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Continuing our tribute to our national parks this Bar year, this issue’s cover features a photo of The Narrows in Zion National Park, Utah. This gorge has walls a thousand feet high and is one of the favorite hikes in the park. Hikers are urged to check before their trip for appropriate gear to take or plan to rent in the nearby town of Springdale – especially water-tolerant, rocky riverbed-comfortable shoes. Then, when at the park and before hiking The Narrows, hikers should check with a park ranger to make sure the river’s depth is predicted to be safe during their hike – flash flood risk is monitored and regularly reported by the National Park Service. This photo was taken by Bar member Brian Sparks during his family’s “Great Western Vacation” in July 2011.
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THE HILLSBOROUGH COUNTY BAR ASSOCIATION

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As you know, Twitter can be a terrible place to waste your time. If you’re looking for intelligent, reasoned discussion of important issues, Twitter probably shouldn’t be your first choice. Of course, I’m usually on Twitter procrastinating from doing the things I should be doing. So it works out fine for me. Occasionally, though, I stumble across something thought provoking.

The other day, I saw a tweet by a black female lawyer. The lawyer told how she got on an elevator with two men and two young black girls. One of the men asked her what she did for a living. The woman responded she was a lawyer, and one of the girls exclaimed, with a huge smile on her face, “She’s a lawyer!” The woman said she was never more proud to be a lawyer.

Surely I’m not alone when I say I dread when people ask me what I do for a living. I’ll confess that my first thought is to lie, because one of two things invariably happens when I tell people I’m a lawyer.

One, I’m forced to pretend to be amused as the person runs through his routine for “Last Comic Standing: Lawyer Joke Edition.” “Oh, I say,” feigning amusement, “I hadn’t heard that before, but it’s really clever.” Two, I get quizzed about some arcane legal issue — always in a practice area I know nothing about — based on a fact pattern that would be too implausible for a law school exam.

Sometimes, there’s a third option: The person just complains to me about lawyers. I can’t think of a time I walked away thinking, “I’m proud I’m a lawyer.”

Why is that? Oh, sure, our profession has its share of bad apples. So does every other profession. Yet, lawyers often find themselves at the bottom of public opinion polls. The typical reaction isn’t, “He’s a lawyer!” I suppose that has a lot to do with the fact that most people don’t know all that lawyers do.

That’s one reason I’m thankful for the Lawyer magazine. This year, HCBA President Gordon Hill has made a point of highlighting lawyers who have “paid their rent to society.” In this issue, he highlights three HCBA members and one of our voluntary bar associations: Stephen Todd, Jo Ann Palchak, Scott McLaren, and the George Edgecomb Bar Association.

You should really read Gordon’s article to see how much Stephen, Jo Ann, Scott, and GEBBA are doing for our community. Between the two of them, Stephen and Jo Ann have done more than 7,500 hours of pro bono work! And GEBBA members have done another 2,000! But it’s not just Gordon’s article.

Laura Tanner wrote an article for the YLD highlighting how this past fall, HCBA lawyers volunteered nearly 150 hours reading to more than 120 kids, and donated more than 850 books. And the Military & Veterans Affairs Committee has an article about how Bay Area Legal Services has partnered with the Bay Pines VA hospital to address the unmet legal needs of our veterans.

Reading about all the good work my fellow HCBA members are doing makes me proud to be a member of the HCBA. From now on, when people ask me what I do, I think I’ll proudly say, “I’m an HCBA lawyer!”
Hillsborough County Attorneys Honored for their Pro Bono Service

Thank you for showing what lawyers who are committed to pro bono service can accomplish.

On January 25th, the Florida Bar held its annual pro bono awards ceremony at the Supreme Court in Tallahassee. I am pleased to report that Hillsborough County lawyers took home two of the highest awards and were recognized for their superior service.

First, Stephen Todd won the 2018 Tobias Simon Pro Bono Service Award, the highest statewide pro bono award. Steve’s service is nothing short of heroic — contributing well over 2,000 pro bono hours to people in need. Steve has donated his time and efforts through Crossroads for Florida Kids, as a Guardian Ad Litem (GAL), through the HCBA’s mentoring program, and the Hillsborough County Attorney’s office. With Crossroads for Florida Kids, Steve has represented several children in complex “crossover” cases featuring foster care children charged with delinquencies and has been a desperately needed steady influence in their lives even through some of their most difficult times. As a GAL, Steve has served approximately 20 to 30 children over the last ten years and has been recognized as a “Master GAL” where he mentors and guides new guardians in the GAL program. Steve was also instrumental in organizing the Hillsborough County Attorney’s Office to staff an annual intake night at Bay Area Legal Services. In nominating Steve, Rosemary Armstrong (2012 Tobias Simon Award Winner) noted that,

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“[n]ot only is Steve an excellent lawyer who is an effective advocate for his young clients, he is also a kind, compassionate human being who becomes a stalwart supporter for these children in and outside the courtroom.”

Steve says he serves because, “I firmly believe it is the obligation of every attorney to serve those who cannot through their own means hire an attorney … [but] as I have continued to work for children as a GAL and a Crossroads attorney … I have come to realize that it is the children and their families who bless me and help me to grow both as an attorney and as a person.” In presenting the award, Chief Justice Jorge Labarga summarized it well saying “This man is a MASTER pro bono lawyer.”

Second, the George Edgecomb Bar Association won the statewide Voluntary Bar Association Pro Bono Award, primarily for its work in establishing and maintaining its Legal Redress Workshop. Since 2004, GEBA has conducted free workshops in predominately minority neighborhoods and at Hillsborough Community College to provide much needed legal education and pro bono services for a wide variety of citizens in need. At each workshop, volunteer lawyers teach citizens areas of law that disproportionately impact our minority and low-income populations, such as immigration, criminal law, employment and housing discrimination, tenant rights, bankruptcy, foreclosure, and family law. At each session, GEBA’s volunteers devote significant time to answering questions and connecting attendees with existing pro bono resources to provide continuing assistance. In 2017, GEBA offered 15 minute one-on-one counseling sessions on a range of legal topics. Since 2004, GEBA estimates that it has conducted 16 workshops, and its lawyers have contributed approximately 2,000 pro bono hours. As attorney Charles Holloman noted in support of GEBA’s nomination, “I have witnessed many cases where the attendees start the day with tough questions, misdirection and, sometimes, a little anxiety about a stressful legal problem; but, then end the day fulfilled and empowered to address their legal issues with confidence … The GEBA volunteer attorneys have a proven track record of experience, integrity, and devotion to ‘the cause of the defenseless or oppressed.’”

And last but certainly not least, Jo Ann Palchak won the Florida Bar President’s Award for the Thirteenth Judicial Circuit. Jo Ann’s passion for pro bono service began as a law student at Stetson University when she worked with the immigration office of Gulf Coast Legal Services and published in the area of gender crime and donated her research materials to the International Criminal Tribunals of Rwanda and Yugoslavia. Since then, Jo Ann has donated approximately 5,500 hours of pro bono service in her almost 12 years of practice. Among other things, Jo Ann has handled a case from the Innocence Project for over eight years, has assisted in pursuing a federal lawsuit to ensure the rights of migrant workers, and has represented a federal inmate who was denied needed AIDS medication. As an Attorney Ad Litem to countless children, Jo Ann represents them in their legal cases, but also provides much needed mentoring and, as she is all too often the steadiest adult influence in their lives, even attends their graduations. In nominating Jo Ann, Katherine Yanes (president of the Federal Bar Association, Tampa Bay Chapter) recognized that she “does not take ‘no’ for an answer when it comes to helping her clients, nor does she say ‘no’ when asked to help anyone in need, particularly those who have been marginalized or disenfranchised.”

Thank you Steve, GEBA, and Jo Ann for your leadership in showing what lawyers who are committed to pro bono service can accomplish. We are so proud to have such great lawyers committed to pro bono service here in Hillsborough County. I encourage everyone to follow their lead and volunteer to one of the many great causes they have championed.

**LAWYERS DOING GOOD IN THE COMMUNITY**

This year, I am closing each article by telling the story of attorneys who have gone above and beyond in their civic involvement. This month’s recognition goes to Scott McLaren who recently won the Federal Bar Association Tampa Bay Chapter pro bono service award, primarily for his leadership in helping organize a help clinic for federal pro se litigants. The Legal Information Program is a weekly clinic at the Sam Gibbons Federal Courthouse at which pro se litigants meet with attorneys who answer questions and provide general information on federal procedural matters. The clinics are held each Tuesday from 11 a.m. to 1 p.m. Since its start in 2017, the clinic has provided 100 litigants with information on procedural rules, court orders, preparing pleadings, and other procedural and logistical topics. More information is available at www.flmd.uscourts.gov/pro_se/docs/pro-seLegal_Assist.htm. Please consider volunteering with this worthy program.
The old joke goes:

Question: “What do you call 1,000 lawyers at the bottom of the ocean?”
Answer: “A good start.”

