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Mangrove islands of Cockroach Bay Preserve, near the mouth of the Little Manatee River, represent the natural habitat that once fringed the entirety of Tampa Bay.

Photo courtesy of Carlton Ward Photography, www.carltonward.com
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Documenting the HCBA’s History

I hope the Lawyer magazine continues to fill its role of telling who we are and why we are the way we are for many years to come.

“The memories of men are too frail a thread to hang history from.” I have to confess I’ve never been good at analyzing literature. So I have no real idea what John Still meant when he wrote that line in The Jungle Tide. (That could be, in part, because I haven’t read the book.) But I do know what the quote meant to me when I came across it online: Our history is so important that we must write it down so it can be passed on to successive generations. For the past 25 years, the Lawyer magazine has been doing a fantastic job of documenting the HCBA’s history for those who will come after us.

Before becoming editor, I always thought of the legal articles when I thought of the Lawyer magazine. When I practiced, it was great to be able to flip through a copy of the Lawyer and read about the latest developments in a variety of practice areas. As the editor now, I appreciate how much time and effort (by others, not me) is devoted to turning out such a high-quality legal publication. There is no question in my mind that the Lawyer magazine is the best local Bar publication around. But as I’ve been editing this year’s 25th Anniversary edition, I’ve really come to appreciate how all of the articles and snippets about what the HCBA is up to tell a compelling story about who we are as a Bar association.

Just look at the special features in this year’s editions alone. In the September-October issue, there was a nice feature about the birth of the Bench Bar Conference 18 years ago and how it has turned into the HCBA’s signature event, featuring a full day of CLE classes, a membership luncheon, and a judicial luncheon. This issue’s feature documents the history of the Chester H. Ferguson Law Center, which has become the hub for the HCBA’s activities. Last issue, there was a great feature about how the 1st Annual Barrister Bash Pig Roast from 11 years ago has evolved into the Judicial Pig Roast/Food Festival and 5k Pro Bono River Run we know today. (By the way, please read John Kynes’ article on page 8 of this issue about the 500 attendees at this year’s Pig Roast and how more than 2,500 pro bono hours were pledged at the event.) But perhaps my favorite was Cory Person’s touching feature in the January-February issue about the legacy of George E. Edgecomb and how he paved the way for a whole generation of lawyers who came after him.

As I mentioned in my initial editor’s message, historian David McCullough once observed, “History is who we are and why we are the way we are.” We are fortunate to be part of such a vibrant Bar association with a rich history. While I tremendously appreciate all of the lawyers who take time to keep us up-to-date on the latest legal developments, I hope the Lawyer magazine continues to fill its role of telling who we are and why we are the way we are for many years to come.
I live in denial. I refuse to believe that I am no longer a young lawyer. In reality, I am now quite removed from the Bar’s definition of a “young lawyer” as I am no longer near being “under 36 years old or admitted to practice for five years or less.” Perhaps like many of you, my young lawyer days have faded somehow to a point where I can hardly see, hear, or recall moments that just yesterday I swore I would never forget. Curiously, this seems to resemble a phenomenon that has arisen on the home front as my wife and daughters diligently point out how much I fail to see, hear, or remember (of course, they don’t know what they’re talking about).

Kidding aside, I am a huge fan of young lawyers and submit that our local Bar is fortunate to count so many talented and professional young attorneys as active members. Perhaps I am biased as I “grew up” in the HCBA-YLD, but in this year’s role I have observed firsthand our YLD continuing its tradition to do, serve,

Continued on page 4
and achieve greatly. As such, it firmly remains a leader among its peers not only throughout Florida, but nationally as well. Indeed, the success of our YLD bodes well for our local Bar as it attracts lawyers early in their careers and helps to nurture and shape them into servant leaders who, through the relationships they build and the respect for the law they develop, go on to assure that our area remains one of the most professional places to practice in the country.

The above said, a number of young lawyers have asked me this past year for advice, tips, and, generally speaking, what I have learned that might help them in the early parts of their careers. Although I feel wholly inadequate to answer such and recognize that I am far from an authority, I recall that line from The Faces’ hit, “Ooh La La,” “I wish that I knew what I know now when I was younger...” and offer the following:

1. **Be professional at every turn.** Each case, transaction, or matter has pivotal moments, and one of them usually occurs early on. When it does, set the tone for all involved by extending professional courtesy.

2. **Find a mentor.** Sooner or later, we all need some help within the profession. Try to identify someone who will genuinely listen and really share what he/she thinks. Although many workplaces foster and even structure such mentoring, others do not. Here, I shamelessly plug and recommend the HCBA and Thirteenth Judicial Circuit’s Mentoring Program (see “For Attorneys” link on our HCBA’s new website).

3. **Be accountable.** Like life, each day is filled with choices. Sometimes, we screw up. When we do, don’t cover up — own up. As the saying goes, the cover-up is often worse than the crime. Save yourself, and those around you, a lot of heartburn. Admit your mistakes, accept their consequences, fix them (if you can), learn, and move on.

4. **Give back to our profession.** Everyone has some time and talent. Take a *pro bono* case. Volunteer and serve on a committee. Write an article for this magazine. Speak at a CLE or similar program. When opportunity presents, educate friends, neighbors, and kids on our justice system and the importance of judicial independence. Toward this end and with a focus on delivering civics education to others, The Florida Bar’s Benchmarks programming is excellent. To learn more about Benchmarks while receiving CLE credit, I encourage you to attend the May 29 program that our friends at HAWL have coordinated (see the HCBA website for more info).

5. **Be nice.** Although I am sure I borrowed this from someone, does this one really need any commentary? Seriously, just be nice.

6. **Establish and build relationships.** If you value networking and its benefits, go to a YLD lunch or, perhaps better yet, a YLD Happy Hour or other event like the YLD Golf Tournament. Email friends or acquaintances and meet them at the Law Day Lunch on May 20. Go to a lunch sponsored by a section or committee that involves one of your practice areas. You never know where your next idea, tip, case strategy, referral, or friendship will originate, but your odds improve when you join other lawyers at such events.

