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**about the cover**
Each day we visit buildings in our legal community and pass by unique works of art, often without even noticing. Framed covers from past issues of the Lawyer magazine are displayed in various locations throughout the Chester H. Ferguson Law Center. This photo exhibits magazine covers found in a staff member’s office. Do you know which one? Check page 39 for the answer.
Meet your 2011-2012 Board of Directors

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Fifth Third Bank is proud to support the Hillsborough County Bar Association.
Welcome to the start of another bar year! I hope you all had a productive summer and also enjoyed some adventures in Tampa Bay or farther away. Check out the Corporate Counsel Section’s article about standup paddleboarding in this issue to read about how some of our members spent a fun day away from the office!

The calendar of events is starting to fill up for the fall. Initial reports from the HCBA sections and committees promise an interesting variety of educational and social events for our members. Please check this magazine, the association’s website at www.hillsbar.com, weekly e-mail notices, Facebook, LinkedIn, and/or Twitter to identify events of interest to you. From the Appellate Practice Section to the Young Lawyers Division, there is bound to be an event for you!

The HCBA will publish seven issues of the Lawyer magazine this year, just like last year. You will notice a shift in theme for this year’s cover art, however. This year’s covers will emphasize pictures from various local buildings where we or our colleagues spend time. Photo locations will include the Chester H. Ferguson Law Center, the Sam M. Gibbons U.S. Courthouse, the George E. Edgecomb Courthouse, and perhaps some others. Please contact me at grace.yang@gray-robinson.com if you have ideas for a location shot or if you have a high-resolution digital photo that fits our art theme this year. I know we have some talented photographers out there, and I would be glad to consider your photo for use in a future issue!

This issue includes names and photos of the 2011-2012 HCBA officers and directors on page 3. This issue also contains some photos from the installation of officers and directors event on June 27th. Please read President Pedro Bajo, Jr.’s message on the next page to learn about some of his thoughts as we start the 2011-2012 bar year.

As I mentioned in my Editor’s Message in the previous issue, John Kynes is the HCBA’s new executive director. He officially started work on July 5th. If you have not met John, then you will have an opportunity to do so at the Membership Cookout on October 20th at the Chester H. Ferguson Law Center. This issue includes an article about John and some photos so that you can learn a little more about him.

I extend a warm welcome back to our readers who are returning HCBA members. To those readers and new members who are receiving this magazine for the first time, I extend a hearty welcome and hope you will quickly realize your good fortune in joining our collegial and active association. I hope you all enjoy reading the assortment of articles, and I thank the many authors who spent the time to prepare them!
As we embark on a new Bar year, it is a good time to reflect on who we are and where we are going. The summer months are typically slow as far as Bar activities, which provides us with an opportunity to catch our breath from a hectic end of the year and energize ourselves for a busy fall.

I would like to start by thanking Amy Farrior for the remarkable job she did last year and especially to thank her for her mentorship and friendship throughout the past year. Your Association is truly a better organization for her dedication.

Continued on page 7

I am not ashamed to proclaim that I like lawyers.
As Amy came into office, she was confronted with the bombshell that our longtime Executive Director, Connie Pruitt, was retiring which just added to her long list of tasks. She guided us all through our normal responsibilities as well as led us on our national search for a new executive director; the search resulted in finding a gem right here in our own backyard.

While one does not replace a Connie Pruitt, John Kynes is the type of individual who will thrive in his own right. We are all going to enjoy working with John in the coming years.

A big shout-out to the HCBA staff as well. Throughout the past few years, I have come to truly appreciate how fortunate we are to have such a dedicated staff to make the Association the special place it has come to be known.

Now I want to wax on regarding what I hope will become our mantra in the coming year. As the famed player/coach/owner Jackie Moon once proclaimed—our motto shall be ELE - Everybody Love Everybody.

I am not ashamed to proclaim that I like lawyers. I like this Association. I grew up in this Association. I still believe in the nobility of this profession. From time to time, I re-read the oath we all took to give me a gentle reminder of why I became a lawyer in the first place. It is important to remember always that we, as attorneys, are officers of the court, first and foremost. With that comes a great deal of responsibility. We must not lose sight of the fact that while we are advocates for our clients, we have obligations of candor to the tribunal and to treat our adversaries with dignity and respect.

This Association has always been a place that fosters those principles. It is a place where we come together after advocating in the courtroom, address issues facing our profession, and socialize with one another. In an era where it seems those tenets have been eroded, we as an Association need to promote professionalism and respect for the bench, our fellow lawyers, and litigants. We hope to undertake objectives to educate and promote those tenets to the public at large and to achieve a better understanding of the nobility of our profession.

Each of you is the Association; it is not your Board. I am a great believer that achieving goals and accomplishments as part of a team is infinitely more rewarding than achieving goals as an individual. The bonds that are created by such achievements are lifelong, while individual achievements are short-lived. I believe in the rewards that come with decisions made for the good of the whole rather than the good of the sole. This is a time of significant change in your Association. There has never been a better time for all of us to bond and take this organization to even greater heights. I look forward to the great achievements we will make together in the coming year.

I hope to see all of you at our first member event, a cookout at The Chet in late October. Come share some time with fellow members in a relaxed atmosphere.

In the meantime, please remember ELE!
I am honored to be president of the Young Lawyers Division this year. Most of you already know me, but I wanted to introduce myself briefly. I am a Tampa native and a graduate of Academy of the Holy Names High School. I left Tampa to attend Davidson College and University of Michigan Law School. I bleed maize and blue (sorry, Gators and Seminoles!). I returned home after law school to clerk for the Honorable Charles R. Wilson, U.S. Court of Appeals for the Eleventh Circuit. After my clerkship, I began practicing commercial litigation at DLA Piper, where I have practiced ever since. I would be remiss not to mention that my husband and I are the parents of one adorable cairn terrier, Maddie. I truly enjoy serving the YLD, and I look forward to working with and getting to know more of our young lawyers this year.

I want to highlight some of our YLD events planned for this fall. Each year the YLD plans many wonderful events, including community service projects and networking opportunities. We encourage all members to attend and get involved.

Thank you for allowing me the opportunity to serve as YLD President. Together, I know we will have a wonderful year!

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projects, pro bono opportunities, membership luncheons and happy hours. This year we have many exciting events planned and are hoping for greater participation and involvement in each of them. This fall, our first quarterly luncheon will be held on October 6th and will feature a panel of experts in various fields who will discuss “Everything a Young Lawyer Needs to Know,” from how to invest your money now that you are making some (hopefully!), to important healthcare issues, including substance abuse, to the type of insurance you should have for yourself and your family. This promises to be a very informative and interesting luncheon that you won’t want to miss.

Our annual YLD Golf Tournament will be held on the afternoon of October 14th at Rocky Point Golf Course. This year’s tournament promises to be bigger and better than ever—we will have great prizes and great fun for all participants! Also, you do not need to be a young lawyer (or a lawyer at all) to participate. Please get a foursome of your HCBA and non-HCBA friends together and join us for this year’s golf tournament.

Our judicial shadowing day will also take place this fall. This is an opportunity to spend a half day shadowing a county or circuit court judge and learning from them one on one. Additionally, our YLD members will participate, through our Graphic Novels for Grads Program, in the Great American Teach-In on November 18th. We will provide short illustrated law-based novels to seniors in Hillsborough County high schools and will coordinate lawyer volunteers to discuss the novels with the students during the Teach-In.

These are just a few of the events we have planned this fall. For a full calendar of events, please visit the YLD page of the HCBA website and friend us on Facebook. We hope to see more young lawyers (and non-young lawyers) at our events this year. If you have any questions or thoughts about this year’s YLD events, please feel free to contact me. Thank you for allowing me the opportunity to serve as YLD President. Together, I know we will have a wonderful year!
The Civil Commitment of SEXUAL PREDATORS

Prior to 1999, a prisoner with a history of violent sexual crimes was released back into society once his sentence was served, even if it was likely he would commit future acts of sexual violence. This process changed when the Florida Legislature passed the Involuntary Civil Commitment of Sexually Violent Predators Act, commonly known as the Jimmy Ryce Act.¹

The Act permits the state attorney to file a petition for the involuntary civil commitment against any inmate who has a conviction for a sexually violent offense and is determined by experts to be a “sexually violent predator.” The sexual conviction may date to any time during the prisoner/respondent’s past, and the state may seek commitment of a prisoner, even when the sentence being served is not sex-related. To qualify as a sexually violent predator, prosecutors must prove that the individual has been convicted of a sexually violent offense and has a mental abnormality or personality disorder that makes the person likely to re-offend in a sexually violent manner if not confined in a secure facility for long-term care, control and treatment.

After we file a petition for involuntary civil commitment, the court determines whether probable cause exists to believe the person is a sexually violent predator. A respondent is entitled to the assistance of counsel, including appointed counsel if indigent, and is entitled to a trial by jury. The rules of civil procedure apply, and prosecutors bear the burden of proving the case by clear and convincing evidence.

If found to be a sexually violent predator, the respondent is held in the Department of Children and Families custody and treated at the Florida Civil Commitment Center. Numerous challenges to this law have been raised and rejected by Florida courts, including a claim that involuntary commitment violates plea agreements that provide for a prison sentence followed by probation with outpatient sexual offender treatment. The Florida Supreme Court has rejected this claim, concluding that “any bargain that a defendant may strike in a plea agreement in a criminal case would have no bearing on a subsequent involuntary civil commitment for control, care and treatment under the Jimmy Ryce Act.” State v. Harris, 881 So.2d 1079 (Fla. 2004). The Jimmy Ryce Act also has been challenged as a violation of the ex post facto and double jeopardy clause of the state and federal constitutions. This argument also has been rejected by the courts because the law is civil and the commitment is intended to provide treatment to individuals rather than punishment.