Too often, the legal profession gets a bad rap with outsiders who either have little knowledge or misinformation about what lawyers actually do and the standards to which lawyers are held. As a young lawyer putting in long hours trying to please partners and clients, it quickly became difficult to manage this perception of the profession. Ironically, the reality is that lawyers are out in the world doing a tremendous amount of good — and not always buried by those long hours in the courtroom or in the office writing contracts. Lawyers are making our communities better.

For instance, at The Florida Bar Young Lawyers Division’s annual Affiliate Outreach Conference held January 12-13 this year, there were 29 different affiliate Bar groups vying for grant money to support projects that would help other young lawyers and the communities at large served by these Bar groups. These projects range from supporting legal aid clinics for the less fortunate to benefitting youth in mock trials. This is just a tiny snapshot of the good lawyers are doing all around the State of Florida. Representatives from the HCBA YLD attended the Conference and presented a project benefiting children in the Hillsborough County community that has become very important to the HCBA: The John Germany Young Reading Initiative’s Read to Dream mentoring program. In response to the HCBA YLD’s request for a grant, The Florida Bar YLD awarded a grant of $1,660 for books and school supply donations for our program.

The Read to Dream program is volunteer-staffed and addresses the lowest reading levels in Hillsborough County public schools by providing engaging reading activities and books for children in at-risk or underserved communities. The focus of the program is to share and promote the excitement and enjoyment of reading through small group reading sessions with children, help children improve their reading ability, expose them to a wide variety of books, and provide them with their very own books to encourage them to take ownership of their reading.

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Immediate HCBA Past President Kevin McLaughlin made the project a priority during his tenure as president in the 2016-2017 year. Under his leadership, the HCBA, other Bar affiliates, and a number of law firms staffed reading sessions with volunteer lawyers at Booker T. Washington Elementary, Just Elementary, West Tampa Elementary, Broward Elementary, Graham Elementary and Edison Elementary — schools with many families living below the poverty level. In the 2016-2017 year, lawyers volunteered 208 hours reading to 167 children at these six elementary schools, and 557 books were donated to the children.

In the 2017-2018 year, the Read to Dream program continues to grow. For the Fall 2017 session, the program had 12 teams of volunteer readers that each sent one to two volunteer readers per week. In the fall session alone, lawyers volunteered 144 hours reading to 122 children at these six elementary schools, and 854 books were already donated to the children. In addition to the volunteer readers, the program also has a school coordinator that serves as the point of contact each week at the school assisting with keeping everything running smoothly — their combined donated time for the Fall 2017 session is over 50 hours. We also have had local attorneys assist in gathering in-kind book donations for the program, including member Melanie Griffin shown in the photo on the previous page. This allows children to take home books each week geared towards different reading levels.

With the support of the lawyers in the surrounding community and The Florida Bar YLD, we hope to surpass last year’s numbers of volunteer hours, books donated, and, most importantly, children reached in our community. If you are interested in volunteering with the Read to Dream program, please reach out to the HCBA for more information.

With John Germany’s guidance and a bit of luck, maybe lawyers won’t always have such a bad rap.

Author: Laura Tanner – Burr & Forman LLP

Coffee at the Courthouse and Judicial Shadowing Event

The members of the Young Lawyers Division had a great morning meeting and shadowing judges from the Thirteenth Judicial Circuit and Second DCA at their annual Coffee at the Courthouse event on January 23.

Thank you to the judges for taking the time to participate in this event and to Bush Ross P.A. for sponsoring this event.
Holocaust Survivor Shares Childhood Memories Living in Nazi Germany at Diversity Membership Luncheon

At Luncheon, Lanse Scriven Named 2017 Outstanding Lawyer; YLD Awards Presented

“The opposite of love is not hate, it’s indifference.”
— Holocaust survivor Elie Wiesel

Otto Weitzenkorn, born in 1928 to Jewish parents in Mayen, Germany, lived a rather idyllic childhood.

His father proudly served in the German army in World War I, and he later operated a successful retail business. The family was well respected in the small German town in which they lived, and they often went on ski vacations.

But, in the 1930s — as Germany’s economy faltered, as anti-Semitism escalated, and as Adolph Hitler and the Nazi Party came into power — life forever changed for Weitzenkorn and his family, and ultimately the world.

Weitzenkorn, father of Tampa attorney Joan Wadler, shared some vivid memories of his childhood in Nazi Germany with HCBA members at the Diversity Membership Luncheon on Jan. 10.

This year, the luncheon speakers focused on the issue of hate crimes, both yesterday and today.

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In a taped video interview conducted by the Florida Holocaust Museum, Weitzenkorn, now 89, recalled how, early one morning, his father was forcibly taken from their home by German soldiers, loaded onto a railroad cattle car, and then sent to the concentration camp located in Dachau.

Ultimately, Weitzenkorn’s father was able to escape from the camp and flee Germany with his immediate family to the United States.

But Weitzenkorn, who attended the luncheon with his family, spoke with emotion in the video about losing 34 aunts, uncles and cousins during Hitler’s reign of terror.

Later in the luncheon, FBI special agent Susana Mapu, who works in the FBI’s Tampa field office, talked about how the agency handles civil rights and hate crime investigations.

FBI agent Mapu also discussed two recent cases dealing with hate crimes in the Tampa Bay area.

One incident involved anti-Semitic activities at a Tampa synagogue, and another involved an interracial couple in New Port Richey being threatened and terrorized by white supremacists.

Also at the membership luncheon, Bill Schifino, Jr. announced Lanse Sciven as the winner of the HCBA’s 2017 Outstanding Lawyer Award.

The award recognizes someone who has made a significant difference in the practice of law and the community due to the individual’s personal and professional ethics and conduct.

In his introduction, Schifino cited Sciven’s many accomplishments during his career. Sciven, a shareholder with Trenam Law and member of its Commercial Litigation Group, was the first African-American president of the HCBA (2005) and was president of the George Edgecomb Bar Association. He also served on The Florida Bar Board of Governors from 2009-17.

Schifino noted that Sciven has mentored many young lawyers over the years, and that he has long history of service in the community, including serving on the boards of Tampa General Hospital, Moffitt Cancer Center Foundation, and the Innocence Project of Florida.

Schifino said what ultimately defines Sciven was not just his legal ability, but his outstanding character.

“The world needs more Lanses,” Schifino said.

In accepting the award, a surprised Sciven said he was “deeply moved” by receiving the honor and was grateful for the support of his family, friends, and colleagues.

Meanwhile, Melissa Mora, president of the Young Lawyers Division, announced two YLD annual awards.

The 2017 Robert W. Patton Outstanding Jurist Award went to Thirteenth Judicial Circuit Chief Judge Ronald Ficarrotta.

And the 2017 YLD Outstanding Young Lawyer Award went to Linda Anderson from Bay Area Legal Services.

Congratulations to all these outstanding award winners.

See you around the Chet.
One of our goals at the State Attorney’s Office is to develop a significant presence in the dynamic and multifaceted community that we serve. Doing so means interacting with residents so that they have a better understanding of who we are and what we do; partnering with attorneys, stakeholders, and organizations involved in the criminal justice system; and educating neighborhood associations about new programs.

Robust community engagement builds trust and promotes transparency and accountability, which leads to more amicable interactions and cooperation. It gives the community a voice about our criminal justice system, which in turn provides us with invaluable insight into how our prosecutorial decisions and policies impact community health, safety, and crime at a grassroots level. And it gives us a way to increase public knowledge about

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the extraordinary work that our prosecutors do every day. Here are a few of the steps that we are taking to increase our engagement with the community:

• **Quarterly Community Workshops.** We have established quarterly workshops, open to the public, at which my prosecutors and I talk about important issues facing our criminal justice system. The workshops rotate throughout the county, and the topics addressed change based on current news and events. Every Community Workshop begins with an introduction to the office and an update on new policies or initiatives, and it ends with a question-and-answer session where community members have the opportunity to directly ask me questions that are important to them. We also live-stream the workshops on our Facebook page. Between live attendance and streaming, we reached more than 2,000 Hillsborough County residents with our Community Workshops in 2017.

• **Internal Community Engagement Task Force.** We have established an internal State Attorney’s Office Community Engagement Task Force (CETF) that consists of service-minded prosecutors and staff members. The purpose of the CETF is to increase our office’s community service and outreach, and discover and organize ways in which we can better serve the public and our partners. Look for increased outreach to schools and kids through mock trial programs, criminal justice education awareness initiatives, and partnerships with organizations that share our mission of a safer, stronger Hillsborough.

• **Increased Communications Tools.** Those that follow our office on Facebook, Twitter, or YouTube know that we have increased our social media presence and interaction to expand our office’s reach. (Follow us at @sao13th!) We are also establishing a periodic newsletter to share information and news about the office, new initiatives, and selected matters of importance within our local, statewide, and national criminal justice system. Also, 2018 will see a new, user-friendly website to increase our information-sharing capabilities.