7. **Smile, laugh, and have some fun.** The practice of law can be stressful. The hours are long. Clients can be demanding. Each issue is someone’s crisis. I recognize it can be difficult at times, but find the humor in things and embrace it. Lighten up and laugh at yourself.

8. **Get active in our local Bar.** You have chosen a career path, so share it with others, especially your YLD peers with, and even against, whom you may well be practicing for years. You will not only learn from each other, but over time you will inevitably help and support each other, all the while becoming better lawyers. One of the best opportunities to grow more active is to participate in the HCBA’s Bar Leadership Institute. If you have not considered applying to this terrific program, please do and visit the HCBA’s new website for more information.

9. **Be a doer and never stop.** Although one should not say “yes” to every opportunity and should analyze the cost/benefit of each commitment, it is good to stretch yourself every now and then. Challenge yourself to do something outside of your comfort zone. You will not only grow in unexpected ways, you will positively impact — perhaps even unknowingly — someone else.

10. **Enjoy the moment.** As implied above, you will not be a young lawyer forever. Ask your rookie questions now and understand the answers. As King Solomon wrote, “[t]here is a time for everything, and a season for every activity under heaven.” Ecclesiastes 3:1. Enjoy your “season” as a young lawyer!
The Practice of Law: Learning to Act like a Lawyer

It is not enough to think like a lawyer, you must learn to act like one.

According to about half the attorneys who responded to a Florida Bar survey in 2013, the most serious problem facing the legal profession today is too many lawyers. Objectively, since 2000, the number of law schools in Florida almost doubled with the addition of five new law schools. Not surprisingly, the number of lawyers in this state increased by more than 50 percent. By comparison, in 1980, the state had only 27,000 lawyers, approximately a quarter of the amount today.

A natural consequence of the increased competition is a decrease in available work and, thus, the opportunities to develop as a young lawyer. It is the practice of law, as opposed to only knowledge of it, that will prove vital to your development in the profession. I think this concept was well explained by Alasdair MacIntyre, who defined practice as involving a “coherent and complex form of socially established cooperative human activity.” This requirement, MacIntyre observes, distinguishes planting turnips from farming. Said another way, it is not enough to think like a lawyer, you must learn to act like one.

The practice of law can only be achieved through clinical experience. In addition to seeking out mentors, young lawyers need to seek out the experiences necessary in their particular field. “Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.”

Comment to Fla. Bar Rule 4-1.1. Perfecting your craft requires exposure to “lawyering” done in trials, hearings, client meetings, negotiations, and depositions. If you are not being provided these opportunities, then you must seek them out elsewhere. Experiential education is necessary to develop the ability to understand a concept on a level that you can then anticipate and apply to new situations.

In an attempt to broaden the experiences available to young lawyers, the YLD offers a number of programs designed to increase such exposure. Through the YLD, you can participate in our Judicial Shadowing program, where feedback is received directly from the bench; attend the State Court Trial Seminar on June 12, where established litigators take you from trial preparation through closing arguments; or volunteer for structured and supervised pro bono, where you can develop or enhance skills such as negotiating (with your client and with opposing counsel), drafting pleadings, handling discovery, arguing motions, representing clients at trial, learning about new courts, and writing briefs.

Recent & Upcoming YLD Events:

The State Court Trial Seminar will be June 12 from 1 to 5 p.m. at the George E. Edgecomb Courthouse, 6th Floor, Courtroom 1 (4.0 CLE Credits).

For more information on the YLD’s activities, check out our Facebook page at www.facebook.com/Hillsboroughyld.

Stay connected to your colleagues by renewing your HCBA membership. Go to hillsbar.com.
The American Inns of Court Tampa Chapters invite you to apply for membership.

The American Inns of Court is a national organization designed to improve the skills, professionalism, and ethics of the bench and bar. Tampa's civil litigation Inns are The J. Clifford Cheatwood Inn, 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.)

Name:______________________________________________________________________________
Firm:________________________________________________________________________________
Address: __________________________________________________________________________
Email address:________________________________________________________________________
Years in practice and specialty? ______________________________________________________
Prior experience with any Inn of Court? ________________________________________________
Have you previously applied? _______________ When? ________________________________
Have you been referred to an Inn? ___________ By whom? ______________________________
List any weekday evening you cannot attend meetings: __________________________________
Do you have a preference for a particular Inn? __________________________________________
Please attach a current resume limited to one page in length.

Forward Application Package to:
Hillsborough County Bar Association, Attn: John Kynes, Chester H. Ferguson Law Center
1610 N. Tampa Street, Tampa, FL 33602. Fax (813) 221-7778.
Pro Bono and Pork: A Proud HCBA Tradition Continues

12th Annual Judicial Pig Roast/Food Festival and 5K Pro Bono River Run Draw a Big Crowd

They came ready to run. They ate great food. They enjoyed good company. And they left feeling full and gratified that they had helped support the Bar and pro bono work in the community.

That sums up the festivities on a beautiful Saturday afternoon on March 21 when more than 500 people participated in the HCBA’s 12th Annual Judicial Pig Roast/Food Festival and 5K Pro Bono River Run held on the grounds of Stetson Law’s Tampa campus.

“The Pig Roast and 5K are unique and fun HCBA events, and I am pleased that we had a huge turnout this year,” said HCBA President Ben Hill IV. “I believe the family-friendly atmosphere helps build greater camaraderie among HCBA members, and the tremendous support of the 5K certainly speaks volumes about the Bar’s commitment to pro bono service.”

There were more than 20 food and beverage booths at this year’s Pig Roast/Food Festival, which featured a wide variety of culinary delights and handcrafted concoctions.

The judges of the Thirteenth Circuit were “all in” again this year, and they took home the prize for Best Pig Sty, or most creative booth. Inspired by the 75th anniversary of the premiere of “The Wizard of Oz,” the judges decorated their food tent with Oz-themed paraphernalia. A sign hanging from their tent read “The Judges of Oz.”

