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SOME THINGS CHANGE, AND SOME THINGS STAY THE SAME
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LAW DAY MEMBERSHIP LUNCHEON
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about the cover

Photo by Aimee Blodgett, USF Photographer

The orchid featured on the cover, Dendrobium Kouch’s Pride, is from the University of South Florida (USF) Botanical Gardens. The Dendrobiums are one of the easiest orchids to grow and give months of color.

The USF Botanical Gardens maintain a living collection of over 3,000 taxa of plants and natural habitats that emphasize the rich botanical diversity of our area. The mission of the Gardens is to foster appreciation, understanding, and stewardship of our natural and cultural botanical heritage through living collections, education, research and sustainable practices. stroll through the Gardens’ natural areas and explore collections and displays that include: orchids, begonias, mallow, bromeliads, gingers, ferns, aroids, fruit trees, palms, cycads, carnivorous plants, butterfly garden, herb and scent gardens, and much more. Throughout the Gardens, visitors will find many animal and insect species, from gopher tortoises to butterflies to over 60 species of birds.

Additional information is available at www.cas.usf.edu/garden or by calling 813-974-2329. The Gardens are located on the USF Tampa campus at 4202 E. Fowler Avenue.
I am amazed at how quickly the time has passed. Last summer, I became the editor of the Lawyer. With red ballpoint pen in hand, I began to review articles, advertisements, and general layout for the first issue of the 2010-2011 bar year.

Numerous events occurred this year around our bar association, and we continued to try to give readers a sense of them in these pages. Articles mentioned events that promoted professionalism and excellence in the law. Articles educated our members about legal developments. Articles highlighted many good deeds and accomplishments of our members. Articles promoted pro bono and other projects that supported our local community. I hope each issue contained something educational and entertaining for you.

Online access to our magazine is a new feature. You now have the ability to view past issues by visiting the HCBA’s website at www.hillsbar.com. Once on the HCBA’s home page, look at the Quick Links section on the left column, then select “Lawyer Magazine Online.” All issues from the September/October 2010 issue and forward will be posted on the website.

More changes are coming. On June 27, 2011, the HCBA installed the new officers and board of directors. We also welcome new leaders for the various sections and committees in the HCBA.

John Kynes is the HCBA’s new executive director. We hope to tell you more about him in a magazine issue in the new bar year.

Many of us recently gave our best wishes to Connie Pruitt as she retired as HCBA Executive Director. Thanks, Connie, for the leadership, support, and energy that you gave to the HCBA! If you were unable to attend Connie’s retirement party on June 9th, we included some party pictures on pages 38 and 39. On pages 36 - 37, you will see some final thoughts that Connie shared with us as she looked back on her years with the HCBA.

I was preparing to retire, too, as your magazine editor. Incoming HCBA President Pedro Bajo, Jr. had other ideas, though. He asked me to postpone my retirement for a year, and I agreed. I will not be transitioning duties to a new editor this month after all and bidding you farewell. Instead, the publication team and I will take a brief break and then begin work on the next magazine issue. Look for your next issue to arrive in September. We welcome article submissions from HCBA members, so please contact Dawn McConnell, the HCBA’s Public Relations/Communications Coordinator, or me for publication guidelines if you want us to consider one of your articles.

I hope you all have a pleasant, productive, and hurricane-free summer. See you next year around the HCBA!
Words of Gratitude from a Soggy, Soon-to-Be Immediate Past President

In preparing to write this, my last column of the year, I began by mulling over various topics. The first that came to mind was “Reflections from the Dunk Tank.” For those of you who did not attend the Judicial Pig Roast on April 9, I sat in a Dunk Tank to raise money for Lawyers for Literacy—a “tradition” begun last year by Ken Turkel. I’m a sucker for tradition!

But Ken was right. You can learn a lot in a Dunk Tank. Here’s what I learned: (1) judges don’t bother to throw balls, they just push the button (but I’m not bitter); (2) the Bill Schifino family spends way too much time at the ballpark, if the throwing ability of those three kids is any indication—each one dunked me at least 3 times; (3) there has to be an easier way to earn $250 for a good cause like Lawyers for Literacy!

But enough about the Dunk Tank. I have something far more important and timely to do—thank those who have made this year at the HCBA one on which I will look back with a great deal of satisfaction.

First and foremost, I want to thank the HCBA staff members who worked so hard to make sure our meetings and events went off without a hitch. They went out of their way to do whatever they could to make my job easier. Thank you so much!

The members of our Board of Directors also deserve a hearty pat on the back for their hard work. Most of what we do at the board level goes unseen, but rest assured this association could

Continued on page 5
So, the only question
I have now is,
do I have to give
my tiara to Pedro?

Continued from page 4
Summer, Summer, Summertime.
Time to Sit Back and Unwind!

It has been an honor and privilege serving the Young Lawyers Division this past year. It made me a stronger person and definitely a more organized one.

What a successful year for the Young Lawyers Division! Here are some of the highlights:

- Implemented a Judicial Shadowing program at the Thirteenth Judicial Circuit and won Membership Service Project of the Year at the Florida Bar Young Lawyers Division Affiliate Outreach Conference.
- Hosted “Holidays in January” at the Florida Aquarium for more than 40 children in foster care in Hillsborough County.
- Received a $1600 grant from The Florida Bar to be used to start a new program this fall called “Graphic Novels for Grads.”
- Successfully hosted four quarterly luncheons with great speakers! A special thank you to our speakers this past year—Lt. Col. Robert C. Cottrell, Jr., Staff Judge Advocate for the 6th Air Mobility Wing, MacDill Air Force Base; William “Bill” A. Gillen, Chairman of the Tampa Downtown Partnership; Joseph A. Corsmeier, Esq.; and The Honorable Anthony Black, 2nd DCA Judge.
- Raised nearly $2,000 for Big Brothers Big Sisters of Tampa Bay at the Second Annual Cornhole for a Cause Tournament.
- Hosted a successful Golf Tournament and some very successful Happy Hours.

I would be remiss if I didn’t acknowledge the members of the YLD Board. Without their efforts, the YLD would not have accomplished nearly a

Continued on page 7
Continued from page 6

fraction of what they did this past bar year. The young lawyers on the Board not only make me proud to be a lawyer, but they have taught me what it means to be dedicated—dedicated to their profession, their friends and family, and their community. Thank you for all of your hard work! It was an honor and privilege working with you and becoming your friend.

Equally as noteworthy is the commitment of the YLD Committee Chairs and the Committee Members to the YLD programs. We have seven active committees that provide a great springboard for young lawyers to get involved in the YLD. Like the Board Members, the Committee Chairs and their Committees have truly been dedicated to the success of the YLD this year. I would encourage all young lawyers interested in getting involved to apply for a Committee Chair position this fall.

It has been an honor and privilege serving the Young Lawyers Division this past year. It made me a stronger person and definitely a more organized one! The Young Lawyers Division will be in great hands next year as I pass the torch to my friend Laura Ward. She is a remarkable person and lawyer, and I know she will accomplish greatness with the YLD this upcoming bar year!

Now, where are my flip-flops and sunscreen? I’m off to the beach! Have an enjoyable and restful summer, YLD! See you in the fall!

HCBA YLD Quarterly Luncheon

The HCBA Young Lawyers Division Judicial Appreciation Luncheon was held on May 24, 2011 at the Chester H. Ferguson Law Center. The event honored members of the judiciary and YLD award recipients. The Outstanding Young Lawyer Award was presented to Richard H. Martin by YLD President Jaime Girgenti and HCBA President-Elect Pedro F. Bajo, Jr. Kelly Zarzycyki acknowledged Crystal Russell of the Hillsborough County School Board with an award of appreciation for her contributions and service to Law Week.
Obtaining voluntary confessions and forensic samples from a criminal suspect is essential to an effective investigation. Will evidence obtained as a result of artifice by police officers be admitted? Maybe, depending on the level of deception employed. Law enforcement may use factual misstatements during the course of interviewing a suspect, as long as the level of deception does not render the confession involuntary. “It is fear of material or physical harm, or hope of material reward, which renders a confession inadmissible…. A confession voluntarily made, but procured by artifice, falsehood or deception, is admissible.” Grant v. State, 171 So. 2d 361, 363 n. 1 (Fla. 1965) (quoting Denmark, 95 Fla. at 762, 116 So. at 759), cert. denied, 384 U.S. 1014, 86 S.Ct. 1933, 16 L. Ed.2d 1035 (1966).

