counsel representing those corporations. Each statute prohibits “schemes or artifices to defraud.” The problem is that Congress has never defined these terms, and the interpretation of the statutes has been left to the courts, with decidedly mixed and unclear results.

Indeed, during oral argument before the Seventh Circuit Court of Appeals, the Department of Justice conceded that a simple practical joke could be prosecuted under the mail fraud law. In another instance, a court held that the criminal law could be broken by violations of “moral uprightness” or “fair play” — whatever that means. The potential breadth of the federal fraud statutes gives prosecutors incredible discretion to prosecute alleged business crimes … Continued on page 25
gives prosecutors incredible discretion to prosecute alleged business crimes where companies and individuals have no reason to believe that their conduct is in any way “illegal.” Not surprising, one former federal prosecutor described the mail fraud statute (which is the mother of all of the fraud provisions) as “our Stradivarius, our Colt .45, our Louisville Slugger, our Cuisinart — and our true love.”

The uncertainty and ambiguity of what conduct could be deemed “criminal” under federal law allows prosecutors to threaten and bring cases that fall well outside traditional common law notions of “fraud.” A criminal case might be brought where there has been no reliance upon alleged misrepresentations, no actual loss suffered, and no breach of a contract or other legal duty. Executives face substantial risk that ordinary business practices might one day be prosecuted as a “fraud.”

The potential scope of the fraud statutes also allows any administration to “regulate by prosecution.” In other words, the fraud statutes become powerful tools to achieve political objectives of the party that happens to be in office.

The Supreme Court, from time to time, has weighed in to limit the scope of the federal fraud statutes. See McNally v. United States, 107 S. Ct. 2875 (1987) (striking criminal prosecutions of “honest services” fraud absent clear direction from Congress); United States v. Skilling, 130 S. Ct. 2896 (2010) (limiting the scope of honest services fraud to traditional kickbacks and bribes). However, Congress has shown no interest in defining “schemes to defraud” with any clarity or giving guidance to the business community as to the conduct to be proscribed by the harshest penalties imposed by our society.

The political use of the fraud statutes is obviously too compelling. Where does this leave corporate counsel? Sadly, with the understanding that criminal fraud is whatever 12 people (none of whom have any understanding of your business) in a jury box say it is.

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6 United States v. Walters, 997 F.2d 1219, 1224 (7th Cir. 1993).
7 Gregory v. United States, 253 F.2d 104, 109 (5th Cir. 1958).

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**JUDICIAL CLE LUNCHEON**

Judge Caroline J. Tesche was the guest speaker at the HCBA’s Judicial CLE Luncheon on March 18. Judge Tesche discussed “Preparation, Pacing and Professionalism: A Judicial Primer for Attorneys Handling Complex and Lengthy Litigation.” Thanks to Judge Tesche and all who attended!
SHERIFFS’ OFFICES ACROSS THE UNITED STATES, INCLUDING THE HILLSBOROUGH COUNTY SHERIFF’S OFFICE, PUBLISH ARREST RECORDS AND BOOKING PHOTOS ONLINE. ARREST RECORDS ARE PUBLIC RECORDS, AND THE PUBLICATION OF ARREST DATA ON THESE WEBSITES PROVIDES THE PUBLIC WITH EASY ACCESS TO VIEW AND INSPECT RECORDS.

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AUTHOR:
MORGAN VASIGH
BUBBA HUERTA AWARD

The HCBA Criminal Law Section would like to congratulate David Weisbrod, who was this year’s recipient of the Marcelino “Bubba” Huerta III Award for pro bono service and the pursuit of equal justice. Weisbrod was honored at a luncheon on February 27. Thank you to the luncheon’s sponsor:
In February, the National Association of Women Lawyers issued its “Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms.” The survey polled 200 large law firms regarding the progress of female attorneys compared with their male counterparts. The results demonstrate that despite the high number of female law school graduates for the past few decades, women are still not strongly represented in the highest ranks of law firms.

Law firms reported the “perceived lack of business development and high rate of attrition as the two primary reasons why the number of women equity partners has not been increasing.”

Certainly, female attorneys do not leave the practice of law more often than men simply because they do not like to practice law. Additionally, female attorneys have the same ability to generate business as male attorneys. Therefore, law firms need to understand and combat attrition and lack of business development by female attorneys. As a starting point, it can be assumed that law firms will continue to hire female attorneys as associates. In fact, the 2010-2011 data from the Directory of Legal Employers Diversity and Demographics Report of the National Association of Legal Placement revealed that approximately 43 percent of law firm associates were women.

Assuming this trend of hiring continues, the focus turns to retention and promotion. What can law firms do better to retain female attorneys and give them a seat at the boardroom table?

First, law firm leaders need to fully embrace the proven premise that including female attorneys in firms and treating them fairly is a profitable business model. Attrition can be a large cost to law firms. However, according to Gerry Riskin, founder of law firm consultancy Edge International, “Most firms are oblivious” to attrition costs, and although “that expense is unacceptable, [law firms] have been accepting it.”

Second, law firms need to ensure that their method of evaluating business development by attorneys fairly credits both the attorney who brought the work to the firm and the attorney who manages the client relationship, which ensures that future business continues to flow in.

Third, firms should develop methods to track work assignments to ensure that women have the same opportunities to participate in significant, high-revenue matters as male attorneys.

Finally, promoting female attorneys to equity partnership and opening doors that allow women to participate in law firm governance provide women a greater incentive to stay in practice and serve as an example to younger female attorneys who are trying to climb the ranks.

**References:**

2 Survey at p. 1.
3 Id. at p. 4.
4 Id. at p. 5.
5 “Why are lawyers such terrible managers?” Shanker, Deena; CNN Money; January 11, 2013.
6 “Plugging the ‘Leaky Pipeline’ of Women Attorney Attrition,” Liebenberg, Roberta D., Vol. 15 No. 9, American Bar Association: The Young Lawyer (July/August 2011).
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In Florida, a competent individual has a variety of choices to ensure that his wishes are carried out should he lose capacity to make his own medical decisions. These choices are generally referred to as advance directives. This article will examine the procedure for invoking a valid surrogacy, proxy, and a living will.

When a surrogate or proxy is involved, the surrogate or proxy’s power is not invoked until the patient is deemed incapacitated. If the patient’s capacity is in question, the attending physician must first evaluate the patient and document the evaluation. Although a second physician’s opinion is only required in the event that the attending physician has a question as to capacity, obtaining the second opinion is always a good idea. Upon determination of incapacity, the facility or provider will then notify the surrogate or proxy in writing that the surrogacy or proxy has commenced. The surrogacy or proxy shall remain in effect until the patient regains capacity.