My office has a special unit of attorneys to prosecute violent sexual offenders. This unit is staffed by prosecutors who have vast experience in trial work and are specially trained to prosecute sexual assault cases and involuntary civil commitment cases. Be assured, I will continue to use every resource legally available to protect the citizens of Hillsborough County from sexual predators.

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Gifts were received in memory of Crosby Few, Bob Mitcham, Raymond Suarez, Peter Taylor,
and Ruth Whetstone Wagner

Gifts were received in honor of Leonard Gilbert, Eileen Griffin & Sheila McDevitt

The Annual Fund
The Annual Fund is the vehicle which provides the resources necessary to secure the operations of the Hillsborough County Bar Foundation. In order for the Foundation to maintain its mission to support projects and programs which encourage assistance to those in our community in need of legal assistance, we must rely on those who step forward and make a commitment to support the Annual Fund. During this time of economic uncertainty, the charities who have received support from the Bar Foundation are facing even greater needs. For us to be able to reach out to the charities, we need your assistance. Annual Fund contributions are tax deductible and can also be made in honor or memory of a colleague or loved one.

Please join the members of the Bar Foundation Board of Trustees and Bar Association Board of Directors as well as your colleagues and friends and make a gift to the Annual Fund. Your gift will help make a difference in our community!

Contributions can be mailed to: The Hillsborough County Bar Foundation, 1610 N. Tampa Street, Tampa, FL 33602

Gifts can be made by credit card including MasterCard, VISA or AMEX by faxing or e-mailing the Annual Fund pledge form on the Foundation page of the Bar Association website or by calling the Foundation office at (813)221-7774.

Our thanks to those who continue to support the Annual Fund and the efforts of the Hillsborough County Bar Foundation!

This list recognizes the donors and their contributions of $100 or more to the Hillsborough County Bar Foundation for the Annual Fund for gifts received during the July 1, 2010—June 30, 2011 fiscal year. If we have overlooked anyone, please forgive us and allow us the opportunity to correct our records by contacting Bar Foundation Executive Director Darlene Kelly at (813) 221-7774 or e-mail to kelly@hillbarfoundation.com.
Overcoming Language Barriers: THE COURT INTERPRETER CENTER

Many people who find themselves in court may have only a limited understanding of basic English, much less the unique jargon often used in legal proceedings. To meet the needs of our non-English speaking residents and fulfill our constitutional obligations, the Thirteenth Circuit employs seven staff interpreters under the direction of the Court Interpreter Center.

Each interpreter is licensed through the state and must meet certain proficiency requirements, pass both a written and oral exam, pass a background check, and abide by ethical standards. For certain kinds of cases, such as shelter hearings, juvenile delinquency and dependency hearings, criminal proceedings, Marchman and Baker Act cases, and child support enforcement hearings (all commonly referred to as “Due Process proceedings”) the state of Florida provides, at no cost, an interpreter capable of translating the proceedings into a defendant/respondent’s native language. In most civil cases, however, a non-English speaking litigant will be required to obtain his or her own interpreter. Because processing communications back and forth between two languages is mentally taxing, any hearing or matter lasting longer than thirty minutes ordinarily requires the presence of two interpreters so that one can be relieved by the other without unduly disrupting the proceeding.

Here in Hillsborough County, the predominate need for interpretation in court proceedings is for Spanish speakers, although Creole, French, Vietnamese, Russian, and American Sign Language interpreters are not infrequently called for as well. Attorneys anticipating a need for the Court Interpreter Center’s services for a Due Process proceeding may call (813) 272-5931 to make arrangements; for languages other than Spanish, counsel should contact the Center at least two to three days prior to the hearing.

The importance of language translation in the Thirteenth Circuit’s operations cannot be overstated. Throughout a judicial proceeding, the interpreter literally becomes “the voice” of the non-English speaker, and a jury must ordinarily accept the interpreter’s words as the authoritative translation for what a non-English speaking witness may have said. Ensuring that communications in court are fostered and understood by all those involved remains a challenge, one where indeed “the stakes are high,” but one which we continue to meet every day with the aid of certified interpreters.

1 Fla. R. Jud. Admin. 2.560(e). See also Obando v. State, 988 So. 2d 87, 88 (Fla. 4th DCA 2008) (“In short, an interpreter must be qualified, sworn, and impartial.”) (citing Gopar-Santana v. State, 862 So. 2d 54, 55 (Fla. 2d DCA 2003)).


3 See JoNel Newman, Ensuring that Florida’s Language Minorities Have Access to the Ballot, 36 STETSON L. REV. 329 (2007) (noting shift in Florida demographics, “[c]onsequently, more Floridians than ever before live in linguistically isolated households where there is no English-proficient member.”).

4 See, e.g., Florida Standard Jury Instruction (Civil) 202.5; Florida Standard Jury Instruction (Criminal) 2.8.

5 Thomas M. Fleming, Annotation, Right of Accused or Other Participant in Proceedings Interpreted, Because Accused or Other Participant in Proceedings is not Proficient in the Language Used, 32 A.L.R. 5th 149, § 2 (1995).

Author: Judge Matthew C. Lucas, County Court Division “M”, Thirteenth Judicial Circuit
Moving Forward with New Courts Technology System

We have had a challenging journey in the Clerk’s Office as we move forward to implement a new technology system. When I first took office, we did extensive research but found that there was not a system on the market which would meet all of our complex needs. Fortunately, a couple of years ago, we were introduced to Tyler’s Odyssey system, along with clerks from other counties in Florida.

Change can be problematic under the best of circumstances, and it hasn’t been made any easier for our office by the fact that we now have far fewer employees than in the past. As a point of reference, in 2007, we had 937 employees on the payroll, while today we are reduced to 779. What this means to us is that while we are in the process of implementing a complex new system in our courts, we still must perform our everyday functions. Thus, we have many employees who are stretched quite thin, doing double duty, as they test new processes while keeping up with their regular workload.

However, there is a visible excitement in the air as we transition into our new technology system. We have already seen it in action as we implemented Odyssey in Probate and Mental Health last year, with good results. On June 27, after months of planning and testing, our Family Law Department had an official “Go Live” launch, which was a major step toward putting the Odyssey system in place. As you might imagine, intensive

“As of this writing (mid-July)…we have already converted...

468,111 Family Law cases; 11,279,384 docket entries; 884,265 parties; 207,175 attorney records; 483,119 file check out records; and 2,766,034 financial transactions.”

Continued on page 15
preparation preceded the kickoff, including extensive system testing and conversion validation steps. I am pleased to report that as of this writing (mid-July) the statistics are quite impressive: We have already converted the following information from our old Banner Courts system: 468,111 Family Law cases; 11,279,384 docket entries; 884,265 parties; 207,175 attorney records; 483,119 file check out records; and 2,766,034 financial transactions. When you read this column, I expect several digits will be added to each of these numbers!

We are on target for our continuing conversion to Odyssey, with our Circuit Civil and County Civil Departments scheduled for their “Go Live” launch on November 7. It is exhilarating for us to be able to do our business better and more efficiently, with you as the ultimate beneficiary. It has been a long road since we first embarked on this path. Our business is too complex for simple solutions; therefore it took us some time to find the right system. The good news is that Odyssey is working well— for us and many other clerks in the state of Florida. My hope is that it works well for you, too. In fact, we would appreciate your feedback as we progress through this implementation.

---

**BOARD MEMBERS SOUGHT FOR BAY AREA LEGAL SERVICES**

The Community Service Committee of the Hillsborough County Bar Association is seeking applicants for two attorney seats on the Board of Directors of Bay Area Legal Services, Inc. The position carries a three-year term beginning February 28, 2012.

Bay Area Legal Services, Inc. is a non-profit corporation which provides legal services to the indigent. The Board is charged with guiding Bay Area Legal Services in its efforts to provide high-quality assistance to those who otherwise would be unable to afford legal counsel and to ensure that the agency is accountable to client.

In accordance with 45 C.F.R. § 1607.3, appointments will be made to ensure that attorney board members include women and minorities and reasonably reflect the population of the area served. Applicants should have a demonstrated commitment providing legal services to the indigent. Persons who have previously applied but have not been selected are encouraged to re-apply. Special consideration is given to current Board members who have served one term and remain eligible to serve one more. One of the two attorney openings is currently held by a person who is eligible to serve one more term.

Persons interested in serving may obtain an application from Corinne Bylone, assistant to Selection Committee chair, Karen M. Buesing, Akerman Senterfitt, SunTrust Financial Centre, 401 East Jackson Street, Suite 1700, Tampa, FL 33602, (813) 209-5056, corinne.bylone@akerman.com. Completed applications must be returned to corinne.bylone@akerman.com no later than November 1, 2011.
In the world of billable hours, I often ask myself, “What is an hour of my time really worth?”

I recently had my first pro bono experience as an attorney. I left the office an hour before my normal departure time and headed to the George E. Edgecomb Courthouse. I had committed myself to helping with Bay Area Legal Services client intake. It was the most hectic week of my legal career to date.

Driving to the courthouse, I couldn’t help but wish I had billed one more hour. But, it wasn’t until I left the courthouse that I realized the true value of my time.

As a student at Stetson University College of Law, I learned to give back to the community. Four years later, as a first-year associate, it is easy to get caught up in the race to make partner and lose sight of the fundamental purpose of my profession—to help people.