Federal courts also have stated that “unlike physical violence or the threat of it, which makes any resulting statement per se involuntary, the effect of psychological pressure or deception on the voluntariness of a statement depends on the particular circumstances in each case.” Martin v. Wainwright, 770 F. 2d 918, 925-26 (11th Cir. 1985), modified on other grounds, 781 F.2d 185 (11th Cir. 1986).

The courts have found that the following were appropriate: telling a suspect his co-defendant had confessed; advising a suspect he failed a polygraph; advising a suspect he had been identified as being at the scene; falsely telling a defendant that some of his DNA had been found on the body of the victim; a misrepresentation by federal agents that they wanted to see the defendant’s sawed off shotgun to try and connect it with a robbery, when their actual purpose was to establish possession of a firearm by a convicted felon.

Creative Investigative Tools

Law enforcement must employ creative tactics to obtain evidence to solve crimes.

Not all confessions obtained by misrepresentation are proper, and the court will look at the level and manner of deception employed in determining admissibility. In McCord v. State, 833 So. 2d 828 (Fla. 4th DCA 2002), the defendant was a suspect in a string of robberies. A detective wanted DNA samples to compare with the blood found at the scene. The detective falsely advised the defendant he was a suspect in a rape investigation and that providing samples could clear his name. The rape investigation was fabricated by the detective. The defendant readily provided the samples to clear his name of rape. These samples were then used against him in the robbery case. In State v. Cayward, 552 So. 2d 971 (Fla. 2d DCA 1989), detectives created a false lab report stating that the defendant’s semen had been found in the victim’s underwear. They showed this report to the defendant, and he confessed. In both of these cases, the courts found that such a high level of deception rendered the defendant’s consent involuntary, and the evidence was suppressed.

Law enforcement must employ creative tactics to obtain evidence to solve crimes. In that pursuit, law enforcement must exercise care not to improperly invade the constitutional rights of the defendant. Our office strives to work with law enforcement to balance community safety with the safeguards of the Constitution.
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**BAILIFFS:**
The People Out Front and Behind The Scenes

...without these dedicated men and women, the courthouse simply would not function.

At 3:30 A.M. on a Monday morning, bailiffs in the Thirteenth Judicial Circuit are already at work. The day begins with picking up transport sheets for the two hundred to three hundred inmates who will arrive at the Tampa courthouse that day. The bailiffs must assign the inmates to different holding areas according to various factors, including security risk. They also must determine where each inmate is to appear and at what time. Then begins the laborious task of making sure each inmate gets moved within the courthouse in a safe manner for citizens, lawyers, court personnel and the inmates themselves. Added to this security aspect of the job is the requirement that inmates be in the correct courtroom at the precise time needed. The majority of this work is carried out so effectively and efficiently that most people present at the courthouse on any given day are not aware of the complex logistics that make it happen.

Bailiffs are part of the Judicial Protection Bureau within the Court Operations Division of the Hillsborough County Sheriff’s Office. Competition for the assignment to the Bureau is stiff, allowing commanders to select the highest qualified applicants to fill positions. Bailiffs must possess superior communication and interpersonal skills, maintaining the ability to interact in a friendly manner with members of the public, while also being alert for potential dangerous situations in an environment often crowded and filled with distractions. In many courtrooms, bailiffs control the flow of litigants into and out of the courtroom and must understand and assist with the variety of paperwork prepared and distributed to each person appearing before the judge. The latter is no small feat considering that bailiffs constantly move from courtroom to courtroom. A bailiff may be assigned to domestic violence in the morning, civil in the afternoon, and dependency the following morning.

All 337 bailiffs are detention-certified sheriff’s deputies, having successfully completed 552 hours of training required by the Criminal Justice Standards and Training Commission. Additionally, each bailiff receives eight weeks of on the job training.

Continued on page 11
training by a Field Training Officer and an additional 40 hours of subject matter training each year. The bailiffs are authorized to carry firearms, chemical agents and electronic control devices, and they receive extensive training in their use.

Lest we forget the command structure, the corporals and sergeants have direct, hands on responsibility for coordinating the various components of the process so that everything goes smoothly and according to plan. Personnel must be shifted around the courthouse in response to ever changing courtroom situations, including trials which cancel, trials which were supposed to cancel but do not, high risk or high profile cases and other situations.

The space constraints of this article do not permit discussion of many additional duties required of bailiffs in our courthouses, including interaction with jurors and coordinating with the deputies and private security personnel responsible for external courthouse security. In short, without these dedicated men and women, the courthouse simply would not function.

Author: The Honorable Scott Farr, County Court Judge, Thirteenth Judicial Circuit
Large Law Firms Encourage Attorneys to “BE THE ONE”

“One Client, One Attorney, One Promise.”
The Florida Bar’s “One” campaign encourages all attorneys to get involved in pro bono service. Since its inception in 2009, the campaign has taken Hillsborough County by storm, and large law firms with offices in Tampa are taking notice.

Large firms have the unique ability to encourage and incentivize vast numbers of attorneys to perform pro bono service. They can do this through policies and programs that provide support and rewards for attorneys who are ready to “Be the One.”

As far as policies are concerned, large firms can provide malpractice coverage for their attorneys’ pro bono work (this is often available from local legal aid as well), supervision so that new attorneys or those venturing outside their practice areas can confidently take on a pro bono case, billable-hour credit for a specified number of hours of pro bono work, concrete goals for attorney participation that are incentivized through compensation and recognition, and a culture of support that makes pro bono work even more enjoyable.

In addition to these and other policies often implemented by large firms, many firms have instituted a variety of pro bono programs in which their attorneys are encouraged to participate. For example, Holland and Knight’s “One in Ten” program encouraged all attorneys firm-wide to take one pro bono case in 2010.

Carlton Fields provides ample support for its attorneys who perform pro bono service. Among its pro bono initiatives, the firm’s pro bono committee hosts a firm-wide Pro Bono Week from its Tampa office every year. The week’s events include a recognition program that presents awards to shareholders, associates, and staff who participate in the firm’s pro bono efforts. Williams Schifino’s program encourages its attorneys to maintain at least one pro bono matter at any given time as part of their ongoing caseload.

Key in most large law firms’ efforts to maintain attorneys’ involvement in pro bono service is having a pro bono coordinator or committee. Having a point of contact is important both internally and externally because attorneys

Side Bar:
The 13th Judicial Circuit Pro Bono Committee seeks pro bono attorneys and firms who would like to share their pro bono experiences in this publication. Please contact Ginger Schechter at schechvm@fljud13.org if you want to submit an article or idea for an article on pro bono services.
need a resource to help them find out about current pro bono opportunities, and legal aid organizations can locate volunteers more effectively if they are able to do so through a firm’s designated contact person.

Phelps Dunbar has assembled a group of pro bono coordinators who maintain ties in their respective communities to ensure a steady stream of pro bono work for the firm. The pro bono coordinators are able to channel various pro bono assignments to the firm’s practice groups and the attorneys best equipped to handle them.

Fowler White Boggs has a pro bono committee that arranges pro bono activities, including lunch-and-learns for attorneys interested in current pro bono opportunities and case adoption days where attorneys can review and select available pro bono cases. Case adoption days have become popular at many law firms. This year, in addition to its attorneys’ individual pro bono efforts, Hill Ward Henderson plans on starting a formal case adoption program through Bay Area Legal Services.

Attorneys at large firms are often pleasantly surprised at the wide range of pro bono opportunities available, including corporate, non-profit, and tax matters. Trenam Kemker has found great success with attorney participation by promoting handling these types of pro bono matters, which complement the firm’s practice areas. Foley & Lardner is another example of a firm that harnesses its practice groups’ expertise to help those in need. Many of its practice groups have their own pro bono projects, including the firm’s trusts and estates department’s program that provides free services to emergency first responders.

Overall, large law firms’ policies and programs make a strong statement about the importance of pro bono service and how integral it is to the legal profession. With the degree of support that exists locally from large firms, the Florida Bar’s “One” campaign is sure to continue to thrive in Hillsborough County.

Author: Sarah Lahlou-Amine, Fowler White Boggs P.A.
Florida’s new appellate mediation rules, adopted in July 2010, present several stumbling blocks for the unwary practitioner. Thus, a close reading of the rules should be undertaken before filing a motion to refer a case to mediation. Importantly, the rules differ procedurally from both the state trial court and Eleventh Circuit mediation programs.

