One day a hurricane, fire or flood will destroy the home or business of a valued client and an insurance carrier will attempt to deny or limit the claim.

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This postcard on the cover of this issue lists some upscale Florida tourist attractions in the 1950s – long before the mouse arrived. Cypress Gardens lives on today, but as the recently reinvented Legoland. Founded in the 1890s, the St. Augustine Alligator Farm has survived, while many similar reptile emporiums are but memories.

Marineland, shown right and on page 27, opened in 1938 and was one of Florida’s first major tourist attractions.

Cover postcard courtesy of Raymond T. (Tom) Eligett, Jr.
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Being Thankful

While I hope that you give generously to our community this year, I also hope that you take a moment to focus on all you are thankful for.

The holiday season typically kicks off in November, and gives us all pause to enjoy time with loved ones and revel in some of the things we are most thankful for. As we head into the holidays this year, I find myself as thankful as ever. My fiancé and I plan to be married over Thanksgiving weekend, and we have immense gratitude for the good wishes we have received from family and friends since we got engaged last fall. There is nothing like a wedding to bring people together!

The holidays offer a number of opportunities to give back. Luckily, at the HCBA alone, you can help at any point in the year through pro bono efforts and with volunteer programs such as Law Week and Lawyers for Literacy. An upcoming event is Holidays in January, which will take place January 12, 2013.

While I hope that you give generously to our community this year, I also hope that you take a moment to focus on all you are thankful for. As lawyers, we are almost always guaranteed that our work will be challenging. Usually, it is a fact for which we are decidedly not thankful! We research questions that seem to have no clear answer (always for a business or client that, for good reason, would really like a clear answer!). We try difficult, nuanced cases, and work to meet our clients’ goals within the boundaries of the law. But there is a part in one of my favorite poems, “To Be of Use” by Marge Piercy, that I think sums up why we should be grateful for the challenges in our careers:

The work of the world is common as mud.  
Botched, it smears the hands, crumbles to dust.  
But the thing worth doing well done  
has a shape that satisfies, clean and evident.

I sincerely wish that you find real satisfaction in your work, despite its myriad challenges.

I also hope that, in addition to appreciating the difficulties in your job, you find time to consider the people who helped get you to where you are professionally. Perhaps there was a family member who supported you in law school, a mentor who offered guidance when you began your legal career, or a significant other who understood, time and time again, that law is a jealous mistress. It is a great feeling to remember, and express gratitude toward, those people!

Have a fantastic month, and enjoy it with some of the people for whom you are most thankful!

LOOKING FOR A NEW JOB?  
Check out the Career Center on the HCBA website at www.hillbar.com
The Bus Ride

“He is indebted to his memory for his jests and to his imagination for his facts.”

—Richard Brinsley Sheridan

In Remembrances of things past, historical details can sometimes become murky. However, everything you are about to read is true. As “The Old Professor” Casey Stengel once said, “You could look it up.”

I have always been fascinated by the remarkable number of 1965 high school graduates of Hillsborough County, entering their freshman year at the University of Florida, who eventually became lawyers and judges. It was a time when there were only eight city, five outlying county, and two main parochial high schools.

I first met some of these future members of our profession during my four undergraduate years at UF in either classrooms or dormitories. As for nine unforgettable others, my first encounter with them was on a bus ride headed to Gainesville on a muggy summer day after graduation.

The University had arranged for a Greyhound Bus to be waiting at Franklin and Madison streets in downtown Tampa, parked in front of Jack Pendola’s retail clothing store, to take the soon-to-be freshmen up to Gainesville for a pre-orientation day tour of campus. After nine years of higher education, I vividly remember my first two college texts purchased at the University Bookstore during this visit... Mirror for Man, a contemporary primer on modern anthropology and human behavior, by Harvard Professor Dr. Clyde Kluckhohn, and All the King’s Men, the Pulitzer Prize winning novel by Robert Penn Warren. Both books needed to be read and digested before the commencement of trimester classes beginning in late August.

I arrived downtown during the early morning of an especially hot, drizzly, mid-July day. As students were boarding the bus, introductions began... “Hi, I’m Bobby Nader from King High.” “Hello, nice to meet you. I’m Manny Menendez of Jefferson High. Let me introduce you to my fellow Dragons, Gene Ferguson, John Fernandez, and Terry Smiljanich.” The exchange of

Continued on page 6
pleasantries continued... “I’m George Cappy, and I expect to be the greatest Gator of them all. Here are two of my Jesuit buddies, Jimmy Dominguez and Joe Ficarrotta.” “Nice to meet you, George, Joe, Jimmy!” More young guys and gals entered the slightly air-conditioned but nonetheless sultry bus. “I can’t wait ‘til our football and basketball seasons begin. Our freshmen teams should be swell, with Larry Smith in the back field and Andy Owens in the front court!” “Darn nice to meet you Bob,” he said, extending his hand, “Bruce Bokor, Plant Panther.” Attention then enthusiastically turned to the coeds who were also making the trip.

The Greyhound was finally boarded, its nose facing north as it was about to embark on the two-hour jaunt along Highways 41, 301 and 441 to its college destination. Interstate 75 did not exist. All of the windows were opened, and I can remember the waft of exhaust as it drifted inside the steamy bus. Indeed, the humidity and dankness of the day exaggerated the white fumes coming from the underbelly of the glimmering blue and steely silver carrier.

As the students were taking their seats, the engine of the transport began revving for the trip. All of a sudden, a faint and barely discernible voice could be heard coming up from Franklin Street. The voice got louder as the form galloped closer to the waiting vehicle. At some point, the words of refrain became clear, “Don’t leeeaaavve!!” The driver, with his window wide open, was the first to respond, “I’m not going anywhere! But get a move on!” he yelled. The plea got louder as the approach to the ready-to-leave Greyhound bus got shorter. “DON’T LEEEAAVVVE!!!” Yet again, “DON’T LEEEAAVVVE!!!” By this time, the exasperated man at the wheel was screaming. “WE’RE WAITING FOR YOU!! HURRY UP!” As the vocal exchanges got more intense, all of us gradually stood up and drifted over to the right side of the bus to see the commotion. Within two blocks, one could make out a young fellow dressed in a three-piece tan herringbone suit, wearing a starched white shirt with a striped tie, with wing-tipped shoes, and carrying a brief case. All of the rest of us on the bus were in the casual dress of the time, without satchels. Clearly, the running figure either could not hear the bus driver or was too anxious to hear him. “PLEASE DON’T LEAVE!!!”

Within less than one block, everyone inside had their heads out the windows or as close to the portals as they could get. Just as this fellow freshman got to the side of the bus, his shoes gave way to the slippery concrete and up into the air he flew, slamming down hard onto the soaking pavement and sliding to an abrupt stop. His vest buttons had popped open as did his brief case, strewing papers all about. There was a long, pregnant pause among us as we looked down on this fallen, drenched 18-year-old lad. While lifting himself up off the sidewalk and gathering himself together, he looked up at all of the eyes descended upon him. And then, in the single greatest moment of self-deprecating aplomb under embarrassing circumstances I have ever seen to this day, he straightened himself up, and with the two-armed gesture of an experienced major league umpire, he yelled out and declared himself, “SAFE!!!” After a short but sweet silent lull, everyone inside the bus, including the driver, thunderously applauded! And so we were all first introduced to Hillsborough High School’s Augie Quesada.

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ON THE BUS

Bruce Bokor
John Fernandez
Terry Smiljanich
Gene Ferguson
Manuel Menendez, Jr.
Augie Quesada
Jim Dominguez
Joe Ficarrotta
George Cappy
Bob Nader

ALSO FROM TAMPA

Jim Buzbee
Mac Greco
Rodney McGalliard
Robert Moeller
Jim Moody
Stan Morris
Andy Owens
Larry Smith
Charles White
Dennis White

Continued from page 6

I would have never imagined that 10 individuals on that embraceable bus ride and 10 others whom I met during my undergraduate years at Florida, after graduation, or learned about while preparing this article, including Jim Buzbee, Mac Greco, Rodney McGalliard, Robert Moeller, Jim Moody, Stan Morris, Andy Owens, Larry Smith, Charles White, and Dennis White, were destined to choose the law as their careers.¹

My experience on that “Bus Ride” has been an indelible and enduring memory. If you do not believe me, there are witnesses.²

¹ Research materials provided by Bruce Bokor, Jim Buzbee, George Cappy, Judge Menendez, Judge Moody and Larry Smith [all referenced high school annuals, circa 1965]: See, Excalibur, Robinson High School Knights’ yearbook, pg. 104; Hilsborean, Hillsborough High School Terriers’ yearbook, pgs. 207, 234, 237 & 251; Monticello, Jefferson High School Dragons’ yearbook, pgs. 161, 168, 169 & 175; Tiger, Jesuit High School Tigers’ yearbook, pgs. 11, 13, 15 & 16; Clarion, King High School Lions’ yearbook, pg. 69; Panther, Plant High School Panthers’ yearbook, pgs. 244 & 262; Kanyukaw, Plant City High School Raiders, nee Planters’ yearbook, pgs. 164, 166 & 167.

² Research materials provided by Bruce Bokor, Jim Buzbee, George Cappy, Judge Menendez, Judge Moody and Larry Smith [all referenced high school annuals, circa 1965]: See, Excalibur, Robinson High School Knights’ yearbook, pg. 104; Hilsborean, Hillsborough High School Terriers’ yearbook, pgs. 207, 234, 237 & 251; Monticello, Jefferson High School Dragons’ yearbook, pgs. 161, 168, 169 & 175; Tiger, Jesuit High School Tigers’ yearbook, pgs. 11, 13, 15 & 16; Clarion, King High School Lions’ yearbook, pg. 69; Panther, Plant High School Panthers’ yearbook, pgs. 244 & 262; Kanyukaw, Plant City High School Raiders, nee Planters’ yearbook, pgs. 164, 166 & 167.

WHERE ARE THEY NOW?