It was my second client intake that really opened my eyes to the value of an hour. The client was seeking what I considered a “simple” divorce. No kids. No property. No alimony. He wanted to move on with his life, but he needed Bay Area Legal Services’ help to do so. I asked him some questions, listened to his story, and told him I would come back shortly with some advice.

I’m a civil litigator; I don’t practice family law. Nevertheless, I immediately thought this was something he could do himself, that he did not need a lawyer for this simple matter. It was then that I realized the power of my law degree and the invaluable ability it gave me to change someone’s life in an hour.

I went to the Bay Area Legal Services attorneys to discuss the client’s divorce. I was seventh in line. What I told the client would take a few minutes actually took an hour (“1.0” in the world of billable hours). I impatiently watched the minutes tick by and considered all of the things I could be doing at the office. The client sat patiently awaiting my advice. He didn’t live in six-minute intervals.

I returned to the client an hour later, apologizing for the delay. He looked at me eagerly, anticipating my advice and praying we could help.

We could help.

I conveyed the good news and told him we would attempt to set him up with a volunteer lawyer to assist with his divorce. The joy on his face spoke volumes.

Feeling good about what I had done and the time I had spent, I shook his hand and started to walk away. I heard him say, “Well worth the hour wait.” I smiled to myself, knowing that extra billable hour lost at the office was more than recaptured at the courthouse. I immediately volunteered to take on this client’s divorce in what I hope will be my first of many pro bono cases.

Author:
Traci L. Koster,
Bush Ross, P.A.
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Contact the market experts.

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813.204.5305

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barry.oaks@cushwake.com
813.204.5307

Bill Reeves
bill.reeves@cushwake.com
813.204.5362

Proud to support the Hillsborough County Bar Association.
As we say goodbye to the not-so-lazy-days of summer, the Appellate Practice Section of the HCBA would like to thank Duane Daiker for his leadership last year as we plan for the new and busy year ahead!

As chairs of the Appellate Practice Section, our goal this year, as in years past, is to ensure that each member gets the most out of his or her membership in the section. This means not only providing breakfasts, lunches and CLE programs that are of interest and benefit to our members, but also giving each member an opportunity to shape and to be involved in the section and its events. Here’s a preview of what we have planned so far.

First, we will start the 2011-2012 Bar year with an appellate luncheon on October 26, 2011. Another luncheon will follow on January 4, 2012. Our quarterly lunches will be held at the Chester H. Ferguson Law Center. We will also have our annual two hour “Breakfast with the Judges” CLE at Stetson Law School on March 7, 2012. Another four hour CLE will follow later in the year.

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Bay Area Legal Services 7th Annual Cup of Hope

Saturday, November 5, 2011
1:00 p.m. – 4:00 p.m.

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www.bals.org to purchase tickets and learn more about being a sponsor.
A PREVIEW OF THE YEAR AHEAD
Appellate Practice Section

Continued from page 18

year on May 2, 2012. In addition, we will work with the HCBA to provide an appellate break-out session at the HCBA’s 15th Annual Bench-Bar conference, scheduled for November 17, 2011 at the Hyatt Regency downtown.

We also plan to continue providing our HCBA Appellate Practice Section members with helpful articles on current appellate issues. Our section will publish seven articles this year in the Lawyer, and the deadlines for submission are already upon us. These articles don’t write themselves, so please let us know if you have any ideas for articles or would like to tackle a topic yourself! The articles cannot exceed 500 words, so it is easy to pick a limited topic (like a review of a recent opinion, or a change in the law or appellate rules), and both get your work published, and your name out there.

The Appellate Practice Section benefits when we have the input of its many and diverse members. Please take a moment to contact one of us, either Marie Borland at mborland@hwhlaw.com, or Kristin Norse at knorse@kmf-law.com, to let us know if you have any suggestions for the upcoming year or would be willing to assist with articles, CLEs, or planning other events. No offer of assistance has been turned down before! We look forward to working with you this year, and we hope you will let us know if there is anything the section can do for you.

Authors: Marie A. Borland, Hill Ward Henderson, and Kristin A. Norse, Kynes, Markman & Felman, PA.
THE HCBA LOOKS TOWARD A YEAR OF SERVICE TO OUR COMMUNITY
Community Services Committee

Another hot Florida summer is behind us and the 2011-2012 HCBA year is in full swing. We look back at last year’s events and applaud the HCBA members who donated their time, money, and personal items to the worthy causes we have supported. A special thanks is owed to Stacy E. Yates, our former committee chair, for three years of outstanding service to our Community Service Committee. We also give thanks to former Co-Chair Lori Vella and former Co-Chair Mindi B. Lasley for their leadership roles in our Community Services Committee. We look forward to this HCBA year. We have planned several new opportunities to give back to our community. This year, we will again take part in the annual Make a Difference Day. This event takes place annually across the United States on the 4th Saturday in October. Last year, more than 3 million Americans volunteered on Make a Difference Day. Continued on page 21

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Day. The HCBA is proud to be part of that group of volunteers. This year, the HCBA Community Services Committee will participate again in the Adopt a Veteran Project in conjunction with Make a Difference Day.

The Adopt a Veteran Project will assist another project, the Homeward Bound for Those Who Served project. Deborah Gottardi, Chief of the Voluntary Services with the James A. Haley Veterans Hospital, began the Homeward Bound for Those Who Served project in Tampa in 2005. This project is a “medical foster home program that provides an alternative to nursing home placement for approximately 50 non-service connected veterans who are dependent, chronically or terminally ill with limited family support and finances.” There is limited funding for the care of our elderly veterans. This is where the Adopt a Veteran Project comes in. The Foster Home staff and caregivers obtain “Wish Lists” from each of the veterans in the program. The HCBA will coordinate efforts with Ronika Anderson, Veteran Affairs Voluntary Services, to obtain these Wish Lists. Volunteers like you “adopt” the veterans by purchasing the items on the wish lists. Items include everything from board games, to clothing, to toiletries. Volunteers are then encouraged to deliver their donations to the veterans at the VA Hospital on Make a Difference Day. Visiting the veterans and hearing their stories is one of the most rewarding aspects of this event. When we give back to those who served our country, we show our appreciation for their contribution to this country. In years past, volunteers have taken great joy in brightening the days of our elderly veterans. We look forward to doing so again this year.

As Co-Chairs of the Community Service Committee for the 2011-2012 year, we look forward to working with HCBA members to make this event, and several others, a huge hit. Assistance is always needed, so please contact us at shammett@saxongilmore.com or zglaser@sponslerbennett.com for more information.

Authors: Sarah M. Hammett, Saxon, Gilmore, Carraway & Gibbons, PA., and Zachary J. Glaser, Sponsler, Bennett, Jacobs Adams, PA.
As has been discussed in this column before, Florida’s “Little Miller Act,” Section 255.05 of the Florida Statutes, requires a payment bond for all public projects in excess of certain relatively low dollar amounts. Because a subcontractor cannot have a lien on public lands and buildings, the statutory 255.05 payment bond typically provides the only security for payment of the subcontractor. However, despite the law, some of us have encountered public projects where the required bond cannot be found.

Fortunately, Florida law provides unpaid subcontractors the right to recover directly from the members of the public authority where those public officials failed to do their duty to ensure that the required bonds were obtained. In the key case on point, Hughes Supply Co. v. Glens Falls Indemnity Co., the Florida Supreme Court holds that a public authority, and by implication the individual public officials have a ministerial duty to ensure the required bonds are posted and that the failure to “faithfully perform” such duty subjects the individual public officials to personal liability in the structure. If there is any doubt as to the duty of the board in this respect, such doubt is completely dissipated by the concluding two sentences of the section making it the duty of the public body to furnish a copy of such bond to interested persons. This statement of the law by the Florida Supreme Court has not been revised or supplanted in more than 50 years, so it remains the law of Florida.

There are not many Florida cases on point, but you can expect the public authority to argue that it and its members have no such duty. Likely, it will rely upon I.W. Phillips & Co. v. Board of Public Instruction of Pasco County, which previously held that “…no duty is imposed on the board of public instruction to require a bond…” 122 So. 793, 794 (Fla. 1929). However, the I.W. Phillips case was decided 25 years before the Hughes Supply case and was based upon an even earlier version of the public contracts law that has since become known as Florida’s Little Miller Act. Put more formally, the Florida Supreme Court’s holding in the Hughes Supply case superseded its holding in the I.W. Phillips case. Therefore, under Florida law, the individual members of a public authority are exposed to personal liability in tort where they fail to fulfill their ministerial duty of ensuring the posting of a public payment bond.

Author: Morgan W. Streetman, Streetman Law
Hillsborough County Bar Association 100 Club

Law firms with 100% membership in the HCBA

[List of law firms]

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Work hard, play hard is a mantra of many lawyers, and it’s definitely one we in the Corporate Counsel section take seriously. Diversion is a sacred part of our lives because of the constant stress of our profession, so we are constantly looking for new adventures when our schedules allow. Our most recent adventure was standup paddleboarding. It turned out to be just what we needed after a long week glued to a desk and a Blackberry.

We pulled up to the Clearwater Sailing Center in a downpour, with the wind whipping around at about ten knots. What we originally expected to be a quiet, calm Saturday morning now looked like it was going to be a bit more of an adventure. We met our teacher for the day, a ski instructor turned paddleboard comedian, named Jeremy at Standup Fitness. While we looked at the weather with trepidation, Jeremy distracted us with the perfect combination of detailed instruction and jokes about drinks being on the Lido deck.