All courts sitting in an appellate capacity may refer cases to mediation *sua sponte* or on motion “at any time.” While a motion can be made at any time, Rule 9.700(d) is notably ambiguous about the tolling effect of a motion for mediation. Ordinarily, Rule 9.300(c) provides that the service of any motion (save a few exceptions, which do not include motions for mediation) tolls all court deadlines. Rule 9.700(d), however, provides that a motion for mediation “shall toll all deadlines” until ruled upon—but only if “filed by a party within 30 days of the notice of appeal.” Given this ambiguity, a practitioner filing a motion after the 30-day period should also consider filing a motion for enlargement of time, to toll the applicable deadlines. Within ten days of referral, the parties may file a stipulation designating an agreed-upon mediator. The mediator, however, must be an appellate-certified mediator, which narrows the choices for selecting a qualified mediator. Absent a stipulation from the parties, the court will select the mediator.

The first mediation “shall be commenced within 45 days of referral”—unless the parties agree otherwise or the court modifies the time period. Once the first mediation conference has occurred, however, mediation “shall be completed within 30 days”—unless the court modifies the time period.

The “party or its representative having full authority to settle without further consultation,” the “trial or appellate counsel of the time period.”

Continued on page 15

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**ASK-A-LAWYER VOLUNTEERS**

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- Brent Rose
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If you would like to volunteer for these programs, please contact Cathy at 221-7783 or email cathy@hillsbar.com
Continued from page 14

record,” and a “representative of the insurance carrier” must be present at mediation.9 In terms of scheduling and procedure, the mediator is in control.10 Parties may also move to dispense with mediation if the referral violates Rule 9.710 by involving a matter forbidden for mediation or for other good cause, but only within ten days after discovering the facts that support the motion.11

Finally, unlike Eleventh Circuit mediation, parties need not prepare a Civil Appeal Statement,12 deadlines are automatically tolled or modified by the court rather than the mediator,13 and parties may select only an appellate-certified mediator rather than any registered mediator.14

Carefully used, these mediation rules can hopefully facilitate resolution of cases on appeal.15

2 See In re Amendments, 41 So. 3d 161, 161 (Fla. 2010).
3 Fla. R. App. P 9.700(a), (b).
4 Id. 9.730(a).
7 Id. 9.700(c).
8 Id.
9 Id. 9.720(a)(1)-(2).
10 See id. 9.720(c) (“mediator shall set the initial conference date”); id. 9.720(d) (“mediator shall at all times be in control of the procedures to be followed in the mediation”).
11 Id. 9.700(e).
12 11th Cir. R. 33-1(a).
13 Id. 33-1(e).
14 Id. 33-1(g).

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Kimberly Mello and Thomas Burns, Greenberg Traurig, PA.

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HCBA HELPS VICTIMS OF ABUSE AT THE FAMILY JUSTICE CENTER
Community Services Committee

Justice Center, thanks everyone for the generous support. Women and children often leave violent homes with nothing but the clothes they are wearing, so our efforts assisted these families with making a new, safe start in life.

The Family Justice Center is a unique non-profit organization that brings organizations together from all over the Tampa area to provide support services to victims of violence. This organization is special because it brings its resources together and offers all of its assistance out of one location, making it a “one-stop-shop.”

Ms. Daniels has shared heart-wrenching stories about the

Continued on page 17
continued from page 16

Family Justice Center teamed up with the HCBA to conduct its May children’s clothing drive to help the Family Justice Center replenish its stock of children’s clothing, diapers, and baby formula.

The Family Justice Center has great need for financial support, donations, and volunteer time. If you would like more information about how you can help out, please contact Nikki Daniels at ndaniels@fjchc.org or at (813) 935-2015. The Family Justice Center offers Lunch and Learn programs, where people can gather for lunch and learn more about the Family Justice Center, its partner agencies, and the valuable services that are helping our community combat domestic violence.

For more information about the HCBA’s Community Service Committee and its upcoming events, contact Sarah M. Hammett at shammett@saxongilmore.com. We have not yet planned all of our community services events for next year, and your time and input is always welcome.

Special thanks to everyone who assisted us with our drive benefitting the Family Justice Center and our Ladies Suit Drive benefitting Dress for Success Tampa Bay. With the help of HCBA members and staff, paralegal Jan Brown, and outgoing Community Services Committee Chair Stacy E. Yates, we filled several rooms with suits and handbags! Great job everyone!

Author: Sarah M. Hammett, Saxon, Gilmore, Carraway & Gibbons, PA.
A LITTLE CONFUSION WITH THE LITTLE MILLER ACT
Construction Law Section

As many construction attorneys know, the Little Miller Act can be a little confusing. The purpose of Section 255.05 of the Florida Statutes, also known as “Florida’s Little Miller Act,” is to protect subcontractors, material suppliers and laborers by providing them with an alternative remedy to mechanic’s liens on public projects. The Little Miller Act is vital to those downstream parties because they cannot acquire liens on public projects. Additionally, the Act protects the state from defaults by the general contractor in the payment of subcontractors and material suppliers.

However, a confusing situation can arise when a public entity removes portions of a bonded contract and deals with subcontractors directly in order to realize tax-related savings. As an example, the state hires General Contractor, Inc. (“GC”) to construct a new courthouse. As part of the contract, each courtroom bench is to be constructed out of Fabergé eggs. GC engages Subcontractor, Inc. (“Sub”) to construct and install the benches, with Supplier, Inc. (“Supplier”) supplying the eggs. As required by Section 255.05, GC furnishes a payment and performance bond that covers the general contract. Months into the project, the state realizes it could save thousands of dollars by cutting the Sub portion out of the general contract and dealing directly with Sub as the GC would no longer have to pay the sales tax for the eggs and pass that cost along to the state. The state and GC cut the Sub portion from the general contract, and the state and Sub enter into a separate contract for the benches for $250,000. The state, Sub and Supplier continue on, unaware that there is no longer any protection under Section 255.05.

If Sub does not pay Supplier, and Sub becomes insolvent, neither the state, nor Supplier is afforded the protection of the 255.05 bond. As public entities are looking for ways to save money on construction projects more now than ever, the message to state entities, contractors, and subcontractors alike is that only strict compliance with Florida’s Little Miller Act will protect them.

As public entities are looking for ways to save money on construction projects more now than ever, the message to state entities, contractors, and subcontractors alike is that only strict compliance with Florida’s Little Miller Act will protect them.

Author:
Bennett Acuff,
Hill Ward Henderson

affirmed a summary judgment in favor of a subcontractor against the county as the county failed to ensure that the contractor posted a payment and performance bond. Id. at 945. The court, citing Warren for Use & Benefit of Hughes Supply Co. v. Glens Falls Indem. Co., 66 So. 2d 54 (Fla. 1953), held that the Little Miller Act places a corresponding duty on the public agency, as well as the contractor, to see that a bond is posted for the protection of the subcontractors and suppliers before construction commences. Palm Beach, 661 So. 2d at 944.

While the Palm Beach and Warren holdings are not recent, their significance is increasingly relevant. As public entities are looking for ways to save money on construction projects more now than ever, the message to state entities, contractors, and subcontractors alike is that only strict compliance with Florida’s Little Miller Act will provide protection.

Author:
Bennett Acuff,
Hill Ward Henderson
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INVESTMENT MANAGEMENT  TRUST SERVICES  ESTATE SETTLEMENT
With spring waning, annual tax certificate auctions conducted by Florida’s counties have been or soon will be held. Given historically low market interest rates and the high incidence of taxpayer delinquencies that have been experienced in recent years, Florida tax certificates have received particularly strong attention from investors. Some promoters have even created leveraged investment funds solely intended to invest in this class of asset. Related to this, financial institutions may have been asked to provide purchase financing to investors or to the investment vehicles investing in Florida tax certificates. In other cases, financial institutions may be looking at taking security that includes, at least in part, Florida tax certificates. In either event, as explained below, caution is warranted in light of the novel status of Florida tax certificates under Florida law concerning secured transactions.

A financial institution’s agents and advisers might assume that, as is the case with many kinds of assets, a security interest in Florida tax certificates can be created under Florida’s version of the UCC. It is unclear whether Florida’s subsequent adoption of UCC Revised Article 9 following Elliott did anything to modify this legal analysis, although similar language to that relied upon by the Elliott court in rendering its decision still appears in Revised Article 9, suggesting that Elliott is still applicable.

Under the rule provided by the Elliott decision, a lender that merely enters into a security agreement and files a financing statement describing Florida tax certificates would apparently have no secured position whatsoever with respect to Florida tax certificates (although entering into a security agreement and

“a lender that merely enters into a security agreement and files a financing statement describing Florida tax certificates would apparently have no secured position whatsoever with respect to Florida tax certificates”

financing statement describing the collateral. However, this seemingly reasonable assumption is very likely wrong in this context.