Manuel Menendez, Jr., and James Dominguez, Chief Circuit Court Judge and County Court Judge, respectively, of the 13th Judicial Circuit; James Moody, U. S. District Court Judge for the Middle District of Florida; Stan Morris, Circuit Court Judge of the 8th Judicial Circuit; Andy Owens, Circuit Court Judge of the 12th Judicial Circuit; James Buzbee and Charles White, attorneys in Plant City; Dennis White, attorney in Naples; Bruce Bokor and John Fernandez, attorneys in Clearwater; Robert Moeller, attorney in Old Town; Rodney McGalliard, attorney in Gainesville; George Cappy, Joe Ficarrotta, Mac Greco, Larry Smith, Terry Smiljanich and your humble correspondent, attorneys in Tampa; Gene Ferguson and Augie Quesada, Tampa and Jacksonville attorneys, respectively, now deceased.
YLD PRESIDENT’S MESSAGE
Rachael L. Greenstein, Akerman Senterfitt, LLP

Project Highlights Diversity in Local Legal Community

“We need to zealously guard our advances in order to continue to move forward rather than re-fighting the battles already won.”

—Judge Claudia Isom

For the past 10 months, the HCBA Young Lawyers Division (“YLD”) and Diversity Committee have been organizing and filming a “historical narrative” about the effects of racial discrimination during the 1950s and 1960s titled Before the Law was Equal: A Documentary of Desegregation in the Hillsborough County Legal Community. The purpose of the project is to capture the oral history from those who experienced inequalities during this time and to memorialize their stories for future generations.

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YLD PRESIDENT’S MESSAGE
Rachael L. Greenstein, Akerman Senterfitt, LLP

Continued from page 8

The first phase of this project involved interviewing individuals from the local legal community regarding their recollections and experiences during this era and thereafter. Our interviewees included Judge E.J. Salcines, Judge Mary Scriven, Judge Donald Castor, Judge John Germany, Warren Dawson, Delano Stewart, Gwynne Young, Wm. Reece Smith, Lance Scriven, and Fraser Himes. Portions of these interviews are being compiled into a comprehensive documentary that will debut in the spring.

Also in connection with this project, the YLD and Diversity Committee hosted a Diversity Summit on September 6, 2012, featuring a panel of distinguished members of the Bar and moderated by HCBA President Bob Nader. The panelists were Judge E.J. Salcines, Carolyn Stewart, Warren Dawson and Marsha Rydberg. The panelists are legends in their own right. Judge Salcines was the first Hispanic U.S. federal prosecutor east of the Mississippi. Stewart was the first African-American partner at a major law firm. Dawson was the first African-American assistant city attorney in the South, and Rydberg was the first female president of the HCBA and the University Club. The panelists discussed their experiences with segregation, racial and gender discrimination, and diversity.

The Diversity Summit was attended by many prominent members in the legal community, including numerous local judges. Judge Claudia Isom said, “I was impressed by how many young people were at the event. It is important for our young attorneys to see how far we have come and to understand that we need to zealously guard our advances in order to continue moving forward rather than refighting the battles already won.”

Nicola Larmond-Harvey, a third-year law student at Stetson University College of Law who was also in attendance, said, “I feel inspired after hearing the information presented at the luncheon. It gives me hope that the legal profession is not just merely aware that minorities have had to overcome much, but that the profession also recognizes that there is much more to be accomplished.”

The Florida Bar also supported the Diversity Summit through the award of its Diversity Leadership grant to the HCBA, which helped defray the costs associated with hosting and filming the event. The YLD and Diversity Committee plan to include portions of the Diversity Summit in the documentary as well as on the website created for this project. The documentary is in the final editing stages and promises to be a unique snapshot of our profession. HCBA President Bob Nader said, “The task of preserving on film a documentary narrative and history of the racial, ethnic, and gender diversification of Tampa’s legal community was daunting, but the YLD and Diversity Committee have met the challenge in exemplary fashion. This noble endeavor, which culminated in the well-attended and highly appreciated Diversity Summit, is a unique and stellar achievement that will be recognized for years to come by the judges and lawyers, both young and old, who make up the fabric of our bar association.”

Authors: Rachael L. Greenstein, Akerman Senterfitt, LLP, and Victoria N. McCloskey, Ogden & Sullivan, PA
Back when she was completing law school, Marsha Rydberg was thrilled to learn she would be graduating first in her law school class at Stetson.

Rydberg believed her hard work and academic rank would help her get multiple job interviews with law firms in her hometown of Tampa.

The year, however, was 1976. And she quickly learned otherwise.

At the time, hiring practices and societal attitudes made it especially difficult for women and minorities who were entering the workplace.

And the legal profession was no exception.

The job offers were few and far between.

But Rydberg persevered and did not lose sight of her ultimate goal.

She eventually landed a job with a prominent Tampa law firm and quickly set about to distinguish herself in her chosen profession, and to make a positive difference in the community.

Years later, in 1991, Rydberg became the first female president of the Hillsborough County Bar Association, which was among her many career “firsts.”

“You had to work twice as hard,” Rydberg says, reflecting on some of the obstacles she has had to overcome as a woman climbing the professional ladder.

Now, she has her own law firm.

An optimist by nature, Rydberg says, “if anyone opens a door for you, you should walk through and take advantage of it.”

Rydberg’s comments came during a panel discussion in September at the Chester H. Ferguson Law Center that focused on the racial, ethnic, and gender diversification of the legal community in Hillsborough County and the HCBA through the years.

Besides Rydberg, the other panelists were Judge E.J. Salcines, Jr.; Warren H. Dawson; and Carolyn H. Stewart.

Continued on page 11
Sponsored by C1 Bank, the “Diversity Summit” was organized by the HCBA’s Young Lawyers Division (“YLD”) and Diversity Committee.

HCBA President Bob Nader moderated the event.

Stewart, now a partner with Macfarlane Ferguson & McMullen, P.A.; shared her personal experiences growing up in Tampa and the segregated South.

She talked about the racial discrimination she encountered in the 1970s as an African-American woman in law school at the University of South Carolina.

Undeterred, Stewart graduated with her law degree in 1977.

She returned to Tampa and went to work as the first African-American female corporate lawyer in Tampa with Jim Walter Corp.

Later, she continued to break down racial and gender barriers when she served as an assistant state attorney and as an assistant county attorney.

Dawson shared his recollections of growing up in segregated Polk County; his time at Florida A&M University; his experiences in the U.S. Army stationed in racially charged Alabama; and his early legal career after graduating from law school at Howard University in 1966.

Dawson talked about becoming the first black lawyer hired in the National Labor Review Board’s Tampa office, and becoming the City of Tampa’s first black assistant attorney.

He also discussed his role as lead counsel in the federal civil rights litigation — lasting 27 years — that desegregated the Hillsborough County school district.

Additionally, Dawson spoke about the voting rights case that challenged the at-large system of Tampa City Council elections and led to the creation of single-member districts in the city and county.

Tampa native E.J. Salcines — who has served as an attorney, prosecutor, assistant U.S. attorney, and judge — shared his experiences fostering diversity and confronting discrimination throughout his distinguished career.

Salcines became the first Spanish-speaking assistant U.S. Attorney in 1964.

In the late 1960s, when he was Hillsborough state attorney, Salcines said a senior judge, who was white, had threatened to undermine his office if he carried out his plans to hire a black prosecutor.

Despite the threat, Salcines said he hired the black lawyer anyway.

The man’s name was George Edgecomb, and in 1973 he became Hillsborough County’s first African-American judge.

The courthouse in downtown Tampa is now named in his honor.

The Diversity Summit was videotaped and will become a part of the YLD’s ongoing historical documentary project, which is set to be completed by the spring.

The Florida Bar has been supportive of the YLD’s documentary project, and Arnell Bryant-Willis, who is the Bar’s diversity initiatives manager, attended the event.

As the panelists made their concluding remarks, Dawson summed up the event and the progress that has been made in the area of civil rights and equality: “Much progress has been made, but there is still much work to be done.”

See you around the Chet.
Organized Retail Theft

In Florida, the Legislature has provided additional tools to use when combating organized retail theft.

The term “retail theft” often brings to mind images of teenagers pulling pranks or individuals sneaking through a store furtively stealing items. While these are criminal acts that certainly create a financial loss to retailers, they do not tell the full story.

Increasingly, merchants are the victims of organized groups or gangs engaged in the theft and resale of the stolen merchandise as part of a large scale criminal enterprise. It has been estimated that losses to merchants due to organized retail theft gangs are $15 billion to $30 billion dollars a year. Organized retail theft gangs usually target specific items that have a strong resale value. They may also assign members of the gang to different roles, such as lookouts and drivers. Some gangs employ more sophisticated techniques by using cloned credit cards, producing fake receipts, or otherwise using technology to defeat security devices.

Normally, retail theft prosecutions are pursued under Florida Statute § 812.014, which is the general theft statute. This statute provides for penalties based upon the value of the property stolen and enhancements for multiple convictions. Punishments for violations of this statute start at second-degree misdemeanor level; the maximum is 60 days in jail and six months of probation. This structure is often inadequate when dealing with organized retail theft gangs.

In Florida, the Legislature has provided

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additional tools to use when combating organized retail theft. Under Florida Statute § 812.015, the state can seek increased penalties in certain retail theft prosecutions. If the state can prove that an individual committed retail theft at more than one location within 48 hours, the state can aggregate the values of all of those thefts to enhance the crime to a felony level.\(^3\) This statute also criminalizes the acts of individuals coordinating a retail theft operation\(^6\) and individuals who work with others to distract merchants or law enforcement so that thefts can occur.\(^7\)

On a national level, proactive steps have been taken to combat organized retail theft by the creation of the Law Enforcement Retail Partnership Network (“LERPnet”). LERPnet is a partnership between the Federal Bureau of Investigation and retailers.\(^8\) It is a secure database that allows retailers and law enforcement to report retail theft incidents and share information.\(^9\) One of the goals of LERPnet is to track incidents and individuals across jurisdictions, allowing law enforcement and retailers to prepare for, and, we hope, reduce losses due to organized retail theft gangs.

As consumers, we all bear the costs of this type of criminal activity. Through the cooperative efforts of retailers, law enforcement, and prosecutors, I hope that we can work to reduce organized retail theft gangs.


\(^2\) Id. at 5.

\(^3\) Id. at 6.