• **Policy Initiative Awareness Campaigns and Listening Tours.** In addition to our Community Workshops, we have increased regular meetings with community leaders, organizations, and residents to spread the word about new policy initiatives and programs at the State Attorney’s Office; to better involve the community in policy development; and to expand our opportunities to receive feedback. In 2017, we embarked upon a Listening Tour with Hillsborough County criminal defense attorneys, community leaders, partner organizations like the Crisis Center, and law enforcement. We also engaged in awareness campaigns for the newly expanded juvenile civil citation program, as well as the new initiative to disarm domestic abusers.

We are committed to increased community engagement, and we value all the benefits it brings to Hillsborough County.
Domestic violence is a subject that cannot be ignored. Domestic violence can happen to anyone of any race, age, sexual orientation, economic status, religion, or gender. Such abuse can be physical, sexual, emotional, economic, or psychological. You have likely heard these things already. But did you know that while reported incidents of domestic violence are down in Florida, the severity of violence in the acts themselves is increasing? The physicality of domestic violence is increasing, and strangulation is on the rise.

To bring awareness to the importance of domestic violence prevention, the Thirteenth Judicial Circuit Court, State Attorney’s

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Judge Ficarrotta addresses the Summit.
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Office, Public Defender’s Office, Hillsborough County Sheriff’s Office, Clerk’s Office, Spring of Tampa Bay, Hillsborough County Domestic Violence Task Force, and Hillsborough County sponsored a Domestic Violence Summit on January 19, 2018.

The featured presenter was Gerald W. Fineman, Chief Deputy District Attorney with the District Attorney’s Office in Riverside, California. Mr. Fineman, an expert on family violence, previously represented the Training Institute of Strangulation Prevention, a program of the Alliance for HOPE International.

He shared ways victims downplay their strangulation, often because of their limited understanding of the danger in such violence. They may say, “He didn’t really choke me; he just had me in a headlock and I couldn’t breathe.” Or they substitute the words “choked” or “squeezed my neck” for the word “strangled.” There was also a discussion about how professionals in the field, such as 9-1-1 dispatchers, emergency responders, and law enforcement officers, minimize such violence.

The impact of intimate-partner violence and domestic violence can be both personal and professional. Unfortunately, too many of us suffer the personal impact, as one in four women and one in seven men have suffered intimate-partner violence. Chances are, we all know someone who has been there. Professionally, Mr. Fineman discussed the importance of conducting thorough investigations, raising awareness of warning signs among medical professionals, presenting knowledgeable experts, and presenting evidence as to visible and non-visible injury, among other subjects.

The court is committed to eliminating domestic violence and helping survivors heal. If you missed Mr. Fineman’s presentation and want to learn more, visit the Training Institute on Strangulation at strangulationtraininginstitute.com.
This column has previously warned about the procedural trap of filing a motion for rehearing that is not authorized by the procedural rules that govern your case. While that article focused on motions for rehearing in small claims cases, a recent decision from the Fifth District Court of Appeal addresses another type of rehearing motion that has too often become a procedural trap in civil circuit court cases: a motion for reconsideration of an order disposing of a motion for new trial.

In Gustavsson v. Holder, 2018 WL 300229 (Fla. 5th DCA Jan. 5, 2018), a plaintiff filed a motion for additur or new trial, arguing that he was awarded an inadequate amount of damages. Id. at *2. After that motion was denied, the plaintiff filed a motion for reconsideration, arguing for the first time that the jury had rendered a compromise verdict. Id. The trial court denied that motion also, and the plaintiff appealed from the resulting final judgment. The Fifth DCA held that the plaintiff failed to preserve the compromise verdict issue because the trial court lacked jurisdiction to consider his motion for reconsideration. Id. The court explained that, absent fraud or clerical error, an order granting or denying a motion for new trial is not subject to rehearing or modification, because such an order confers a substantive right and is not interlocutory in nature. Id. (citing State v. Burton, 314 So. 2d 136, 137 (Fla. 1975); Owens v. Jackson, 476 So. 2d 264, 264 (Fla. 1st DCA 1985); Huffman v. Little, 341 So. 2d 268, 269 (Fla. 2d DCA 1977)).

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This principle is well established, but not very well known. Florida’s appellate courts have long held that a trial court may not rehear or reconsider an order disposing of a motion for new trial. See Frazier v. Seaboard Sys. R.R., Inc., 508 So. 2d 345, 347 (Fla. 1987); State Farm Mut. Auto. Ins. Co. v. Miller, 688 So. 2d 935, 935 (Fla. 4th DCA 1997); Lee v. Elliott, 155 So. 2d 169, 170 (Fla. 3d DCA 1963). The same applies to orders disposing of motions for remittitur or additur. See Salkay v. State Farm Mut. Auto. Ins. Co., 398 So. 2d 935, 935 (Fla. 4th DCA 1981). And although trial courts have the inherent authority to reconsider any interlocutory ruling before entry of final judgment, that does not apply to orders disposing of motions for new trial because they are not interlocutory in nature. See id.; Frazier, 508 So. 2d at 347; Huffman, 341 So. 2d at 269.

Filing a motion to rehear or reconsider an order ruling on a motion for new trial can easily become a procedural trap — and cost your client the right to appeal. Because such a motion is not authorized, it will not toll the time to appeal if an appealable judgment or order has already been entered. See Frazier, 508 So. 2d at 347; Owens, 476 So. 2d at 265. As a result, attorneys who are unfamiliar with this rule could allow the 30-day deadline for filing a notice of appeal to expire, under the mistaken belief that the period won’t begin running until the trial court disposes of the motion for reconsideration. See Reilly v. Hyster Co., 307 So. 2d 202, 202-03 (Fla. 4th DCA 1975). That typically happens when the motion for reconsideration is denied.

Another kind of procedural trap arises when the unauthorized motion for reconsideration is granted. Then the moving party, thinking it has obtained the relief it wanted, could forego appealing from the original judgment or order — only to have it reinstated when the appellate court reverses the order granting the motion for reconsideration. See Pompano Atlantis Condo. Ass’n, Inc. v. Merlino, 415 So. 2d 153, 154-55 (Fla. 4th DCA 1982); Volumes in Value, Inc. v. By Mail Int’l, Inc., 177 So. 2d 511, 512 (Fla. 3d DCA 1965). By then, it will be too late to appeal.

In a way, the plaintiff in Gustavsson was lucky. Because the final judgment was not entered until after his motion for reconsideration was denied, he was still able to appeal — and he won a partial reversal of the denial of his original motion for additur. Other cases have not turned out so well, so beware the procedural trap of moving for reconsideration of an order granting or denying a motion for new trial.


Author: Shea Moxon – Brannock & Humphries
One of the many valuable resources the HCBA Bar Leadership Institute program provides to its participants is mentorship opportunities. I have had many mentors in my life, and I can directly attribute many of my successes to their influence. As Maya Angelou once said, “A mentor is someone who allows you to see the hope inside yourself.”

At the BLI, not only does each participant receive an official mentor from among the HCBA officers and directors, we also receive consistent direction from experienced attorneys and leaders like Grace Yang, who serves as our self-proclaimed “class mom.” And we have the opportunity to interact with leaders in the local business, government, and non-profit sectors who provide insight and guidance on our development as future leaders in Tampa Bay.

The BLI program is full of interesting panel discussions, events, and activities that enrich the experience of its participants; the BLI program also gives participants an opportunity to develop their leadership skills while networking with influential leaders in the community who can serve as our future mentors.

In January, we attended a panel discussion with local leaders in the legal field, including Bradford D. Kimbro, Jim Shimberg, and our very own Gordon Hill, to discuss upcoming changes to the business community, as well as their roles as leaders. We had the chance to hear their background stories and to ask pointed and specific questions to guide us on our own journeys.

In February, we attended a tour of MacDill Air Force Base. We heard about its mission of refueling aircraft in the air, conducting airlift operations, and providing base support for MacDill’s units and partners. With over 18,000 employees on or near the base, MacDill AFB serves an integral role in Tampa Bay’s local economy.

In April, we will be completing our annual group project. This year, the BLI has partnered with the Spring of Tampa Bay — a local organization dedicated to preventing domestic violence; providing safe shelter for victims; and promoting change in lives, families, and communities in Tampa Bay. We will transform an outdoor area into a meditation and relaxation space for the adults and children in the shelter, then enjoy an ice cream social with the residents.

Through these activities, BLI participants learn to engage with all aspects of the Tampa Bay community, including the legal industry, business community, local government, charities, and not-for-profit organizations. They all provide valuable services to a wide range of Tampa Bay residents. The intersection of these entities reflects the diverse and vast opportunities available locally for lawyers to serve as leaders in various capacities.

All the individuals from whom we have received tours, talks, and tips share a love of the Tampa Bay community and a desire to help it reach its full potential — a desire the HCBA BLI program shares as well.