Similarly, the terms of a living will regarding life-prolonging procedures are not invoked until it is determined that: 1) the principal does not have a reasonable medical probability of recovering capacity; 2) the principal has a terminal condition, an end-stage condition, or is in a persistent vegetative state; and 3) the limitations and conditions expressed orally or in a written declaration have been carefully considered and satisfied. To determine whether the patient has a terminal condition, an end-stage condition, or is in a persistent vegetative state; may recover capacity; or whether a medical condition or limitation referred to in an advance directive exists, the patient’s attending physician and at least one other consulting physician must separately examine the patient. The findings of each examination must be documented in the patient’s medical record and signed by each physician before life-prolonging procedures may be withheld or withdrawn.

In conclusion, once a patient has a valid advance directive in place, the patient’s capacity is the key to invoking the terms of a valid surrogacy, proxy, or living will regarding life-prolonging procedures. Once incapacity is determined, the terms of the advance directive should be followed by the health care provider.

Author: Kristin K. Morris - de la Parte & Gilbert, P.A.
Bay Area Legal Services has expanded legal services to qualifying families or individuals with children age 8 or younger, or those expecting a child, through its Lawyers Helping Kids program. The expansion of services is made possible by a grant from the Children's Board of Hillsborough County. The Lawyers Helping Kids program expands legal assistance in the areas of housing, employment, relative caregiver, and family law.
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11th Annual Judicial Pig Roast/Food Festival & 5K Pro Bono River Run

Hundreds of HCBA members and their families came out on March 22 for the 11th Annual Judicial Pig Roast/Food Festival & 5k Pro Bono River Run at Stetson’s Tampa campus. About 300 runners zoomed through the race course before joining the large crowd hanging out and chowing down at the pig roast/food festival. Thanks to all who contributed to making this the most successful event to date!

**PIG ROAST AWARDS**
Best Pig Slop: Trenam Kemker
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Best Pigsty: Mason Black & Caballero P.A.
Runner-up Best Pigsty: Judges of the Thirteenth Judicial Circuit

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Fastest Male Judge: Hon. Mark Wolfe
Fastest Female Judge: Hon. Linda Allan

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HCBA members celebrated St. Patrick’s Day at the Forum this year, watching the Lightning beat the Canucks 4-3. Thanks to all who attended, and congratulations to our Facebook fans who won tickets: Diane McSpirrit and Ashley Rector.
The Supreme Court this term is hearing a record high of eight intellectual property cases — 11.4 percent of the court’s docket, according to Reuters. Be on the lookout for decisions in the following important cases:

**Copyright**

*American Broadcasting Companies, Inc. v. Aereo, Inc.*, No. 13-461: The issue presented is whether a company “publicly performs” a copyrighted television program when it retransmits a broadcast of that program to thousands of paid subscribers over the Internet. Oral argument was set for April 22, 2014.

*Petrella v. Metro-Goldwyn-Mayer, Inc.*, No. 12-1315. The court heard argument on January 21 in this case, which considers whether the defense of laches can apply to copyright claims brought within the statute of limitations. The plaintiff’s claim was decades old, but she only sought damages for the most recent three years. At oral argument in February, the court seemed skeptical of the limited claim.

**Patent**

*Limelight Networks, Inc. v. Akamai Techs., Inc.*, No. 12-786. Can one induce patent infringement if there is no underlying direct infringement? This so-called “divided infringement” has become more of an issue as patent owners struggle to enforce patents applicable to the Internet. The court was scheduled to hear argument on April 30, 2014.

*Highmark, Inc. v. Allicare Management Sys., Inc.*, No. 12-1163; and *Octane Fitness v. ICON Health and Fitness*, No. 12-1184. In both *Highmark* and *Octane*, the court is considering the application of the exceptional-case finding under 35 U.S.C. § 285. Both petitioners are defendants arguing that the Federal Circuit is too rigid in its application of the standard, depriving prevailing defendants of attorneys’ fees awards to which petitioners argue they should be entitled. Oral argument was held February 26. The decision has the potential to affect trademark cases as well, since the Lanham Act also uses an “exceptional-case” standard.

*Medtronic, Inc. v. Boston Scientific Corp.*, No. 12-1128. In the only IP case so far to have issued a decision, the Supreme Court unanimously reversed the Federal Circuit on the issue of who bears the burden of proof when a licensee seeks a declaratory judgment against a patentee to establish that its products do not infringe the licensed patent. The court — in an opinion strongly admonishing the Federal Circuit for failing to apply “simple legal logic” — held that the patentee bears the burden of persuasion on the issue of infringement.

*Nautilus v. Biosig Instruments*, No. 13-369. In *Nautilus*, the court will wrestle with the issue of how definite and precise a patent claim must be to constitute a valid claim. The case promises to be important to patent litigators and prosecutors alike. The court was scheduled to hear argument on April 28, 2014.

**Trademark**

*POM Wonderful LLC v. The Coca Cola Co.*, No. 12-761. *POM Wonderful* requires the court to clarify the intersection between the Lanham Act’s unfair and deceptive trade practices provisions and the Food and Drug Administration’s labeling requirements. Can a private party challenge an FDA-compliant label under the Lanham Act? Oral argument was scheduled for April 21, 2014.

Author: Dineen Pashoukos Wasylik – DPW Legal
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LAW WEEK 2014: A SUCCESS!
Law Week Committee
Chairs: Amy Nath – Shriners Hospitals for Children; Kelly Zarzycki Andrews – Shumaker, Loop & Kendrick, LLP; and Maja Lacevic – Cole, Scott & Kissane, P.A.

The week of March 17, students, judges, and attorneys across Hillsborough County came out in droves to enthusiastically celebrate Law Week 2014. Year after year, Law Week draws support from judge and attorney volunteers who choose to spend countless hours mentoring local elementary, middle, and high school students by leading courthouse tours, giving talks, or presenting mock trials.

School exam schedules required that Law Week be moved roughly six weeks earlier this year than in recent years, leaving Hillsborough County Bar Association Law Week organizers to wonder whether volunteer needs could be met in a significantly decreased amount of time. The organizers rallied for support, but their worry was unwarranted. Dozens of veteran volunteers raised their hands for an opportunity to work with the students again, and a new generation of Law Week volunteers stepped up as well. Once again, when all was said and done, thousands of Hillsborough County students and scores of attorney and judge volunteers actively participated in Law Week festivities.

Throughout the George E. Edgecomb Courthouse, children and tour leaders could be found attending proceedings or discussing the workings of the court system. In classrooms across the county, students performed the mock trial of *The Three Bears v. Goldilocks*, and volunteer attorneys discussed the Law Week 2014 theme, “American Democracy and the Rule of Law: Why Every Vote Matters.”

Although the theme is particularly relevant in election years like this one, it also reminds us that the fundamental right to vote must never be taken for granted. The topic of voting rights can be as important in an introductory lesson to elementary school students as it can be in a reminder discussion with high school seniors, reflecting on the importance of a citizen’s right to vote and the challenges we continue to face in ensuring that all Americans have the opportunity to participate in our democracy.

On behalf of the entire HCBA Law Week Committee, I extend a sincere “thank you” to the volunteers, students, and educators who helped create another fantastic and inspiring Law Week. We hope to see you next year!