\(^4\) Florida Statute § 812.014

\(^5\) Florida Statute § 812.015(8)(b)

\(^6\) Florida Statute § 812.015(8)(a)

\(^7\) Florida Statute § 812.015(8)(c)


Passionate, dynamic, inspiring and coach of Duke University men’s basketball team who recently lead Team USA to back-to-back gold medals in the 2012 Olympics, Mike Krzyzewski (known by fans as Coach K) is a master motivator — not only of teams, but of individuals and organizations, spurring them on to succeed beyond even their own expectations.

The all-time NCAA Division 1 men’s leader for wins, Coach K has compiled an incredible record of success leading Duke’s men’s basketball team to more than 900 wins, 28 NCAA tournaments, 11 Final Fours (tied for second most in history) and four national championships over 30 seasons. In 2008 and in 2012, Coach K led the U.S. men’s basketball team to back-to-back Olympic gold medals, part of a 62-1 record he amassed during his years as the head coach of Team USA.

These accomplishments have not gone unnoticed. In all, Coach K has been named National Coach of the Year 12 times in eight different seasons. He was named Coach of the Decade for the 1990s by the NABC and was the second recipient of the John R. Wooden Legends of Coaching Award. In 2001, Coach K was one of three members inducted into the Naismith Memorial Basketball Hall of Fame, with the presentation made by his college coach, Bob Knight.

Prior to coaching at Duke, Coach K spent five years building the men’s basketball program at his alma mater, West Point. On November 17, 2000, he earned his 500th win at Duke with a triumph over Villanova. That night, the fabled floor of Duke’s Cameron Indoor Stadium was dedicated as Coach K Court.

Krzyzewski also has an impressive resume as a best-selling author, including Leading with the Heart, which reached The New York Times best seller list in 2000. His two most recent books Beyond Basketball: Coach K’s Keywords for Success, released in 2006, and The Gold Standard: Building a World-Class Team, released in 2009, were co-authored by his youngest daughter, Jamie Spatola.

Coach K reveals life’s lessons taught by his parents and his own proven principles of learning, which make his college and Olympic teams inspiring examples for other organizations. Through his experiences, he passionately shares with others how they, too, can compile winning numbers in both their professional and personal lives.

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It Takes a Village

This is one budget saga that does have a happy ending.

It is easy to feel you are standing alone when you are a clerk of the circuit court in the state of Florida and have to make your case for adequate funding every year to the members of the Florida Legislature.

I wish I could say that this office was always exciting to follow, like a fascinating mystery book, the kind that people cannot wait to turn the page to see what comes next. While we may not be in that league, the 67 clerks in Florida perform vital functions, in service to you, as a member of the legal profession, as well as to the public. However, it does seem that we go through an annual ritual where we clerks are faced with a serious challenge of whether we will get sufficient funding to do our jobs.

Unfortunately, we do not always find that answer in a timely manner. Also, despite my protestations, I have been unable to get any real enthusiasm in the Florida Legislature for putting all clerk employees in the same calendar year for budget purposes. Our court employees are on the state calendar, with the fiscal year beginning July 1, and our county employees, who provide services to the Board of County Commissioners, are on the Hillsborough County calendar, with the fiscal year beginning October 1.

Thus, when this current fiscal year began in July, a majority of our employees, who serve the courts, here and throughout Florida, were impacted adversely by a 7 percent cut to our budgets — $29.5 million. To further complicate matters, the clerks found out about this reduction at the last minute, right before the legislative session concluded.

This unexpected cut was devastating, as we have already endured sizeable cuts in the past. To illustrate this point, there are now slightly fewer than 800 people employed in the clerk’s office. In the 2007 fiscal year, we had 961 employees, almost 20 percent more. And it could not have come at a worse time for us, as we are in the process of implementing our new case maintenance and e-filing systems, along with other innovative procedures.

For our office alone, this meant a $2 million reduction. In this environment, the clerks were forced to cut hours of operations — we had no choice — and hope that a solution could be found.

This is one budget saga that does have a happy ending. When the Legislative Budget Commission met in August, the funding was restored, thus reversing the 7 percent cut, dependent on sufficient court-related revenue. This reversal would not have occurred without the strong support of our allies, especially in the courts and the Florida Bar. Gwynne Young, newly elected president of the Florida Bar, was especially vocal and eloquent in making our case.

I am very grateful for this assistance, as are my colleagues. We would not have been successful in our quest without the “village” of support that made it happen. Thank you.
Normal or Abnormal?

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* Referral fees paid in accordance with Rule 4-1.5 of the Florida Bar Rules of Professional Conduct.
The Florida Rules of Appellate Procedure give parties tools to ensure that the record seen by the appellate court truly reflects what the trial court considered.

Unless the parties instruct the circuit court clerk otherwise, the rules provide that the appellate record will include “the original documents, all exhibits that are not physical evidence, and any transcript(s) of proceedings filed in the lower tribunal,” but not “summons, pracipes, subpoenas, returns, notices of hearing or of taking deposition, depositions, and other discovery.” Fla. R. App. P. 9.200(a)(1). If the basis of the appeal is the adequacy of a notice of hearing, for example, the necessary documents will not automatically be included.

Many a novice brief writer has realized, as deadlines loom, that a necessary document is not in the record.

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Parties can avoid this issue by observing the early deadlines in Rule 9.200(a)(3). The appellant can, within 10 days of filing the notice of appeal, direct the trial court clerk to include or exclude items from the docket in the appellate record, and the appellee has 20 days from the filing of the notice of appeal to do its own designation. See also, Fla. R. App. P. 9.900(g)(form). Within the same time frame, both parties should ensure that all necessary transcripts are actually in the trial court file, and if not, serve and file a Designation to Approved Court Reporter requesting the transcription, following the form found at Florida Rule of Appellate Procedure 9.900(b). See Fla. R. App. P. 9.200(b)(1). If there was no court reporter at a key hearing, the appellant should attempt to secure a “stipulated statement” showing how the issues were presented to the trial court, Fla. R. App. P. 9.200(a)(4), following the procedure found in Rule 9.200(b)(4).

What if an item never made it to the docket? Under Rule 9.200(f), the parties by stipulation, the lower court prior to transmission of the record, or the appellate court acting on a motion of any party, may supplement the record. The rule does not allow parties “to cure inadequacies in the record which are the result of a party’s failure to make a record during proceedings in the trial court.” Bei v. Harper, 475 So. 2d 912, 915 (Fla. 2d Dist. Ct. App. 1985). Rather, the request should be limited to items “considered by the trial court, but ...omitted from the record on appeal.” Poteat at 573. A Rule 9.200(f) motion should attach a copy of the document to be added and set out facts demonstrating that the trial court actually had the document.

For the appellant, failure to ensure a complete record can be fatal. See, e.g., Bei at 915 (noting such failure may be held against a party). Ensuring the appellate court has a complete record maximizes your chances of a decision on the merits.

Author: Dineen Pashoukos Wasylik, Conwell Kirkpatrick, P.A.
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The collaborative law “movement” continues to gain momentum locally and statewide. On July 31, 2012, our circuit became the fourth Florida circuit to enter an administrative order (S-2012-041, Collaborative Practice) recognizing collaborative practice as a viable non-adversarial alternative for resolving family law disputes. It establishes procedures for the collaborative process and observes the Supreme Court’s acceptance of recommendations for a model family court system is consistent with principles of collaborative law because the process empowers parties to make their own decisions guided and assisted by counsel in a setting outside of court.

The Thirteenth Circuit states its support of the philosophy that the interdisciplinary collaborative practice model may be a suitable alternative to full-scale adversarial litigation in family law if parties agree. A committee, comprised of Judge Catherine M. Catlin, Michelle Ralat Brinner, Adam Cordover, Nancy Harris, Christine A. Hearn, Beth Reinke, and Caroline Black Sikorske, drafted the proposed administrative order. Judicial formal recognition will enhance Bar and public awareness and credibility of the process as an option for divorcing couples.

If the collaborative process is agreed to after filing, the court abates proceedings while parties, with assistance from trained lawyers, financial and mental health professionals, mediators or other neutral professionals, attempt to reach settlement between themselves without court involvement. Although the order does not limit the abatement period, a status conference is held within six months of abatement. If agreed to prior to filing pleadings and the collaborative process achieves written agreement on all issues, the petition is then filed, and scheduling an uncontested final hearing is permitted within 20 days. In both pre-filing and post-filing collaborative cases, parties must file their written participation agreement with the clerk.

The order requires that participation agreements include a provision disclosing that collaborative attorneys must withdraw if full settlement is not attained. This informed consent requirement for mandatory withdrawal is fundamental because it discourages even the threat of litigation. The order encourages (but does not mandate) including a provision maintaining confidentiality of oral or written communications exchanged during the process. If included, confidentiality provisions must nevertheless comply with Florida law and rules of court.

Courts may not adjudicate disputes between parties, thus empowering parties themselves to make decisions affecting their family. No formal discovery is used unless both parties agree; however, parties must make a full and candid exchange of financial information, including full disclosure of all assets, liabilities, income, and information concerning children. The order does not permit scheduling a hearing or trial during the collaborative process, but there can be periodic status conferences or hearings to impose discovery deadlines. If a party files a petition or motion seeking affirmative relief during the process, the process terminates. The collaborative process recognizes it is cheaper and more efficient for parties to begin with a mindset to settle fairly than to attempt settlement on the courthouse steps after paying to prepare for trial.

The administrative order is found on the court’s website: http://www.fljud13.org/.

Author: Jill Lowe, Himes & Hearn, P.A., and Fraser Himes, Himes & Hearn, P.A.
For centuries, the law regarding real estate transactions was *caveat emptor* or “let the buyer beware.” This left new home buyers who did not have an express warranty no legal remedy against a developer for home defects. Florida courts eventually moved away from *caveat emptor* and began applying the common law doctrine of implied warranty of habitability to the sale of new homes to allow buyers recourse against unscrupulous developers. Florida courts have recently revisited this doctrine as it pertains to claims arising from defects in offsite improvements.

In *Conklin v. Hurley*, 428 So. 2d 654 (Fla. 1983) the Florida Supreme Court limited the implied warranty to the residence of first purchasers and other improvements “immediately supporting the residence thereon.”