Author:
Joseline Jean-Louis Hardrick - U.S. Middle District of Florida
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NEW IACP ETHICAL STANDARDS MAY CHANGE THE WAY WE COLLABORATE

Collaborative Law Section
Chairs: Tina Tenret - ProVise Management Group & Ellie Probasco - Probasco Law

In June 2017, the International Academy of Collaborative Professionals (IACP) released updated Minimum Ethical Standards for Collaborative Professionals. The Standards are meant to keep up with the rapidly expanding field of collaborative practice and fill in the gaps of traditional ethics rules for attorneys, mental health professionals, and financial professionals. The Standards may change how we collaborate here in Tampa Bay.

Work After Termination

When a collaborative case terminated (without a full agreement) under prior IACP standards, it was clear that collaborative attorneys could not participate in contested proceedings. But what about neutrals? If both clients agreed, could they continue as neutrals or testify about documents created during the process?

The answer, now, appears to be no. According to Standard 4.5A, “After Termination, a Collaborative Professional will not provide any service for the client(s) that is either (a) adverse to any other client in the terminated Collaborative matter, or (b) related to the Collaborative matter.” Standard 3.12 broadens this notion and elaborates that a collaborative professional (including a neutral) is forever prohibited from participating in any proceeding that involves the clients.

Likelihood of Reaching Resolution

Florida Rule of Professional Conduct 4-1.19 regarding Collaborative Law instructs us that attorneys must screen for domestic violence. IACP Standard 2.4 adds another screening requirement: “[A]
Collaborative Professional must assess the likelihood that a Resolution can be reached in a manner consistent with these Standards and within a timeframe appropriate to this matter and to the client(s) circumstances.” Like Rule 4-1.19 screening, the Standard 2.4 screening must take place before a participation agreement is signed and throughout the process.

Confidentiality Before the Participation Agreement Is Signed

Standard 1.4B reminds us that a collaborative professional may not disclose confidential information before a participation agreement is signed. Of course, with informed (preferably written) consent, a client may permit the professionals to communicate to prepare for the collaborative process.

Conclusion

Keep in mind that, under Standard 1.1, if there is a conflict between professional rules of conduct and the Standards, the rules of conduct control. Further, the IACP is not a regulatory body and does not enforce the Standards. But the Standards are considered best practices developed and approved by leaders in the field. We can and should use the Standards to improve our collaborative processes.


2 This article is based, in part, on a workshop conducted by Diane Diel, David Fink, and J. Mark Weiss of the IACP Ethical Standards Rewrite Task Force.

3 Standards 4.5B & C provide exceptions to (i) provide referrals or (ii) consult about reinstating or resuming the collaborative process or other ADR processes.

Author: Adam Cordover – Family Diplomacy
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HCBA PAST PRESIDENTS’ LUNCHEON

The Association was pleased to host a large gathering of our past HCBA presidents and the past presidents of the Hillsborough County Bar Foundation on December 18. These leaders of the local legal community took the time to catch up and reminisce about their experiences with the HCBA and the HCBF. Thank you to the luncheon’s sponsor:
The reasoning and analysis the Court employed (in this case) is likely to have wide-ranging impacts upon construction defect litigation.

The Florida Supreme Court recently answered a question that will affect construction defect claims and insurers called upon to defend them. In Altman Contractors, Inc. v. Crum & Forster Specialty Insurance Company, 232 So. 3a 273, the Florida Supreme Court ruled that the pre-suit notice-and-repair process, Chapter 558, Florida Statutes, is a “suit” within the meaning of a commercial general liability policy that Crum & Forster (C&F) issued to Altman Contractors.

Altman was the general contractor on a condominium project. After construction, the condominium association served Altman with several pre-suit Chapter 558 notices of claim that alleged construction defects. Altman demanded that its insurer, C&F, defend and indemnify Altman against the Association’s claims. C&F denied Altman’s demands. Without C&F’s involvement, and before a lawsuit was filed, Altman settled the Association’s claims. Altman then sued C&F for a declaration that C&F had a duty to defend and indemnify Altman against the Association’s notices and claims. The Eleventh Circuit ultimately certified to the Florida Supreme Court whether the Chapter 558 process fell within the commercial general liability policy’s definition of “suit.”

Based on the policy’s definition of “suit,” as well as the language and purpose of Chapter 558, the Florida Supreme Court answered this question in the affirmative. The Court held that the Chapter 558 process is an “alternative dispute resolution proceeding” within the policy’s definition of “suit.”

In analyzing the policy, the Court first concluded that the Chapter 558 process is not a “civil proceeding” covered under the policy’s primary definition of “suit.” But the Court concluded that the Chapter 558 process fell within the alternative definition applicable to any “alternative dispute resolution proceeding.” Therefore, the Court reasoned, the Chapter 558 process was a “suit” under C&F’s policy.

The Florida Supreme Court did not go so far as to find that C&F had a duty to defend and indemnify Altman against the Association’s Chapter 558 notices. To establish such a duty, Altman had to prove, under the policy’s definition of “alternative dispute resolution proceeding,” that C&F consented to Altman’s submission to the Chapter 558 process. That issue presented a disputed question of fact that the Court could not resolve.

While the Florida Supreme Court’s ruling in Altman may be limited to the specific terms of the insurance policy involved, the reasoning and analysis the Court employed is likely to have wide-ranging effects on construction defect litigation. The Court’s holding also raises a number of questions that Florida courts likely will address in the future:

- How much information must a Chapter 558 notice contain to trigger an insurer’s duty to defend, and does the “eight corners rule” now apply to Chapter 558 notices?
- Must an insurer’s consent be in writing or does participating in or monitoring the process establish the consent required to trigger a duty to defend?

Stay tuned, as these issues and more are sure to be litigated in the coming years in Altman’s wake.

Authors: Jeffrey M. Paskert and Dara L. Dawson - Mills Paskert Divers P.A.
Construction Law Section Discusses Dispute Resolution Boards

On January 18, the Construction Law Section received a presentation from expert James Guyer on Dispute Resolution Boards (DRB). Guyer discussed the basics of DRBs, including elements of an effective DRB, the hearings process, and admissibility of recommendations in subsequent proceedings.

The Section thanks First Citrus Bank for sponsoring its luncheon.

Save the Date

◆ MAY 9, 2018
Law Day Membership Luncheon at the Hilton Tampa Downtown

◆ MAY 17, 2018
Law & Liberty Dinner at the Hilton Tampa Downtown

◆ JUNE 7, 2018
Installation of the HCBA and YLD Officers & Board of Directors at the Chester Ferguson Law Center

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“AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction.” Alexander Hamilton, in the ninth Federalist Paper, states, “It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy.”

John Jay, in arguing for Federalism and Union, clearly references the European conflicts in the sixth Federalist Paper, stating, “Nay, it is far more probable that in America, as in Europe, neighboring nations, acting under the impulse of opposite interests and unfriendly passions, would frequently be found taking different sides.”

Unfortunately, today we see the rise of people calling for the United States to be an ethno-state. The tragic events in Charlottesville, Virginia, in August 2017, demonstrate that. But such violence is precisely what the Founding Fathers, influenced by the Enlightenment, sought to avoid. Amidst the calls to turn away refugees, tighten borders, and restrict immigration in the name of preserving the “American Identity,” we must remember the true American identity is a beacon of hope, concisely inscribed in the Statue of Liberty, “Give us your poor, huddled masses.”

The Founding Fathers dreamed of a nation free of the kind of violence based on ethnicity, religion, and political affiliation that had torn Europe apart. They saw a nation where people could associate as they pleased, yet still work together for the progress of that nation. To allow ourselves to give way to factionalism of any kind would be a betrayal of that vision. The United States is not a nation of a single ethnicity. Rather, “E pluribus unum.”

Author: Abraham Shakfeh
Shakfeh Law, LLC

JOIN THE DIVERSITY COMMITTEE ON APRIL 19 AT ITS ANNUAL CLE.
REGISTER AT HILLSBARI.COM.
RAISE ACT TO GIVE CAREGIVERS THE VOICE THEY NEED

Health Care Law Section
Chairs: T.J. Ferrante – Foley & Lardner LLP & Kevin Rudolph – Shriners Hospital for Children

An estimated 37 billion hours are spent each year by caregivers in the United States preparing meals, managing medication, helping with bathing and dressing, scheduling medical appointments, providing transportation, and helping with financial and legal matters.1 With the recently passed S.1028, RAISE (Recognize, Assist, Include Support, and Engage) Family Caregivers Act, which President Trump signed into law in January, the U.S. is finally recognizing family caregivers and striving to give them a voice among healthcare providers.

The new law will require the Secretary of Health and Human Services to work with an advisory council consisting of 15 voting non-federal employees. The advisory council should include family caregivers; individuals with disabilities; workers in health care, social service, and other long-term services; and support providers.2 The council will also include non-voting federal employees from governmental agencies such as CMS and Veterans Affairs.

RAISE calls for promoting family caregivers and recognizing both the economic and emotional value of their services. The law, which enjoyed bi-partisan support, is aimed at gathering and sharing information, relying on insight from the private sector to best prepare the public sector to act. States across the country are praising their senators for supporting the bill.