Some judges also came dressed as characters from the movie. Wearing ruby slippers, Judge Samantha Ward came as Dorothy; Judge Caroline Tesche was quite a sight dressed in all silver as the Tin Man; Judge Lisa Campbell was the Scarecrow; and Judge Kimberly Fernandez was decked out as the Cowardly Lion.

Judge Jack Espinosa Jr. arrived just after 7 a.m. on Saturday morning and spent the next eight hours with a small group tending to 20 Boston pork butts cooking in a massive black 11-foot smoker parked behind Stetson under an oak tree. A Pig Roast veteran, Espinosa said the key to preparing the judges’ pulled pork entree was the special marinade applied to the meat the night before and cooking the pork at the proper temperature.

“Low and slow is best,” Espinosa said as smoke billowed from the smoker nearby.

GrayRobinson, P.A., took runner-up honors for Best Pig Sty for its strawberry-themed food booth, which was adorned with red balloons made to look like strawberries. Grace Yang, a GrayRobinson partner and HCBA board member, helped serve attendees strawberry shortcake and strawberry daiquiris made with fresh Plant City strawberries.

The award for Best Pig Slop, or best food, went to the law firm of Trenam Kemker. Eric Koenig, the firm’s own “Top Chef,” explained that Trenam’s culinary theme this year was called “Feed Your Inner Child.”

Koenig said he took familiar childhood food favorites — chicken fingers, macaroni and cheese, and Rice

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EXECUTIVE DIRECTOR’S MESSAGE
John F. Kynes - Hillsborough County Bar Association

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Krispie s’mores — and “elevated” them to a gourmet level using extra fresh ingredients and homemade bourbon barbecue sauce for the chicken fingers. He said he spent weeks creating handcrafted American wheat and Nutella beers that attendees were able to enjoy.

Wilkes & McHugh and the Thirteenth Judicial Circuit shared runner-up honors for Best Pig Slop.

The HCBA’s inaugural 5K run took place in 2009, and before this year’s Pig Roast, runners hit the streets for what is now called the 5K Pro Bono River Run.

“This year’s race was a great success with almost 300 runners and over 2,500 hours pledged in support of indigent citizens in our community,” said Judge John Conrad, who chaired the 5K event along with Judge Christopher Nash. “The 5K Committee deserves special thanks for their outstanding effort in making this race such a wonderful event.”

The overall 5K male winner was Alejandro Navas, and the overall female winner was Yova Borovska.

The fastest male judge was Judge Gregory Holder, and the fastest female judge was Judge Linda Allen.

Of special note, Judge Conrad’s 85-year-old father, Joe, ran a remarkable time for his age, and Judge Nash’s 7-year-old son, Charlie, ran for the second year in a row.

Dick Woltmann, executive director of Bay Area Legal Services, said the 5K run not only raises pledges of pro bono hours, it also generates pro bono participation in various projects in the Thirteenth Circuit, such as Crossroads for Florida Kids and Are You Safe. Woltmann said this year’s pledges of more than 2,500 pro bono hours represent a 50 percent increase in hours pledged from last year.

No doubt both the Pig Roast and 5K run have experienced many changes over time, but the competitive spirit and camaraderie that exist among HCBA members remain the same. Many thanks to all the financial sponsors and tireless volunteers who, over the years, have helped make both these events a success.

See you around the Chet.

CARTER ANDERSEN, HCBA PRESIDENT-ELECT
GRACIOUSLY REQUESTS THE HONOR OF YOUR PRESENCE AT THE
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5 TO 7 P.M.
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Traditionally, evidence of a crime is collected by law enforcement during the normal course of their investigation, but there are situations where it becomes necessary for my office to assist law enforcement in obtaining evidence needed to investigate a crime.

In some cases of driving under the influence, the defendant has sought and obtained medical treatment. That treatment may have precluded law enforcement from obtaining a lawful sample from the defendant to test for alcohol or impairing drugs. During the course of treatment, medical personnel may have obtained a blood sample for diagnostic purposes. This sample may contain important evidence that could be used to determine whether a driver was impaired.

This medical blood is not obtained at the direction of law enforcement. Although the blood sample and subsequent results are not a seizure by the government or its agents, they are subject to heightened privacy protections. Not only are medical records subject to protection under federal law, but section 395.3025, Florida Statutes, provides that “[p]atient records are confidential and must not be disclosed without the consent of the patient.” Section 319.1932(1)(f)(2)(b), Florida Statutes, does allow medical personnel to notify law enforcement of a blood alcohol level over the legal level, but that information can only be used for limited purposes. Those results may be obtained by subpoena, but our office must provide notice to the defendant before issuing that subpoena.

To satisfy the requirements imposed by that statute and by the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA), our office notifies the defendant of our intent to obtain the defendant’s medical records and of the opportunity to object to the issuance of the subpoena.

If a defendant provides timely objection to the subpoena, our office must set the case for a hearing. At the hearing, the state carries the burden of showing that those records would be relevant to a criminal investigation. The state must “show the nexus between the medical records sought and a pending criminal investigation.” This burden can be met through the presentation of live testimony or by reliance upon a probable cause affidavit or sworn statement.

If there has been no objection, or after hearing, a subpoena may be issued to the hospital to provide the results of any blood test showing the alcohol level of the defendant. The information that my office is able to obtain is limited to information that would be relevant to the crime being investigated; it would not include all of the defendant’s medical records.

As state attorney, it is my duty to assist law enforcement in lawfully obtaining evidence of criminal acts. Lawfully obtained evidence allows my prosecutors to secure convictions that help keep our community safe.

1 45 C.F.R. § 164.501.
4 See Hunter v. State, 639 So. 2d 72 (Fla. 5th DCA 1994).
5 Id. at 74.
6 See McAlevy v. State, 947 So. 2d 525 (Fla. 4th DCA 2006).
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How can we help you brand your firm or practice?
One of the biggest milestones documented in the pages of the *Lawyer* magazine over the past 25 years has been the construction of the Chester H. Ferguson Law Center. The joint effort by the Hillsborough County Bar Foundation and Hillsborough County Bar Association is a shining example of the great things that can be accomplished through the cooperation and commitment of the local legal community. In the few years since its grand opening, the law center has become the hub of local legal activities, hosting CLEs, seminars, luncheons, networking events, pro bono programming, and much more. The HCBF and HCBA are proud to provide such a beautiful place for our members to call home.
A Look Back

June 20, 2006:
Groundbreaking ceremony takes place, featuring then-Mayor Pam Iorio and leadership from the HCBF and HCBA.