Following *Conklin*, the Fourth District Court of Appeal held in *Port Sewall Harbor & Tennis Club Owners Association, Inc. v. First Federal Savings and Loan Association of Martin County*, 463 So. 2d 530 (Fla. 4th Dist. Ct. App. 1985) that the implied warranty did not extend to defective roads and drainage because neither physically supported the residence.

Although directly in disagreement with the Fourth District Court of Appeal, the Fifth District Court of Appeal held in *Lakeview Reserve Homeowners Ass’n v. Maronda Homes, Inc.*, 48 So. 3d 902 (Fla. 5th Dist. Ct. App. 2010) that the warranty of habitability extended to roads and drainage because both were essential to the habitability of a residence even though neither supported the residence.

The new statute eliminates actions by purchasers of a home against a builder based upon the theory of implied warranty habitability for damages to offsite improvements.

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residence. The Fifth District Court of Appeal also announced a new test for the reach of the implied warranty in Lakeview Reserve: if in the absence of the service the home was uninhabitable, then the implied warranty of habitability applies. Review of the conflicting district court decisions is pending before the Florida Supreme Court.

The Florida Legislature rejected the Fifth District Court of Appeal’s decision in Lakeview Reserve because it expanded the reach of implied warranties “beyond the fundamental protections that are necessary for a purchaser of a new home.” To reverse the Fifth District Court of Appeal’s expansion of the implied warranty, the Florida Legislature created Florida Statute § 553.835, which took effect July 1, 2012, and “applies to all cases accruing before, pending on, or filed after that date.” The new statute eliminates actions by purchasers of a home against a builder based upon the theory of implied warranty habitability for damages to offsite improvements.

It remains to be seen how the Florida Supreme Court will resolve the conflicting district court decisions on the reach of the implied warranty of habitability in Lakeview Reserve. Because Florida Statute § 553.835 applies to the pending case, the Court ordered all parties to file supplemental briefs on the effect of the new statute on the case, adding further uncertainty to the future of the implied warranty.

1 Gable v. Silver, 258 So. 2d 11, 12 (Fla. 4th Dist. Ct. App.) (1972) opinion adopted, 264 So. 2d 418 (Fla. 1972).
2 428 So. 2d 654, 655 (Fla. 1983).
3 463 So. 2d 530 (Fla. 4th Dist. Ct. App.) (1985).
4 48 So. 3d 902 (Fla. 5th Dist. Ct. App.) (2010) review granted, 58 So. 3d 261 (Fla. 2011).
5 Ch. 2012-161, Laws of Florida.
7 Case Docket, Maronda Homes, Inc. v. Lakeview Reserve Homeowners Ass’n, Inc., (SC10-2292).

Author: Daniel R. Zorrilla, The Zorrilla Law Firm, P.A.
On August 21, 2012, Judge Richard G. Andrews of the U.S. District Court for the District of Delaware dismissed a shareholder derivative action alleging that a corporation’s proxy statement contained false and misleading statements concerning compliance with Internal Revenue Code (IRC) § 162(m).1

The plaintiff claimed that the proxy statement instructed shareholders that if they voted to reapprove the performance goals of the Long-Term Performance Plan (“LTPP”), the performance goals of the Stock Incentive Plan (“SIP”), and the amendment of the SIP, performance-based compensation under those plans would be tax-deductible under IRC § 162(m). However, because the plans do not allow for such tax deductions, the plaintiff alleged that the proxy statement disclosures were false and misleading and brought derivative claims for breach of duties under § 14(a) of the Exchange Act, breach of the duty of loyalty, waste, and unjust enrichment.

A shareholder bringing a derivative action in federal court must file a complaint that states with particularity (i) any effort by the plaintiff to obtain the desired action from the directors of the corporation, and (ii) the reasons for not obtaining the action or not making the effort. However, federal courts hearing derivative actions involving state law claims apply the substantive laws of the relevant state to determine whether the facts demonstrate that demand would have been futile and can be excused. The Delaware Supreme Court has stated that, in determining whether a demand made by the plaintiff would be futile, the court considers whether, under the particularized facts alleged, a reasonable doubt is created that (a) the directors are disinterested and independent, and (b) the challenged transaction was otherwise the product of a valid exercise of business judgment. Aronson v. Lewis, 473 A.2d 805, 814 (Del. 1984).

Regarding Aronson’s first prong, the court held that the plaintiff’s allegations that the outside directors were interested in the proxy statement’s representations concerning restricted stock did not create a reasonable doubt as to whether such directors were interested in the representations concerning performance-based compensation under the SIP and LTPP. As such, the plaintiff failed to plead that demand was excused.

Regarding Aronson’s second prong, the court rejected the plaintiff’s position that derivative claims based on a proxy statement nondisclosure do not need to meet Aronson’s second prong in the context of a Delaware Court of Chancery Rule 23.1 motion. The court also rejected the blanket proposition that a shareholder need only allege violation of a compensation agreement to excuse demand, without additional allegations of knowledge and intent.

Finally, the court rejected the plaintiff’s position that demand is excused because the claim of waste, based on the inability to take tax deductions under the LTPP and SIP, does not invoke the business judgment rule. In order to excuse demand, a waste claim still requires the pleading of particularized facts to create a reasonable doubt that the board’s decisions were the product of a valid exercise of business judgment.

1 Abrams v. Wainscott, DC Del., CA No. 11-297, RGA, Aug. 21, 2012

Author: Eric Almon, Holland & Knight, LLP

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FLORIDA LEADS NATION IN DISENFRANCHISEMENT OF FELONS
Criminal Law Section
Chairs: Mark P. Rankin – Shutts & Bowen LLP; and Joseph C. Bodiford – Bodiford Law, P.A.

Criminal convictions often result in the loss of civil rights and other collateral consequences. Florida law automatically permanently bans convicted felons from voting unless they have their civil rights restored by the state. Florida is one of only 11 states with this strictest of voting prohibitions. Maine and Vermont have no voting restrictions on convicted felons. Most other states restore felons’ voting rights once they have served their prison term, or at least completed any probation or parole.

Florida’s automatic ban greatly affects the state’s voter pool, and particularly African-American voters. According to The Sentencing Project, almost 10 percent of Florida’s adult population is prohibited from voting because of the state’s ban on voting by convicted felons. In 2010, that amounted to more than 1.5 million Florida residents barred from voting. Nearly 25 percent of adult African-American Floridians are barred from voting based upon felon status. This makes Florida the nation’s leader in disenfranchisement.

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for both groups. By comparison, the national averages are 2.5 percent and 7.7 percent, respectively.

Only a small portion (about 16 percent) of Floridians barred from voting in Florida are currently in jail, prison, or on probation. The rest of these individuals have paid their debt to society in full, but are still not legally permitted to cast a vote in local, state, or federal elections. Those who wish to have their right to vote restored may petition the state. However, the Florida Parole Commission recently confirmed that there are more than 21,000 pending applications and a typical wait of six years to receive an answer.

In 2007, Governor Charlie Crist established a procedure by which certain felons with less serious criminal records would have rights restored automatically after a waiting period. Promptly upon being sworn in as governor in 2011, Governor Rick Scott had his Cabinet unanimously reverse these new procedures, thereby undoing Governor Crist’s policy changes.

There is ongoing debate in Florida and on a national level regarding the voting rights of felons. Chicago Tribune columnist Steve Chapman wrote: “We let ex-convicts marry, reproduce, buy beer, own property and drive. They don’t lose their freedom of religion, their right against self-incrimination or their right not to have soldiers quartered in their homes in time of war. But in many places, the assumption is that they can’t be trusted to help choose our leaders... If we thought criminals could never be reformed, we wouldn’t let them out of prison in the first place.” But Presidents Ronald Reagan and George H.W. Bush appointee Roger Clegg argues: “We don’t let children vote, for instance, or noncitizens, or the mentally incompetent. Why? Because we don’t trust them and their judgment. Do criminals belong in that category? The answer is clearly yes. People who commit serious crimes have shown that they are not trustworthy.”

This debate will not be settled here. However, it is important for all of us to be aware of our state’s policies on this subject, and to understand that the loss of civil rights is a very real and sometimes permanent collateral consequence of a felony conviction in Florida.

Author: Mark P. Rankin, Shutts & Bowen LLP

When Marine Studios opened in 1938, admission was $1. The 125-acre park south of St. Augustine is known as the “World’s First Oceanarium.” It later was renamed Marineland of Florida, and in the 1950s and ’60s, became known for its many forms of aquatic life, especially its trained dolphins and porpoises that performed never-before-seen behaviors. Many movies have been filmed there, including parts of the Tarzan films.
In 1981, a small group of female legal professionals in the Tampa area who met every month for an informal lunch had a vision to start a chapter of the Florida Association for Women Lawyers (FAWL). Chartered in 1982, HAWL was founded by those women and lead by Kay McGucken, HAWL’s first President. Within ten years, HAWL was incorporated and became a thriving FAWL Chapter. The group quickly outgrew its space and moved its monthly membership meetings to the Tampa Club, where HAWL met regularly until mid-2012. This year, HAWL moves to the University Club, which provides more space for our growing membership.

HAWL’s founders were committed to maintaining the informal networking and opportunity for friendship that originally brought them to lunch, and this commitment still shapes our activities today. Sporting events were a big part of HAWL’s early years, and its annual softball game remains a mainstay of HAWL, having created a legendary rivalry between the judiciary and attorneys.

HAWL has also maintained a strong commitment to pro bono and charitable work, supporting groups such as Bay Area Legal Services and the Kinship Care Legal Hotline.

In the recent past, HAWL has been named Outstanding Chapter of the Year by FAWL and has won awards on the local, state, and national levels for its mentoring program. HAWL’s current leadership is looking forward to providing members with more opportunities than ever before to grow their careers, give back to their community, and expand their professional and social circles.

Because its accomplishments are too numerous to list here, the best way to get to know HAWL is to join in the fun! Please visit www.hawl.org to learn more and become a member. From law students to judges, HAWL’s members are as diverse as they are numerous, ensuring that at any HAWL event, there is something for everyone. We look forward to sharing the next 30 years with you!