Across the pond in the United Kingdom, home “carer” programs are well established.3 One of the main benefits is the “Carer’s Allowance,” which is currently £62.70 a week, plus a £10 Christmas bonus in December. That’s almost $90 a week. The Carer must provide at least 35 hours a week for the same person. The 35 hours can include:

Continued on page 27

Health Care Law Section CLE

The Health Care Law Section received a timely overview on medical marijuana at their CLE on December 6. Speakers Jason Cetel and Sunny Levine with GrayRobinson presented an overview of Florida’s industry; the current state of the law; requirements for doctors to recommend medical marijuana to patients; and general compliance concerns and liability risks under state and federal law.

Thank you to the luncheon’s sponsor:

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Continued from page 26

• the time you take to pick them up and take them back to where they live;
• time spent preparing for their visit (e.g., preparing where they will sleep or preparing their meals); and
• time spent cleaning up after they leave.

There are many eligibility requirements, and the system (including the Carer’s income) is closely monitored. But the main point is: the system exists.

The good news for caregivers is that help is on the way in America. Family caregivers, who have many responsibilities, will surely welcome any aid from the government. The AARP estimates it will take up to 18 months. In the meantime, the advisory council meetings will be open to the public, giving opportunities for public input.4 With a process in place to collect and share information, the advisory council will consider best practices and explore new ways to coordinate care. Their goal will be to maximize effectiveness. There is no doubt they will look for ways to decrease federal government services that are already being provided by family members. What will be interesting to watch is what kind of financial benefits will be offered to caregivers and what requirements the council will recommend to qualify for such benefits.

In the United States, we have our work cut out for us. The RAISE advisory council will bring together many voices in healthcare, but this is just the beginning. Given our much larger and health-diverse population, this will be a new challenge for our government. Among the divided political landscape, at least this challenge is one that unites us!

3 https://www.nhs.uk/conditions/social-care-and-support/carers-allowance/

City Council Recognizes VTC Mentors

On January 25, Tampa City Councilman and HCBA member Luis Viera presented a commendation to the Thirteenth Judicial Circuit Veterans Treatment Court (VTC) mentor program, which has reached an impressive milestone of 100 mentors. Judge Michael Sciorti, who oversees the Veterans Treatment Court, and Judge Greg Holder, who previously administered the VTC, attended the recognition ceremony, as did Lead Mentor Col. D.J. Reyes (Ret.), Toni Gross – the president of Gold Star Mothers-Tampa Bay, and mentor Matt Hall, who is an HCBA board member with Hill, Ward & Henderson.

Author: Stephanie Donovan – BayCare Health System, Inc.
For the last 13 years, employees have enjoyed broad protection from work rules that have interfered with their ability to engage in concerted activity under section 7 of the National Labor Relations Act. Section 7 is intended to prevent private-sector employers engaged in commerce from interfering with an employee’s right to engage in concerted activity for purposes of collective bargaining or other mutual aid or protection. Examples of concerted activity include forming a union, circulating petitions, talking with one or more co-workers about working conditions, or participating with one or more co-workers in a concerted refusal to work under certain conditions.

Under Lutheran Heritage Village-Livonia, decided more than a decade ago, the test to determine whether a facially neutral work rule interfered with Section 7 rights required an inquiry as to whether: “(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.”

For more than a decade, the Board broadly interpreted what an employee might reasonably construe as prohibiting Section 7 activity. For example, the Board invalidated a rule prohibiting conduct that “impedes harmonious interactions and relationships,” and another that threatened employee discipline for “inappropriate” social media discussions about the company.

But the recent Republican shift in the Board’s makeup helped it to overrule Lutheran Heritage, with the decision in The Boeing Company. Under the new standard, when evaluating a facially neutral work rule, the Board will look at two things: (1) the nature and extent of the potential impact on NLRA rights, and (2) legitimate justifications with the rule. As the Board explained, application of this new standard will result in work rules falling into one of three categories: Category 1: Rules that are always lawful because they do not interfere with the exercise of NLRA rights, or because “the potential adverse impact on protected rights is outweighed by justifications associated with the rule”; Category 2: Rules that “warrant individualized scrutiny” to determine whether they would unjustifiably interfere with NLRA rights; and Category 3: Rules that are always unlawful to maintain, such as a rule prohibiting employees from discussing compensation with each other.

As to Category 1 rules, the Board was careful to note that while the mere maintenance of these rules is always lawful, application of the rules may violate the Act. The NLRB declined to provide an example of a rule that falls into Category 2.

Consistent with Board precedent, the new Boeing test will be applied retroactively to all pending cases. Moving forward, the Board’s categorization of rules will help shed light on its interpretation of the NLRA. With the Board’s new ruling, employers may now go back and re-write handbooks and work rules that previously were unlawful.

What do these changes mean for employees? Employees will have to show evidence of unlawful application of work rules that chill employees’ rights to engage in Section 7 activity.

2 Id.
3 Lutheran Heritage Village–Livonia, 343 NLRB 646, 647 (2004)
4 See William Beaumont Hospital, 363 NLRB 162 (2016); Triple Play Sports Bar & Grille, 361 NLRB 308 (2014).
5 The Boeing Company, 365 NLRB No. 154 (2017).

Author: Joshua R. Kersey - Sass Law Firm
Wenzel Fenton Cabassa, P.A.
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Wenzel Fenton Cabassa, P.A. represents employees who are victims of illegal workplace violations in state and federal courts throughout Florida.
The family law industry is facing a dramatic change to the tax consequences of divorce following the passage of The Tax Cuts and Jobs Act of 2017, signed into law on December 22, 2017. Under the new legislation, which applies to divorce decrees executed after December 31, 2018, alimony becomes tax neutral, meaning there are no tax consequences to either party, much like child support. The repeal of the alimony tax deduction does not affect existing alimony obligations or divorces finalized before January 1, 2019.

This change in legislation eliminates an income-shifting effect that often results in tax savings to the former family unit, a setup that can reduce the financial burden of spousal support on the paying spouse. In instances where the income is not sufficient to meet the parties’ needs, the new legislation may have more of an impact on the lower-income spouse. While the amount of alimony awarded may be less under the new tax neutral treatment, the net income available to meet living expenses may also be lower, as illustrated in Table 1.

### Settlement Negotiations
The alimony tax deduction has long been used in settlement negotiations to help facilitate an agreement. The repeal of the alimony tax deduction may make settlement negotiations more difficult, as the paying spouse may have less flexibility in creating an agreement regarding alimony. In the absence of the tax deduction, it could become more expensive for the paying spouse and reduce the amount that individual is willing to pay.

### Equitable Distribution
The construction of settlement offers may change dramatically under the new law, especially for wealthier clients. There may be a new incentive to structure offers with an unequal distribution of assets in exchange for reducing or eliminating alimony.

### Alimony Recapture
Under the new law, it appears that the logical result from this change would be the elimination of alimony recapture for alimony originating under the new law, because the concern for disguising equitable distribution payments as alimony is diminished in the absence of the alimony tax deduction.

### Pending Cases
Divorcing spouses often agree to stay married through the end of the year to take advantage of filing a joint income tax return. In 2018, this option may require much more consideration than in the past. The new legislation could also result in an influx of divorce cases this year, as it applies to alimony obligations that arise from court orders and agreements made after December 31, 2018.

The repeal of the alimony tax deduction is just one of several changes in legislation that can impact family law matters. Although we don’t know all the implications this legislation will have, we do know that the future of tax-related issues in divorce will be a hot topic.

For more information on how the Tax Cuts and Jobs Act of 2017 may impact your clients, consult a forensic CPA and/or tax professional.

**Author:**
Amanda M. Porupski, CPA - CBIZ MHM – Forensic & Financial Services

### Table 1 - Summary of Monthly Alimony

<table>
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<tr>
<th>Gross Income</th>
<th>Payee</th>
<th>Payor</th>
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<td>$25,000</td>
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<td>(6,250)</td>
<td>6,250</td>
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<td>$18,750</td>
<td>$10,417</td>
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<td>(6,563)</td>
<td>(2,292)</td>
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<td>$11,375</td>
<td>$8,125</td>
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*For Illustrative Purposes Only*
The American Inns of Court Tampa Chapters invite you to apply for membership.

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

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

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Prior experience with any Inn of Court?________________________________________________
Have you previously applied? ________________ When? _________________________________
Have you been referred to an Inn? If so, by whom? ______________________________________
List any weekday evening you cannot attend meetings: _________________________________
Do you have a preference for a particular Inn? __________________________________________
Please attach a current resume limited to one page in length.
Diversity Membership Luncheon

More than 300 HCBA members attended the annual Diversity Membership Luncheon on Jan. 10, 2018. The luncheon featured two presentations on the theme of “Hate Crimes: Yesterday and Today.” A representative from the Florida Holocaust Museum in St. Petersburg discussed their programs and services and showed a special interview video from Holocaust survivor Otto Weitzenkorn, who attended the luncheon with his daughter, HCBA member Joan Wadler. Following the Museum’s presentation, Susana Mapu, a special agent with the FBI Tampa Field Office, discussed how the office handles current-day hate crime investigations in our area. (Read more about these presentations in the Executive Director’s Message on page 8.)