January 2007:
Construction begins on the two-story 17,500-square-foot facility at 1610 N. Tampa St., adjacent to the Stetson Law Tampa Campus.

May 2007:
Members of the HCBF Board of Trustees and the HCBA Board of Directors gather at the construction site to celebrate the topping off of the building. Those in attendance had the opportunity to sign the last truss installed on the roof.

February 27, 2008:
The Chester H. Ferguson Law Center opens its doors with a ribbon cutting and open house.
The following is an edited excerpt of an interview with the Hon. James D. Whittemore of the U.S. District Court.

Q Judge, can you tell us a little about your background — where you grew up and went to school?

A I was born in South Carolina, moved down to Jacksonville when I was in elementary school, and actually moved back to South Carolina. My dad was in the trucking business so the Eastern Seaboard was his trail. We moved back to Jacksonville the summer before seventh grade, stayed there until we moved to Tampa after my sophomore year in high school.

Q I understand that you enjoyed surfing growing up. That’s not exactly a skill set that we normally associate with federal judges.

A That’s where it started, in Jacksonville. That summer before seventh grade, my parents had a close friend who lived out on the beach, and one of the brothers was my age. Our parents had been close friends, and he introduced me to surfing; I surfed all the

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“I was in the library in the Supreme Court and learned a great lesson in preparation — you’re never finished.”
time and played golf. I balanced the two — I had the best of both worlds.

Q  Do you still surf at all?
A  Oh yeah.
Q  Really?
A  That’s a picture in Costa Rica about five years ago, maybe six. I don’t go as much as I used to, not for any reason other than logistics.
Q  You became one of the first public defenders in the Middle District in 1978. What challenges did you face as one of the first federal public defenders here?
A  It was a great experience. We tried our own cases and handled appeals on our own cases, so we got not only trial experience but appellate experience. We argued cases in New Orleans, Jacksonville, Miami, and Atlanta. We got to go to Atlanta and argue before the new Eleventh Circuit; one of my cases eventually made it up to the Supreme Court.
Q  How would you say that experience in the federal public defender’s office helped prepare you for a judgeship?

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Miranda if I’m not mistaken, but also was a proponent of stare decisis. He asked me a very pointed question, “You tell me that remaining silent is equivalent to exercising your Sixth Amendment right?” I said, “Yes, sir, that’s exactly what this court said ...” He said, “Well, who wrote that opinion?” I pointed at him and said, “You did, Your Honor!” A great experience. It was a hot court.

Q Why did you decide that you wanted to become a judge?

A I had applied for a county judgeship and made the short list. I may have applied one more time and didn’t get it and kind of just gave up on that because it’s disrupting when you’re trying to practice. And I remember driving out I-4 and Jim Arnold had a campaign sign, which was probably ’85 or ’86. I knew him well, and I said, “Well, my contemporaries are getting on the bench,” and it just kind of opened up that avenue of interest. It’s not why I applied, but it certainly gave me reason to think that I was at a point in my career where it might be a good time, and it worked out well.

Q Is there a state or federal judge who you truly admire and who you try to emulate in the way you run your courtroom?

A I anticipated that question, Michael. As a federal practitioner, the first person who comes to mind is...
Terry Hodges. I tried our first jury trial as an assistant federal public defender for the office in front of Judge Hodges and learned from him over the years more than, I think, any other judge. He was very serious and stern in the courtroom — stern in a good way. And he expected us to be prepared. He was a great judge — a great demeanor. He ruled from the bench for the most part, and we used to marvel at his ability to lean back, look through his glasses, and begin articulating a decision and cite cases and the rules, and I always admired that.

Q You’ve been on the state and the federal bench for a combined total of almost 25 years. And you have, if I may say, a reputation of being even-tempered on the bench. How are you able to maintain that disposition with all of the skirmishing among lawyers that typically occurs in contentious cases?

A I’m glad to hear that because I have to admit that there are times when I wear my emotions on my sleeve, but that’s part of the personality of a judge. I think, for the most part, we try to take a breath and think before we speak, and try to eliminate the tone that so easily creeps into our communications in a courtroom. It’s a constant struggle, not because of the lawyers, I mean that’s certainly a component — but when you’re in the midst of a deliberative process, I think we attempt to stay focused and not be distracted and get to the answer of that particular question, whatever it may be. That’s a big challenge as a judge.

Q What do you like best about being a judge?

A I think the sense of making a difference, of having the opportunity to apply principles of law, whether it be civil or criminal, correctly. That’s what we are asked to do and what we swear to do. That’s what the lawyers and litigants expect. The decision needs to be based on the law and the facts that are in front of a judge. I enjoy that part of it.

Q What’s the hardest part of being a judge?

A Sometimes it can get monotonous. Sometimes disputes are seemingly repetitive. That part of it is a challenge and sometimes can get frustrating.

Q How do you separate your personal and political ideology from the issues that you have to decide in a case?

A I’ve never had a problem with that. I’ve been asked that question a hundred times by non-lawyers as well as lawyers because that would seem to be to most people one of the most difficult challenges of being a judge. That’s just something that as a lawyer I didn’t let interfere with my advocacy, and I think as a judge, you certainly know it cannot interfere.

Q Can you tell us a little about your family? How long you have been married? How many kids do you have?

A Thirty-seven years last Wednesday, I’ve been married. She’s a trooper. My oldest son is a lawyer who practices with the Wagner, McLaughlin firm, personal injury — made partner last year. We’ve got a 4-year-old grandson who we are very proud of. My next son is a border patrol agent who’s been in the border patrol more than six years. He’s got brand-new twins, a boy and a girl. And I have a 23-year-old daughter at home who is challenged, special needs. She’s our baby. So a pretty well-rounded family. An older brother is a lawyer in St. Pete. A younger brother is a lawyer here in Tampa at Phelps Dunbar.