Author: Victoria N. McCloskey, Ogden & Sullivan, P.A.
CHET HAPPENINGS

With the arrival of September came a flurry of activity around the Chet – and a few other places around town. Judge E.J. Salcines, pictured in the photos at right and below, was a featured speaker at the Diversity Summit and the Senior Counsel Luncheon held at the restored Floridan Palace Hotel in downtown Tampa.

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Florida Earns “F” on Providing Counsel to Foster Children

In the absence of a statewide system to provide counsel for children, a patchwork of legal representation has grown circuit by circuit.

No child should be a party to a legal proceeding in which her life is on the line without having her own lawyer. Basic due process is a simple proposition, right? Wrong. Fewer than 10 percent of children in Florida’s foster care system are represented by counsel in dependency proceedings. Of course, these children have the right to have an attorney, if they can find one. The children, however, have no statutory right to be appointed counsel. Florida’s failure to provide counsel puts it in the minority of states, one of only 10 to earn an “F” grade on a national report card (see First Star, A Child’s Right to Counsel, Third edition, available at floridaschildrenfirst.org).

In 2002 the Florida Bar Commission on the Legal Needs of Children recommended that the state provide counsel for dependent children in a variety of contexts. In 2010, the Florida Bar adopted a legislative position that promotes that position. That year, legislation was filed but not passed.

In the absence of a statewide system to provide counsel for children, a patchwork of legal representation has grown circuit by circuit. In February 2012, Florida’s Children First and the University of Florida Levin College of Law Center on Children and Families issued the first comprehensive report on access to counsel by circuit (also available at floridaschildrenfirst.org). The report shows that access to counsel, working with an organized program, varies widely. In Palm Beach County, attorneys represented 53 percent of children in out-of-home care. The Third, Tenth and Twelfth Judicial Circuits had no attorneys directly representing children. In Hillsborough County, the L. David Shear Children’s Law Center of Bay Area Legal Services is the only organized provider of legal counsel. With 2.5 lawyers on staff at the time of the report, they represented 4 percent of foster children in Hillsborough County.

Unfortunately, the availability of counsel for children has decreased since the data was collected. The Florida Bar Foundation, the primary statewide funder, has had to make drastic across-the-board funding cuts. Locally, the Children’s Board of Hillsborough County has chosen to reduce and may soon eliminate its funding for lawyers for children.

On the bright side, a number of communities are stepping up to create pro bono projects to train and
support attorneys to represent dependent children. Miami-Dade has long enjoyed the efforts of hundreds of volunteers working with Lawyers for Children America to directly represent children in foster care. Bar-Legal Aid partnerships in Broward and Duval counties have started projects recently. A new project in Hillsborough, Crossroads for Florida Kids, Inc., is under way now.

Florida’s foster children deserve meaningful and effective assistance of legal counsel. That is best provided by well-trained, supervised and adequately compensated lawyers who have access to the resources needed to do the job right. A cadre of dedicated pro bono lawyers will always be needed to handle conflict cases, and in times of low funding, to pick up where organized providers have to leave off.

Author: Rosemary E. Armstrong, Attorney at Law, Founder of Crossroads for Florida Kids, Inc.

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**SPECIAL FEATURE**

Rosemary E. Armstrong, Attorney at Law

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SEPTEMBER MEMBERSHIP LUNCHEON

The HCBA’s “Welcome Back Luncheon” kicked off an event-filled Bar year. The Membership Luncheon was held September 18, 2012, at the downtown Hyatt. The keynote speaker was Judge Gerald B. Tjoflat of the Eleventh Circuit Court of Appeals, who shared his thoughts and insights on how the legal profession has changed through the years.

HCBA President Bob Nader welcomed the membership and recognized recent award winners and leaders of the Florida Bar for their achievements. Other speakers included Florida Bar President Gwynne Young, who discussed merit retention, and HCBA board member John Schifino, who shared plans for the 16th Annual Bench Bar Conference. YLD President Rachael Greenstein highlighted the Young Lawyers Division’s plans for the year, including the YLD Golf Tournament on November 2, 2012, at Rocky Point.

Members were also urged to sponsor and buy the HCBA cookbook, the proceeds from which will benefit Bay Area Legal Services.

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NEW ADMITTEE SWEARING-IN

The Young Lawyers Division of the HCBA hosted a swearing-in ceremony for the newest members of the Florida Bar on September 21, 2012, at the George E. Edgecomb Courthouse. Chief Judge Manuel Menendez, Jr., of the Thirteenth Judicial Circuit, administered the oath.

HCBA President Bob Nader and YLD President Rachael Greenstein congratulated and welcomed the new lawyers. Julie Snead, chair of the HCBA’s Professionalism and Ethics Committee, spoke about the importance of practicing with professionalism and ethics.

Thank you to our sponsor:
Florida Supreme Court Justice R. Fred Lewis was the keynote speaker at the Trial & Litigation Quarterly Luncheon on September 24, 2012, at the Chester H. Ferguson Law Center. Lewis, one of three Florida Supreme Court justices up for a merit retention vote on November 6, 2012, spoke about the threat partisan politics poses to the future of an independent judiciary.

“We cannot sacrifice fairness and impartiality and the court system to political whims,” Lewis said.

The Republican Party of Florida announced in September that it will oppose Lewis, Justice Barbara Pariente and Justice Peggy Quince.

Trial & Litigation Section Chair Kevin McLaughlin encouraged those at the luncheon to educate their friends and families about merit retention.

Also at the luncheon, representatives from Crossroads for Florida Kids, Inc. spoke about the new nonprofit organization created to provide pro bono legal representation for children in dependency and delinquency proceedings. The Trial & Litigation Section sponsored the first training for lawyers on October 22, 2012, at the Chester H. Ferguson Law Center.
Could eminent domain be getting an image makeover? If some local governments have their way, eminent domain will be used to bail out millions of underwater homeowners. Currently, cities such as San Bernardino and Berkeley in California are considering using eminent domain to help homeowners refinance their high mortgages and find new mortgages with significantly lower monthly payments. The plan would seek to assist homeowners who are current on their mortgages, but owe more on their mortgages than their home is worth.

Here is how such a plan would work: 1) local government files a suit in eminent domain against the holder of the underwater mortgage, 2) a non-governmental financing company provides funds to the local government that would use the money to pay the holder of the mortgage the “fair market” value of the loan acquired in the condemnation suit, 3) local government conveys to the non-governmental financing company the rights associated with the loan acquired in the condemnation suit, and 4) the homeowner refinances with the non-governmental financing company. Such “public purposes” may not be legal in Florida.

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(or other lender who purchases the non-governmental financing company’s rights to the underwater loan) in an amount close to the fair market value of the property.¹

Not everyone is thrilled with such a plan. Some detractors believe that such a plan would be unconstitutional and would invite costly litigation. Others believe that such a plan would discourage lenders from making new mortgages. Consequently, prospective homebuyers would find it difficult to find a mortgage for a home.

Would such a plan work in Florida? Proponents of the plan to use eminent domain to help underwater homeowners allege that “public purpose” exists due to: 1) economic development, 2) prevention of urban blight, and 3) elimination of housing market disruption resulting from lender reluctance to participate in short sales and other means of eliminating debt on underwater properties.

Such “public purposes” may not be legal in Florida. The 2006 Florida Legislature enacted several statutes in response to the United States Supreme Court’s 2005 controversial decision in Kelo v. City of New London, 548 U.S. 469 (2005). In that case, the Supreme Court affirmed the Connecticut Supreme Court’s decision allowing the City of New London to use eminent domain to acquire private property, including homes. The city planned to lease a portion of the private property acquired through condemnation to a private developer as part of an economic development plan.

In order to prevent similar occurrences in Florida, the Florida Legislature enacted statutes that, among other things, stated there was no public purpose in the use of eminent domain to abate or eliminate a public nuisance or to prevent or eliminate slum or blight conditions. Also, another statute restricted the ability of the government to transfer property acquired by eminent domain.

Thus far in Florida, eminent domain has not been used to rescue underwater mortgage holders, so there is no precedent. However, the Florida Legislature may be prompted to revisit statutes it enacted in 2006 restricting the use of eminent domain.


Author: Kenneth C. Pope, Hillsborough County Attorney’s Office
October 1, 2011, DEO operates the State Land Planning Agency to administer Florida’s local government comprehensive planning, Development of Regional Impact and other growth management programs.

While state oversight of local planning is still mandated in select areas, most comprehensive plan amendments only receive comments from and can be challenged by the new division when proposed plan amendments have adverse impacts to important state resources and facilities. Additionally, the burden of proof has changed in most third-party challenges to plan amendments to the “fairly debatable” test. This means that if the issue is subject to fair debate, the decision of the local government is upheld. The 2011 legislation also repeals state mandates for transportation, education, and parks and recreation concurrency, making these elements optional. This new flexibility on concurrency and lighter burden of proof have given local governments a greater opportunity

As of the 2012 update, 94 out of the 324 (29 percent) Florida local governments surveyed had enacted some form of sustainable development legislation.

Commencing with the 1985 Local Government Comprehensive Planning and Land Development Regulation Act, Florida growth management was directly managed by the state executive and legislative branches. That all changed in 2011 when growth management and government reorganization legislation terminated the Department of Community Affairs and transferred the surviving growth management functions to the newly created Division of Community Development within the new Department of Economic Opportunity (“DEO”). As of

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to regulate development impacts on their communities. While many local governments have indicated a desire to continue utilizing some form of concurrency, others have indicated a desire to abandon concurrency. Though any analysis at this point is premature, the legacy of the 2011 Florida legislative session may be to provide the local government empowerment necessary to regulate growth management more comprehensively on a local level, including by directly addressing sustainable development.

Since 2009, I have annually compiled an index containing excerpts from Florida municipal codes that address sustainable development through green building, low impact development, and renewable energy, including Property Assessed Clean Energy (“PACE”) programs. Please visit the complete index at http://www.carltonfields.com/Index-of-Sustainable-Development-Provisions-in-Florida-Municipal-Codes/. In the past four years, Florida local governments have enacted an increasing number of green development initiatives. As of the 2012 update, 94 out of the 324 (29 percent) Florida local governments surveyed had enacted some form of sustainable development legislation.