The HCBA also presented three annual awards at the luncheon — the Outstanding Lawyer Award, presented to Lanse Scriven with Trenam Law; the Outstanding Young Lawyer Award, presented to Linda Anderson with Bay Area Legal Services, Inc; and the Robert W. Patton Outstanding Jurist Award, presented to Chief Judge Ronald Ficarrotta with the Thirteenth Judicial Circuit Court.

Additionally, the HCBA would like to thank all the representatives of the various local bar associations who came out to support this event.

Thank you also to our luncheon sponsor:

Photography is courtesy of Thompson Brand Images, and A/V assistance at the luncheon courtesy of TCS. Thompson Brand Images (www.thompsonbrandimages.com) and TCS (www.trialcs.com) are benefit providers for the HCBA. Visit Facebook.com/HCBATampaBay to view additional photos from the Membership Luncheon.
Bay Area Legal Services (BALS) has seen how the struggle with legal problems can significantly affect a client’s physical and mental health. When people join the armed forces, one promise that they rely on is that if their service results in an honorable discharge or in a disability, they will receive a lifetime of health care and assistance.

Even with this benefit, veterans can be particularly vulnerable to the stress and instability caused by unresolved legal issues. And a disability can further affect a veteran’s capacity to find and maintain gainful employment. As a result, disabled veterans are among the most impoverished groups in our communities.

Low-income or homeless veterans face legal challenges unique to their status. Many fail to obtain permanent housing because they cannot meet lending requirements or have poor or no credit. This is in addition to other challenges they share with many low-income individuals seeking housing in a poor economy. Those challenges, which often involve legal issues pertaining to housing, family law, and consumer issues, cannot be properly addressed without the assistance of an attorney — and they are an obstacle to a veteran’s health, housing status, stability, and productivity.

Legal assistance, through innovative projects such as a medical-legal partnership, can alleviate many of the factors that negatively affect a veteran’s health and his or her ability to become self-sufficient. Medical Legal Partnerships (MLPs) are designed to address the unmet legal needs of veterans by integrating civil legal aid services into existing health care services for veterans. In recognition of this important need, and in furtherance of BALS’s Veterans Initiative, BALS worked diligently for months with the Bay Pines VA Healthcare System and the Stetson University College of Law Veterans Law Institute to develop a medical legal partnership to serve veterans receiving their health care services at the Bay Pines Regional Health Center. Bay Pines is one of the country’s largest regional VA Medical Centers and serves veterans from Pinellas, Manatee, and Sarasota Counties.

In February 2017, after months of planning, the Bay Pines VA Medical Legal Partnership was established to provide veterans access to legal services at the Bay Pines Regional Health Center. BALS was pleased to partner with Bay Pines and Stetson College of Law to bring these critical legal services to the veterans. This innovative, collaborative approach has enabled BALS to address the unmet legal needs of our veterans by providing services directly at the facility where veterans receive their health care.

Our innovative legal services delivery system has established an important partnership between health and legal providers to better assist veterans in need and encourage a more holistic approach to their overall well-being, thereby improving their quality of life. Since February 2017, the Bay Pines MLP has served approximately 600 veterans using the expertise of BALS staff attorney Julie Embler and Equal Justice Works Fellow Cherilyn Hansen. The MLP also uses the assistance of Stetson law students and volunteer attorneys.

In 2018, BALS is looking forward to expanding the Bay Pines MLP to serve veterans in Sarasota and Manatee counties, with the help of pro-bono attorneys, in addition to our staff attorneys. This project and other veteran-focused initiatives through the Major General Ernest A. and Marilyn Bedke Veterans Law Center will enable BALS to better serve these deserving members of our community — our veterans.

Author: Lisa L. Brody – Bay Area Legal Services
Hillsborough County Bar Association 100 Club

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<th>Law firms with 100% membership in the HCBA</th>
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Florida’s Rules of Professional Conduct require attorneys to exercise due diligence toward clients and members of the public. A rule of professional conduct is the linchpin for disciplinary action by The Florida Bar. A referee adjudicates complaints by The Florida Bar against attorneys and recommends appropriate sanctions. Later, the referee’s findings are forwarded to the Florida Supreme Court for a final determination of sanctions.

The Florida Constitution provides the Supreme Court with the authority to discipline attorneys who are admitted to The Florida Bar. See Art. V, § 15, Fla. Const. The Supreme Court has chosen to impose increasingly tougher sanctions on attorneys who refuse to comply with their ethical obligations.

In *The Florida Bar v. Marrero*, the Supreme Court found that severe sanction was warranted, even though the referee initially “submitted a report recommending that the attorney not be found guilty of any rule violations.” See *The Florida Bar v. Marrero*, 192 So. 3d 23, 24 (Fla. 2016). Despite the referee’s recommendation, the Supreme Court found the attorney violated Rule 4-8.4. So the Court increased the term of suspension to three years and expected “proof of rehabilitation prior to reinstatement.” *Id.* at 27.

The Preamble to the Rules of Professional Conduct provides that “[a] lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.” The Florida Supreme Court demands that lawyers live up to that responsibility. Those who don’t might lose their license to practice law.

Author:
Caroline Johnson
Levine - Office of the Attorney General
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Thanks To All Our FOX 13 Ask-a-Lawyer Volunteers!

The attorneys from the Lawyer Referral & Information Service were at it once again in December and January, answering phones as part of Fox 13’s Ask-A-Lawyer program. We appreciate all those who volunteered to take calls and help out local residents.

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According to the U.S. Department of Energy, there were 47,011 electric vehicle (EV) charging stations in the United States as of January 5, 2018. With experts predicting that EV sales will outpace sales of gas-powered cars by 2040, the expansion of EV charging infrastructure will keep pace accordingly. All those new charging stations will sit on real property, and many will be a part of commercial real estate projects. EV charging stations — commonly known as “EV supply equipment” or EVSE — present both new and familiar challenges to commercial landlords and tenants alike.

It is important for attorneys confronting EVSE issues to be familiar with some basic terminology. EVSE generally comes in Levels 1, 2, and 3. Level 1 looks like a short extension cord, plugs into a standard 120-volt outlet, and can charge most EVs overnight. Level 2 requires a dedicated circuit with a 240-volt outlet, and can charge most EVs in four to six hours. The current state-of-the-art — Level 3 or “DC fast charging” — typically uses direct current and can give most EV batteries an 80 percent charge in around 30 minutes.

EVSE arises in two leasing situations: where a tenant is leasing real property solely for the purpose of installing EVSE, and where EVSE is an ancillary part of a traditional commercial lease, akin to an alteration. This brief article focuses on the former.

Leases involving only EVSE are becoming more common as property owners, particularly in the hospitality and retail industries, realize their customers view charging stations as a necessary amenity. Certain public-private partnerships, such as parking garages and toll plazas, may also involve a subtenant that installs and maintains EVSE.

Leases for EVSE differ from traditional leases in these respects. First, landlords often attempt to treat EVSE companies as licensees, though the clear possessory rights that such tenants need to operate makes a license a risky move for both parties. Second, the tenant frequently pays no base rent and limited, if any, pass-throughs, such as operating expenses, insurance, and taxes. Third, the small size and the nature of the leased premises alters the traditional division of rights and obligations between landlords and tenant.

Savvy landlords will make sure they understand how the EVSE tenant plans to make money. While many EVSE companies are providing low-cost or even free charges for now, others are developing local, regional, and national charging networks. Many Level 3 chargers include small LED screens that are potential sources of advertising revenue. Experienced EVSE tenants can take advantage of unwitting landlords by keeping revenue sharing provisions out of the lease.

Two trends will affect the future of EVSE in unknown ways: regulation and technology. In California, commercial landlords are prohibited from denying a tenant’s requests to install EVSE. As EV adoption increases, attorneys should expect regulations to increase. Attorneys should also be mindful of impacts on EVSE and real estate. Finally, technological evolutions will likely affect leases because of changes in electricity and space utilization by EVSE, requiring landlords, tenants, and their attorneys to respond creatively.
Marital & Family Law Section Luncheon/CLE

On January 17, the Marital & Family Law Section held their quarterly luncheon and a four-hour CLE. During the luncheon, Judge Wesley Tibbals and Alex Caballero with Sessums Black Caballero Ficarrotta PA discussed temporary relief matters. Following the luncheon, attendees received an in-depth overview on child-related experts by speakers Joe Hunt, Richard Mockler and Dr. Jay Flens.

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Real Property, Probate & Trust Law Section CLE


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On September 25, 2017, the SEC announced new enforcement initiatives, including the creation of a new Cyber Unit, to combat cyber-based threats and to protect retail investors. The new Cyber Unit focuses on, among other cyber-based misconduct, violations involving distributed ledger technology (DLT) and initial coin offerings (ICO).

Between July and October, the SEC issued initial insight into two cases involving the sale of coins and tokens. Both cases involved defrauding investors in asset-backed ICO’s, which purportedly were backed by real estate in one case and diamonds in the other. Each involved the unregistered sale of securities and nonexistent digital tokens.