According to the Supreme Court of Florida, which decided the issue of whether a UCC security interest can be created in a Florida tax certificate in S.E.C. v. Elliott, 620 So.2d 159 (Fla. 1993), such collateral constitutes an interest in real property; accordingly, the creation of liens in Florida tax certificates is not governed by Florida’s version of the UCC. It is unclear whether Florida’s subsequent adoption of UCC Revised Article 9 following Elliott did anything to modify this legal analysis, although similar language to that relied upon by the Elliott court in rendering its decision still appears in Revised Article 9, suggesting that Elliott is still applicable.

Under the rule provided by the Elliott decision, a lender that merely enters into a security agreement and files a financing statement describing Florida tax certificates would apparently have no secured position whatsoever with respect to Florida tax certificates (although entering into a security agreement and

borrower’s counsel unexpectedly discovers that it cannot issue a UCC opinion), substantial wasted effort in structuring and documenting the transaction (and delay) may result. Thus, it is important to identify this issue early in the process of negotiating any lending transaction where any of the collateral is intended to be Florida tax certificates and to implement appropriate, alternate protective measures with respect to this class of collateral.

Author:
Carl T. Berry,
Trenam Kemker
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On May 25, 2011, “John Adams Lawyer, Countryman, President: His Life and Times (A Scholarly & Theatrical Law Day Symposium)” was presented at the Chester H. Ferguson Law Center. The event was produced and directed by Robert J. Nader and written by Evan Farrior. USF History Professor John Belohlavek and Attorney Michael Foster provided an informative and amusing discussion moderated by Mr. Nader. The cast and crew members were Richard Coppinger as John Adams; J.D. Sutton as Thomas Jefferson; Amy Farrior as Abigail Adams; Evan Farrior as The Bailiff and The Revolutionary War Courier; USF Professor Emeritus David Snider as The Player on guitar; and Keith Arsenault as Technical Director.

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LEADERS:
Bill McBride

“Small town boy makes good” is an often-heard expression—and one particularly apropos for Bill McBride. Bill grew up in Leesburg, Florida, put himself through college, and volunteered for military service, rising to become a recognized leader in our legal and social communities.

Bill attended public schools, including the University of Florida, for which he was awarded a football scholarship. When a knee injury precluded him from pursuing football, he gave up the scholarship and worked his way through college. After a year of law school, he volunteered for the Marines in 1968 in order to serve in the Vietnam War. After tours that included leading infantry Marines in Vietnam, he returned to law school at UF. He graduated in 1975 with honors and was a member of the Law Review.

Continued on page 25
Bill joined Chesterfield Smith, his mentor, at the law firm of Holland & Knight in 1975. In 1992, he was elected managing partner of the firm of then over 300 lawyers. Under his leadership during the next ten years, the firm grew to the fifth largest in the country, with almost 1,400 attorneys.

Bill’s involvement in the organized bar began even before he graduated from law school. Bill took a year off to served as Chesterfield Smith’s special assistant during Mr. Smith’s term as American Bar Association President. Bill later served as president of the Hillsborough County Bar Association in 1983-84. He has been widely acclaimed for his legal accomplishments and has served in too many community leadership positions to list.

Among his longest standing community efforts is the United Way of Tampa Bay, where he has served as the campaign chair and as the chair of the Board of Directors. Diane Baker, President and CEO of United Way of Tampa Bay, observes, “Bill gives the kind of volunteer leadership that many organizations can only dream of. As a United Way donor and volunteer for
the past 30 years, Bill has provided strategic leadership to the Board and many committees, and passionate advocacy to every fund raising effort undertaken. He consistently takes on big assignments and always does exactly what he says he will do or more—for all the right reasons. United Way is very fortunate to have him on our team as we work to help kids graduate and help families find paths out of poverty.”

In 2002, Bill won the Democratic nomination for the Governor of Florida—an impressive start for someone in his first run for public office. After the campaign concluded the following year, he joined Barnett, Bolt, Kirkwood, Long & McBride, where he practices in various aspects of complex business law.

Bill is married to Alex Sink, and they have two children: Bert, who graduated with an economics major from Stanford last year, where he played football for four years on a scholarship, and Lexi, who is a pre-med senior at Wake Forest.

Bill’s hobbies include handball (he plays daily with a group that has played together in one form or another since 1964), offshore fishing, Texas Hold ‘Em poker tournaments (he recently won a “big” tournament in Biloxi), cooking, and reading science fiction and mysteries.

Judge Jim Moody describes Bill as a natural leader, with a great vision for things that can be accomplished. Bill is organized and cares more...
about others than himself. Judge Moody notes that Bill seeks people out to take leadership positions and credits Bill with suggesting to Judge Moody that he seek the HCBA president position.

While on the state bench, Judge Moody set up a citizens’ organization to try to catch potential children’s issues early. He learned Bill was working on a similar project, and together their efforts became Hillsborough Tomorrow. Judge Moody recalls that not only did Bill lead the organization, but he contributed significantly to its funding and arranged financing. As Judge Moody says, “Bill put his money where his mouth is.”

Bob Buckhorn, Tampa’s new mayor, sums it up well: “Bill McBride is a guy whose large frame hides an even bigger heart. As long as I have known him, he has always had a passion for the underserved and commitment to give a voice to the voiceless. Tampa has been well served by Bill McBride, and I am lucky to count him as a friend.”

Indeed—our legal community, and our larger community, have benefitted and continue to benefit from Bill’s leadership.

Author:
Raymond T. (Tom) Elligett, Jr.,
Buell & Elligett, PA.
Members of the HCBA celebrated Law Day and recognized many award recipients for their outstanding contributions to our community during the May Membership Luncheon held on May 18, 2011, at the Hyatt Regency Tampa. The Honorable Manual Menendez, Jr. led attorneys in attendance in the oath of admission to The Florida Bar. Program Chair Julie S. Sneed introduced Gwynne A. Young, 2011-2012 President-Elect of The Florida Bar, and Kelly Zarzycyki, Law Week Co-Chair, who each addressed the attendees. Featured speaker Ronald Kessler, a New York Times bestselling author, revealed behind the scenes information he discovered during his research on the Secret Service, the FBI, the CIA, and the war on terror.

Lincoln J. Tamayo, Academy Prep Head of School, was honored with the Liberty Bell Award for community service. The Honorable Claudia R. Isom received the Young Lawyers Division Robert Patton Outstanding Jurist Award for her judicial integrity and willingness to assist young lawyers.

Chief Judge Manuel Menendez Jr. presented Law Enforcement Officer of the Year Awards to Detective Christopher T. Rule of the Hillsborough County Sheriff’s Office and Master Police Officer Paul Smalley of the Tampa Police Department.

HCBA President Amy S. Farrior acknowledged student award winners for Peer Mediator of the Year: Ani Wells, 4th Grade, McDonald Elementary School; Elementary School Essay: Romonie Killins, 5th Grade, Ippolito Elementary School; Middle School Essay: Jordan Kelly, 8th Grade, Benito Middle School; and High School Essay: Damaris Yepes, Senior, Durant High School. Art Contest award recipients in the high school division were: First Place Kimberly LaBarbera, 12th Grade, Plant City High School; Second Place Johnathon Horne, 12th Grade, Armwood High School; and Third Place Chris Serrano, 12th Grade, Howard W. Blake High School. The middle school division award winner was Joshua Felder, 8th Grade, Coleman Middle School.

Thank you to our sponsor The Bank of Tampa and to Inkwood Books for assistance with Mr. Kessler’s book signing!
Student Award Winners

PEER MEDIATOR ESSAY AWARD WINNERS
High School Essay Winner
*Damaris Yepes, Senior, Durant High School

Middle School Essay Winner
*Jordan Kelly, 8th Grade, Benito Middle School

Elementary School Essay Winner
*Romonie Killins, 5th Grade, Ippolito Elementary School

High School Essay Winner
Damaris Yepes, Senior, Durant High School

Life is never what you expect. Moving from New Jersey to Florida during June, 2006 was one of the most immense adjustments I have made in my life. It forced me to mature quickly in order to deal with some major issues in my family. Prior to moving, my father, a Colombian immigrant had begun to establish his appliance business in New Jersey. Due to the economic downfall in the nation at the time, our family was forced to relocate to Florida. My father was forced to re-build his business from scratch. Not only was it a financially stressful time for my parents, but the pressure of rebuilding and the loss of income created strain on my parents’ marriage and relationships within the family. It caused such uproar that we felt it would damage us forever. In a matter of months we went from being a prosperous, united family, to being estranged and enraged.