To encourage green development, these municipalities offer varying types of incentives to developers constructing new buildings or retrofitting existing buildings to make them more sustainable. The most commonly utilized programs take the form of tax incentives (credits, deductions, and exemptions), permitting fee waivers, density bonuses, and expedited approval processes. The most innovative programs integrate other low-cost inducements such as marketing and publicity incentives to encourage adoption. Even where such incentives have not been codified, increasing emphasis on such values is apparent. Some local governments have incorporated definitions of green building terms in preparation of future legislation. Additionally, numerous local governments have appointed “green task forces” or promised green initiatives in their comprehensive plans. Time will tell how many Florida local governments will adopt sustainable development provisions as a response to community demand rather than state oversight.

Author: Nicole C. Kibert, Carlton Fields, P.A.
American designer Yves Saint Laurent began to market a line of monochromatic shoes in purple, green, yellow, and red. Yves Saint Laurent’s shoes featured the same color on the entire shoe. Louboutin sued Yves Saint Laurent for trademark infringement and counterfeiting, false designation of origin and unfair competition, trademark dilution, and various state law claims based on Yves Saint Laurent’s monochromatic red shoe. The District Court denied the injunction and Louboutin quickly appealed.

The Second Circuit reversed the District Court’s conclusion that a single color can never serve as a trademark in the fashion industry, stating that the holding is inconsistent with the United States Supreme Court’s decision in Qualitex Co. v. Jacobson Products Co., 514 U.S. 159, 162 (1995). Consequently, Louboutin’s trademark was held valid and enforceable. However, the Second Circuit limited Louboutin’s trademark rights by directing the Director of the Patent and Trademark Office to limit the registration of the Louboutin’s red sole mark to only a red lacquered outsole that contrasts with the color of the adjoining “upper.” In essence, the Second Circuit split the baby, and
upheld Louboutin’s contrasting red outer sole trademark as valid and enforceable, while at the same time holding that Yves Saint Laurent’s monochrome shoe does not infringe Louboutin’s red outer sole trademark.

In 1995, the Supreme Court resolved the issue of whether a color could meet the requirements for use as a trademark. The Supreme Court held that “color alone, at least sometimes, can meet the basic legal requirements for use as a trademark. It can act as a symbol that distinguishes a firm’s goods and identifies their source, without serving any other significant function.” So why would the District Court in New York possibly rule that Louboutin’s trademark was not valid and not enforceable? There is one basic answer: This case involves the fashion industry. Historically, the fashion industry has been immune from the basic intellectual property protections afforded to every other industry. As the Second Circuit acknowledges, “the fashion industry, like other industries, has special concerns in the operation of trademark law; it has been argued forcefully that the United States law does not protect fashion design adequately.” The Second Circuit presented an academic summary on the issues of whether color is a functional aspect of the fashion industry and outlined the basic tenants of the aesthetic functionality doctrine. At the end of the day, a court is willing to extend basic intellectual protections to the fashion industry and uphold a color trademark that signifies Christian Louboutin’s handiwork.

4 Id. at 166.
In keeping with its current examination of standard practices of employers, the National Labor Relations Board (“Board”) has now held that the common directive to employees to not discuss matters under investigation with co-workers may interfere with, restrain, or coerce employees in the exercise of their statutory rights under Section 7 of the National Labor Relations Act (“NLRA”). Section 7 protects the rights of both union and non-union employees to engage in “concerted activities” for their mutual aid and protection, and includes discussions among employees concerning their terms and conditions of employment.

On July 30, 2012, in Banner Health System d/b/a Banner Estrella Medical Center and James Navarro, Case No. 28-CA-023438 (2012), the Board held that it was unlawful to maintain a blanket policy forbidding employees who make a workplace complaint from discussing the matter with co-workers during the employer’s investigation. In Banner, the employee made an internal complaint regarding a direction that he received to alter his normal duties when his equipment malfunctioned. The employee refused to follow his supervisor’s instructions, on the basis of health and safety concerns, and thereafter received a “coaching” for insubordination.

In connection with the “coaching,” the employee met with the employer’s human relations consultant. During the interview, the employee was requested not to discuss the matter with co-workers while the investigation was ongoing. The Board noted that the representative used an “Interview of Complainant Form” that contained the confidentiality instruction for all interviews.

In a 2-1 decision, the Board held that a “blanket” rule of providing confidentiality directives in connection with internal complaint interviews violates employees’ rights to engage in protected concerted activity under Section 7 of the NLRA. The Board determined that the employer’s “generalized concern with protecting the integrity of its investigation” was too broad to satisfy a legitimate business interest that would outweigh employees’ Section 7 rights.

An employer’s policy must be more narrowly tailored to prohibit employee discussion about an ongoing investigation. An employer may do so only if it has a specific legitimate business justification for confidentiality tied to the individual investigation. This must be determined on a case-by-case basis, which might include, but is not limited to, witness protection; evidence is in danger of being destroyed; testimony is in danger of being fabricated; or a cover-up needs to be prevented.

In light of the Board’s decision, employers and their counsel should review investigation procedures to ensure confidentiality directives are provided only on a specific, individual basis. In a broader context, however, this is the latest example of the Board’s aggressive invalidation of non-union employer policies. In recent months, the Board has held that social media policies, “at-will” employment disclaimers, and arbitration provisions may all violate the law where they are broadly written so as to chill employee rights. The Board has launched a webpage advising employees of their NLRA rights. Employers can therefore expect to see a rise in unfair labor practice charges and are advised to examine all of their current procedures to assure NLRA compliance.

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Most attorneys who practice family law do not do it for riches or fame. They do it because they have a passion and a sense that they can make a difference for their clients. Why then, is there a lack of structured pro bono work being done in the Hillsborough County family law community?

The court system can be difficult to navigate for the layperson, even with the resources available through the Internet and the Legal Information Center. The vast majority of pro bono cases are not complicated, which means that lawyers can make a huge impact in a person’s life, usually with minimal effort. Pro bono work has the added benefit of allowing family law attorneys to get back to the reasons they chose this area, to remember that there is more to this profession than helping two good parents fight over who gets an additional overnight or dividing assets between two parties who have plenty to go around.

Most attorneys who have done pro bono work can attest that doing the hours is more satisfying and rewarding than writing a check.

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Florida Bar Rule 4-6 encourages, but does not require, pro bono legal services. The Rule suggests attorneys satisfy the responsibility by donating a minimum of 20 hours or $350 annually. Most attorneys who have done pro bono work can attest that doing the hours is more satisfying and rewarding than writing a check.

Most, if not all, family law attorneys work for free at times, albeit unintentionally. However, there is a huge qualitative difference between voluntarily helping a deserving client and working for a client who agrees to pay but fails to do so. True pro bono service is legal assistance provided without charge or expectation of fees at the time the service commences, which means that legal services written off as a bad debt or a case in which an attorney cannot collect a fee do not qualify as pro bono.

Hillsborough County is at a crisis point. Bay Area Legal Services, the primary provider of pro bono legal services in Hillsborough County, suffered an unprecedented $1 million in cuts this year, which translates to a 14 percent reduction from last year’s budget. Nearly every funding source, including federal, state, and local contributions and a trust fund set up by The Florida Bar Foundation, has reduced its contribution. The Children’s Board of Hillsborough County has chosen to reduce, and may soon eliminate, its funding for lawyers for children, at a time when fewer than 10 percent of children in Florida’s foster care system are represented by counsel in dependency proceedings.

Contribute today by volunteering to provide legal services through one of these programs actively seeking attorney volunteers:

- **Florida’s Children First:** Represent children in the foster care system in dependency proceedings, (813) 227-9050.
- **Family Forms Clinic:** Help pro se litigants complete forms, (813) 226-8685, ext. 101.
- **Bay Area Volunteer Lawyer’s Program:** Advise or represent low income litigants in family court, (813) 226-8685, ext. 101.
- **Are You Safe:** Represent victims of domestic violence during the injunction process, R-U-Safe.org.
- **Guardian Ad Litem Program:** Be the voice for a child in dependency or family court, (813) 272-5110.

Author: Kristin R.H. Kirkner, Esquire, DeCort & Kirkner, P.L.

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To begin with, mediators will tell you that they do not “hate” anything, and that whatever helps the parties reach a settlement is good. After interviewing several local mediators, however, I found five common pitfalls that should be avoided:

1. Lack of Preparedness

Tell your client what to expect, including the fact that it may take eight to 10 offers/counteroffers and a full day to get the job done. You and your client should discuss potential outcomes before you arrive at the mediator’s office. Make sure your client has enough authority to settle within a reasonable range. Be prepared for the long haul.

2. Springing Key Facts at the Mediation in Hopes of Creating a Perry Mason Moment

If you have killer facts, and you think they will help settle the case, do not wait until the mediation. As one prominent local mediator put it, this tactic will not create “shock and awe” resulting in capitulation. It will more likely create questions and confusion, resulting in delay. Settlement decisions are usually collaborative, and people just cannot process that much new information on the day of the mediation. If your facts are so good that you want to hold off until trial, so be it. But do not expect your opponent to digest new information on the day of the mediation. This also applies to financial calculations. Give your opponent an opportunity to understand your numbers in advance.

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3. Failure to Confront the Risk of Losing

This one is big. Do not force the mediator to be the first person to tell your client that your side might lose. Explore the weak areas of your case and how the fact finder could react. Your client should not have unrealistic expectations. If you recognize that the case could go either way, you will naturally avoid gamesmanship and dismissive remarks.

4. Confusing the Mediator with Your Opponent

The mediator is not an advocate for either side, nor is she the trier of fact. Do not expect the mediator to banter with you over your legal theories or pass judgment on the case. Explain your position in a logical and helpful manner to give the mediator ammunition to use in your favor. Nobody “wins” a mediation.

5. Last-Minute Cancellations

Your mediator gets paid only if you show up or give him enough time to book someone else. If you have scheduling problems, let everyone know as soon as possible. Get an early start on planning, and you will avoid having to reschedule.