In November, the SEC warned that the promotion of ICOs and other investments by celebrities and others may be unlawful if the promoter does not disclose the nature, source, and amount of compensation paid, directly or indirectly, as consideration for the endorsement. The Chairman also warned against insider trading within ICOs.

Interesting complications in regulating DLT and ICO’s emerge from the diverse character of the coins and tokens. Coins and tokens may be categorized differently depending on the facts and circumstance surrounding the design, creation, and implementation of each coin or token. Such diversity requires nuanced analysis and demands flexible regulation, allowing for the emerging token economy to realize its full, flexible, and diverse potential. SEC guidance and statements thus far acknowledge the unique characteristics of the cryptocurrency market. The SEC currently appears supportive of technological advancements, while being consistent with its primary objective of protecting investors.

In the latter part of 2017, CFTC Commissioner Brian Quintenz opined that digital assets “may actually transform at some point from something that starts off as a security and transforms into a commodity.” He also observed that its “going to be a very difficult but important conversation for us to have to give the market certainty, to allow for innovation to flourish and..."
For example, access rights to transact on a blockchain protocol may be treated as a licensing agreement. A token may also represent a product such as gas or fuel to run applications on the blockchain. The utility is significant because it provides for the tokenization of business networks through the unrestricted exchange of tokens.

Tokenization promises to provide a powerful tool to run innovative digital blockchain applications for managing business transactions and networks. Increasingly, the SEC is providing additional guidance about the facts and circumstances necessary to determine whether a token is a security, commodity, or a utility token.7

6 Id.

Author: Gregory M. Karch – WorldBlock Legal, P.A.
The first Spanish governor of La Florida was Pedro Menéndez de Avilés, who founded the first permanent European settlement at St. Augustine and was appointed adelantado or governor in 1565. The first American governor of Florida was Andrew Jackson, who was named military governor of the Florida Territory in 1821, after the United States acquired Florida from Spain. Since then, there have been over fifty governors of Florida, from Andrew Jackson, to our current governor, Rick Scott.

But only one governor of Florida came from Tampa — Governor Bob Martinez. The Senior Counsel Section was honored to welcome Governor Martinez as the featured speaker at its October 2017 luncheon.

A true son of Tampa, Bob Martinez was born on Christmas day in Tampa. His mother worked as a seamstress in Ybor City; his father served as a waiter at the legendary Columbia Restaurant. Martinez graduated from the University of Tampa and then taught civics in high schools in Hillsborough County. After earning a master’s degree in labor and industrial relations from the University of Illinois in 1964, he returned to teach economics at his alma mater, the University of Tampa. He also operated Café Sevilla restaurant in Ybor City, known for the best paella in town.

Martinez became the 54th mayor of Tampa in 1979 and the 40th governor of Florida in 1987. In 1991, President George H. W. Bush named him the Director of the Office of National Drug Control Policy (Drug Czar). He currently serves as a senior policy advisor at Holland & Knight.

At the Senior Counsel luncheon in October, Martinez discussed the “business of politics,” contrasting 20th Century politics with 21st Century politics. He related how he began in politics in 1966, when, as the executive director of the Hillsborough Classroom Teachers Association, he worked for the election of Governor Hayden Burns. He explained that in the “business of politics,” the customers are the voters.

In the 20th Century, the election business plan terminated on Election Day. Politicians used television broadcasts, newspaper advertisements, and direct mail. There were few, if any, political consultants — and there were no Political Action Committees (PACs) to help fund a campaign. Early voting days did not exist; and there were no mail-in ballots — only absentee ballots. At the end of the election cycle, you closed your business.

In the 21st Century, the business model has changed dramatically. Some candidates never stop campaigning, even after Election Day. Newspaper advertisements are more sophisticated, but often more brutal. Cable television ads, which are more targeted and less expensive, have replaced broadcast television, which often included broadcasting outside of the election area. Now political parties are less important, as every candidate has his own PAC.

The lawyers and judges in attendance were delighted to receive the wisdom and insights of our own son of Tampa, former Governor Bob Martinez. We look forward to seeing our fellow HCBA members at future Senior Counsel luncheons.

1 Charlton W. Tebeau, A History of Florida, 32-34, (University of Miami Press 1971)
2 Id. at 117-118.

Author: Thomas Newcomb Hyde – Attorney at Law
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Brannock & Humphries is pleased to announce that former Second District Court of Appeal Judge DOUGLAS A. WALLACE joined the firm on November 8, 2017.
We chose a challenging profession. For those that own or manage a law firm, the challenges are even greater — servicing clients, getting more clients, managing cases, directing employees, networking with colleagues, and staying educated, among countless others.

How can we get better at managing these obligations? One way is to be more productive. Here are some tips on being more productive this year:

**E-mail Better.** This is a big one. Lawyers always complain about how much e-mail they get. Let’s be clear — spending your entire day inside your inbox and responding to e-mails is not productive. It’s reactive and keeps you from focusing on the big picture. Don’t ignore your inbox. But take control of it to spend less time there. Here are some ideas:

- Set aside specific times each day to review e-mails instead of reading and responding to whatever comes in, whenever it comes in.
- Create folders and rules so e-mails automatically get routed away from your inbox so you can review them later. This helps for listservs where the discussions are important but not urgent.
- Disable the sounds that your computer and phone make when you get a new e-mail to avoid the distraction.
- Avoid e-mail if a letter or a call is a better way to communicate.

**List It.** Make a list of what you want to accomplish. But don’t list broad, general concepts. For example, your list should not say, “Get ready for trial.” Break large projects up into simple steps, preferably ones that don’t require any decision-making, so they can be done quickly. By dividing large projects into smaller mini-tasks and eliminating the decision-making process, they become easier to do, and you’ll be more likely to accomplish them. Weekly To-Do Lists, which give you a road map for the next five days, are more effective than Daily To-Do Lists. Let’s face it, one day can easily be derailed. If that happens, you still have the rest of the week to accomplish your list.

**Calendar It.** For every item on your To-Do list, create a calendar entry. That way, you have already estimated how long it should take and set aside the time to do it. Maybe it’s because as lawyers, scheduling events and meeting deadlines are so ingrained, but when something is on the calendar, it gets done. Turning your Weekly To-Do List into a schedule is a great way to increase productivity.

**Know Yourself.** A huge part of being productive is recognizing your own strengths and weaknesses and working around them. Structure your schedule to maximize your strengths and minimize the effects of your weaknesses. For those things that are your weaknesses but still have to be done, come up with better ways to do them so they are less tedious, or delegate them to others. If not, you will put them off and kill your productivity.

Remember that being busy is not the same thing as being productive. We don’t want to be busy, we want to be productive. So let’s all have a productive 2018!

*Author: Matthew A. Crist - Crist Legal | PA*
Holiday Open House

The Hillsborough County Bar Association hosted about 300 lawyers, judges, family members, and friends at the Holiday Open House on December 7. Attendees enjoyed a festive atmosphere as they gathered to celebrate, mingle, and catch up before the year came to a close. The open house was a great success, thanks largely in part to the generosity of our sponsor: The Bank of Tampa.

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Thank you to all of our 2017 members!

Thank you for helping Larry, a senior client.

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In Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co., 832 F.3d 1318 (11th Cir. 2016), the Eleventh Circuit certified the following question to the Florida Supreme Court: Is the notice-and-repair process set forth in Chapter 558, Florida Statutes, a “suit” within the meaning of the CGL policies issued by Crum & Forster to Altman Contractors?


Altman was the general contractor for a high-rise condominium. Crum & Forster (C&F) insured Altman. C&F’s policies stated that it had the right and duty to defend against any “suit.” The policy defined “suit” to mean a “civil proceeding,” including an “arbitration proceeding” or “any other dispute resolution proceeding” that the insured submitted to with C&F’s consent.

The condominium association served Altman with Chapter 558 notices of construction defect claims. Altman notified C&F and demanded a defense and indemnification. C&F denied it had a duty to defend, reasoning that the notices did not constitute a “suit.” So Altman hired its own counsel. The condominium association then supplemented its notice with additional claims and demanded that Altman correct them. C&F maintained its position but retained counsel for Altman under a reservation of rights. Altman objected to the counsel, demanded its original counsel, and requested reimbursement of fees and expenses. C&F denied Altman’s requests, Altman settled the claims without C&F’s involvement, and then Altman sued in the Southern District of Florida seeking a declaration that C&F owed it a duty to defend and indemnify.

The Southern District found the Chapter 558 process was not a “suit” under the policy. Therefore, the condominium’s notices did not trigger a duty to defend. So the Court entered summary judgment for C&F. Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co., 124 F. Supp. 3d 1272 (S.D. Fla. 2015). Altman appealed to the Eleventh Circuit, arguing that the Chapter 558 process is a “suit” because it is a “civil proceeding” or “proceeding,” as defined by Black’s Law Dictionary and Merriam-Webster’s Dictionary, or otherwise constitutes an “alternative dispute resolution proceeding.” The Eleventh Circuit certified the question above.