By the time we got onto the water, the wind and waves didn’t seem quite so intimidating. After less than five minutes of paddling around on our knees, it was time for the moment of truth. Interestingly enough, up seems a lot further from down when you’re floating in the water, but, with some encouragement from Jeremy, we were right up on our feet.

We didn’t just standup and paddle around. We’re lawyers, and it didn’t take long for our competitiveness to take control. Our quiet paddle to the Marriott turned into a rabid race, followed quickly by a tournament to see who could knock who into the water. The absolute highlight was when a pod of dolphins decided to get in on the fun, and spent 15 minutes racing along with us.

At the end of our three hour adventure, we had a workout, overcame Mother Nature, and figured out who really was top dog. Best of all, for three hours we enjoyed ourselves on the water without reading even one "urgent" email. We strongly encourage all of our colleagues to remember to play to hard, try out standup paddleboarding, and, if you’re tough enough, challenge us to a race sometime.

Authors:
Cal D. Everett and Nicole D. Strothman, Ideal Image Development Corporation

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But, assuming for the purpose of this article that there was never going to be any cross on the issues and the defendant was never going to testify in order to prove the claims, was the opening statement ethical?

Rule Regulating the Florida Bar 4-3.4 mandates that “[a] lawyer shall not . . . in trial … allude to any matter that the lawyer does not reasonably believe is relevant or that will not

As litigators... it is our duty to present ethical arguments, and to follow arguments with admissible evidence. ...

It is up to each of us to rebuild the trust in the justice system. Ethical trial conduct in front of jurors is the best place to start.

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be supported by admissible evidence . . . (emphasis added).

As attorneys, we must fight to uphold the integrity of our court system - a system predicated upon truth and adherence to rules.

“It is no longer—if it ever was—acceptable for the judiciary to act simply as a fight promoter, who supplies an arena in which parties may fight it out on unseemly terms of their choosing. . . .” Walt Disney World Co. v. Blalock, 640 So. 2d 1156, 1157 (Fla. 5th DCA 1994) (citing Borden, Inc. v. Young, 479 So. 2d 850 (Fla. 3d DCA 1985)).

As litigators, we must be mindful that the jurors in our cases often are completely ignorant of how the system works and likely get their understanding about juror duties from shows like Law and Order or Nancy Grace. They don’t fully understand burdens of proof and other Constitutional provisions. To them, the line is blurry about what to deliberate upon and what to disregard. Thus, it is our duty to present ethical arguments and to follow arguments with admissible evidence. We must rebuke a “win at all cost even if it means cheating” mentality.

It is unethical for a trial attorney to make statements in opening that he or she has no intention of proving later. It is up to each of us to rebuild the trust in the justice system. Ethical trial conduct in front of jurors is the best place to start.

1 Adopted in Hillsborough County Standard of Professional Courtesy M.24.a, found at http://www.hillsbar.com or http://www.fljud13.org/LegalCommunity.

Author: Joseph C. Bodiford, Bodiford Law, PA.
HCBA

Installation of Officers and Directors

June 27, 2011
Chester H. Ferguson Law Center
LEADERS:
Mike Fogarty

Mike Fogarty earned his college degree from Notre Dame and his law degree from University of Florida in 1974, where he was Editor-in-Chief of the Law Review and graduated with high honors.

Mike, with his friend and classmate Harley Riedel, joined the newly minted firm founded by Larry Stagg and Don Stichter, which later became Stichter, Stagg, Hoyt, Riedel and Fogarty. In 1980, Mike joined Holland & Knight as a partner. Then he helped form Glenn, Rasmussen, Fogarty & Merryday in 1983.

The Hillsborough County Bar Association benefitted from Mike’s service as president of the Association in 1985-86. The original Standards of Professional Courtesy were prepared in 1986 and expanded in 1990 while Rich Gilbert chaired the HCBA Professional Conduct Committee. The HCBA also held its first Law Follies in 1986. Mike then represented our circuit on the Florida Bar Board of Governors from 1990 until his death in 1994.

Mike was a distinguished trial lawyer, becoming Board Certified in Civil Trial Law by the Florida Bar and the National Board of Trial Advocacy. Beyond giving back to his profession, Mike participated in numerous community organizations, including chairing the Tampa Sports Authority and the Special Projects Committee for the 1991 Superbowl Task Force.

Sports as a part of Mike’s life extended to coaching Little League Baseball for many years, and playing Law League softball, football and basketball. Mike was also known for his love of rock ‘n’ roll music, which encompassed an extensive command of song lyrics. Mike’s partners and friends note his great sense of humor, ability to put things in perspective, and thereby not to take things too seriously.

It was because of his personal qualities, as well as his renown as an effective and professional trial lawyer, that the HCBA Trial Lawyers Section named its Michael A. Fogarty Center: Mike Fogarty, Spring of 1983

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“In The Trenches” Award to honor him annually when it is presented. The Award that bears Mike’s name honors a civil litigator who displays not just the skills that make a great trial lawyer, but also the professionalism and courtesy that flows from the confidence such a lawyer possesses.

Mike’s partners recall his “sayings,” many humorous, but with some providing a deeper message. After a rare loss, Mike might be heard to repeat a favorite quotation: “Fame is fleeting, popularity a bubble, money takes wings. The only thing that lasts is character. Character alone endures.” Then he would add something like, “That doesn’t mean that I don’t want fame, popularity, and money, and I sure as hell wanted to win that case.”

Harley Riedel has many fond memories of, and stories about, Mike Fogarty. Mike, Harley and Bob Glenn frequently hiked the Smoky Mountains. On one trip, hiking up Springer Mountain in Georgia, Mike was not feeling well due to what later turned out to be an oncoming stomach flu. The three reached a crowded shelter and pushed on when told there was plenty of water at the next stop up. Upon reaching the next shelter several miles up the trail, the spring was bone dry. Even though he was not feeling well, Mike insisted on participating in the drawing of straws to determine who would go back for water. He lost and insisted on making the trek.

It is fitting that the HCBA continues to honor one of its leaders who gave so much to our Association and community. We continue to benefit from his example, and beyond his untimely passing.

Thanks to Mike’s partners: Bob Rasmussen, Bob Glenn, and Mike Hooker, for much of the information in this article, including Bob Rasmussen’s article in the *Lawyer* in 1994 and Bob Glenn’s introduction used to present the Mike Fogarty In The Trenches Award.

Author:
Raymond T. (Tom) Eligett, Jr., Buell and Eligett, Jr.
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Meet John Kynes, HCBA’s New Executive Director

Q. What interested you in the executive director position at the HCBA?
A. Having grown up and also worked in Tampa for a number of years, I was familiar with the history of the HCBA and its mission in our community. As a matter of fact, at the invitation of Federal Judge Susan Bucklew, I attended the dedication of the new building in 2008. Also, I had longtime personal relationships with many HCBA members. So I had a historical perspective related to the HCBA. With that in mind, I jumped at the opportunity when a board member told me earlier this year that Connie Pruitt would

Continued on page 35
be retiring and I should consider applying for the position. I submitted my resume to the selection committee, went through the interview process, and feel fortunate that the HCBA board selected me for the job.

Q. What is your background?
A. I was raised in Tampa, graduated from Plant High School, and went on to the University of Florida, where my two older brothers and father had gone before me. After graduating from UF in 1983, I went to work for then-U.S. Senator Lawton Chiles and to graduate school at American University in Washington, D.C., where I received a master’s in journalism and public affairs. In 1990, I went to work for former Florida Lt. Governor Buddy MacKay in Tallahassee. Later, I came back home to Tampa, where I worked under former Tampa Mayor Dick Greco as director of intergovernmental relations. In 2000, I became district director for former U.S. Representative Jim Davis in Tampa, and after he left office in 2006, I have been consulting in the affordable housing area.

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Q. Where can you be found on most weekends?
A. Probably helping to coach one of my 10-year-old son Andrew’s athletic teams, or at one of my 13-year-old daughter Abby’s many swim meets. In the fall on Saturdays, I like to cheer on the Gators with my family in Gainesville. On Sundays, we can be found at Christ the King Catholic Church in South Tampa where Stacy, my wife, teaches at the parish school and where we are parishioners.

Q. What are your short-term and long-term goals for the HCBA?
A. In the short term, I want to do a broad cost assessment of all the programs in which the HCBA is currently involved. I will be focused also on improving the performance of the Lawyer Referral Service and marketing the rental space at the Law Center. Overall, the HCBA has strong board leadership, an active foundation, and a stable membership, all very positive indicators, especially in a weak economy. Also, I think having strong participation by the judiciary has helped to set a positive tone for the association. Long term, I want to build on the tremendous legacy and national reputation that Connie Pruitt and many others have helped to establish. I’m very optimistic about the future.

Q. Do you have any special items in your new office?
A. I have a photograph from the mid-sixties of my late father, James, who was Florida Attorney General at the time, with former U.S. President Lyndon Johnson. Those were tumultuous times in our state and nation, and I think those days helped shape my father’s long term views on civil rights and service to the community.
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one of the glaring omissions of diversity outreaches with many bar associations, law schools and law firms is outreach to veterans.

Recently, we have seen a resurgence in awareness of the contributions our veterans make. What, if any, relevancy does this resurgence have to our diversity efforts? Nationally, almost 1 in 13 Americans is a veteran—or about 23 million. This includes 1.7 million Floridians who have proudly served.

If you are a recruiter for your law firm or law school, ask yourself: What kind of an outreach are you doing to our returning veterans?