Q Without getting too personal, how has your role as a parent of a special needs child shaped you as a person and even as a judge?

A That’s a great question. That’s something you live and breathe every moment of your waking day and well into the night during your sleepless moments. I think it makes you appreciate challenges that those with disabilities have and just as importantly, challenges those families face. It’s difficult I think for most people to fully appreciate and understand the challenges of a special needs person and their family.

Q Judge, last question. What have you found to be the single most fulfilling aspect of your distinguished legal career?

A Well, that’s a hard one because I feel very, very fortunate to have been selected and appointed to this position. It’s an honor. I think the most fulfilling part is the fact that I’m in a position that the founders recognized as an important component of our system of government — the judiciary — the third branch — and fulfilling that constitutional role is not only an honor, it’s just an absolute privilege. I find that to be very fulfilling.

Author: Michael S. Hooker, Phelps Dunbar LLP
In January, Judge Matt Lucas moved from the Hillsborough County Circuit Court to join the Second District Court of Appeal. Arriving on a Monday, he sat on his first oral argument panel the next day. (Clerk Jim Birkhold had thoughtfully arranged to have the files made available for his review earlier.)

The fast judicial pace is nothing new for Judge Lucas, having been appointed to the county bench in 2010, elected for another term in 2012, appointed to the circuit bench in 2013, and elected in 2014. Judge Lucas graduated from FSU with a bachelor of science degree in economics, and he attended UF College of Law. He married into a Gator family and diplomatically roots for the Gators 364 days a year.

After law school, Judge Lucas worked at Carlton Fields and then Bricklemeyer, Smolker & Bolves, becoming a shareholder. His private practice included a variety of civil trial and appellate fields. His broad experience on the trial bench added family and criminal law to his skill set, further preparing him for the Second District and its heavy criminal docket.

Judge Lucas’ wide legal interests are reflected both in his professional activities and articles he has authored. His writings range from law review articles on corporate dissolution and how the right to remain silent impacts access to civil courts, to shorter pieces on valuing the marital home, title insurance, and diversity jurisdiction removal. He explains that his articles have risen out of cases that had an issue he felt warranted a deeper exploration.

Generous in sharing his time on CLE seminars and bar activities, Judge Lucas has actively contributed in projects directly benefiting children. These have included participating in Teen Court and the Great American Teach-In, serving as a Cub Scout den leader, and coaching Little League.

His interests outside law focus on his wife and their two sons, who

Continued on page 19

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JUDGE MATT LUCAS JOINS THE SECOND DISTRICT
Appellate Practice Section

Continued from page 18

are active in baseball and preschool. He also has varied musical interests in several instruments, and his past forays encompassed playing bass guitar in his high school jazz band, acoustic guitar for youth gatherings, and, on rare occasions, the bagpipes.

Although only on the Second District for less than a month when we met in late January for this article, Judge Lucas noted differences between trial and appellate judging experiences. The amount of written materials and their role in reaching the resolution of cases takes on a considerably more significant role in the appellate arena. Judge Lucas also shared what seems to be the prevailing view of appellate judges: that he is not a fan of footnotes, commenting they may be appropriate to direct the reader to a more detailed discussion of a less important aspect of an issue — but are not the place for crucial points. He also observed that his office phone seems to ring a little less often.

We are fortunate to have Judge Lucas become the first of two new judges on the Second District, as it expands to 16 judges. Lawyers and parties in the district can look forward to his thoughtful analysis and courteous judicial demeanor in the years to come.

Authors: Raymond T. (Tom) Elligett Jr. and Amy S. Farrior - Buell & Elligett, P.A.

In the next issue:
Solo Section outlines developments at the County Law Library.

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FROM TALKING THE TALK TO WALKING THE WALK
Collaborative Law Section

Three years ago when our section began, the main objective was to educate the Bar and public about the collaborative process as an often-better alternative to court and litigation. Informing divorcing couples how they can resolve their problems peaceably, privately, and in a child-sensitive way is very important. That objective continues to be a challenge, but significant progress has been made! We have an energetic section, supported by our judiciary, and two enthusiastic practice groups all working to achieve that goal. We have significantly increased awareness of this process, which empowers clients to make their own decisions on how to settle their cases, and the Collaborative Law Legislation is hopefully poised for passage, so we may have our statute that will heighten awareness to new levels.

The section and the practice groups have also presented excellent educational opportunities. Woody Mosten recently presented a two-day seminar on how to become a full-time (and profitable) peacemaker. Last fall, Linda Solomon and Rita Pollock presented an advanced seminar teaching problem-solving techniques and the importance of the “we” in our teams.

For those already trained and convinced that the collaborative process is our preferred way to handle a divorce, I believe we all agree the more collaborative cases we handle, the better we perform our technical roles as peacemakers. However, it also becomes increasingly obvious that there is much more to learn to enhance our skills. The skills of the collaborative practitioner may be different, but they are just as important as the skills required to hone trial advocacy skills. We are realizing, as we use the collaborative process more, our skills need to improve to better handle those difficult moments, clients, and lawyers who are struggling to make the paradigm shift as well.

Collaborative lawyers have come to realize the importance of facilitators because they possess skills that we, as lawyers, weren’t trained to have. Mental health professionals have skills of neutrality and non-defensive communication necessary to help clients feel safe and understood. Skills we need to develop are mindfulness, listening, being present, and being self-aware, as well as aware of others, so that our words are chosen and effective in the questions we ask and the communications we intend. To help our clients solve their problems at a very difficult time, we need to strive for excellence and continue to learn and be better at what we do. Just as law school does not a lawyer make, one or two trainings do not an accomplished collaborative lawyer make.

Selling the process is the important first step, but the easier one. The next important step is for us to become excellent, to accept the challenge to always be learning, so we can more effectively deliver collaborative services for parties to achieve a mutually acceptable resolution. Being a poor performer in a great process hurts our clients and will hurt the reputation of the process, so strive to walk the walk well!