At the age of fourteen, I was suddenly faced with the biggest challenge I have ever endured. I found myself trying to adjust to a new state with unique cultural differences, establish new friendships at a new school, all while feeling alone and homesick for New Jersey. To add to that challenge, I came home each day to an environment thick with tension. My parents were on the brink of separation, and my dad was desperately working to save not only what was left of his business, but also his family.

This experience has empowered me to be driven to excel in school. Our family’s struggles helped define me as a determined focused young woman driven to reach my goals. Going through such a hard time firsthand led me to become a peer mediator. I knew I was not the only teenager in the world going through difficult times, but I wanted to make sure others were aware that they had someone like my life, not as a setback or downfall, but as an empowerment to move forward and make the right decisions. Having dealt with issues in my past, counseling students my age became an innate effect for me. Having the ability to empathize other students with their troubles, not only in school but also at home has shaped me into an exceptional peer mediator. Peer mediation has not only benefitted countless students I have dealt with, but it also has allowed me to look outside my family’s struggles, grow as an individual, and have a better appreciation of life in general.

Moreover, the 2011 Law Day Theme; The Legacy of John Adams, From Boston to Guantanamo provides a perfect example of how peer mediation is needed now more than ever. Peer mediation allows for both parties to win, whereas court does not. Coming to an agreement reduces public controversy. Although an extraordinary case in American history, defeat of either party could have been avoided if peer mediation was enforced within our first leaders.

Middle School Essay Winner
Jordan Kelly, 8th Grade, Benito Middle School

John Adams from Boston to Guantanamo

Our second president and the first high profile lawyer John Adams. When the Boston Massacre (the snowball fight that went deadly) broke out he defended the British. He also participated in the propaganda for the massacre of five people. He has helped us establish our laws. He even helped draft the declaration of Independence. You may ask how he ties into mediation? If he didn’t look at the colonist perspective and the british perspective he wouldn’t have been able to solve the issue. John Adams actually took Great Britain’s side of the massacre. He believed in Justice and a fair trial. He kept the soldiers from the cruel and unusual punishment of death. Every story or conflict has two sides, such as the soldiers were bullies and the colonist threw snowballs. Although in school many students have a conflict everyday. As a mediator, you have to listen to each side and you can’t judge. It is just like a jury but with no judge. We help them solve their conflicts not by telling them what to do but by helping them come up with a solution. Sometimes the mediations go fast because the people cooperate but if they do not you need to be patient with them. Being a peer mediator is a rewarding job because when the people leave you feel happy that you helped them. Even though most of the people we mediate come in rudely and act rude towards us I love helping them, it is just so rewarding for both me and them. John Adams helped us develop this system. If he didn’t look at both sides of the Boston Massacre and see that the British were right, even though he didn’t like it he still did it. That is what he has done for our justice system.
**Peer Mediator of the Year Award Winner**

*Ani Wells, 4th Grade, McDonald Elementary School*

I would like to nominate Ani Wells for “Peer Mediator of the Year” from McDonald Elementary School in Seffner, Florida. Ani has demonstrated leadership skills beyond being a peer mediator. In addition to keeping up with her studies she is very busy helping out many of our kindergarten teachers each morning. She does a great job helping the kindergartners get unpacked, helping them get started on their morning work or just a friendly greeting. Sometimes she even helps the teacher with a special errand. On one occasion during a peer mediation practice, I noticed that one of her peer mediator colleagues was struggling with learning the peer mediator script. Ani jumped into action by helping her peer mediator friend learn her script. This positive attitude was all it took to help another student and this is often times seen around our campus. Ani is no stranger to peer mediation because she saw firsthand how her older brother participated as a peer mediator himself and how he was able to help students resolve conflict. When Ani had the opportunity to apply to be a peer mediator this year she leaped at the opportunity and never looked back.

Being a peer mediator comes naturally to Ani and she does a great job in this role.

Ani is always on time for her scheduled peer mediations, speaks very clearly during the process and conducts herself in very confident manner. This confidence has allowed Ani to participate in ten peer mediations all of which have been very successful. In addition, Ani has perfected the strategy of probing when disputants struggle with expressing their true feelings during the beginning steps of the process. As a result of the extra work Ani puts forth to be an excellent peer mediator the students leave with smiles and a sense of relief knowing that they have resolved their conflict and can now focus in on the rest of their day. In return, Ani is most proud of these moments after peer mediation because she saw firsthand how her older brother participated as a peer mediator himself and how he was able to help students resolve conflict. When Ani had the opportunity to apply to be a peer mediator this year she leaped at the opportunity and never looked back. Being a peer mediator comes naturally to Ani and she does a great job in this role.

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Being a peer mediator comes naturally to Ani and she does a great job in this role.

Sincerely,

Karen Mynes, Guidance Counselor

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**Elementary School Essay Winner**

*Romonie Killins, 5th Grade, Ippolito Elementary School*

My experience as a peer mediator have helped others solve conflicts. I’ve helped my classmates come to agreement rather than getting into altercations. I like to see smiles on kids’ faces instead of angry faces. I’ve learned it’s better not to get angry over silly things. Helping one another is better than helping yourself.

John Adams helped write the Declaration of Independence. He wanted to help people who were accused and helped defend them. He became known as our nation’s first lawyer-president. Before that he was the Vice-president. He became the second president by beating Thomas Jefferson in an election. John Adams was very independent. He even died on July 4th, Independence Day. My dream has always been to become the nation’s first female lawyer-president. I want to be just like him and fight for people’s rights. John Adams was very smart. He went to Harvard University when he was 16 years old.

I would like to go to either Harvard or Georgetown University. I feel my first step in succeeding is being a peer mediator. I used to get in trouble sometimes before I became a mediator. Now I’m student of the month.

After I did my first mediation, I felt that I should have done something else instead of doing the same thing the disputants did when I had the same kind of problem. I’ve become a better person. Now instead of arguing about things, I sit down and talk about them.

Being a peer mediator gets me to help kids solve their problems like, don’t fight because someone takes your place in line. Just ask them nicely to have your space back in line. I love to succeed as a person who helps others become a better person. My goal for next year is to be a peer mediator in middle school and achieve high standards for my own behavior.
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The HCBA YLD welcomed the new admittees of The Florida Bar who were sworn into the legal profession on April 15, 2011, at the George E. Edgecomb Courthouse. The judges of the Thirteenth Judicial Circuit officiated the ceremony with Judge Herbert J. Baumann, Jr. administering the oath. YLD President-Elect Laura Ward and HCBA President Amy Farrior addressed the new attorneys.
Save the Dates

2011-2012
HCBA Membership Events

September 13, 2011
Membership Kick Off Cookout
Chester H. Ferguson Law Center

November 17, 2011
Bench Bar Conference, Membership Luncheon and Judicial Reception
Hyatt Regency Tampa Downtown

January 11, 2012
Membership Luncheon
Hyatt Regency Tampa Downtown

February 11, 2012
Diversity Picnic
Chester H. Ferguson Law Center

May 8, 2012
Law Day Membership Luncheon
Hyatt Regency Tampa Downtown

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Final Words from Connie Pruitt

As I depart the HCBA, it is with a great sense of accomplishment and satisfaction. I am very proud of the fact that we have such a dedicated group of members who really support the HCBA, participate in so many things in the HCBA, and help to make this legal community one of the outstanding communities in which to practice law. I would like to think that I have played a part in that happening.

Making the Chester H. Ferguson Law Center, also known as the Chet, a reality is something that also gives me a lot of pride. There were so many people involved in the effort, and we ended up with a great building for the legal community. The facility also has enabled the HCBA to offer a variety of outreach programs to the whole community.

Like my favorite flower—the orchid—blooming on the cover of this magazine, my new life is beginning with new possibilities.

The community service the HCBA provides is excellent. I have really enjoyed working with all the members to assist children, seniors, the military, veterans, and the disadvantaged, to name only a few. It is great to be a part of an organization that has a high level of compassion.

Continued on page 37
I think it is wonderful that the Ask a Lawyer program has been going on for 16 years. I will miss the staff we have developed at the HCBA. They provide excellent service to the members and the public. I am very proud of each one.

Like my favorite flower—the orchid—blooming on the cover of this magazine, my new life is beginning with new possibilities. After my retirement, I will have time for creative endeavors such as quilting and pottery on the wheel. I will be able to travel to new destinations, relax in my new vacation home in Texas (I am not leaving Florida), and spend more time with my husband Arley. The thought of keeping up with my three grandchildren who have recently moved to Tampa is both exciting and exhausting.