This is not an attempt to place veterans within a “grievance” group, but to shed light on the burden our returning veterans bear, and the corresponding duty we have in helping them become productive members of society.

The burden returning veterans carry today is growing. To the extent Americans have experienced an economic storm, returning veterans experience an economic hurricane. Veterans of our post-September 11, 2001 conflicts saw their unemployment rate increase from 10.9% in April to 12.1% in May. Compare this to the non-veteran unemployment rate of 8.5%.

How can we address such troubling statistics?

Law firms should conduct outreach in a manner that includes veterans in recruitment. Recruiters should inquire with otherwise able candidates about their veteran status as an enriching background experience that enhances the legal practice and a firm’s culture. Law schools and the HCBA should journey to local ROTC (Reserve Officer Training Corps.), VFW (Veterans of Foreign Wars) and other local units to ask: Do you know a returning veteran in need of assistance?

Continued on page 39
Continued from page 38

Wars), and Paralyzed Veterans of America meetings and encourage returning veterans to consider our profession. We need the valor, courage and decency that these Americans have shown in the service.

In so doing, we can fight the growing disconnect between returning veterans and professional communities. There seems to be little connection between the sacrifices made by our veterans in Iraq and Afghanistan and our everyday lives. The relatively recent concept of “war on the cheap” only temporarily hides from the general public the heavy burdens borne by our returning veterans. Though we despair over stories such as the closure of Walter Reed Hospital, what are doing individually to make veteran hospitals a tribute to returning heroes? Though we mourn the physical and psychological injuries veterans return home with, what are we doing to pay tribute to the service of veterans and their families?

There are many values and sacrifices that serve to create the heart of our country. One of the central elements of our national heart is the valor of our veterans—from the Minutemen at Lexington and Concord to the brave Americans who served in World War II, Korea and Vietnam, to our post-September 11, 2001 veterans. Bruce Springsteen once sang, “Everybody’s got a hunger, a hunger they can’t resist.” For American veterans, that hunger has always been a level of sacrifice that serves as a predicate not only to our professional lives, but also to our personal liberty. Let us define diversity and pluralism in a manner that includes this most heroic and yet forgotten population of great Americans.

Author: Luis Viera, Ogden Sullivan & O’Connor

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In any eminent domain case, the condemning authority’s use of the property taken is often an important factor in measuring severance damages. Construction plans and their interpretation by the parties can be points of dispute in such cases. It is in a condemning authority’s best interest to commit itself to a particular use of the property taken in as clear a manner as possible in order to limit its exposure to severance damages. See Belvedere Development Corp. v. Dept. of Transp., 476 So. 2d 649 (Fla. 1985). When a condemning authority fails to define clearly the use of the property taken, a jury may consider the worst possible effect on the remainder to the extent of the legal rights acquired. See Central and Southern Florida Flood Control District v. Wye River Farms, Inc., 297 So. 2d 323 (Fla. 4th DCA 1974). The issue of construction plans and severance damages is especially prevalent in easement takings where the construction plans may not clearly define the use of the property taken.

A conflict in easement takings arises when the easement taken as defined by the easement’s legal description varies from the construction plans. Any conflict between the legal description of the easement taken and the actual construction plans becomes a question of fact for the jury. See Trailer Ranch v. City of Pompano Beach, 500 So. 2d 503, 506 (Fla. 1986).

In Trailer Ranch, the Florida Supreme Court considered a case where the city of Pompano Beach (the “City”) acquired a permanent utility easement and “temporary construction easements under, across and over” the condemnee’s property. Id. at 504. The trial judge interpreted the easement language to be the equivalent of a fee simple taking as matter of law and did not allow the City to present evidence to the contrary. Id. The Fourth District reversed, stating that the City should have been allowed to present such evidence. Id. at 505. Ultimately, the Florida Supreme Court agreed with the District Court by stating the condemnee was certainly entitled to argue for the worst possible damage, but that the City was also entitled to show that the project would result in less than the worst possible damage acquired. By carefully tailoring the legal descriptions of easements to the exact rights required for the project, a condemnor can reduce its liability for severance damages arising from interpretation of the easements.

The second lesson is that condemnees should carefully weigh the legal descriptions and the construction plan to determine if any discrepancies exist. If so, the condemnee is entitled to submit the interpretation of the rights taken to a jury for a determination of the worst possible damage arising from the taking.

Author: Blake H. Gaylord, Gaylord Merlin Ludovici Diaz & Bain
PRE-ENFORCEMENT REVIEW OF ACOS—PERHAPS SOMETIMES

Environmental and Land Use Section

On June 11, 2011, the United States Supreme Court declined to hear a challenge to the prohibition on pre-enforcement judicial review of administrative compliance orders (“ACOs”) issued under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” aka the Superfund program). In doing so, it held that the bar to pre-enforcement review of administrative orders does not violate due process protections guaranteed by the Fifth Amendment to the U.S. Constitution. Given the textually inclined nature of a potential majority of the justices, this comes as little surprise; to them, the words in § 113(h) of CERCLA—“No Federal court shall have jurisdiction ... to review any order issued under section [106(a)]” except in the circumstances set forth at § 13(h)(1)-(5)—no doubt spoke expressly and unambiguously.

As to other environmental statutes where the provisions addressing pre-enforcement judicial review are far less explicit, the outcome might be less certain. For example, the pre-enforcement review provision of the Clean Water Act (“CWA”) will be reviewed by the Supreme Court next term, when it hears an appeal from the Ninth Circuit decision barring pre-enforcement judicial review of an ACO issued pursuant to the CWA. In Sackett v. U.S. EPA, 622 F.3d 1139 (9th Cir. 2010), involving the unpermitted discharge of “dredged or fill material” into jurisdictional wetlands, the Sacketts brought suit in the district court, challenging the ACO. In affirming the district court, the Ninth Circuit directly addressed whether the CWA precludes pre-enforcement judicial review of ACOs and concluded that, while generally judicial review of administrative actions is presumed, the presumption is lost where “congressional intent” to preclude such review is “fairly discernable in the statutory scheme,” taking into account factors such as the statute’s express language, structure, objectives, legislative history, and the nature of the administrative action itself.

Acknowledging that the CWA does not expressly preclude pre-enforcement review, the Ninth Circuit, relying upon decisions from the Tenth, Sixth, Fourth and Seventh Circuits, nevertheless found that the CWA’s structure, objectives and legislative history revealed a “congressional intent to preclude pre-enforcement judicial review of compliance orders.” The Ninth Circuit also found no due process violations in precluding pre-enforcement review because post-enforcement review was available, the Sacketts could have sought a permit and adjudicated any denial of that permit, and any penalties would be court-imposed, not by EPA.

In their arguments to the Ninth Circuit, the Sacketts relied upon the decision in TVA v. Whitman, 336 F.3d 1236 (11th Cir. 2003), cert. denied, 541 U.S. 1030 (2004), where the Eleventh Circuit interpreted a similar ACO provision in the Clean Air Act as violating due process because of the “severe civil and criminal penalties” that could be imposed for violating the ACO without any meaningful pre-enforcement judicial review. Curiously, the Ninth Circuit ignored the Supreme Court’s denial of certiorari in the Whitman case. We wait to see if the Supreme Court determines the matter based on textual differences in the statutes or upholds existing judicial precedents barring pre-enforcement review of ACOs under the CWA. Stay tuned.

Author: Hugh H. Marthinsen, Saxon, Gilmore, Carraway & Gibbons, PA.
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The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (collectively, the “PPACA”) has been the subject of numerous lawsuits brought by states and individuals challenging the constitutionality of PPACA. The Sixth Circuit recently issued the first federal appellate opinion regarding PPACA’s constitutionality in Thomas More Law Ctr. v. Obama et al., No. 10-2388 (June 29, 2011).

In upholding the constitutionality of PPACA, the Sixth Circuit held that “the minimum coverage provision is a valid exercise of legislative power by Congress under the Commerce Clause . . . .” Op. at 3. To support this holding, the Sixth Circuit found that “virtually everyone” will require health care services, but the “uninsured cannot avoid the need for health care, and they consume over $100 billion in health care services annually.” Op. at 19-20. As such, “the practice of self-insuring substantially affects interstate commerce by driving up the cost of health care as well as by shifting costs to third parties.” Op. at 20. The Court then concluded that the minimum coverage provision is a valid exercise of Congress’s ability to regulate commerce. Id.

As for the argument that PPACA was unconstitutional in that it governed the “inactivity” of those people who did not want to purchase health insurance, the Sixth Circuit announced that “the constitutionality of the minimum coverage provision cannot be resolved with a myopic focus on a malleable label.” Op. at 24. The Court found the provision to be constitutional notwithstanding the fact that it could be labeled as regulating inactivity because it “is an essential part of a broader regulatory scheme” and therefore a proper exercise of Congress’s power to tax and spend. Op. at 26.

The Supreme Court is anticipated to examine PPACA in the future, perhaps even as early as next term, which begins in October. There is also likely to be additional controversy over the status of this law as both the Fourth and the Eleventh Circuits are anticipated to rule on the constitutionality of PPACA in separate ongoing lawsuits.