Author: John Fraser Himes - Himes & Hearn, P.A.

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DEBT RELIEF CLINIC ASSISTS LOCAL RESIDENTS
Community Services Committee
Chairs: Lisa Esposito - Law Offices of Lisa Esposito, P.A.; and Lara M. LaVoie - LaVoie & Kaizer, P.A.

It is no secret. Debt collectors can be aggressive in their practices. They can make multiple calls a day. They can send dunning letters and threaten to garnish wages and take property. Debt collectors can then file lawsuits and hope to get a quick default judgment against the unwary. Many times, these efforts drive people who owe debt into bankruptcy. Low-income residents in the Tampa Bay community now have a good friend to combat these practices in the Debt Relief Clinic at the WMU-Cooley Law School.

Founded in 2013, the pro bono Debt Relief Clinic is a student-run organization. Robert “Bert” Savage, the clinic’s founder, oversees about 10 students who provide free legal services in the community to eligible clients under financial distress. “Many of the eligible clients are without jobs, elderly, and/or disabled, and it is precisely these people in the community who need protection and legal help,” Savage says.

Jose Morales, a law student with the clinic, says he “enjoys the clinic because it provides an opportunity to help less fortunate people in need while getting real-world experience under the direction of a seasoned attorney.” Law students get valuable experience in that they assist clients in negotiating debt, defending collection lawsuits, raising counterclaims based on unfair collection practices, if applicable, and filing bankruptcy, if necessary.

Without a marketing budget, the clinic usually gets its clients through grass-roots efforts. For example, potential clients are usually directed to the clinic from Bay Area Legal Services or from bankruptcy judges in the Middle District of Florida.

In bankruptcy cases, both the clients and the courts are happy with the clinic’s involvement because bankruptcy can often be a very technical and paperwork-driven process, much like preparing and filing tax returns. Law students under supervision can help make the process friendlier and cut down on errors associated with pro se filings. To date, the clinic has helped many people in the community and hopes to build on its early success. For more information on the Debt Relief Clinic, please contact Bert Savage at savager@cooley.edu or (813) 419-5100, Ext. 5153.

Author:
Alfred Villoch III - Savage, Combs & Villoch, PLLC

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Section 627.706, Florida Statutes, has not always required “structural damage” as part of a “sinkhole loss.” Until 2005, the statute required “actual physical damage to the property.” The 2005 amendment to section 627.706 narrowed the damage requirement to “structural damage to the building” but left “structural damage” undefined. In 2011, the legislature codified five criteria that individually define “structural damage.” See § 627.706(2)(k), Fla. Stat.

Recently, two Eleventh Circuit opinions put to rest an issue in sinkhole litigation: interpreting the “structural damage” requirement for a “sinkhole loss.”

In Shelton v. Liberty Mutual Fire Insurance Co., 578 F. App’x 841 (11th Cir. 2014), the policy issued after the 2011 amendment did not define the phrase “structural damage to the building.” Nor did the policy explicitly incorporate the detailed “structural damage” statutory definition. Id. at 843.

The question for the court, then, was whether the detailed statutory definition applied to the policy’s requirement of “structural damage.” Id. at 845. The court held it did. Id.

The court noted the legislature intended for the “structural damage” definition to be “used in connection with any policy providing coverage ... for sinkhole losses.” Id. (quoting § 627.706(2), Fla. Stat.). Because the policy did not define “structural damage,” the statutory definition “must be read into” the policy and given full force and effect as other terms in the policy. Id. (quoting Northbrook Prop. & Cas. Ins. Co. v. R & J Crane Serv., Inc., 765 So. 2d 836, 839 (Fla. 4th DCA 2000)).

The court held that the plain meaning of the unambiguous phrase “structural damage to the building” is “damage that impairs the structural integrity of the building.”

The broader aspect of the Hegel case is the court’s guidance on interpretation of contracts, especially with respect to plain meaning. For sinkhole coverage disputes involving Florida property insurance policies, Shelton and Hegel resolve these debates for the undefined use of “structural damage.”

Author:
William B. Collum – Butler Pappas Weihmuller Katz Craig, LLP

1 Disclosure: Butler Pappas Weihmuller Katz Craig LLP represented the insurer.
2 Butler Pappas also represented the insurer in Hegel.
Corporations defending negligence actions that are unable to obtain a dismissal or summary judgment may present evidence to argue for and achieve a directed verdict. However, directed verdicts can be difficult to sustain when a plaintiff can provide some proof a defendant proximately caused the plaintiff’s injuries. In Sanders v. ERP Operating Limited Partnership, 157 So. 3d 273 (Fla. 2015), the Florida Supreme Court recently resolved “when a defendant is entitled to a directed verdict in a negligence action.”

In that case, Shandalyn Sanders’ estate sued ERP, “a national company owning approximately one hundred properties,” which owned the apartment complex where Sanders and a companion were murdered. Id. at 275. ERP marketed its apartment complex as a highly secure gated community, with “a policy of providing reasonable lighting, locks, and peepholes” and alarm systems. Id. However, 20 crimes had been committed at the complex, and the entrance gate had been intermittently broken in the three years before the evening that “the victims were shot to death by unknown assailants.” Id. Sanders’ estate alleged that ERP negligently failed to maintain the entry gate, provide reasonable lighting, and warn the residents of previous criminal activity. Id.

A defense expert testified that the demise of Sanders in a violent manner was not foreseeable and that a security gate was not necessary because ERP provided reasonable security measures. The trial court denied a directed verdict, and the jury returned a verdict in Sanders’ favor. However, the appellate court reversed the jury verdict and held “that Sanders did not present sufficient evidence to establish that ERP's breach of duty was the proximate cause of the deaths of the decedents in this negligent security action, thereby warranting a directed verdict for ERP.” Id. at 277.