*Author: Amy Nath – Shriners Hospitals for Children*

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Continued from page 44

The HCBA would like to thank all the volunteers who participated in Law Week 2014:

Classroom Speakers
  Dale Appell
  Zachary Bayne
  Jennifer Waugh Corinis
  Terin Barbas Cremer
  Kevin Elmore
  Diana Evans
  Martha V. Evans
  Cameron Frye
  Alexandra Haddad
  Lynn E. Hanshaw
  Tom Hyde
  Caroline Levine
  Paul McDermott
  Ryan McGee
  Bradley Merritt
  Felix Montanez
  Anthony Palermo
  Elliott Peace
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  Robert Webster

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  Cecilia Bidwell
  Jan Brown
  Judge Marva L. Crenshaw
  Jackie Coleman
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  Paul E. Berg
  Bruce Carr
  Benjamin P. Deninger
  Frank Leung
  Lisa Millman-Nodal
  Alexandra M. Murdocca
  Melissa Muriel
  Patrick Colin Rice
  Jennifer Weihmuller
  David Yamin
Success! You just secured a final money judgment for your client. Now what? Is that final money judgment worth the paper it was printed on? It is, if you know what to do with it.

Record the judgment against real property.
A judgment becomes a lien against real property when a certified copy is recorded in the county in which the property is located. The recorded judgment must contain the creditor’s address or be accompanied by an affidavit stating the address. Fla. Stat. § 55.10(1); Butler v. Butler, 870 So. 2d 239 (Fla. 2d DCA 2004). The judgment shall be a lien in that county for an initial period of 10 years from the date of the recording. Fla. Stat. § 55.10(1). After the initial period of 10 years, the lien may be extended for an additional period of 10 years by re-recording a certified copy of the judgment prior to the expiration of the lien and by simultaneously recording an affidavit with the current address of the person who has a lien as a result of the judgment, order, or decree. Fla. Stat. § 55.10(2). However, “no judgment, order, or decree of any court shall be a lien upon real or personal property within the state after the expiration of 20 years from the date of the entry of such judgment.” Fla. Stat. § 55.081. It may take some time to get paid from this type of lien, but it might be just enough to get the debtor to negotiate a payoff of the judgment.

Establish a lien against personal property.
To establish a judgment as a lien against personal property, a judgment lien certificate must be filed with the Department of State. Fla. Stat. §§ 55.202, 55.203. An execution lien attaches to personal property, including pending lawsuits and workers’ compensation settlements. Id.; Blackman v. State, Dept. of Revenue, 704 So. 2d 1102 (Fla. 1st DCA 1997); Dept. of Revenue ex rel. Springer v. Springer, 800 So. 2d 700 (Fla. 5th DCA 2001). A duly filed lien lapses after five years. Fla. Stat. § 55.204(1). However, liens securing child support are effective for 20 years. Fla. Stat. § 55.204(2). If the debtor in your case is particularly fond of his or her “stuff,” this may get his or her attention.

Take a deposition in aid of execution.
Rule 1.560 of the Florida Rules of Civil Procedure provides that a party can obtain discovery in aid of execution. The judgment creditor can request an order requiring the judgment debtor to complete the fact information sheet in form 1.977. Fla. R. Civ. P. Rule 1.560(b). Additionally, the judgment creditor may take depositions or request the production of documents in aid of execution. Unlike in family court, in some circumstances, the court can require the debtor to supply financial information in form 1.977 about the debtor’s spouse. Fla. R. Civ. P. Rule 1.560 (d).

These are only a few ways to collect on a final money judgment, but it is definitely worth pursuing.

1 The entry of a judgment for arrearages for child support, alimony, or attorney’s fees and costs does not preclude a subsequent contempt proceeding or certification of a IV-D case for intercept, by the United States Internal Revenue Service, for failure of an obligor to pay the child support, alimony, attorney’s fees, or costs for which the judgment was entered. Fla. Stat. § 61.17(3).

Authors:
Eliane I. Probasco - Probasco Law, P.A.; and Christine L. Derr - Law Offices of Christine L. Derr
If the first goal of mediation is to settle your case, the second goal should be to manage your client’s risk. When the mediation seems to be reaching an impasse, a good mediator will encourage the parties to consider the high/low agreement.

In a high/low agreement, the defendant agrees to pay a minimum amount of money regardless of the outcome at trial. The money is usually paid when the settlement agreement is entered into. In exchange, the parties agree that regardless of the verdict, the maximum that will be paid will be an agreed amount. Any verdict between the high and the low will be paid without adjustment.

You understand from your experience the enormous perils associated with going to trial. However, your clients may not fully appreciate the danger of losing a case that should have been won and vice versa.

If you want to be a good advocate and a good risk manager, you should not give up attempting to limit risk even if you cannot settle your case at the mediation conference. You can consider a high/low agreement at any time during the course of litigation. For example, after all the evidence is presented, neither party may have a good sense about the potential outcome. After closing arguments are completed, the parties can enter into a high/low agreement that guarantees a substantial amount of money to the plaintiff and limits the upside to protect the defendant in the event of an exorbitant verdict.

Such a settlement can be structured to make certain that no matter the outcome, neither party will be saddled with a judgment for attorney fees because of prior offers and demands for judgment. The settlement can assure that there will be no appeal and that the monies owed will be paid within a specific period of time. The defendants know that under the worst-case scenario, they will not need to file bankruptcy. The plaintiffs know that under the worst-case scenario, they will receive significant compensation for their losses.

In a high/low agreement, the defendant agrees to pay a minimum amount of money regardless of the outcome at trial. ... In exchange, the parties agree that regardless of the verdict, the maximum that will be paid will be an agreed amount.

High/low agreements can be even more beneficial to the parties if agreed to before trial. Normally, the low amount is paid upon execution of the agreement. These monies can fund the costs needed to go to trial. Therefore, a high/low agreement can level the playing field for plaintiffs and limit the risk to the defendant.

A high/low agreement has some risk. The defense can overpay if the verdict is lower than the low, or the plaintiff can be underpaid if the verdict is higher than the high. Be very careful to cover all contingencies in the agreement. Remember that by encouraging your clients to limit their risk exposure, you are being both their best possible advocate and counselor.

Author:
Eric E. Ludin - Tucker & Ludin

To join an HCBA section or committee, call (813) 221-7777.
Tibbals also appears in the two other delinquency courtrooms, others estimate that he contributes more than 100 hours each year and an additional 50 hours each year outside the courtroom for extended representation. After Crossroads for Florida Kids Inc. took over the Attorney ad Litem program in 2013, Tibbals mentored its principals, recruited new attorneys, and placed himself on call two days a week, sometimes more if other attorneys could not attend. Thus, since 2008, Tibbals has likely contributed more than 800 hours of pro bono services to the Attorney ad Litem program.