It has been a tremendous honor being a part of the HCBA. There could not have been any other career that I could have enjoyed as much!
The HCBA Trial & Litigation Section recognized three outstanding trial lawyers on May 3, 2011 at the Chester H. Ferguson Law Center. Benjamin H. Hill, III was honored with the Herbert G. Goldberg Memorial Award for a lifetime body of work reflecting a dedication and commitment to advocacy in the court system. William A. Hahn received the Michael A. Fogarty Memorial “In the Trenches” Award for excellence and integrity in civil advocacy. John F. Lauro received the James H. Kynes “In the Trenches” Award for excellence and integrity in criminal advocacy. The Court Family Award acknowledging a deserving member of the state or federal court support staff who has demonstrated ongoing courtesy, consideration, and professionalism was presented to Marie Folsom.
Just days after the release of his latest suspense novel, *The Fifth Witness*, and with the film adaptation of *The Lincoln Lawyer* in theaters, Michael Connelly shared stories that helped him capture the practice of criminal defense for main character Mickey Haller with the Trial & Litigation Section members.
ABOTA Seminar

The Tampa Bay Chapter of the American Board of Trial Advocates and the Hillsborough County Bar Association presented a “Practicing with Ethics, Professionalism and Civility” seminar on May 11, 2011.


Thank you to Buell & Elligett, P.A. for sponsoring this event.

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The first three participants in an innovative program for defendants serving supervised release terms sat in the jury box on March 3, 2011 and talked to U.S. District Judge James D. Whittemore. Each told his life story and described short-term and long-term goals: staying drug-free, finding or keeping a job, paying bills on time, completing a General Equivalency Diploma (GED) enrolling in community college, and repairing family relationships, among other things. Designed for individuals who have completed their prison sentences and halfway house programs and who present a high risk of recidivism due to drug or alcohol abuse and other factors, the Intensive Re-Entry Program requires substantial commitment by participants and stepped-up supervision by the probation officer.¹

The U.S. Probation Office screens potential candidates. Participants who volunteer for the program

Continued on page 47
and are selected must obtain approval from the judge assigned to their case. Key components are regular court sessions and meetings with the probation officer to review progress in meeting goals, drug testing and treatment, educational tools, incentives, and sanctions. Four phases—which take about a year to complete in total—are necessary to graduate. Progression depends on a participant’s achievement. A participant who completes the Intensive Re-Entry Program earns a one-year reduction in the length of supervised release. A serious violation warranting potential revocation of release results in the participant’s removal from the program.

Publications such as *The New York Times* and *The Economist* have detailed the financial and societal benefits of re-entry and drug court programs. The Jacksonville and Orlando divisions of the Middle District initiated the first Intensive Re-Entry Programs in the district more than a year ago; Tampa is the third location to implement the Program. In addition to Judge Whittemore and the author of this article, the third judge participating is U.S. Magistrate Judge Anthony E. Porcelli. One of us presides over a weekly court session with the participants, the lead U.S. Probation Officer responsible for the program in Tampa (Chong Bahng), an Assistant U.S. Attorney (Kathy Peluso or Jennifer Peresie), and an Assistant Federal Public Defender (Adam Allen or Jenny Devine). At each court session, the participants’ progress or setbacks for the preceding week are discussed. Participants who have progressed to a subsequent phase encourage new participants to “stay focused” and “avoid negative influences.” There are penalties for missed court sessions, drug treatment programs, appointments with the probation officer, or a positive drug or alcohol screen.

All of us at the court sessions have one thing in common: we have volunteered for the Intensive Re-Entry Program. Chief U.S. Probation Officer Elaine Terenzi says of the participants, “The men and women in the program face significant challenges, especially during the first year of release. By volunteering to participate in the program, with all its rigor, they demonstrate their commitment to a better future.” So far, the results are encouraging.


Author: U.S. Magistrate Judge Elizabeth A. Jenkins, U.S. District Court, Middle District of Florida

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collaboration with the Florida Department of Children and Families Refugee Services, Catholic Charities, Lutheran Services of Florida, and Gulf Coast Jewish and Community Services. The purpose of the Refugee Spring Summit and Bike Drive was to provide educational information to the refugees regarding their legal rights, collect donations of bicycles to provide transportation for refugees to go to and from work and classes, and to enjoy an afternoon of fun.

We would like to give special recognition to Linda Breen who spearheaded this event and to Henry Gyden who obtained a grant from The Florida Bar to sponsor the CLE.

We would like to express how much we appreciated the opportunity to serve as Co-Chairs of the Diversity Committee. We have been members for several years and have seen the membership grow this past year. Thanks to everyone on the Committee for their involvement and support.

1 The Diversity Committee Mission Statement retrieved from https://www.hillsbar.com/Membership/Sections%20Committees/Diversity%20Committee.

Authors: Deborah Blews and Cynthia Oster, Hillsborough County Attorney’s Office
Diversity Committee
Refugee Spring Summit

To the right are photos from the Refugee Spring Summit and Community Law Fair on May 21, 2011, at the Chester H. Ferguson Law Center. The event, made possible by a grant from The Florida Bar, provided an informal venue where refugees obtained information regarding their legal rights in the areas of family, immigration, landlord-tenant and employment law. Tampa Fire Rescue, the Hillsborough County Sheriff’s Office and the Hillsborough County Public Defender’s Office provided public service awareness to the refugees. Over 100 refugees attended the family fun event with free food, entertainment and a bouncy house for the children. The HCBA also collected donations of new or used adult bicycles, helmets, lights and locks to be distributed to local refugees.

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As we all know, government agencies are strapped for money. Nevertheless, property and property rights still need to be acquired for the purpose of building and improving highways, roads, intersections and bridges. Can government use eminent domain to acquire more land than necessary if doing so would save money?

In 1984, the Florida Legislature enacted Florida Statute 337.27(3), which allowed the Florida Department of Transportation to acquire more property than was actually needed for a project if the acquisition cost was equal to or less than the cost of acquiring only a portion of the property. Although the constitutionality of F.S. 337.27(3) was upheld in Department of Transportation v. Fortune Federal Savings & Loan Association, 532 So.2d 1287 (Fla. 1988), the Legislature repealed then-F.S. 337.27(2) effective January 1, 2000.

However, before the Legislature repealed Florida Statute 337.27(2), in State Dept. of Transportation v. Barbara’s Creative Jewelry, Inc., 728 So.2d 240 (Fla. 4th DCA 1998), the Fourth District decided whether the Florida Department of Transportation (FDOT) could condemn a whole parcel because doing so would be cheaper than condemning only part of the parcel. Pursuant to Florida Statute 73.071(3)(b), a business owner is entitled to compensation for damage to or destruction of a business, but only if less than the entirety of the property is being taken. The trial court denied the order of taking, holding that the issue involved a matter of compensation and should be determined by a jury.

In reversing the trial court, the District Court distinguished between compensation owed for the property (“severance damages”) and compensation owed to business owners (“business damages”). The District Court stated, “[t]he trial court’s determination in this case, that the defendants presented a ‘viable position’ that acquisition costs of the entire tract would not be equal to or less than that of the costs of a partial taking, does not amount to bad faith or an abuse of discretion on DOT’s part, and the order of taking should have been confirmed.” Id. at 242.

Further, the Court said “…if the Legislature determines that such damages should not be awarded, the landowner has lost nothing to which it is constitutionally entitled.” The District Court also held that, “[i]n the context of the statute [Florida Statute 337.27(2)], it is within the legislative judgment to permit the condemning authority to make those calculations so long as no bad faith is involved.” Id. at 243.

On October 5, 2000, the Florida Supreme Court declined to hear the appeal of the Barbara’s Creative Jewelry case.

Although F.S. 337.27(2) only applied to FDOT, one could argue that despite its repeal, the principles articulated in the Barbara’s Creative Jewelry case apply to all condemning authorities whether they are FDOT, a county or a municipality as the Florida Supreme Court chose not to disturb it. Therefore, if a condemning agency chose to acquire the entire property instead of just a portion of the property to save money, such a taking may be permissible as long as no bad faith is involved.

Author: Kenneth C. Pope, Hillsborough County Attorney’s Office
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there are many confusing aspects of copyright law, but one of the most commonly misunderstood is the Work-For-Hire Doctrine. The Doctrine is found in the Copyright Act and has existed in its current form with minor amendments for decades. Despite its age, the Doctrine is frequently misapplied in determining copyright ownership.

Under the Copyright Act, a “work made for hire” is first defined as “a work prepared by an employee within the scope of his or her employment.” This is relatively straightforward; when an employee prepares a work in the scope of employment, the employer generally owns any copyrights in that work.

Copyright ownership becomes complicated in situations where one creates a work for another outside the employer/employee relationship. The Copyright Act further defines a “work made for hire” as “a work specially ordered or commissioned for use”: as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas...