The Supreme Court held that “whether or not proximate causation exists is a question of fact, involving an inquiry into whether the respondent’s breach of duty foreseeably and substantially contributed to the plaintiff’s injuries.” Id. at 277 (citing McCain v. Fla. Power Corp., 593 So. 2d 1015, 1018 (Fla. 1992)). Further, in “order for a court to remove the case from the trier of fact and grant a directed verdict, there must only be one reasonable inference from the plaintiff’s evidence.” Id. (citing Owens v. Publix Supermarkets, Inc., 802 So. 2d 315, 322 (Fla. 2001)).

The Supreme Court reviewed the evidence presented by Sanders’ estate and concluded that it provided “a question of fact as to whether ERP more likely than not caused the decedent’s deaths” and that it “should properly be considered by a jury in a comparative negligence analysis and is not a basis for a directed verdict.” Id. at 282. Nevertheless, the Supreme Court has consistently held that courts require “proof that the [defendant’s] negligence probably caused the plaintiff’s injury,” which provides an opportunity for a defendant to present evidence that it could not foresee causation of the plaintiff’s injuries. Id. at 277 (quoting Gooding v. Univ. Hosp. Bldg., Inc., 445 So. 2d 1015, 1018 (Fla. 1984)).

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Caroline Johnson Levine - Office of the Attorney General
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Clemency Project 2014 is a national pro bono program helping federal prisoners obtain early release from unfairly long sentences, and the program needs your help. After decades of extremely harsh sentences, the Department of Justice announced an initiative to award clemency to deserving federal inmates. In asking the legal profession to provide pro bono assistance to federal prisoners who would likely have received a shorter sentence if they had been sentenced today, Deputy Attorney General James Cole said, “For our criminal justice system to be effective, it needs to not only be fair, but it also must be perceived as being fair. Older, stringent punishments that are out of line with sentences imposed under today’s laws erode people’s confidence in our criminal justice system, and I am confident that this initiative will go far to promote the most fundamental of American ideals — equal justice under law.”

Under the new initiative, the Department of Justice will prioritize clemency applications from inmates who meet all of the following factors:

- They are currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today;
- They are non-violent, low-level offenders without significant ties to large-scale criminal organizations, gangs, or cartels;
- They served at least 10 years of their prison sentence;
- They do not have a significant criminal history;
- They have demonstrated good conduct in prison; and
- They have no history of violence before or during their current term of imprisonment.

The Bureau of Prisons will

“Older, stringent punishments that are out of line with sentences imposed under today’s laws erode people’s confidence in our criminal justice system, and I am confident that this initiative will go far to promote the most fundamental of American ideals — equal justice under law.”

— Deputy Attorney General James Cole

Check out the “Pro Bono Opportunities” page at hillsbar.com for training opportunities and organizations that could use your help.

Continued on page 29
CLEMENCY PROJECT 2014 NEEDS YOUR HELP
Criminal Law Section

Continued from page 28

notify inmates of this initiative and provide interested inmates with an electronic survey that will help pro bono lawyers and the Justice Department screen the petitions. The Justice Department has asked all 93 United States Attorneys for assistance in identifying meritorious candidates. Thousands of federal inmates have already sought assistance. This is an unprecedented opportunity to restore the hope of freedom for many, but a significant number of lawyers are needed to provide this legal assistance.

Clemency Project 2014 is a national pro bono effort with a working group made up of lawyers and advocates, including the American Bar Association, the American Civil Liberties Union, Families Against Mandatory Minimums, the National Association of Criminal Defense Lawyers, Federal Public and Community Defenders, and lawyers within those groups. CP 2014 members have collaborated to recruit and train lawyers on how to screen for eligible inmates and represent those inmates in the clemency process. For those attorneys who currently serve as members in good standing on a Criminal Justice Act Panel, you need not complete the training if you can provide a copy of your CJA appointment letter. But you do not need to have handled criminal cases to be eligible and capable of participating in this work. The training program is available on the Internet, so you can complete the five-hour program on any computer. CP 2014 staff and volunteers are available to provide resource and guidance to you as you analyze the cases, and the project has developed a toolkit of templates to streamline the process. To volunteer for this important project, please visit the Clemency Project 2014 website at www.clemencyproject2014.org, or email volunteer@clemencyproject2014.org. You can also volunteer at clemencyproject@nacdl.org or contact the Federal Public Defenders Office for the Middle District of Florida.

Author: Matt Luka - Trombley & Hanes, P.A.
DIVERSITY NETWORKING SOCIAL

Law students from across the state joined with law firms, Bar associations, and other legal organizations at the HCBA Diversity Networking Social on February 21. The event gave students a chance to network with members of the local legal community and meet with potential mentors.

The Diversity Committee would like to thank the event's sponsors:

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A DOUBLE TAKE: SAME-SEX MARRIAGE BEFORE THE SUPREME COURT AGAIN?
Diversity Committee
Chairs: Amanda B. Buffinton - Bush Ross, P.A.; and Jessica Goodwin Costello - Florida Attorney General’s Office of Statewide Prosecution

You may think this issue is old news given Florida’s January 6 recognition of same-sex marriages following the U.S. Supreme Court’s refusal to extend the stay of a federal district court decision finding the state’s ban on same-sex marriages unconstitutional, but it’s not over. The U.S. Supreme Court was planning to hear arguments in four same-sex marriage cases in April, potentially settling the divisive issue by the end of the current term. The justices were planning to consider an appeal from the Sixth Circuit decision that upheld state same-sex marriage bans in Michigan, Ohio, Kentucky, and Tennessee. Arguments are limited to the following two questions: 1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex? 2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

The decision to hear these cases follows on the heels of Florida’s recognition and the Fifth Circuit’s extremely critical questioning of state bans in Texas, Louisiana, and Mississippi. Only three federal courts have upheld state marriage bans since 2013 — the Sixth Circuit and federal district courts in Louisiana and Puerto Rico.

The Supreme Court had set oral argument for the cases on April 28, 2015, and had stated that it would release the audio recording of the arguments on the same day.