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

Zuckerman Spaeder LLP was founded in Washington, D.C., in 1975. The firm represents individuals and businesses in complex, highly contested civil and criminal cases. It has offices in Washington, New York, Baltimore, and Tampa. The firm has been named to *The National Law Journal’s* Midsize Hot List every year since 2010.

Zuckerman Spaeder is a firm with a culture of pro bono service. Since the firm’s Tampa office was opened in 1991, it has contributed more than 4,600 pro bono hours. In 2013, this office of 12 attorneys contributed more than 1,200 hours of pro bono service! As Judge Ralph Stoddard observed: “I have personally witnessed [two Zuckerman Spaeder] lawyers contribute hundreds of hours in my division, so I can only assume that the total number of hours spent by the firm is generous indeed.”

Continued on page 49
The Tampa office’s pro bono services are wide ranging and complex. Partner Jack E. Fernandez and associates Jo Ann Palchak and Mamie Wise filed a federal lawsuit on behalf of migrant farmworkers against a Florida tomato grower who failed to pay them minimum wage. Partner Marcos Hasbun, Palchak, Wise, and Sara Alpert represented foster care children in Hillsborough County’s dependency and delinquency courts. Palchak and Wise also represent, under the supervision of Lee Fugate, a criminal defendant seeking post-conviction relief based on new evidence available from DNA testing.

Zuckerman Spaeder’s Tampa office is also involved in numerous community programs that promote pro bono. Its attorneys sit on the board and contribute to Bay Area Legal Services; assisted in the formation of Crossroads for Florida Kids Inc., which represents youths in foster care; and participate in Florida 4-H Foundation, various outreach programs such as breast cancer awareness, and the coordination of mock trials at the Academy Prep in Ybor City.

**Outstanding Pro Bono Service by a Young Lawyer**

Sara Alpert is an associate in the Tampa office of Zuckerman Spaeder LLP. She represents individuals and businesses in criminal and civil litigation and governmental investigations. She is a graduate of Johns Hopkins University and the University of Maryland School of Law.

In 2013, Alpert contributed more than 250 pro bono hours representing two clients in foster care as a Crossroads for Florida Kids Inc. pro bono attorney. She was lead attorney representing a teenager in foster care whose parents were deceased and her relatives refused to care for her. By providing the teen legal help and personal counseling, Alpert helped her stabilize over the past year. Alpert also represented a 17-year-old girl who faced the prospect of returning to an abusive home or marrying a boy she knew for four months. Alpert helped find an alternative by petitioning for emancipation; since then, the teen has graduated high school and is applying to colleges.

Alpert’s community involvement is extensive, having contributed about 250 hours raising awareness and securing funding for the mission of Bay Area Legal Services. She also organized the mock trial program at the Academy Prep Center in Ybor City and helped them prepare for a statewide competition.

**Outstanding Pro Bono Service by a Lawyer**

Elizabeth L. “Betsey” Hapner has been a sole practitioner for more than 25 years, focusing on family law, mortgage foreclosure defense, probate, and estate planning. She received her bachelor’s degree and her law degree from the University of Florida. According to Hillsborough County Circuit Judge Caroline J. Tesche, “Ms. Hapner has truly been a tireless champion in providing pro bono services in our circuit.”

“I have seen few individuals with the dedication Betsey has toward pro bono work,” praised Judge Rex M. Barbas, “she is a shining example of what lawyers should be.”

These accolades are well deserved. In 2013, Hapner contributed more than 550 pro bono hours assisting clients referred to her from Bay Area Legal Services, Crossroads for Florida Kids Inc., and other pro bono projects. She contributed more than 170 hours representing

*Continued on page 50*
children in the Delinquency Division and 240 hours representing seven children and young adults as a Crossroads for Florida Kids Inc. pro bono attorney. Her cases have involved real estate, paternity, probate, time sharing and child support, criminal, and probation matters.

In addition to her decades of pro bono work, Hapner has tirelessly lobbied for rule and statutory changes in the areas of juvenile law and family law. She has also generously given her time and expertise to advance the legal profession through her involvement in dozens of legal organizations and community projects.

Outstanding Pro Bono Service by an Organization

Crossroads for Florida Kids Inc. was created in 2012 by Rosemary Armstrong as a nonprofit organization to promote and facilitate pro bono legal services for children in dependency and delinquency proceedings. It recruits volunteer attorneys and provides them training and ongoing mentoring. These pro bono attorneys meet their young clients at the crossroads of their lives and, through counseling and advocacy, help them to persevere and become productive citizens.

In 2013, Crossroads recruited more than 90 local attorneys who collectively contributed more than 3,500 pro bono hours representing 43 children in foster care and 19 teens for extended representations in the Delinquency Division. Since May 2013, Crossroads pro bono attorneys also attended the hearings and trials of approximately 150 youths in delinquency who came to their proceedings unaccompanied by a parent or guardian.

Outstanding Pro Bono Service by a Paralegal

Jan L. Brown is a litigation paralegal in the Tampa office of James, Hoyer, Newcomer & Smiljanich, P.A. The firm practices in the areas of class actions, false claims, consumer, and Qui Tam law. Brown dedicates herself to helping individual clients in need and legal organizations that provide pro bono services.

In 2013, Brown provided more than 28 hours of pro bono services to clients involving foreclosure and the Hague Convention. She has been contributing this level of pro bono work for the past three years. As the Tampa Bay Paralegal Association’s Pro Bono Chair, Brown advocated the inclusion of paralegals in pro bono projects such as the Wills for Heroes Program, actively recruited paralegals to participate, and contributed more than 20 hours of pro bono services herself.

Brown has served as the paralegal liaison for the Thirteenth Judicial Circuit’s Pro Bono Committee since 2012, spending more than 35 hours assisting with the committee’s Circuit Pro Bono Report, which is a circuit-wide compilation of pro bono activity reported to the Florida Supreme Court. With professionalism and dedication, Brown has spent more than 125 hours of service on various pro bono projects since 2011.

Special Recognition Award

The Hillsborough County Bar Association has long been a stalwart supporter of legal services for the poor. The HCBA has promoted pro bono service among its sections and committees and throughout its membership. A “Quick Link” to Pro Bono Opportunities offered by the Bay Area Legal Services Bay Area Volunteer Lawyers Program (BAVLP) is included in its weekly e-newsletter, and for more than a decade, the HCBA has provided a table at its membership luncheon meetings for use by the BAVLP staff to recruit volunteer attorneys. The HCBA has offered its meeting rooms for use by the circuit’s Pro Bono Committee for its quarterly meetings, as well as for its annual awards ceremony and reception. Furthermore, the HCBA has also sponsored the annual Jimmy Kynes Pro Bono Service Award.