Even if the work falls into one of these specific categories, it will not be considered a work made for hire unless “the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.” Therefore, outside of the employer/employee relationship, a work will not be a work made for hire unless it falls into one of the types of work mentioned above and the parties have a written agreement stating that the work will be a work made for hire.

Some common examples demonstrating misunderstandings of the Doctrine relate to clients hiring contractors for jobs such as software or website development. Clients often believe that, because they paid the contractor to develop the software or website, the client automatically owns any copyright in the software or website. As shown above, unless the software or website falls into one of the specific categories and there is a written agreement designating the software or website as a work made for hire, the contractor would own the copyright.

The best way to ensure that clients own the copyrights in works created by hired contractors is to create written agreements under which any works created are designated to be works made for hire with fall back language that, even if the works cannot be considered works made for hire under the Copyright Act, the contractor assigns any and all copyrights in the works to the client.

Copyright ownership becomes complicated in situations where one creates a work for another outside the employer/employee relationship.

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1 17 U.S.C. § 101; see also § 201(b).
2 Id. at § 101.
3 Id. The terms “collective work,” “supplementary work,” and “compilation” are specifically defined in Section 101.
4 Id.
5 Note that generally, the term of a copyright is the life of the author plus 70 years, but the term for a work made for hire is 95 years from the year of its first publication or 120 years from the year of its creation, whichever expires first. Id. at § 302.

Author:
Mindi M. Richter, Shumaker, Loop & Kendrick, LLP

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In celebration of the legacy of John Adams, this year’s Law Week theme was “The Legacy of John Adams: From Boston to Guantanamo.” This theme provided our community with the opportunity to explore the historical and contemporary roles of lawyers and to renew our understanding of and appreciation for the fundamental principle of the rule of law.

During the first week of May, Hillsborough County attorneys and judges conveyed the Law Week theme to local students through participation in three great events—Classroom Speeches, Mock Trials and Courthouse Tours. Each event was truly a success.

Twenty local attorneys visited twelve different schools and spoke to over 1,300 students about the practice of law while focusing on this year’s historical theme. The attorney volunteers led discussions with students about the development of the practice of law and the defense of civil liberties in America. Many

Law Week 2011 was extremely successful thanks to the attorneys and judges who gave their time.

Continued on page 55
of the students were also interested in the daily activities of a lawyer. Our volunteers left the students with an understanding of what we do as a profession and how we strive to honor the legacy of President Adams.

Four local judges joined 64 attorney volunteers in the presentation of mock trials at 27 county schools. Over 3,500 students attended the mock trials. The volunteers presented the case of *United States v. Bunyan*, based on the fairy tale of Paul Bunyan. Several of the kids also participated as witnesses or parties to the trial. Afterwards, the judges and attorneys answered questions about the trial and their roles in the process.

Finally, 13 schools and 646 students made the trip to the George E. Edgecomb Courthouse to take part in a courthouse tour. About 35 attorneys led the students to different courtrooms and explained how our judicial system works. The students visited both civil and criminal courtrooms and witnessed hearings, arraignments, and several other proceedings. Three judges spoke to students at length regarding the administration of justice. In between tours, Teen Court presented mock trials.

Law Week 2011 was extremely successful thanks to the attorneys and judges who gave their time. The events successfully incorporated the Law Week theme, and about 5,500 local students undoubtedly learned about the legacy of John Adams.

*Author: Brad F. Barrios, Bajo Cuva Cohen & Turkel, PA.*
Ms. Smith walks into your office with a Petition to Modify Permanent Alimony that alleges a reduction in her living expenses entitles her former husband to a reduction in his permanent alimony obligation. Ms. Smith is livid. Since the divorce, she has made prudent financial decisions that have reduced her monthly living expenses by $2,000 and allowed her to save for her retirement. Is Dr. Smith entitled to a reduction in his permanent alimony obligation? It appears that the answer is “Yes”!

In Wolfe v. Wolfe, 953 So.2d 632 (Fla. 4th DCA 2007), the parties agreed that the wife would stay in the marital home and assume all the home’s expenses until the home sold. Ms. Wolfe was awarded $13,000 a month in permanent alimony. Three years later, the former husband sought a reduction in his permanent alimony obligation based on the reduction of the former wife’s expenses since the sale of the marital home. The trial court refused to consider the sale of the marital home because it was contemplated at the time of the final judgment. The appellate court reversed, holding that the court should consider the reduction in the former wife’s expenses due to the sale of the marital home. The court also stated that the former wife’s financial maneuvering of buying a less expensive home, but securing a 15 year mortgage with the same monthly payment as the marital home, resulted in a prohibitive savings component in her permanent alimony as she would be increasing her assets by using the former husband’s alimony to pay for her new residence within a shorter period of time. Id. at 635; citing to Mallard v. Mallard, 771 So. 2d 1138 (Fla. 2000). The court also held that the modification court could not consider new expenses, such as long-term care insurance, listed on the former wife’s updated financial affidavit as these expenses were not considered at the time of the alimony award.

In Suit v. Suit, 2010 WL 4861715 (Fla. 2d DCA 2010), the Second District reversed a permanent alimony award and discussed the difference between allowing for mortgage payments to be part of a permanent alimony award and “requiring one spouse to pay off a sizable future mortgage,” which results in an impermissible savings component, making it comparable to “requiring the spouse to fund a savings account.” Thus, Ms. Smith’s $2,000 a month reduction in her living expenses should be considered by the modification court when determining her ongoing need for permanent alimony. It can also be argued that any type of savings by a permanent alimony recipient is grounds for modification as “[c]urrent necessary support rather than the accumulation of capital is the purpose of permanent periodic alimony.” Mallard, 771 So.2d at 1140.

Family law practitioners need to advise their clients who receive permanent alimony that future reductions in their living expenses and savings, while prudent, can lead to a reduction in their alimony award.

Author: Allison M. Perry, Law Office of Allison M. Perry, P.A.
Did you know that pre-mediation communications are privileged and confidential? Have you ever considered conducting mediation prior to litigation, without a court order, and perhaps even without a mediator? Did you know that all of the protections of the Florida Mediation Confidentiality and Privilege Act can attach to such alternative dispute resolution efforts? This article makes the case for pre-suit mediation, with or without a mediator.

The Florida Mediation Confidentiality and Privilege Act, Section 44.401 et seq., Florida Statutes, provides that “all mediation communications shall be confidential.” Mediation participants are prohibited from disclosing mediation communications outside the mediation. Mediation communications include “oral or written statement[s], or nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation.” Section 44.403, Fla. Stat. Parties also are permitted to form their own mediation agreement and invoke all of the protections of the Act. The scope of the Act reaches mediations “conducted under [the Act] by express agreement of the mediation parties.” Section 44.402, Fla. Stat.

Taken together, protection for pre-mediation communications and protection for mediation by the express agreement of the parties permits parties to gain the protections of the Act, even before litigation and without a mediator. The following terms would form the basis for such an agreement:

1. Preambles explaining the dispute and the intent to litigate and the desire to mediate.
2. An express agreement to meet to discuss and negotiate a possible resolution of potential claims and lawsuits and to continue such discussions and negotiations so long as they are productive.

3. An express agreement that the pre-suit meeting and all further discussions and negotiations, including a formal mediation if necessary, shall all be treated as being within the scope of a formal mediation conference and that the provisions of the Mediation Confidentiality and Privilege Act (Section 44.401 et seq., Fla. Stat.) shall apply.

Try it—pre-suit mediation with or without a mediator. Your clients will appreciate the cost savings!

Author:
Carter Andersen,
Bush Ross, PA.
In general, Section 733.805, Florida Statutes provides that the assets of a decedent’s estate will first be used to pay the debts and administration expenses of the estate (even if that means paying such debts and expenses with assets that are specifically devised in the decedent’s will); then, if and to the extent any assets remain in the estate, those remaining assets will pass to the beneficiaries of the estate. This concept is known as abatement. The question arises, however, if the only asset of a decedent’s estate is a promissory note and the remaining balance of the note is forgiven in the decedent’s will. Is the note automatically cancelled and the debt discharged at the moment of the decedent’s death regardless of whether it may be needed to pay administration expenses and claims against the estate? This was the issue presented in *Lauritsen v. Wallace*, — So. 3d —, 36 Fla. L. Weekly D699a, 2011 WL 1195873 (Fla. 5th DCA April 1, 2011).