Author: Scott Richards, Fowler White Boggs
The HCBA Young Lawyers Division was recognized with a Shining Star Award by SERVE Volunteers in Education, the non-profit volunteer organization of Hillsborough County Public Schools, for coordinating volunteers in the classrooms and courthouse tours during Law Week. (Above): Jaime Girgenti accepted the award from Donna Houchen, executive director of SERVE, on behalf of the YLD members. (Right): MaryEllen Elia, Superintendent of Hillsborough County Public Schools and Jeff Jinks, a member of the SERVE Board of Trustees, expressed their appreciation on May 12, 2011 at the TPepin’s Hospitality Centre.
EASY MARK NO MORE—FALSE PATENT MARKING DEFENDANTS FIGHT BACK
Intellectual Property Section

V
timized by a patent troll bringing a false marking qui tam? A review of district court dockets shows you are not alone. Defendants, however, are beating off plaintiffs taking advantage of a favorable 2009 Federal Circuit decision and may soon knock out the action with a constitutional blow.

Under the False Marking Statute, “[w]hoever marks upon, or affixes to ... any unpatented article, the word ‘patent’ or any word or number importing that the same is patented, for the purpose of deceiving the public...[s]hall be fined not more than $500 for every such offense.” 35 U.S.C. § 292 (a).


First appearing in the Patent Act of 1842, the False Marking statute became an overnight sensation in December 2009. Litigation exploded following the Federal Circuit’s decision in Forest Group, Inc. v. Bon Tool Co., 590 F.3d 1295 (Fed. Cir. 2009). There, the Court held that the statute’s $500 penalty applies to each “article” sold, as opposed to earlier opinions which imposed the penalty for the decision to make the false mark. Id. at 1301. Flood gates opened.

In the year before Forest, approximately 30 false marking qui tam suits were filed. The number soared to nearly 800 in 2010. Manufacturers marking their goods with expired patents became easy targets.

Defendants started questioning whether the qui tam provision of the False Marking statute violated the “Take Care” and “Appointments” clauses of Article II of the Constitution. Affirmative responses by two district courts signal this patent fight may soon be over.

Continued on page 47

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Continued from page 46

The usual defenses, failure to state a claim and lack of personal jurisdiction, have been somewhat successful. Particularly noteworthy, however, are the constitutional challenges the 169 year-old statute is newly facing. Defendants started questioning whether the qui tam provision of the False Marking statute violated the “Take Care” and “Appointments” clauses of Article II of the Constitution. Affirmative responses by two district courts signal this patent fight may soon be over. The Northern District Court of Ohio in Unique Product Solutions, Ltd. v. Hy-Grade Valve, Inc., and the Eastern District of Pennsylvania in Rogers v. Tristar Products, Inc., both found the qui tam provision was unconstitutional for lacking “sufficient controls” over the litigation by the Executive Branch.

Those decisions are emboldening other defendants to seek dismissals and alternative stays pending a determination by the Federal Circuit. The plaintiff in Unique Product has appealed, and the Court heard oral argument in July in FLFMC v. Wham-O, 2010 WL 3156162 (W.D. Pa.), a lack of standing decision where the appellee also disputed the statute’s constitutionality. Extended stays may be necessary if the Supreme Court ends evasive measures and finally confronts the issue.

Congress has also joined the fray, passing amendments which will redefine the false marking plaintiff from “any person” to the Government and injured competitors.

For now, clients should still keep their guard up for trolls and remember the best defense is to patent mark your products carefully.

1 See McDonnell Boehnen Hulbert & Berghoff LLP’s website tracking false patent marking litigation, at www.falsemarking.net/district.php.

2 See id.


Author:
Kathy Wade,
Fee & Jeffries, PA
The explosion of technology and social media has given rise to a bevy of legal issues for employers to consider. In private employment, these issues can often be resolved through thoughtful expansion of established policies and practices. The same is not true, however, of the challenges presented by technology and social media in public employment, where the government employer’s actions must be balanced with constitutionally guaranteed rights.

For instance, the First Amendment to the U.S. Constitution prohibits a government employer from taking adverse action against an employee in retaliation for speech involving public concern. However, the ever-increasing use of technology and social media in the workplace has rendered difficult the determination of whether an individual is speaking (or “tweeting”) on behalf of the public as a citizen or as an employee. The Fourth Amendment to the U.S. Constitution...

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At what point is an individual’s right to free speech and privacy outweighed by an employer’s interest in monitoring the workplace?

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Continued from page 48

provides: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated ....” and guarantees privacy, dignity, and security against a government employer’s arbitrary and invasive acts. But, can there be a reasonable expectation of privacy in social media which, by design, was created to disseminate information to the masses? At what point is an individual’s right to free speech and privacy outweighed by an employer’s interest in monitoring the workplace?

Practical guidance on this issue has been hard to find as technology’s impact on the workplace advances far more rapidly than our judicial system. The recent decision in *City of Ontario, California v. Quon*1 was highly anticipated as the U.S. Supreme Court’s first examination of the Constitution’s impact on the technological workplace. However, the Court decided the case on narrower grounds and chose not to address the Constitutional issues, stating:

Rapid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior . . . At present, it is uncertain how workplace norms, and the law’s treatment of them, will evolve . . . A broad holding concerning employees’ privacy expectations vis-à-vis employer-provided technological equipment might have implications for future cases that cannot be predicted. It is preferable to dispose of this case on narrower grounds.2

Justice Scalia captured the frustrations of many public employers when, in his critical dissent, he stated: “[a]pplying the [Constitution] to new technology may sometimes be difficult, but when it is necessary to decide a case we have no choice . . . . The-times-they-are-a-changin’ is a feeble excuse for disregard of duty.”3

The expansion of technology and social media pose difficult constitutional issues in the public workplace. Employers must face these challenges with the tools they are provided. In *Quon*, the Supreme Court acknowledged the difficulties faced by public employers, but, in choosing not to address these evolving issues, failed to provide public employers the tools needed to fully and objectively manage constitutional demands in the modern public workplace. The-times-they-are-a-changin’, and the way employees, employers, the courts, and the legislature view the workplace must change, too.

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2 Id., at 2629-2630.
3 Id., at 2635.

Author: Gregory A. Hearing and Brian C. Ussery, Thompson, Sizemore, Gonzalez & Hearing, P.A.
Nearly 80,000 Florida residents file for divorce each year. Florida has the nation’s highest percentage of residents over the age of 65. Many people enter into a second marriage with significant assets and adult children. Accordingly, it is often important for a prenuptial agreement to address both marital and estate planning issues.

Florida adopted the Uniform Premarital Agreement Act, which expressly provides that parties may reach a binding contract on the following issues: (i) the parties’ rights and obligations concerning any assets and liabilities; (ii) the right to buy, sell, use, transfer, or dispose of property; (iii) the distribution of property upon separation, dissolution, death, or other event; (iv) the right to alimony; (v) the making of a will or trust; and (vi) the disposition of life insurance proceeds.1

It is imperative to understand the estate and probate rights that a spouse may waive.2 For example, a surviving spouse normally has the right to receive an “elective share” of the deceased spouse’s estate (under current law, 30% of the elective estate as defined in Chapter 732, Part II, Florida Statutes).

A surviving spouse also has special rights to homestead real property. A decedent may not freely devise homestead real property upon death if survived by a spouse or minor child.3 The surviving spouse is entitled to a life estate in the property or, upon election, an undivided one-half interest.4 The property is exempt from any claims by the decedent’s creditors.5

Additionally, if a spouse dies intestate (i.e., without a will), a surviving spouse is entitled to a specific share of the estate.6 If a person marries after making a will, the surviving spouse is entitled to receive an intestate share of the estate.7 A surviving spouse also is entitled to receive up to $20,000 in certain exempt property.8 A surviving spouse is separately entitled to receive up to $18,000 in “family allowance” for support during the administration of an estate.9 Finally, a surviving spouse has preference in appointment to serve as personal representative of a decedent’s intestate estate.

All of these rights may be waived in a prenuptial agreement.10 The prenuptial agreement, however, may include language requiring the parties to make a will or trust, to give a devise, or not to revoke a will or devise.11 A practitioner must be prepared to advise clients on any rights that are being waived and avenues to protect the client’s interests.

5 See Art. X, Sec. 4, Fla. Const.
10 See, e.g., Fla. Stat. §§ 732.701 and 732.702 (to the extent the prenuptial agreement affects estate and probate rights, it must satisfy all other applicable formalities) (2010).

Author: Richard J. Mockler, Esquire, Mockler Law Group
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A recent Fifth District Court of Appeal case addressed the rules of procedure regarding appearance at a mediation conference. In Mash v. Lugo, 49 So.3d 829 (Fla. 5th DCA 2010), the court applied Florida Rule of Appellate Procedure 9.720 to impose sanctions for failure to appear. Although this case appears to be the first under Rule 9.720, there are other cases addressing sanctions under corresponding rules of procedure at the trial court level. Mash v. Lugo serves as a reminder, however, concerning appearance at any court-ordered mediation.

In Mash v. Lugo, neither of the two appellees nor any representative of their insurance carrier appeared at the mediation conference. No court order excused their appearance, and no agreement provided for their appearance electronically.

The appellees’ attorney, who was present at the mediation conference, filed an affidavit in response to the appellant’s motion for sanctions. The affidavit stated that the appellees’ insurer had the exclusive right to determine to defend or settle any claim within policy limits, that the appellees did not have any authority to bind the insurer to a settlement, and that the appellees’ attorney had full settlement authority on behalf of the insurer.

The 5th DCA rejected the appellees’ arguments and granted the motion for sanctions. The court stated that counsel’s claim of full authority to settle on behalf of the insurer did not excuse failure of appellees and the insurer’s representative to attend. The court ordered the appellees to pay all mediation fees for that appellate mediation and reasonable attorney’s fees and costs of opposing counsel in preparing for and attending the appellate mediation and filing the motion for sanctions.