When the economy took a downturn in recent years, many legal services programs throughout the nation, including BALS, suffered cutbacks in funding. This resulted in BALS’ loss of 10 staff positions. The HCBA stepped up to assist BALS in several different ways. BALS Chief Executive Officer and President Richard Woltmann recalls: “[I]n order to help BALS persuade attorneys and law firms to provide philanthropic donations in a time of reductions in funding for legal services for the poor, in 2012 and 2013, the HCBA president, Bob Nader, personally wrote to the chair of every HCBA section and committee requesting that they provide time at one of their meetings for BALS representatives to explain the financial crisis faced by the organization. These presentations helped BALS increase its annual attorney giving by about $100,000 annually and helped BALS maintain critical services to its clientele.”
Continued from page 50

**Gold Letters (100 or more Pro Bono Hours)**

Stephanie Adams
Sara Alpert
Rosemary Armstrong
Mike Bedke
E. Kelly Bittick
Stuart Bromfield
Karen Buesing
Christa Carpenter
Amanda Chazal
Jennifer Cohen
Victoria Cruz-Garcia
Lawrence J. Dougherty
Megan Ellis
Nancy J. Faggianelli
Megan Flatt
Robert H. Gidel
Elizabeth Hapner
Susan Haubenstock
Michael Hooi
Scott Horvat
Lauretta Johnston
Cathy Kamn
Sarah Kay
Cristin C. Keane
Sarah Lahlolou-Amine
Joseph H. Lang, Jr.
Robert W. Lang
Mindi Lasley
David J. Liško
Thomas M. Little
James A. Manzi, Jr.
Timothy Martin
Michael P. Matthews
Mac McCoy
Patrick K. Meehan
Stephanie Miles
Kevin J. Napper
Jo Ann Palchak
Terri Parker
Amy Reagan
Randall Reder
Craig Rothburd
Amanda A. Sansone
Daryl Saylor
J. Michael Shea
Mariko K. Shitama

Allison Singer
David Singer
Patrick W. Skelton
Debra K. Smietanski
Jeanne T. Tate
Wesley Tibbals
Stephen Todd
Paul J. Ullom
Lauren L. Valiente
Miriam Velez Valkenburg
Sylvia H. Walbot
Laura Ward
Michael A. Wasylko
Mamie Wise
Mark Wolfson
Rachel May Zysk

**Lapel Pin Recipients (50-99 Pro Bono Hours)**

Jacqueline R. Ambrose
Amy Bandow
Zachary Bayne
George Bedell
David Borucke
Lauren E. Catoe
Marina Choundas
Tiernan Cole
Beth Coleman
Lewis J. Conwell
Tom Curran
Justin Dees
Bill Dolence
Suzanne M. Elinger
Stephen Evans
Richard K. Fuego
Blaise N. Gamba
Joanna Garcia
Jon Gatto
Joel B. Giles
Frederick J. Grady
Christopher Griffin
John M. Guard
Brian Guthrie
Jourdan R. Haynes
Katherine L. Heckert
Vashiti Jattansingh
Joryn Jenkins
Charles F. Ketchey
Nicole C. Kibert
Ellen Lyons

Michael Maguire
Stephanie M. Martin
Jennifer H. McPheeters
George J. Meyer
Richard Oliver
Anthony Palermo
Adriana Paris
Scott P. Pence
Jennifer H. Pinder
Lauren Raines
Tiffany Raush
Michael Rocha
Anthony Rodriguez
Lindsay Saxe
Roger D. Schwenke
Olin Shivers
Albert P. Silva
Bryan Skellett
Natalie Thomas
Kenneth A. Tinker
Barbara Twine-Thomas
Kristopher Verra
Luis Viera
Brian Wanek
Dineen Wasylko
Janelle Weber
Dirk Weed
James Wiley
Nick Williams

**Lapel Pin Recipients (20-49 Pro Bono Hours)**

Katherine Agliano
Adam Alace
Onchantho Am
Andreee Anderson
Scott Anderson
Wallace Anderson
Dale Appell
Mark Aubin
B. Michael Bachman, Jr.
Radha V. Bachman
Lori Baggett
Natalie Baird
Danelle Barksdale
Michael Barnett
Bernard Barton
Sheron Bass
Kandia Batchelor
Dana R. Blunt

Anita Brannon
Christopher Branton
Michael Broadus
O. Kim Byrd
Patricia S. Calhoun
Nathan A. Carney
Thomas Cauffman
Albert Cazin
Jeanne Coleman
Phillip Colesanti
Matthew J. Conigliaro
Adam Cordover
Angela Crawford
Curt Creely
Christine Derr
Dorothy DiFiore
Michelle Drab
Fentrice D. Driskell
Amy Drushal
Jason Ebert
Kelli Edson
Brian Esposito
Lisa Esposito
Jillian Estes
Kathryn Everlove-Stone
Matthew Farmer
Emily Feedes
Christophe Fiori
Daniel Fischetti
John Gardner
Jennifer Garner
Suzanne Glickman
Karla Gonzalez-Acosta
Adam Griffin
John Guyton
David Harper
Amy Harris
Marcos Hasbun
Matthew Hatfield
Harley Herman
Ronald S. Holliday
Felicia Holloman
Elaine Holmes
George Howell
Tom Hyde
Yolanda F. Jameson
David Johnson
Cassidy E. Jones

Continued on page 52
THE THIRTEENTH JUDICIAL CIRCUIT 2014 PRO BONO SERVICE AWARD WINNERS
Pro Bono Committee

Continued from page 51
Ann Joslin
Stephanie Kane
Jody Keeling
Brad Kimbro
Doug Knox
Dominic Kouffman
Nathaniel Lacktman
Stephen J. Leahu
Jordan Lee
Casey Lennox
Richard C. Linquanti
Walter “Chef” Little
Jason Liu
Laurel E. Lockett
Kathy Logue
Lesly Longa
Marcela Lozano
Kate Lucente
Paul Maney
Philip V. Martino
Mark Massey
John P. McAdams
Lily McCarty
Fredrick H.L. McClure
Kevin McCoy
Melinda McLane
Kathleen S. McLeroy
Mark Mooney
Patrick Mosley
John Mulvihill
Kay Murray
A.J. “Stan” Musial
Sundeen Nath
Joseph Odato
Megan Odoniec
Kemi Oguntebi
Shawn Packer
Edward J. Page
Patricia Palma
Grantham T. Parramore
Rinky Parvani
J. Trumon Phillips
Scott Power
Louis D. Putney
Jason J. Quintero
Kerry Rehm
Clara Rodriguez Rokusek
Brent Rose
Sam J. Salarino, Jr.
Lawrence H. Samaha
William Schwarz
Whitney Scott
Susan Sharp
Rebecca N. Shwayri
Lori Skipper
Jan Soeten
Marty J. Solomon
Nicole Soto
Shazia Sparkman
Traci Stevenson
Don M. Stichter
Eduardo Suarez
Dona Suplee
Steve Szabo
Janae Thomas
E. Collin Thompson
Ashley Trehan
Jason Valkenburg
Joe Varner
Lavinia J. Vaughn
Brian B. Vavra
Roland “Chip” Waller
Bethanne Walz
Robert Warram
Alice Weinstein
Jerome Williams
Taylor Williams
Randy Wolfe
W. Cary Wright
Jess Yado
Katherine Yanes

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MAY 13
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Director of the ACLU Mid-Florida Regional Office
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Stay Connected
A LESSON IN MODERN-DAY SLAVERY

The Hillsborough County Bar Association, Tampa Hispanic Bar Association, George Edgecomb Bar Association, and Hillsborough Association for Women Lawyers joined together on March 7 to present a CLE on human trafficking in the Tampa Bay area. Attendees learned about the prevalence of trafficking in Florida, the plight of victims, and how attorneys can help fight trafficking.