In *Lauritsen*, the only non-exempt asset of the decedent’s estate was a one-half interest in a promissory note that was secured by a mortgage on real property. In his will, the decedent forgave the balance of the debt due on the promissory note. The attorneys’ fees, personal representatives’ fees, and administration expenses of the decedent’s estate were substantial as a result of a will contest and wrongful death and other claims filed in the estate. Thus, the

*Continued on page 59*
The question became, could the decedent, in his will, forgive the debt owed to him if his estate is insolvent?

The Court in Lauritsen stated that the only way to enforce the forgiveness of the debt was to probate the decedent’s will. Thus, the Court concluded, the debt forgiveness was unquestionably a testamentary devise, subject to the provisions of Florida’s Probate Code.

Florida’s Probate Code provides in Section 731.201(10), Florida Statutes that a devise is subject to charges for debts and expenses and, in Section 733.805, that devises are subject to abatement if needed to pay debts and administration expenses. Therefore, the Court held that a decedent, in his will, can forgive a debt owed to him only to the extent the estate is solvent to pay debts and administration expenses.

Would the result have been the same if the terms of the promissory note itself provided that the remaining balance of the note is cancelled and the debt forgiven upon the decedent’s death? No. According to Lauritsen, if the cancellation provision were contained in the note itself, it would have represented the agreement between the parties at the time the note was executed, and the act of forgiving the note would not have been dependent upon the admission of the decedent’s will to probate. Thus, the forgiveness of the debt would not have been a testamentary devise subject to Florida’s Probate Code and would have occurred at the moment of the decedent’s death. See In re Estate of Whitley, 508 So. 2d 455 (Fla. 4th DCA 1987) (debt cancelled upon the decedent’s death where terms of note contained the cancellation provision).

1 At the time this article was written, this opinion was not yet final and was not yet published in the Southern Reporter, 3d series.

Author:
Brenda Edgerton Byrne,
Trenam, Kemker, Scharf,
Barkin, Frye, O’Neill
& Mullis, PA.
When the new standard jury instructions went into effect in March of 2010, a concerned colleague’s first comment was “they better not have taken away my common sense instruction.” Fortunately for experienced trial lawyers in Florida, who have undoubtedly reminded jurors countless times that the law requires juries to use common sense, this jury instruction is still alive and well.

In fact, as trial lawyers come to familiarize themselves with these new instructions, many will be pleased to find that the substance of the instructions remains basically unaltered. Many of the changes in these instructions are in the organization of the instruction book. This reorganization certainly makes preparing instructions easier for attorneys, but it will have little effect on trial once the instructions are prepared.

However, there is at least one change that trial lawyers will need to adapt to moving forward: the time at which a jury is instructed. The Supreme Court Committee on Standard Jury Instructions now strongly recommends that the jury be given substantive instructions before opening statements. While both the committee and the Supreme Court have reiterated that the trial judge retains discretion on when to instruct the jury, the vast majority of trial judges have been inclined to follow this new recommendation.

What does this mean for practicing trial lawyers? Lawyers on both sides need to focus more on the jury instructions before the trial begins. Many of us have grown accustomed to charge conferences occurring towards the end of trial. However, if a jury is to be instructed before opening statements, trial lawyers need to take a new approach in order to be an effective advocate for our clients. If the parties anticipate anything other than the most standard of instructions, arguments on these jury instructions need to be addressed before the jury is first instructed. Otherwise, the parties will be faced with a frustrated jury who has been forced to delay service, or worse, a confused jury who has heard law that may not ultimately apply to the case.

This issue arose during one of our recent trials. As recommended by the committee, the Court instructed the jury based on instructions that both parties had agreed should be read. The jury then heard five full days of the testimony, presumably listening to and analyzing that testimony based on the jury instructions that had been read to them before opening statements. Then, at the end of the trial, after hearing further argument from both parties, the Court determined that the instructions needed fairly significant alterations. The instructions that the jury were originally told would apply, they were now asked to forget.

The new standard instructions contain specific language explaining that the last instructions given are controlling. However, this cannot change the fact that the jury has now listened to testimony after having been instructed on the “wrong” law. Going forward under these new recommendations, lawyers need to recognize this concern pre-trial and address substantive jury instruction issues before the trial begins.

Author: Brandon R. Scheele, Banker Lopez Gassler, P.A.
CONGRATULATIONS
Connie Pruitt
ON YOUR RETIREMENT

Postcard from the Past

Hillsborough County Courthouse
Vintage Postcard provided by Raymond T. (Tom) Elligett, Jr.
AROUND THE ASSOCIATION

The law firm of Shumaker, Loop & Kendrick, LLP is pleased to announce that Meredith D. De Nome, associate in the Tampa office, has graduated from Tampa Connection.

Bricklemyer Smolker & Bolves, P.A., recently announced that shareholder Jeffrey L. Hinds, a trial attorney in the firm’s Tampa office, has been appointed to the Florida Bar’s Eminent Domain Committee by incoming Florida Bar President Scott G. Hawkins.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (Ogletree Deakins), a labor and employment law firm, is pleased to welcome William (Bill) Grob as a shareholder to the firm’s Tampa office.

Bricklemyer Smolker & Bolves, P.A. recently announced that Michael R. Rocha has been appointed to the Florida Bar’s Eminent Domain Committee by incoming Florida Bar President Scott G. Hawkins.

Kunkel, Miller, & Hament is pleased to announce that Jennifer Fowler-Hermes has become a shareholder in the firm.

Tampa attorney O. Kim Byrd, of the Givens Law Group, has been recognized as a 2011 Outstanding Pro Bono Attorney by Bay Area Legal Services.

Michael S. Hooker, a shareholder in the Commercial Litigation practice group of Glenn Rasmussen Fogarty & Hooker, P.A., has been elected President of the Board of Trustees for the Henry B. Plant Museum.

Tampa adoption attorney Jeanne Trudeau Tate has been appointed by the President of the Florida Bar to chair the Adoption Law Certification Committee.

Carlton Fields’ Tampa Shareholder Kenneth A. Tinkler was named Chair of The Florida Bar’s City, County, and Local Government Law Section.

Attorney Lara Roeske Fernandez, a Shareholder with Trenam Kemker, was elected President of the Tampa Bay Bankruptcy Bar Association.

Carlton Fields is pleased to announce that the firm is the 2011 recipient of Lawyers for Children America, Inc. (LFCA) “John Edward Smith Outstanding Law Firm” annual award.

The Florida Bar has recognized Danelle Dykes Barksdale and Jeanne Trudeau Tate of Jeanne T. Tate, P.A. as Board Certified Adoption Attorneys.

The law firm of Luks, Santaniello, Petrillo & Jones is proud to announce that the managing partner of the Tampa office, Anthony J. Petrillo, recently passed the Civil Trial Board Exam and is now a Board Certified Civil Trial Lawyer.

Shumaker, Loop & Kendrick, LLP is pleased to announce that Michele Leo Hintson, a partner in the Tampa office, has been appointed as the Assistant Chair of the Grants Committee for the Junior League of Tampa for 2011-2012.

Thompson, Sizemore, Gonzalez & Hearing, P.A. is proud to announce that shareholder Kevin D. Johnson has been appointed by Florida Bar President-Elect Scott Hawkins to serve as Chair of the Florida Bar’s Civil Procedure Rules Committee for the 2011-2012 term.

Nina Lacevic has joined the Tampa office of GrayRobinson, P.A. as an associate in the business and finance practice group.
For The Month of: March 2011.
Judge: Honorable Robert A. Foster, Jr.
Nature of Case: Seeking Homeowners Coverage for damages caused by Chinese Drywall.
Verdict: Coverage granted in favor of the Plaintiffs for the Residence and Personal Property.

For The Month of: April 2011.
Judge: Honorable Bernard Silver.
Parties: Kristen Depew vs. Casualty Insurance Co.
Attorneys: For Plaintiff: Wesley Straw & Matt Emerson; For Defendant: Brandon Scheele & Michael Bird.
Nature of Case: Plaintiff struck by car while crossing the street outside the crosswalk. Plaintiff suffered a broken back, injured neck and left knee.
Verdict: $27,900 for Plaintiff after 90% comparative negligence applied.

LAW OFFICE FURNITURE
FOR SALE: Desks in great condition with wrap around returns, leather office chairs, client chairs, conference table with chairs, file cabinets, bookcases, end tables, leather couch, leather wingback chairs, Minolta copy machine. Contact (813) 966-5291.

LAW OFFICE SHARING - Small and medium sized offices available in Tampa within a 2,100 sq. ft. office located in the Bank of Tampa building on Bayshore Blvd., utilities included. Potential for overflow work and use of legal assistant. If interested, please contact Rory Weiner at rweiner@roryweiner.com or 813-681-3300.

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C. Old tires with good treads
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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.”

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