The Florida Supreme Court held that the Chapter 558 process is not a “civil proceeding” under the policy because it is a voluntary dispute resolution mechanism through which parties may resolve claims without filing suit. But it noted that C&F’s policies broadened the definition of “suit” to include “[a]ny other alternative dispute resolution proceeding” and that Black’s defines “alternative dispute resolution” as “[a] procedure for settling a dispute by means other than litigation.” It held that Chapter 558 falls within that definition and, in doing, noted that the Florida Legislature described Chapter 558 as “[a]n effective alternative dispute resolution mechanism” in section 558.001, Florida Statutes.

Continued on page 53
As a result, the Florida Supreme Court affirmatively answered the certified question, held that the Chapter 558 notice-and-repair process constitutes a “suit” under the C&F policy, and remanded the case to the Eleventh Circuit for further proceedings. The Eleventh Circuit recently reversed the Southern District’s grant of summary judgment in C&F’s favor, vacated the final judgment, and remanded the case to the Southern District for further proceedings. *Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co.*, No. 15-12816, 2018 WL 560523 (11th Cir. Jan. 26, 2018). Regardless of what happens on remand, Altman will have implications for all involved in construction disputes where CGL insurance is involved.

Author: Jaret J. Fuente - Carlton Fields

Note: The Trial & Litigation Section article in the previous issue, entitled “PIP v. Mandatory BI: What’s Necessary on Florida’s Roads” had an incorrect author photo for Marc J. Semago. The photo has been corrected in the digital version of that issue, available online at www.hillsbar.com. We apologize for this error.

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**Trial & Litigation Section Luncheon**

On December 14, the members of the Trial & Litigation Section received a fascinating presentation from Captain Jeffrey D. Grove with the 927th Air Refueling Wing at MacDill Air Force Base. Captain Grove discussed the work of the 927th Squadron and showed the audience mission footage of mid-air refueling.

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In a 4-to-3 decision, *Bishop v. Arena Football League*, Case No. SC17-1409, 2017 WL 6014872 (Dec. 5, 2017), the Florida Supreme Court refused to review a decision by the First District Court of Appeal that took away workers compensation benefits from an injured football player. Although the player was injured during a tryout, the First DCA held he wasn’t entitled to benefits because the Arena Football League never signed his employment agreement. This decision may have limited application because jurisdiction was denied, but it is still a matter of concern.

In 2012, Byron Bishop played for the Orlando Predators and was an employee of the Arena Football League. In July 2013, he participated in a two-day tryout for the team. Before the tryout, his coach had Bishop sign an employment contract where it read “Player’s Signature.” The coach, who was also a league employee, signed the contract where it read “Team Rep.” Another line on the employment contract that read “League Signature” was not signed. The document said that the Team Signature was mandatory. But it didn’t say that the same was true of the League signature. Once the contract was filed with the League offices, the coach allowed Bishop to attend the tryout, where he was injured on the second day.

The Judge of Compensation considered a great deal of testimony and other evidence on the issue of coverage before finding that based on all the facts, Bishop was an employee of the League when he was injured on the second day of tryouts. The First District reversed, holding that because the League signature didn’t appear on the contract, the contract was not binding for the tryout and that allowing Bishop to participate in a tryout did not constitute an agreement to employ him or to sign the contract. *Arena Football v Bishop*, 220 So. 3d 1243 (Fla. 1st DCA 2017).

The First District specifically held that allowing Bishop to attend the tryout was not enough to create an employment relationship. The First DCA did not address whether the coach, who was an employee of the League and who signed the contract where it said “Team Signature,” had acted as an apparent agent of the League to bind the League.

Professional athletes in Florida have been excluded from workers compensation coverage for many years. But the exclusion only applies during paid employment under contract. §440.02(17)(c)(3), Fla. Stat. It appears Bishop wasn’t paid. So Bishop should have been covered. Three members of the Florida Supreme Court felt the issues merited review and analysis, but it was not enough to obtain review.

Author: Anthony V. Cortese – Attorney at Law

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Thank you to HCBA member Jeanne Tate, who for many years has organized the Lawyers with Heart Initiative for the American Heart Association Annual Tampa Heart Walk. In support of last year’s Walk on November 11, Tate received the support of 16 local firms, raising an impressive $108,596 for the cause. Thank you to everyone who supported this great effort! The local firms that supported the cause last year are:

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• Jeanne T. Tate, P.A.
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Judicial Luncheon – What’s New on the Bench

Members had the opportunity to meet and hear from the newest members of the judiciary with the Thirteenth Circuit Court at the HCBA Judicial Luncheon on November 15. The panelists included Judge Darren D. Farfante, Judge Daryl M. Manning, Judge Christine A. Marlewski, and Judge Michael S. Williams.

Thank you to the luncheon’s sponsor:

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Chris Altenbernd - Chris W. Altenbernd has joined Banker Lopez Gassler P.A., returning to practice with many of the attorneys with whom he started his career in 1975. Altenbernd assists outside counsel with brief writing and conducts moot courts prior to actual oral arguments. He is also available to assist counsel with the preparation of jury instructions, verdict forms, and to advise on jurisdictional issues.

Bradley Arant Boult Cummings LLP - is pleased to announce that former U.S. Attorney A. Lee Bentley III and former Assistant U.S. Attorney Jason Mehta have joined the firm’s Tampa office as partners in the Government Enforcement and Investigations Practice Group. Both served the U.S. Attorney’s Office for the Middle District of Florida, based in Tampa and Jacksonville, respectively.

John C. Connery, Jr. - Hill Ward Henderson Shareholder John C. Connery, Jr. was selected to serve on the 2017-2018 Association for Corporate Growth’s (ACG) Global Board of Directors.

B. Ben Dachepalli - Hill Ward Henderson is pleased to announce Shareholder B. Ben Dachepalli was elected as chairman of the board for the Indo-US Chamber of Commerce.

Nicole M. Fluet - Galloway, Johnson, Tompkins, Burr & Smith is pleased to announce that Nicole M. Fluet has been named a director of the firm. Fluet practices in the areas of insurance defense, insurance coverage, construction defect, first-party property, intellectual property, and workers compensation.

Autumn P. George - Galloway, Johnson, Tompkins, Burr & Smith is pleased to announce that Autumn P. George has been named a director of the firm. George devotes her practice to state and federal court litigation and has tried cases in state and federal courts and before administrative law agencies.

Jeffrey W. Gibson - Macfarlane Ferguson & McMullen, P.A., congratulates Shareholder Jeffrey W. Gibson, who was named the chair of the board of directors for the Arts Council of Hillsborough County.

Matthew F. Hall - Hill Ward Henderson Attorney Matthew F. Hall was elected as board chair of the National Multiple Sclerosis Society’s Mid Florida Chapter. Hall has been involved in the NMSS for more than three years.

Dee Anna Hays - Ogletree Deakins is pleased to announce that the firm has elevated Dee Anna Hays to shareholder. Hays practices in the firm’s Tampa office and is one of 11 attorneys elected to the 2018 class of new shareholders.

Luis Prats - Carlton Fields is pleased to announce that Tampa Shareholder Luis “Lai” Prats has been named office managing shareholder of the firm’s Tampa office.

Travis Santos - Hill Ward Henderson is pleased to share that attorney Travis Santos has been elected as a shareholder in the firm’s Bankruptcy and Creditors’ Rights and Commercial Litigation Groups.

Tom Scarritt - Tampa Attorney Tom Scarritt was elected president of the Tampa Ybor City Rotary Club, one of the largest, oldest, and most diverse Rotary Clubs in its District.

Matthew Tyson - Hill Ward Henderson welcomes its new associate, Matthew Tyson, in the firm’s Corporate & Tax Group. His practice focuses on mergers and acquisitions, venture capital, and private equity, as well as general corporate advice.

Mark Wall - Hill Ward Henderson Shareholder Mark Wall has been selected to join the board of directors for Family Resources.

Timothy P. Zehnder - Hill Ward Henderson is pleased to announce attorney Timothy P. Zehnder has been elected to the Gasparilla International Film Festival Board of Directors.

To submit Around the Association news, please email Stacy@hillsbar.com.
For the month of September 2017
Judge: Hon. Paul Huey
Parties: Ronny Rodriguez Ramos v. Dr. Luciano Ramirez
Attorneys: for plaintiff: Omar Medina; for defendant: Melissa Bodnar and Kristen Taylor
Nature of case: Plaintiff was struck by vehicle.
Verdict: $495,000 for the plaintiff, $400,000 in attorney’s fees and costs pursuant to a proposal for settlement.

For the month of December 2017
Judge: Hon. Elizabeth G. Rice
Parties: Stephanie Ming v. Gerealco Traffic Controls, Inc.
Attorneys: for plaintiff: Christopher D. Codling & Robert D. Sparks; for defendant: Jeffrey Katz & Michael Siegel
Nature of case: Personal injury
Verdict: $30 million to plaintiff.

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