The organizations would like to thank those who participated in the discussion: Judge Rex Barbas, Mary Ellen Collins, Stacie Harris, Jenay E. Iurato, Jennifer L. Marks, Detective James McBride, Professor Luz E. Nagle, Anna I. Rodriguez, Giselle Rodriguez, Connie Rose, Professor Stevie J. Swanson, Judge Lynn Tepper, and Special Agent Bill Williger.
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THE AMERICAN INNS OF COURT ANNOUNCE THE FORMATION OF THE WILLISTON TRANSACTIONAL INN OF COURT TAMPA BAY - FLORIDA

The American Inns of Court ("AIC") are designed to promote professionalism, civility, ethics and excellent legal skills of the bench and bar. The AIC actively involve over 29,000 federal, state and administrative law judges, practicing attorneys, legal scholars and students throughout the United States. Each American Inn of Court is an association of judges, lawyers, law professors and law students who meet regularly to hold discussions and present programs on matters of legal skills, professionalism, ethics, technology, quality of life and collegiality.

The Williston Transactional Inn of Court (the "Williston Inn") will be the first purely transactional Inn of Court in the AIC system. It has been named after Samuel Williston, the noted law professor and primary authority on contract law in the United States during the early 20th century. The organizers of the Williston Inn are seeking indications of membership interest from judges, lawyers, law professors and law students in the greater Tampa Bay area. Membership opportunities will be limited, with the goal of selecting members from every segment of the Tampa Bay legal community.

The Williston Inn organizers intend to complete the membership selection process by June 30, 2014 and to hold an inaugural meeting in September 2014.

To obtain additional information and a non-binding membership application, please contact Bill Paul at wrp@floridalandlaw.com or Russ Alba at rtaiba@blackswanlegal.com.
THE AMERICAN INNS OF COURT TAMPA CHAPTERS INVITE YOU TO APPLY FOR MEMBERSHIP.

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

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

Name: ________________________________

Firm: ________________________________

Address: ________________________________

Email address: ________________________________

Years in practice and specialty? ________________________________

Prior experience with any Inn of Court? ________________________________

Have you previously applied? _______ When? _______

Have you been referred to an Inn? ________________________________

By whom? List any weekday evening you cannot attend meetings: ________________________________

Do you have a preference for a particular Inn? ________________________________

Please attach a current resume limited to one page in length.

Forward Application Package to:
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Nursing Home
Medical Malpractice
Product Liability
Aviation
In Florida, if property owners fail to pay real property taxes when due, they risk having their property sold at a public auction to the highest bidder. If the taxes are not paid, a tax certificate will be sold.

On or before June 1, the tax collector must hold a tax certificate sale for unpaid real estate taxes from the prior year. The amount of the certificate is the sum of the unpaid taxes, interest, costs, and charges on the real property. Tax certificates are sold by public auction or electronic sale and awarded to any person who pays the amount of the certificate and bids the lowest rate of interest. The tax certificate sale opens with bidding at 18 percent rate of interest, and the interest rate is bid down until the tax certificate is sold to the lowest bidder.

Once a tax certificate is issued, any person may redeem it before a tax deed is issued and prior to its expiration seven years after the date of issuance. In order to redeem a certificate, the face amount of the certificate plus all interest, costs, and charges must be paid to the tax collector. If a tax certificate is redeemed and the interest earned on it is less than 5 percent of the face amount of the certificate, mandatory minimum interest of 5 percent is levied upon the certificate.

After two years have elapsed since April 1 of the year in which the tax certificate was issued, and before the tax certificate expires, the holder of a tax certificate (other than the county) may apply for a tax deed with the tax collector. Upon filing of an application for a tax deed, the certificate holder must pay the tax collector “all amounts required to redeem or purchase all other outstanding tax certificates, any omitted taxes, any delinquent taxes, any outstanding interest, and current taxes, if due, covering the property.”

Once an application for a tax deed is filed, the clerk publishes a notice once a week for four consecutive weeks in a newspaper available to the public generally where the property is located. The clerk must send notice of the sale to certain persons of record having an interest in the property, including any legal titleholder, lien holder, and any mortgagee, based upon information provided by the tax collector.

At a tax deed sale, the property is sold to the highest bidder. Once a tax deed is issued, any mortgages, liens, interests, or other restrictions against the property are extinguished, unless held by the government.

Author: Stephanie Adams - Shutts & Bowen LLP
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In early March, the United States Court of Appeals for the Fifth Circuit issued a strong-handed, 2-1 opinion rejecting British Petroleum’s (BP) cries of foul play and mandated that the claims administrator, Patrick Juneau, resume payment of proper business economic loss claims.

The back-story: Eleven lives were lost and many were negatively affected by what some are calling the greatest unnatural disaster of our time, BP’s Deepwater Horizon oil spill of April 2010. Awareness of the spill deterred those planning to visit our Gulf Coast states. When tourism dwindled, the Gulf Coast’s economy suffered greatly while creating a ripple effect that spread well beyond the beaches. Over the course of two years, BP and the plaintiff’s steering committee negotiated a class settlement that would recognize losses based on proximity to the Gulf as well as detailed financial analysis. Shortly after the agreement was ratified by the Eastern District of Louisiana, claims were processed and paid accordingly. BP then began the onslaught of objections, claiming unfairness, unconstitutionality, and fraud, to name a few.

The Fifth Circuit entertained BP’s arguments that the oil giant was being treated unfairly, the causation-related settlement terms were not properly followed, and claimant’s questionable accounting techniques were distorting actual business losses. In re: Deepwater Horizon, Nos. 13-30315 and 13-30329, (5th Cir. 2014). The heavy-handed, wit-filled opinion in March 2014 affirmed the lower court’s ruling of December 2013 and vacated the injunction that prevented thousands of worthy claimants from being processed and compensated. Id. BP relied heavily on a footnote buried in the causation section of the 1,033-page agreement. "Wielding this footnote, BP seeks to dismantle the complex framework of exemptions, presumptions and formulas that allow business claimants to submit evidence of their income and expenses before and after the BP-caused disaster," Judge Leslie H. Southwick wrote. Id. at 9. There likely is a more nuanced manner in which BP would characterize its argument, but this fairly captures its essence. Id.