The court in Mash v. Lugo could have imposed more severe sanctions under Rule 9.720(b). The rule provides: “If a party fails to appear at a duly noticed mediation conference without good cause, the court, upon motion of a party or upon its own motion, may impose sanctions, including, but not limited to, any or all of the following, against the party failing to appear: (1) An award of mediator and attorney fees and other costs or monetary sanctions. (2) The striking of briefs. (3) Elimination of oral argument. (4) Dismissal or summary affirmance.”

Other Florida rules of procedure (civil, family law, etc.) differ somewhat in the language concerning appearance at mediation conferences and sanctions for failure to appear, and therefore, those rules should be consulted in applicable situations. Nevertheless, Mash v. Lugo serves as a refresher concerning parties’ attendance at mediation.

Author: Gayle B. Carlson, Gayle B. Carlson, PA.
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Walk-in’s are charged an additional $5 fee, and seating is not guaranteed for walk-ins.

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

All events held at the Chester H. Ferguson Law Center unless otherwise noted.
Suppose your uncle died and left you vacant land in Florida. You have often thought about building a home in Florida and know your favorite uncle would have wanted you to live on the real property you just inherited. You begin to develop plans for your Florida dream home when you discover that there is one significant issue with the vacant land you inherited—it is landlocked.

In Florida, the legislature has provided individuals in the situation described above an option—a statutory easement by necessity. Florida Statute section 704.01(2) establishes a statutory easement by necessity, which is a type of easement that is not available if a common-law right of necessity or express right-of-way exists. Therefore, a statutory easement by necessity is truly an easement of last resort. The purpose of the statute is clear in its own language—it is “[b]ased on public policy” to provide a way to make useless property productive.3

To establish a statutory way of necessity pursuant to Florida Statute section 704.01(2), the landowner has the burden to show specific elements. First, the land must be shut off or hemmed in by lands, fencing, or other improvements by other persons.5 Additionally, there must not be a practicable route of egress or ingress available to the nearest public or private road in which the landlocked owner has vested easement rights.6 The landlocked owner’s property must not have a “practicable” route of egress or ingress in order for it to qualify as a right to a statutory way of necessity, the route must the nearest practical route of access.8

The trial court has the discretion to determine all questions including “the type, extent, duration, and location of the purpose of the

Florida Statute section 704.01(2) establishes a statutory easement by necessity, which is ... truly an easement of last resort.

Thank you to the following HCBA member volunteers who provided assistance to the Florida Board of Bar Examiners in proctoring the Bar Examination held July 26-27, 2011, at the Tampa Convention Center.

- Robin Allweiss
- Leonard Clark
- Jillian Estes
- Jessica Hoyer
- Traci Koster
- Honorable Stephen Rosen
- Russell Sibley
- Allyson L. Smith
"Easement." Additionally, the trial court can consider all reasonably relevant facts to determine the burdens and benefits associated with various routes to determine their practicality. In other words, the landlocked property owner does not have the option of choosing his or her “nearest practical” route.

The landlocked property owner also must be prepared to compensate the servient property owner. However, Florida Statute section 704.04 also permits attorney’s fees and costs against either party for his or her “unreasonable refusal to comply with the provisions of section 704.01(2).” If a landlocked property owner requests access across the property of an adjoining property owner and they unreasonably refuse to comply with this request, the landlocked property owner has the ability possibly to recover its attorney’s fees and costs.

As a matter of public policy, the Florida legislature has provided landlocked property owners a last resort in order access their property. Fortunately for you, you can live happily ever after in your dream home thanks to Florida Statute section 704.01(2).

1 Fla. Stat. § 704.01(2) (2010).
2 Id.
3 Cirelli v. ENT, 885 So. 2d 423, 430 (Fla. 5th DCA 2004).
4 See Parham v. Reddick, 537 So. 2d 132, 135-136 (Fla. 1st DCA 1988).
5 Fla. Stat. § 704.01(2); see also Cirelli, 885 So. 2d at 434 (holding that land must be landlocked by property belonging to others).
6 Fla. Stat. § 704.01(2) (2010).
7 Fla. Stat. § 704.03 (2010).
8 Fla. Stat. § 704.01(2) (2010).
9 Blanton v. City of Pinellas Park, 887 So. 2d 1224, 1229-30 (Fla. 2004).
10 Hoffman v. Laffitte, 564 So. 2d 170, 172 (Fla. 1st DCA 1990).
11 Id.
12 Id.

Author: Jill K. Bell, Hill Ward Henderson
SOLO AND SMALL FIRM—AN EXCITING YEAR IN THE WORKS
Solo/Small Firm Practitioner Section

As the Section’s new chairpersons, we are excited to lead the membership into a year of valuable educational programs, business development opportunities, and timely updates on important issues that especially affect the solo and small firm practitioner.

Quarterly Lunches
We have a full complement of topics to address this year. On the litigation end of the practice, we will look at how the Internet and technology have affected the presentation and preparation of cases, such as instant public polling through social media, the discoverability and admissibility of online evidence, and the technologies being adapted to assist in the presentation of arguments and evidence from pre-suit settlement conferences to mediations and closing arguments.

Transactionally speaking, look for programming on how to negotiate and successfully close transactions in the current economy and considerations for short-sales and debt forgiveness.

From an administrative perspective, we plan to bring our membership guidance on small firm management and updates on the current state of Florida’s advertising rules and the use of cloud computing technology.

Please take a moment to update your calendars so that you can be sure to join us for these programs, which are scheduled for September 21, November 9, January 18, and March 21.

Business Development
Increasing referral business is an important initiative of the Section, which we hope to promote and encourage within the Section with the use of our new attorney-to-attorney directory (which can be viewed on the Section’s webpage on the HCBA website). We will also look at how our members can use available “practice panels” within the Lawyer Referral Service. For instance, several of these panels currently have no attorneys listed and no referrals are being made in these practice areas.

Other Priorities
We will collaborate and partner with other Sections, vendors and members to incorporate as much content and value into our programs as possible, including occasionally going “off campus” in order to keep the calendar diverse and fun.

We also will continue to make a priority of bringing down the cost and enhancing the availability of legal research in order to level the playing field with larger firms.

The only limitation on our success will be your participation as we cannot achieve our goals without your involvement. We hope to bring everyone together to share invaluable information and priceless contacts in an efficient and thought-provoking manner.

We hope to see you at our events!


Register Now for the Solo/Small Firm Practitioner Section Luncheon and CLE
September 21, 2011  12:00 p.m. - 1:00 p.m.  Chester H. Ferguson Law Center
On-line: www.hillsbar.com  Phone: 813-221-7777  Email: hcbarsvp@hillsbar.com
Since the Supreme Court’s decision in *Gregory v. Helvering*, 293 U.S. 465 (1935) economic substance has been a potential hurdle to satisfy where tax benefits are a significant factor in a transaction.

In the Health Care and Education Reconciliation Act of 2010, Congress codified this doctrine in Code Section 7701(o) by referring to the provision as a clarification. The key provision is at (o)(1):

“xxx the transaction is treated as having economic substance only if - (A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer’s economic position, and (B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

(2) The potential for profit of a transaction shall be taken into account in determining whether the requirements of subparagraphs (A) and (B) of paragraph (1) are met with respect to the transaction only if the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed of the transaction were reported.”

(Emphasis supplied). The economic substance doctrine is defined as the “common law doctrine under which tax benefits are not allowable if the transaction does not have economic substance or lacks a business purpose.”

Section (o)(5)(C) provides in part that, “The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same measures as if this subsection had never been enacted.”

The key words and concepts appear to be “meaningful way,” “substantial purpose,” “substantial” and what is encompassed within the terms “net tax benefits,” “income tax benefits,” and “relevant.” In theory, the concepts may seem simple, but in practice are quite difficult to apply. It appears from the Joint Committee Explanation that the doctrine will not apply if the regulation of such benefits is consistent with Congressional intent. For example, depreciation, tax credits, etc. Where will the line be drawn?

The common-law economic substance doctrine will continue to be relied upon in applying the two-prong constructive test in Section 7701(o)(1).

In measuring the present value of pre-tax profit in relation to the present value of the expected net-tax benefits, the expected profit must be “substantial.” This in reality probably only eliminates de minimus differences.

Unfortunately, the Notice provides that the IRS does not intend to issue general administrative guidance regarding the types of transactions to which the doctrine either does or does not apply. So, the taxpayers are on their own.

A recent tax court case will be covered in the next issue.

*Author: V. Jean Owens, Owens Law Group, PA.*
NEUROIMAGING TECHNIQUES SATISFY FRYE IN EVALUATING TBI

Trial & Litigation Section
Chair: J. Daniel Clark, Clark & Martino, P.A.

In what is thought to be one of the few decisions in the country on this issue, a Circuit Court in Tampa in the case of Hammar vs. Sentinel Insurance Company, after conducting a Frye hearing, ruled that both Diffusion Tensor Imaging (“DTI”) and Single-photon emission computed tomography (“SPECT”) have been sufficiently tested and accepted by the relevant scientific and medical communities to be admissible as evidence in a case where the Plaintiff suffered a mild traumatic brain injury.1

As a threshold matter, the trial court must decide if the evidence in question represents a “new or novel” scientific method, since Frye applies only to such evidence. U.S. Sugar Corp. v. Henson, 823 So.2d 104, 109 (Fla. 2002). This is because the focus of the Frye test is on the underlying methodology of the opinion and not the ultimate conclusion. Id. at 109. Under Frye and its Florida progeny, when the expert’s opinion is based upon generally accepted scientific principles and methodology, it is not necessary that the expert’s opinion be generally accepted as well. Berry v. CSX Transp., Inc., 709 So. 2d 552 (Fla. 1st DCA 1998).