Lastly, remember that mediators have heard it all before. Another prominent local mediator offered a few favorites that he has heard more than once: “We’re not afraid to go to trial.” “I’m not going to bid against myself.” “This is a waste of time.” “My client wants to send a message.” And, “OK, we’ll settle, but only if they pay the mediator’s fee.”

Author: Charles A. Wachter, Holland & Knight LLP

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NOV 2012 | HCBA LAWYER
Qualified domestic relations orders (“QDROs”) are orders used to divide retirement accounts in domestic relations matters. They are typically prepared by a small number of attorneys and nonlawyers. Several years ago I read an interesting article online about the unlicensed practice of law in the preparation of QDROs. It was a chance finding that resulted from a Google search about malpractice related to QDRO preparation. The point of the article was pretty simple: non-attorneys who prepare QDROs are engaging in the unlicensed practice of law. At that time, I had not yet embarked on what has since become my career as a QDRO attorney, but I never forgot that article.

In 2009, I began to develop a unique practice dealing with the specific issue of dividing retirement accounts in family law cases. One of my first orders of business was to research the unlicensed practice of law in family law cases, and to write an article about it. The article was published in the American Inns of Court’s “The Bencher” magazine in July 2011. The reaction to the article was polarized: Some people absolutely agreed with me, and others absolutely disagreed with me. Consequently, on November 22, 2011, I petitioned the Florida Bar Committee on the Unlicensed Practice of Law for an advisory opinion as to whether the preparation of a QDRO constitutes the practice of law.

While the committee on the unlicensed practice of law opted not to issue a formal advisory opinion, members noted that this was because “[t]he Committee felt that nonlawyer preparation of QDROs as described in [my] request was clearly the unlicensed practice of law so a formal advisory opinion was not necessary.”

The Committee felt that nonlawyer preparation of QDROs as described in [my] request was clearly the unlicensed practice of law so a formal advisory opinion was not necessary.

A number of family law attorneys are subjecting themselves, not to mention their clients, to potential ethical and legal problems, by depending on non-attorneys for advice when it comes to handling QDRO matters, without properly supervising such nonlawyers. By the committee’s directives, supervision of a nonlawyer preparing a QDRO is critical. However, since a number of attorneys refer these matters out for lack of ability to prepare these orders, this creates a potential ethical issue related to such referrals.

Author: Matthew L. Lundy, Esq., The Matthew Lundy Law Group
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Trial & Litigation Section
Chair: Kevin M. McLaughlin - Wagner, Vaughan & McLaughlin, P.A.

Under Rule 1.280(b)(4)(A), a party may request information regarding facts known and opinions held by expert witnesses that were “acquired or developed in anticipation of litigation or for trial.”1

Because these retained experts inject themselves into and choose to participate in litigation in exchange for fees, and may have prior relationships with litigants, they may be biased.2 Therefore, Rule 1.280(b)(4)(A)(iii) provides that a party may also seek certain financial information directed at that potential for bias, including (a) compensation, (b) the percentage of work performed for plaintiffs and defendants, and (c) how much time the expert devotes to expert testimony.

Like retained expert witnesses, treating physicians also have expert knowledge within their respective fields and, therefore, may offer expert opinions that “assist the trier of fact in understanding the evidence or in determining a fact in issue.”1 Unlike retained experts, however, because the treating physician’s knowledge and opinions arose out of the physician’s agreement to treat a patient that sought his services — i.e., were not “acquired or developed in anticipation of litigation or for trial” — the treating physician generally does not have the same potential for bias.4

Consequently, treating physicians are not subject to Rule 1.280(b)(4)(A)(iii).5 Therefore, although a treating physician may be identified as a fact witness and offer expert opinions, that does not open the door to Rule 1.280(b)(4)(A)(iii) discovery. That is not to say, however, that any witness, even a treating physician, is not open to discovery under unique circumstances.

The Fourth District’s recent Katzman decisions7 do not alter this analysis. The facts and circumstances of those unique cases are too lengthy to address here, but this is what you need to remember:

First, when a party seeks the financial records of a treating physician to show his or her potential for bias, the burden is on the requesting party to show the relevance of those records, not the doctor, the patient, or the patient’s lawyer.8 Second, the Katzman decisions involved discovery propounded directly on the treating physicians, not the parties, concerning the treating physician’s practice. Because this information is normally not within the possession, custody, or control of the patient or the patient’s lawyer, the Katzman decisions do not support the serving of requests for the treating physician’s financial records on another party. Third, there must be evidence of “unique and compelling circumstances” like in the Katzman decisions.9 Fourth, to the extent the discovery seeks information about cases in which the patient’s law firm has worked with the treating physician for its other clients, the law firm is generally not authorized to provide this potentially privileged, confidential information.10 Finally, in Katzman v. Rediron, among the reasons that the court ordered the discovery of the treating physician’s financial records was the referral relationship between the patient’s lawyer and the treating physician.11 Without evidence of such a referral relationship between the treating physician and the patient’s lawyer, the Katzman decisions do not apply.

2 Elkins v. Syken, 672 So. 2d 517, 522 (Fla. 1996) (in determining that discovery on the expert’s potential for bias was relevant, the court attempted to strike a “reasonable balance between a party’s need for information concerning an expert witness’s

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potential bias and the witness’s right to be free from burdensome and intrusive production requests”); Allstate Ins. Co. v. Boecher, 733 So. 2d 993, 997 (Fla. 1999) (“The information sought in this case does not just lead to the discovery of admissible information,” it is also “directly relevant to a party’s efforts to demonstrate to the jury the [expert] witness’s bias.”).

3 Fla. Stat. § 90.702.

4 Coralluzzo v. Fass, 450 So. 2d 858, 859 (Fla. 1984) (because treating physicians do not acquire and develop information or opinions in anticipation of litigation, they are not subject to Rule 1.280(b)(4)(A)); Ryder Truck Rental, Inc. v. Perez, 715 So. 2d 289 (Fla. 3d Dist. Ct. App. 1998) (although the plaintiff’s treating physician had expert knowledge and offered an opinion about the permanency of the plaintiff’s injury, he did not acquire that knowledge or his opinion for the purpose of litigation, but in the course of treating the plaintiff); Frantz v. Golebiwski, 407 So. 2d 283, 285 (Fla. 3d Dist. Ct. App. 1981) (discovery available regarding experts under Rule 1.280 does not apply to treating physicians; “This rule does not apply to this situation. As it specifically says, it concerns not all ‘information and opinions held by experts,’ but only those ‘acquired and developed in anticipation of litigation or for trial,’ as in the case of an expert retained by counsel.”).

5 Winn-Dixie Stores, Inc. v. Miles, 616 So. 2d 1108, 1111 (Fla. 5th Dist. Ct. App. 1993) (retained expert witnesses “inject themselves into litigation and, by so doing, imply that they have any right to object to discovery requests designed to reveal bias”; the plaintiff’s treating physician, however, did “not choose to participate in this litigation but merely agreed to treat a patient who sought out his services”); Baratta v. City of Largo, No. 8:01-cv-1894-T-EAJ, 2003 WL 2568643, *2 (M.D. Fla. March 18, 2003) (treating physician was a fact witness, not an expert witness, because his testimony was not acquired by preparing for trial, but in treating the plaintiff).

6 State Farm Mut. Auto. Ins. Co. v. German, 12 So. 3d 1286, 1287 (Fla. 5th Dist. Ct. App. 2009) (“A treating physician, just as any other witness, may be questioned at trial concerning any bias he or she might have for or against a party.”).


8 In Katzman v. Rediron, the discovery that was ordered was relevant to the issues of whether the doctor recommended an allegedly unnecessary and costly procedure and whether the treating physician overcharged for the procedure. 76 So. 3d at 1064. In Katzman v. Ranjana, however, no such issues were presented and, consequently, the discovery was not ordered. 90 So. 3d at 878. See also Rowe v. Rodriguez-Schmidt, 89 So. 3d 1101, 1103 (Fla. 2d Dist. Ct. App. 2012) (with respect to the confidential financial information on non-parties, the Florida Constitution’s right to privacy protects this information if there is no relevant or compelling reason to compel its disclosure; “The burden to prove the information is relevant or reasonably calculated to lead to the discovery of admissible evidence is on the party seeking the information.”).

9 See, e.g., Fleming v. Mancuso, No. 10-CA-02439 (Fla. 12th Jud. Cir. Ct. March 6, 2012) (Dubensky, J.) (sustaining objections to subpoenas to treating medical providers, finding that the “unusual and compelling circumstances warranting such discovery in Katzman do not exist”).

10 See, e.g., Mitchner v. Leblanc, No. 2009-CA-18229-AH (Fla. 15th Jud. Cir. Ct. March 24, 2010) (Fine, J.) (denying motion for better answers to interrogatories and granting protection; holding that “treaters have not given up certain privacy rights by voluntarily injecting themselves into the litigation” and “[t]he law firm as the agent of their client is not authorized by the client to delve into the law firm’s other cases or other clients”).

11 Katzman v. Rediron, at 1064 (“This witness potentially has a stake in the outcome of the litigation not because of the LOP — because of the referral by the lawyer. The LOP merely gives the doctor the assurance that his/her bill will be paid directly from the proceeds of any settlement or verdict. It is the direct referral by the lawyer to the doctor that creates a circumstance that would allow the defendant to explore possible bias on the part of the doctor.”).

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WORKERS’ COMPENSATION – ARE FUNDAMENTAL RIGHTS STILL FUNDAMENTAL?
Workers' Compensation Section
Chairs: George Cappy - The Cappy Law Firm, P.A.; Mike Winer - Law Office of Michael J. Winer, P.A.

In Berman v. Dillard's/ESIS, 91 So.3d 875 (Fla. 1st Dist. Ct. App. 2012), the court upheld the constitutionality of the permanent total disability (“PTD”) statute, which stops benefits at age 75 unless the accident occurred after the employee reaches 70, in which case the benefits are payable for a period not to exceed five years. The claimant argued that the statute impermissibly violated several fundamental rights guaranteed by the Florida Constitution and framed the issue as whether the court should use a rational basis or a strict scrutiny standard of review. The claimant relied heavily on North Fla. Women’s Health and Counseling Services, Inc. v. State, 866 So. 2d 612 (Fla. 2003) wherein the Florida Supreme Court mandated that the strict scrutiny standard of review was to be used when challenges are made to fundamental rights protected by the Florida Constitution and framed the issue as whether the court should use a rational basis or a strict scrutiny standard of review. The claimant argued that the law infringed on the following rights: 1) trial by jury, 2) access to the courts, 3) redress for injuries, 4) equal rights, 5) the physically disabled, and 6) due process.