Despite negative ad campaigns in major newspapers, atomic briefings at every trench, and a viciously accusatory tone, BP is bound to the agreement it negotiated and signed. “There is nothing fundamentally unreasonable about what BP accepted but now wishes it had not,” Southwick wrote. Id. at 11.

At the time of this publication, there are doubts that BP will accept this ruling. It has, however, achieved success in shaming many for filing and deterred those who have not. It has also persuaded the court to revise accounting procedures to require a matching of revenues to expenses. This may prevent the occasional fraudulent or undeserving claim from payment but will undoubtedly call for more detailed analysis, less favorable compensation for select industries, and increased accountant involvement. Although the filing deadline at publication time was April 2014, expect an extension into mid- to late 2014.

Bottom line: Oil claims can be a bit messy, but there is no better time for a Gulf Coast business to be evaluated.

Oil claims can be a bit messy, but there is no better time for a Gulf Coast business to be evaluated.

Author: Anthony J. Garcia - Alvarez Garcia
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With the continued rise in the use of social media, lawyers have turned to social media such as Facebook, LinkedIn, and Twitter to investigate witnesses, parties, and jurors. Although using these forums to obtain information to support a client’s claims seems harmless, lawyers must tread lightly so they comply with the rules on professional conduct. The Florida Bar has yet to issue any opinions on the use of social media as an investigative tool. However, there are numerous ethics opinions in other jurisdictions that provide helpful guidance on professional conduct rules similar to Florida’s.

Several ethics opinions have held that obtaining publicly available information from social media does not violate any rule on professional conduct. However, the circumstances change when lawyers send “friend” requests or requests for information via social networks. Lawyers must use caution when engaging in such practices to ensure they do so ethically. For example, sending a friend request to an adverse party or a witness could violate Florida Rule of Professional Conduct 4-4.2, which prohibits lawyers from communicating with represented parties.

Likewise, asking a non-lawyer or third party to send a friend request or contacting witnesses or parties via social networking could also violate Rules 4-4.2 and 4-5.3. Case in point, in August 2012, two New Jersey attorneys were charged with numerous ethical violations when their paralegal friended a represented opposing party. Directing a client to make contact on social media networks could raise ethical concerns as well. Thus, it is important that lawyers do not direct a non-lawyer or third party to do what the lawyer cannot do.

Friending a witness or unrepresented party without disclosing the purpose of the friend request or doing so through misrepresentation or deception also can violate the rules of professional conduct regarding misconduct and dishonesty (Rule 4-8.4). This can be true even where the lawyer discloses his or her identity but does not disclose the purpose of the contact. Nor can a lawyer log into someone else’s social media account under the guise of the accountholder to try to communicate with parties or witnesses.

When it comes to jurors, a lawyer might feel compelled to investigate jurors using social media. In fact, the rules on competence (Rule 4-1.1) and diligence (Rule 4-1.3) imply that a lawyer may be negligent if he or she did not use available methods, such as social media, to investigate jurors. Nevertheless, complying with the ethical rules should be paramount. At least two bar associations have held that it would violate the rules regarding communication with jurors and misconduct for a lawyer to send a friend request to a juror through social media. A juror learning that an attorney viewed or attempted to connect on LinkedIn or followed the juror’s Twitter account could also violate the professional rules of conduct.


Author: Yvette D. Everhart - Law Offices of Cynthia N. Sass, P.A.
The dreaded one-time change request can severely impact a case if not handled properly. As we all know, the authorized provider on the file dictates the course of medical treatment and drastically affects the value of the case. As new case law continues to modify the acceptable manner of “appropriately” and timely responding to these requests, adjusters and defense attorneys have increased concern when responding. Below are some tips to help maintain the employer/carrier’s selection of the one-time change.

Pursuant to Fla. Stat. § 440.13 (West), upon written request of the employee, the carrier shall give the employee the opportunity for one change of physician during the course of treatment. Furthermore, the carrier shall authorize the alternative physician within five days after receipt of the written request, or the claimant may select the authorized physician. It is important to note that case law has interpreted the five-day rule as five calendar days, as opposed to business days. See Hinzman v. Winter Haven Facility Operations LLC, 109 So. 3d 256 (Fla. 1st DCA 2013).

We recommend immediately contacting your defense counsel for recommendations of conservative physicians in the specialty and venue.

If the employer/carrier’s selected one-time change refuses to accept the claimant as a patient, the employer/carrier must timely authorize a new provider after notice of the declined authorization. See Roberts v. NPC International dba Pizza Hut, 2014 WL 006733 (holding that the employer/carrier retained the right to select a new physician upon the refusal of the selected one-time change physician, if the employer/carrier authorizes and notifies the claimant of the new physician within five days of knowledge of the refusal).

In the off chance that the employer/carrier misses the deadline, it is not without recourse if the claimant failed to report his or her selection of the one-time change in the written request. If the employer/carrier misses the five-day deadline, it may still elect the one-time change physician as long as the employer/carrier designates an alternate physician prior to the claimant’s selection. Breece v. UPS, 2014 WL 008726; see Pruitt v. Southeast Personnel Leasing Inc., 33 So. 3d 112 (Fla. 1st DCA 2010). Therefore, do not assume that since the deadline has passed the claimant will automatically be entitled to select a physician of their choosing. Instead, review the request for determination of whether the claimant selected his or her one-time change physician. If the claimant failed to do so, immediately authorize the employer/carrier’s selection and provide written notice to the claimant.

More concerning is the trend for responses to the one-time change to be specific. Recent case law interpreted § 440.13 to require the employer/carrier to respond with the name of a physician rather than merely offering a medical group or clinic. Martinez v. AFP M and Star Insurance, 2014 WL 015193. Long gone are the days of merely offering a walk-in clinic. Now, the failure to name the authorized physician at the walk-in clinic will allow the claimant to select the one-time change.

Upon written request of the employee, the carrier shall give the employee the opportunity for one change of physician during the course of treatment.

Author:
Lauren Lief - Vecchio, Carrier, Feldman & Johannessen, P.A.
Radha V. Bachman, Erin E. Banks, Patricia S. Calhoun, and Jin Liu have been elected shareholders at Carlton Fields Jorden Burt’s Tampa office. Bachman is board-certified in health law by The Florida Bar. Her practice focuses on providing clients with a full range of legal counsel on a variety of matters. Banks is a member of the firm’s construction and real property litigation practice groups. She represents general contractors, subcontractors, developers, homebuilders, design professionals, and owners in a variety of matters involving construction defect claims, contract disputes, and delay claims. Calhoun is a member of the firm’s health care, national trial practice, pharmaceutical and medical device, products and toxic tort liability, and white-collar crime and government investigations practice groups. Primarily, she practices health care law. Liu is a member of the firm’s real estate and finance practice group. She represents note holders, servicers, and other financial institutions in workouts, loan transactions, loan sales, and disposition of real estate.