In Hammar, despite the court’s concern that the imaging modalities at issue were not even subject to Frye, a hearing was conducted in the abundance of caution wherein “[t]he proponent of the evidence [bore] the burden of establishing by a preponderance of the evidence the general acceptance of the underlying scientific principles and methodology.” Castillo v. E.I. Du Pont De Nemours & Co., 854 So. 2d 1264, 1268 (Fla. 2003).

When reviewing a Frye challenge, the trial court may consider three methods of proof: (a) expert testimony; (b) scientific and legal writings; and (3) judicial opinions. Id. at 1268. To that end, any conflict in the theories on the meaning to be attached to the evidence goes to the weight to be afforded this evidence, not its admissibility. Huggins v. State, 889 So. 2d 743, 755 (Fla. 2004), cert. denied, 545 U.S. 1107 (2005).

The Hammar court’s ruling is significant because, as in all injury cases, the organicity of the Plaintiff’s complaints is paramount, and this is especially true when the Defendant relies on subjective explanations (e.g., malingering) to dispute the Plaintiff’s symptoms. Accordingly, from a pathophysiological standpoint, these imaging techniques are utilized in the evaluation of a variety of brain abnormalities, including symptomatic mild traumatic brain injury. DTI is used to visualize white matter (axonal) damage to the brain not visible on standard MRIs. SPECT imaging is used to define the regional distribution of brain perfusion (blood flow).

While neither of these studies stand alone as diagnostic proof of a brain injury, they are capable of providing evidence consistent with the ultimate diagnosis of a traumatic brain injury, which is then rendered by the clinicians after consideration of all diagnostic testing, physical examination, neuropsychological testing and medical history while simultaneously ruling out other possible organic and/or congenital sources of the injury or dysfunction, to wit: differential diagnosis.


Author:
Anthony D. Martino, Esq., Clark & Martino, PA.
Workers’ compensation immunity originally protected the employer who provided workers’ compensation benefits to a worker on the premise that the no fault benefits of workers’ compensation would replace the civil remedy. The immunity is statutory and therefore to be read narrowly. Recent federal and state cases show an erosion and evolution of this immunity.

One area where workers’ compensation benefits have not been considered an appropriate remedy is when the injury was caused by a rape which may have physical consequences but which is accompanied by very severe psychiatric injuries even when there are not clear physical injuries. Florida does not appear to allow the immunity to prevent a civil claim for sexual harassment or rape; the scope of the immunity is limited. Guder v. Vincent Men’s Hairstyling, No. 4 D09-2063 (Fla. 3d DCA February 10, 2010), confirmed that an employer is estopped from raising an immunity where it has denied in the workers’ compensation case that the injury was in the course and scope of work. In Rush v. BellSouth, 2011 WL 691617 (N.D. Fla. 2011), the employee was told to unload a truck even though he did not have the proper tools. The employee had a heart attack, and the employer filed a denial raising several defenses, including that the injury was not in the course and scope of employment. The First District Court of Appeals held that the estoppel of immunity doctrine applied and was a jury question.

As the doctrine of workers’ compensation immunity evolves and is eroded, the intentional tort exception also continues to evolve. The rape and sexual harassment cases define and modify the intentional tort exception. The intentional tort exception to immunity will be more fully explored in a later article in this magazine.

Author: Anthony V. Cortese, Esquire, Anthony V. Cortese, Attorney at Law
Shumaker, Loop & Kendrick, LLP is pleased to announce that Kathleen G. Reres, an associate in the Tampa office, has been selected to serve on the STEPS Committee of Tampa Bay Beautification.

The law firm of Barr, Murman & Tonelli, P.A. is pleased to announce that Jon N. Pellett, whose practice focuses on administrative law and the defense of licensed professionals in disciplinary and staff privilege related matters, and Debra M. Metzler, with practice areas in the fields of worker’s compensation defense, insurance defense and health care law, have become partners with the firm.

Luis Viera of Ogden Sullivan & O’Connor was appointed by the Tampa City Council to the City of Tampa Civil Service Review Board.

For the third consecutive year, Carlton Fields was ranked as the number one law firm in the country for “Overall Diversity,” “Women,” and “Minorities” in a survey conducted by the career intelligence company, Vault.

Holland & Knight recently earned Gold Standard Certification from The Women in Law Empowerment Forum (WILEF) for its achievement in providing women attorneys with opportunities for financial success and positions at the highest level of firm leadership.

Debra Deardourff Faulk, a GrayRobinson attorney in the Tampa office, has become board certified by The Florida Bar in Intellectual Property.

Judge Manuel Menendez, Chief Judge of the 13th Judicial Circuit of Florida, issued a Resolution recognizing World Elder Abuse Awareness Day in the jurisdictional boundaries of his court, which covers all of Hillsborough County. The Court joined other organizations, in communities and municipalities throughout the world in acknowledging June 15, 2011 as World Elder Abuse Awareness Day and holding events designed to raise awareness of elder abuse.

Attorney Cynthia N. Sass of the Law Offices of Cynthia N. Sass, P.A., who practices exclusively in the area of Labor and Employment Law, has been elected as a Fellow into The College of Labor and Employment Lawyers.

Ford & Harrison, a national law firm specializing in labor and employment law, is pleased to announce that the firm was chosen as the 2011 recipient of Sodexo’s Frances Nam Law Department Diversity Award.

Anton Castro Law is pleased to announce the addition of Cynthia M. Winter to the firm. Ms. Winter practices in the areas of bankruptcy and marital and family law.

Sarah Lahlou-Amine of Fowler White Boggs has been appointed to a three-year term on The Florida Bar Appellate Practice Section Executive Council.

Carlton Fields is pleased to announce that Tampa Shareholder Mac McCoy was appointed to the Board of Directors of Florida Legal Services, Inc.

The law firm of Shumaker, Loop & Kendrick, LLP is pleased to announce that Liben Amedie, an associate in the Tampa office, has been appointed to the Hillsborough County Industrial Development Authority Board by the Board of County Commissioners.

Roberta Colton, Shareholder with Trenam Kemker, was elected to the Board of Regents of the American College of Bankruptcy as the 11th Circuit Regent.

Jeanne T. Tate, managing partner of Jeanne T. Tate P.A. was appointed by Governor Rick Scott to the Supreme Court Judicial Nominating Commission for a term beginning July 2, 2011 and ending July 1, 2015.

The Hon. Claudia Rickert Isom, Thirteenth Judicial Circuit judge, was awarded the Hillsborough County Bar Association’s 2011 Robert W. Patton Outstanding Jurist Award at the association’s May 18th annual Law Day Luncheon.

The Honorable Richard A. Nielsen was presented the Abraham Lincoln Award by the Tampa Bay American Inn of Court on June 14, 2011.

Hala Sandridge, managing shareholder of Fowler White Boggs, has been appointed to serve a three-year term on the board of The Florida Bar Foundation, a statewide charitable organization that works to expand access to justice on behalf of Florida’s legal profession.

Continued on page 61
Benjamin H. Hill, IV, a shareholder with Tampa law firm Hill Ward Henderson, has been appointed by Stetson College of Law to serve as an Active Member of its Board of Overseers. In addition, Mr. Hill was honored as Outstanding Alumni Representative for his dedication and service to the Stetson Lawyers Association.

Carlton Fields attorney David P. Burke has been appointed Chair of The Florida Bar’s Tax Certification Committee.

David Hendrix, a shareholder in the Tampa office of GrayRobinson, was recently elected by the National Council of the Boy Scouts of America to serve as the President of the State of Florida for the Boy Scouts.

Ford & Harrison LLP, a national labor and employment law firm, announces the addition of Ashwin R. Trehan as a senior associate in the firm’s Tampa office.


Barbara Cowherd JD ‘00 received the Stetson Lawyers Association President’s Award for service and dedication as president of the association during 2010-2011.

Edward M. Waller, Jr., a shareholder in the Tampa office of Fowler White Boggs, has been elected to the national Board of Trustees of the American Inns of Court Foundation as the 11th Circuit Trustee.

Benjamin H. Hill IV, JD ’97 of Hill Ward Henderson received the Outstanding Alumni Representative Award for dedication and service to the Stetson Lawyers Association.

Jacob’s Touch Inc., a local autism awareness and support non-profit charity, has announced the appointment of Daniel A. Alvarez Sr., Esq., Managing Member and founder of The Alvarez Law Group, PL, to serve on its Board of Directors.

As Florida Bar president-elect, Gwynne A. Young, a shareholder at Carlton Fields, will serve as a designated director on the board of The Florida Bar Foundation.

Judge Edward C. LaRose received the Stetson Lawyers Association Distinguished Service Award for significant, meritorious and continuing contributions benefiting the College of Law.
JURY TRIAL INFORMATION

For The Month of: June 2011.
Judge: Honorable Linda Babb.
Parties: Luella Wilson vs. Florida Department of Military Affairs.
Attorneys: For Plaintiff: Keith M. Carter & William B. Bowler; For Defendant: Caroline Johnson Levine & Diana Esposito.
Nature of Case: Inadequate lighting resulting in multiple surgeries to plaintiff’s Rotator Cuff.

Verdict: No negligence. $0 defense verdict.

For The Month of: July, 2011.
Judge: Honorable Lowell T. Bray, Jr.
Parties: Clara & Wayne Morey vs. Dillard’s, Inc.
Nature of Case: Premises liability —trip and fall.

Verdict: Defense verdict.

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

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

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