The court in Berman rejected these arguments and applied the rational basis test, rather than the heightened strict scrutiny standard, despite the fact that fundamental rights were implicated. The court viewed the discrimination as only being age based and stated that an age limitation will survive the rational basis test if the age classification is reasonably related to a permissible government objective. Limiting the strict scrutiny standard to only the right of privacy, the court held that “access to courts” did not involve a privacy right, so the rational basis test also applied to that claim. The court held that the Florida Workers’ Compensation Act (“Act”) remains a reasonable alternative to tort litigation.

Critics have argued that the Berman court misconstrued the decision in North Fla. Women’s Health and Counseling Services, Inc. v. State, 866 So. 2d 612 (Fla. 2003) wherein the Florida Supreme Court mandated that the strict scrutiny review applies to each fundamental right, Id. at 635. (“It is settled in Florida that each of the personal liberties enumerated in the Declaration of Rights is a fundamental right. Legislation intruding on a fundamental right is presumptively invalid.”)

Critics further allege that the Berman court overlooked the fact that the claimant was physically disabled, as are practically all injured workers, and therefore belonged to a protected class pursuant to Article I, Section 2 of the Florida Constitution. (“No person shall be deprived of any right because of race, religion, national origin, or physical disability.”)

The court stated that the Act provides “adequate, sufficient, and even preferable safeguards for an employee who is injured on the job, thus satisfying one of the exceptions to the rule against abolition of the right to redress for an injury.” However, today’s workers’ compensation benefits are often considered inadequate and exist in a system that is complex and filled with delay and uncertainty. The cumulative effect of more than 30 years of legislative changes results in a workers’ compensation system that may no longer provide injured workers with full medical care and wage-loss payments for total or partial disability regardless of fault and without the delay and uncertainty of tort litigation. Indeed, in Berman, the claimant receives nothing any more for her permanent and total disability.

In the absence of the Act, she could present her tort claim and let a jury decide her lost wages and be awarded the full amount for her disability should she prove her case. Instead, she now gets nothing.

Author: Michael J. Winer, Law Office of Michael J. Winer
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FOR YOUR FIRM TO BE LISTED HERE, CONTACT WENDY WHITT, WENDY@HILLSBAR.COM
Trenam Kemker is pleased to announce that five attorneys have been elected shareholders of the firm: Jason H. Baruch, a member of the Commercial Litigation and Bankruptcy, Creditors’ Rights & Insolvency Groups; Carl Berry, who practices in the Business Transactions and ERISA, Employee Benefits & Compensation Practice Groups; Gregg Hutt, a member of the Commercial Litigation and Construction Law and Government Contracting Practice Groups; Eric Koenig, a member of the Commercial Litigation Group; and Amanda Taylor, who practices in the Commercial Litigation Group.

Mason Black & Caballero PA is pleased to announce that partner Alexander Caballero has been appointed to the Thirteenth Circuit Judicial Nominating Commission by Florida Governor Rick Scott. His term ends July 1, 2016. He also has been appointed to the Florida Bar Marital and Family Law Certification Committee by Florida Bar President Gwynne Young. His term began ends July 2015.

David Caldevilla, a shareholder at de la Parte & Gilbert, P.A., has been appointed to serve as chair of the Original Proceedings Subcommittee of The Florida Bar’s Appellate Court Rules Committee.

Blair H. Chan has joined the Givens Law Group, practicing family law.

Linda D. Hartley, shareholder at Hill Ward Henderson and practice group leader in the Trusts & Estates area, has been selected to join the Board of Trustees for the Community Foundation of Tampa Bay.

Roberta Colton, of Trenam Kemker, recently received the Doug P. McClurg Professionalism Award from the Tampa Bay Bankruptcy Bar Association (TBBBA).

Jacob T. Cremer has joined Brickley Smolker & Bolves, P.A., concentrating in real estate and property rights representation.

B. Ben Dachepalli, shareholder in the Construction Law Group at Hill Ward Henderson, has been selected to participate in Leadership Florida’s 31st Class.

The law firm of Shumaker, Loop & Kendrick, LLP is pleased to announce that Duane A. Daiker, partner in the Tampa office, has been elected to the Executive Council of the Appellate Practice Section of The Florida Bar. Daiker also was recently a presenter at the Association of Corporate Counsel conference in Longboat Key.

Shumaker, Loop & Kendrick, LLP is pleased to announce that associate Kathleen G. Reres has been named co-chair of the 43rd Annual Raymond James Gasparilla Festival of the Arts.

Amy L. Drushal, a shareholder in Trenam Kemker’s Tampa office, recently received the Young Lawyers Division Star of the Year award for 2011-2012 from the American Bar Association. She has held numerous leadership positions in the American Bar Association.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that Jeffrey B. Fabian has joined the Tampa office as an associate in the Intellectual Property Department.

Carlton Fields is pleased to announce that Tampa City Council Chair Pro-Tem Harry Cohen recently presented the firm’s Tampa shareholder and Florida Bar President Gwynne A. Young with a commendation. Cohen said: “Gwynne Young personifies leadership at its best — strong, decisive, honorable and courageous. Her outstanding career in the legal profession includes so many firsts — beginning with her service as Hillsborough County’s first female prosecutor...”

Trenam Kemker shareholder Rachel A. Lunsford has been certified by The Florida Bar in the area of Wills, Trusts, and Estates.

Carlton Fields’ Tampa shareholder Mac R. McCoy is chair of the Young Lawyer Committee of the Business Law Section of the American Bar Association. His three-year appointment became effective in August at the 2012 ABA Annual Meeting in Chicago, Illinois.

J. Logan Murphy, associate in the Commercial Litigation Group at Hill Ward Henderson, was recently appointed as the Young Lawyer Liaison to the American Bar Association Standing Committee on Lawyers’ Professional Liability (LPL).

Trenam Kemker shareholder Gary Teblum, co-chair of the Business Transactions Practice Group, received the Outstanding Member of the Year Award from The Florida Bar Business Law Section for his work for the section, including as chair of the Business Law Section’s Legislation Committee.

Continued on page 59
Phelps Dunbar LLP partner Bret Feldman has earned board certification from the Florida Bar in construction law.

Carlton Fields is pleased to announce that Tampa shareholder Adam P. Schwartz recently received the 2011 Community Service Award from the Association of Corporate Counsel West Central Florida Division.

The law firm of Shumaker, Loop & Kendrick, LLP, is pleased to announce that Vanessa Goodwin has joined the Tampa office as an associate in the Litigation Department.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that Jay B. Verona has joined the firm as a partner practicing in the areas of commercial and consumer bankruptcy, business litigation and transactions, real estate litigation and transactions, and alternative dispute resolution.

Carlton Fields is pleased to announce that Elizabeth Bergen Zabak, the firm’s chief marketing officer, serves on the advisory board of the University of California Hastings Leadership Academy for Women. Zabak is also a member of the Greater Tampa Chamber of Commerce’s Leadership Tampa 2013 Class.

FordHarrison LLP is pleased to announce that Dawn Siler-Nixon, Diversity & Inclusion partner and chair of the American Bar Association (ABA) AIDS Coordinating Committee, recently hosted the ABA’s HIV/AIDS Law and Practice Conference in Washington, DC.

Shumaker, Loop & Kendrick, LLP, is pleased to announce that J. Todd Timmerman, managing partner of the firm’s Tampa office, has been elected to the Executive Committee of the Outback Bowl. Timmerman is also on the Board of Directors and Team Selection Committee of the Bowl.

Happy Thanksgiving from the HCBA staff!

Save the Dates
Mark your calendars for these important membership events.

DECEMBER 6, 2012
Membership Holiday Open House
Chester H. Ferguson Law Center

JANUARY 9, 2013
Membership Luncheon, Downtown Hyatt Regency

FEBRUARY 16, 2013
HCBA Student/Law Firm Diversity Mixer
Chester H. Ferguson Law Center

FEBRUARY 28, 2013
Law Follies, Chester H. Ferguson Law Center
For the month of June 2012.
Judge: W. Lowell Bray, Jr.
Parties: Estate of McWilliams and Bassi.
Attorneys: Attorney for
Plaintiff: Maureen M. Deskins, Christopher Knopik; Attorney
for Defendant: Jeffrey M. Adams, Debra B. Tuomey.

Nature of Case: Rear-end accident, three deaths plus shoulder
injury for lone survivor.
Verdict: $15.2 million for plaintiff.

For the month of May 2012.
Judge: Honorable James Barton.
Parties: C. Howard vs. H. Colbassani, M.D.
Attorneys: Attorney for
Plaintiff: N. Tindall; Attorney for
Defendant: S. Kinman and Victoria McCloskey.

Nature of Case: Florida Deceptive and Unfair Trade Practices Act, fraud, declaratory
judgment, breach of contract.
Verdict: Defense.

Here Ye, Here Ye!
COMING SOON: THE HCBA LAW FOLLIES

CASTING CALL ANNOUNCEMENT - SHOW YOUR STUFF!

The Law Follies Production Team is looking for:
Singers, Dancers, Comedians, Actors, Jugglers, Ventriloquists, Magicians, Stagehands, and
Other Talented Attorneys, Legal Professionals and Judges

Preliminary Auditions, Performance Previews, and Open Casting to occur on:
Thursday, November 15, 2012, and Tuesday, December 11, 2012, at 6:00 p.m.
Cohen Hall, Chester H. Ferguson Law Center

All interested performers and participants are encouraged to bring their performance ideas to the auditions. If you are a singer, bring sheet music for the pianist. Pre-selected script materials and a karaoke machine will also be available.

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• Funniest Performance • Best Skit • Best Law Firm Participation • Top Stagehand & Prop Master

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