Penelope A. Dixon, a shareholder at Carlton Fields Jorden Burt in Tampa, was chosen by the Leadership Council on Legal Diversity (LCLD) to be a member of the LCLD’s 2014 class of fellows. LCLD created its fellows program to identify, train, and advance diverse leaders in corporate legal departments and law firms. Dixon practices in products liability and general commercial litigation.

James E. Felman of Kynes, Markman & Felman, P.A., has been elected chair of the Criminal Justice Section of The American Bar Association for a one-year term commencing in August. Felman concentrates his practice in the areas of criminal defense and criminal appeals in federal and state courts.

Tyler Samsing has been promoted from associate to non-equity partner at the Tampa office of Arnstein & Lehr. Samsing’s practice within the firm is focused primarily on creditors’ rights, bankruptcy, real estate, and related commercial litigation.

Joseph Vecchioli has opened a new law firm, Law Offices of Joseph Vecchioli, P.A. The firm is based in Tampa and specializes in personal injury. Vecchioli has been working on behalf of injured victims in personal injury and wrongful death cases for the past 13 years.

John S. Vento, a shareholder in Trenam Kemker’s Tampa office, was recently appointed to the board of directors for the Florida Defense Contractors Association (FDCA). The FDCA is dedicated to promoting the business interests of Florida enterprises engaged in manufacturing, supplying, and other services for national defense.

Jason K. Whittemore has been named shareholder of Wagner, Vaughan & McLaughlin, P.A. His practice focuses primarily on personal injury, legal malpractice, and representing whistleblowers bringing claims on behalf of the government under the False Claims Act.

Brian C. Willis, an associate in the Tampa office of Shumaker, Loop & Kendrick LLP, has been elected secretary of the board of directors of the Florida Museum of Photographic Arts. Willis represents individuals and corporations involved in business, contract, and real estate disputes.

Donald A. Smith Jr. and Scott K. Tozian celebrated their firm’s 30th anniversary in 2013 and announced the addition of Debra J. Davis as a partner. The firm also celebrated partner Gwendolyn H. Daniel’s marriage to Jay Daniel, and the firm changed its name from Smith, Tozian & Hinkle, P.A., to Smith, Tozian, Daniel and Davis, P.A.

Trenam Kemker is pleased to announce the firm’s recognition by the Legal Marketing Association’s Southeastern Chapter with a 2013 Your Honor Award. The firm was recognized in the small firm category for the TK Nugget, a weekly e-newsletter featuring legal information sourced from a variety of blogs and online sources.
MAY 2014 | HCBA LAWYER
For the month of: December 2013  
**Judge:** Honorable Bernard Silver  
**Parties:** Sherre Donahue vs. Oscar Boras  
**Attorneys:** For plaintiff: Christopher Ligori and Chad Pilon; for defendant: Wes Lockwood and Frank Cole  
**Nature of case:** Plaintiff alleged she had a bulging disc in the neck from an auto accident caused by the defendant pulling out of a private driveway  
**Verdict:** For the plaintiff for $242,000; plaintiff motion for fees and cost pending.

For the month of: January 2014  
**Judge:** Honorable Lauren Brodie  
**Parties:** Collier County vs. Holiday CVS LLC and RTG LLC  
**Attorneys:** For plaintiff: Jeffrey Hinds, Jay Bartlett, and Richard Vickers; for defendants: Mark P. Buell and Raymond T. Elligett Jr. (for CVS LLC) and Tobyn DeYoung (for RTG LLC)  
**Nature of case:** Eminent domain action involving strip taken from CVS drugstore in Naples, Florida  
**Verdict:** Business damages for Holiday CVS LLC - $1,933,000; full compensation to RTG LLC - $3,483,000 (Petitioner presented evidence of business damages of $235,000 and full compensation of $519,700.)

For the month of: January 2014  
**Judge:** Honorable Bruce Boyer  
**Parties:** Ratien Tabaku vs. Allstate  
**Attorneys:** For plaintiff: Tony Griffith and Ryan Bresler; for defendant: Leticia Valdes and Jillian James  
**Nature of case:** Personal injury; motor vehicle accident. Plaintiff claimed an injury to his right sacroiliac joint.  
**Verdict:** Defense verdict, no causation.

For the month of: January 2014  
**Judge:** U.S. District Judge Virginia Covington  
**Parties:** Health and Sun Research Inc. vs. Australian Gold LLC  
**Attorneys:** For plaintiff: Harvey Kauget, Eric Pellenbarg, Jason Stearns; for defendant: James McGuire and Charles Meyer  
**Nature of case:** Trademark infringement  
**Verdict:** $147,615 - jury in favor of plaintiff

For the month of: February 2014  
**Judge:** Honorable Jannette Dunnigan  
**Parties:** Glenn Bornemann vs. Richard Harvey  
**Attorneys:** For plaintiff: Dennis Deicidue and Joseph Touger; for defendant: Michael Bird and Brandon Scheele  
**Nature of case:** Trip and fall with claim for knee arthroscopy and replacement  
**Verdict:** Defense verdict

For the month of: February 2014  
**Judge:** Honorable Paul A. Magnuson  
**Parties:** Hollister Inc. v. Zassi Holdings Inc. and Peter Von Dyck  
**Attorneys:** For plaintiff: Frank R. Jakes and James D. Adducci; for defendant: R. Kyle Gavin and John A. Carlisle  
**Nature of case:** Breach of warranty of marketable title in patent and fraud in the inducement from $35 million acquisition of medical product and intellectual property  
**Verdict:** For plaintiff as to liability; damage phase to follow.

For the month of: February 2014  
**Judge:** Honorable Elizabeth Kovachevich  
**Parties:** Estate of Jennifer Degraw vs. Jim Coats, sheriff of Pinellas County  
**Attorneys:** For plaintiff: David Henry, Scott Borders, Craig Laporte; for defendant: Mark McLaughlin and Andrew Bolin  
**Nature of case:** Plaintiffs alleged defendant was deliberately indifferent to Degraw’s serious medical needs while she was a pre-trial detainee in Pinellas jail, resulting in her death.  
**Verdict:** $975,000

For the month of: March 2014  
**Judge:** U.S. District Judge Mark E. Walker  
**Parties:** Jeremy Willis vs. Circle K. Stores Inc.  
**Attorneys:** For plaintiff: Fred Flowers and Martin Black; for defendant: Robert Maxim Stoler and Joel Mohrter  
**Nature of case:** Premises liability, negligent security claim arising from shooting on defendant’s premises  
**Verdict:** Defense verdict

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The HCBA would like to thank Kynes, Markman & Felman, P.A., and the Law Offices of Jeanne T. Tate, both of which donated spring training tickets to the Children’s Cancer Center’s Ticket Bank program through the HCBA. If you have extra tickets to any type of event that would bring a smile to a child’s face, please call Corrie Benfield at (813) 221-7779 to arrange for pickup of your donation, or drop them off the next time you’re at the HCBA, 1610 N. Tampa St.

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