The Supreme Court’s decision will not change the current federal law that requires that all federal benefits be administered as if the state law and benefits plan recognize same-sex marriage. No medical plan can impute income, for federal income tax purposes, to an employee for covering their same-sex spouse under the plan. The cost of benefits provided to same-sex spouses covered under the plan (regardless of whether they live in a recognition state) would not be imputed to the employee but would be treated on a pre-tax basis. The benefits plan must recognize same-sex spouses for the purpose of administering federal statutory benefits, such as HSAs, FSAs, and COBRA, regardless of whether the plan recognizes same-sex spouses.

The Supreme Court’s decision could impact whether fully insured plans are required to extend coverage to same-sex spouses.

Although self-insured plans may continue to use a plan-specific definition of spouse, they may be subject to federal and state antidiscrimination claims. In fact, employees have begun successfully litigating the exclusion of same-sex spouses from self-insured plans under federal and state antidiscrimination laws. Recent case law has found that ERISAs’ preemption provisions may no longer provide protection for the design flexibility once afforded to employers providing self-insured plans. As a result, enacting a definition of “spouse” that is at odds with the state and federal definition may considerably increase a plan’s potential exposure to lawsuits under state and federal antidiscrimination statutes, such as Title VII and the Equal Pay Act.

Keep your eyes peeled for the upcoming decisions.

Author:
Dawn Siler-Nixon - FordHarrison LLP

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Author:
Dawn Siler-Nixon - FordHarrison LLP

CORRECTION: The Diversity Committee’s article in the March/April issue of the Lawyer magazine, “Charging Juveniles as Adults and its Disproportionate Effect on Minority Children,” was written by Stevie Swanson of Western Michigan University–Cooley Law School.
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Pictured from left to right: Stacy D. Blank, Joseph H. Varnum III, and Bradford D. Kimbro.
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As we head down the home stretch to the summer break for the Elder Law Section, we would like to update you on the meetings since our last article and keep you informed about the final speaker of the program year.

We had presentations on many diverse topics. On February 5, Travis Finchum, a trustee of National Non-Profit for Americans with Disabilities Inc., the nonprofit corporation that administers Guardian Pooled Trust, gave a very informative presentation to attendees on SSI rules and lesser known Medicaid programs, such as QMB, SLMB, QI1, and Medically Needy. On March 13, April Hill, a frequent lecturer on VA topics, and Javier Centonzio, a former clerk for the Federal Court of Appeals for Veterans’ Claims, gave us an insider’s overview of the VA health care system, as well as VA Pension, Aid and Attendance and service-connected compensation. They also commented on the newly issued proposed regulations affecting the Improved Pension Program. On April 23, Tae Kelley Bronner, a renowned expert on the subject of homestead, presented a review of the relevant law regarding the constitutional homestead exemption from claims of creditors and the impact of trusts on the availability of that exemption.

The section’s last program before the summer break will be May 29 and will spotlight Dale Krause, of Krause Financial. Originally scheduled for the January meeting, his appearance was prevented by weather conditions at that time, but he graciously agreed to come back for the last meeting of 2014-2015. Krause will provide an overview of Medicaid and VA compliant annuities, options available to deal with non-compliant annuities, and the use of annuities in personal service contracts.

Each luncheon qualifies for one hour of CLE credit. Networking begins at 11:30 a.m., with luncheons beginning at noon. All luncheons are held in the Chester H. Ferguson Law Center. We look forward to seeing you at the luncheons, and as always, if you have suggestions or ideas or would like to submit an article for publication in the Lawyer magazine, please contact Elizabeth P. Allen — eallen@gibblaw.com or (813) 877-9222 — or Debra L. Dandar — Debra.Dandar@TampaBayElderLawCenter.com or (813) 282-3390.

Authors: Elizabeth P. Allen — Gibbons | Neuman and Debra L. Dandar — Tampa Bay Elder Law Center

THANKS TO BAR EXAM VOLUNTEERS

Thank you to the following HCBA members who volunteered to proctor the Bar Exam on February 24 and 25 at the Tampa Convention Center:

- Judd Bean
- Raul Cabrera
- Otto Luis-Jorge
- Russell Sibley Jr.
- Blake Delaney
- Jim Thorpe
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JUDICIAL PIG ROAST/FOOD FESTIVAL & 5K PRO BONO RIVER RUN

Fast running and slow cooking ruled at the HCBA’s Judicial Pig Roast/Food Festival & 5K Pro Bono River Run on March 21. About 500 HCBA members and their friends and families gathered for the event on the grounds of Stetson’s Tampa Campus, where participants competed for best food and best décor and runners raised more than 2,500 hours in pro bono pledges. Thanks to all who came out!

Congratulations to all the winners:

**PIG ROAST AWARDS**
Best Pig Slop:
- Trenam Kemker
- Judges of the Thirteenth Judicial Circuit
- Wilkes & McHugh

Runner-up Best Pig Slop (tie):
- Judges of the Thirteenth Judicial Circuit
- Wilkes & McHugh

Best Pig Sty:
- Judges of the Thirteenth Judicial Circuit
- GrayRobinson

Runner-up Best Pig Sty:
- GrayRobinson

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- Tampa Hispanic Bar Association
- TCS
- Trenam Kemker
- Wilkes & McHugh
- WMU-Cooley Law School
- Young Lawyers Division

**5K INDIVIDUAL AWARDS**
Overall Male Winner: Alejandro Navas
Overall Female Winner: Yova Borovska
Fastest Male Judge: Hon. Gregory Holder
Fastest Female Judge: Hon. Linda Allan

**5K TEAM AWARDS**
First Place: Hill Ward Henderson
Second Place: Team Cordover
Third Place: CFJB

**PRO BONO PLEDGE AWARDS**
Proven Producer: Adam Bild
Individual Pledge: Nancy Lugo
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The government and qui tam relators are increasingly using statistical sampling in False Claims Act to garner massive recoveries. Audit results based on reviewing a small sample of claims are extrapolated over a larger universe of claims to calculate overpayments. The government touts statistical sampling as a resource efficient means to calculate False Claims Act damages and penalties. Defendants counter that statistical sampling fails to account for the unique nature of each patient’s medical condition. Recent federal court decisions suggest a trend toward permitting the use of statistical sampling to establish both False Claims Act liability and damages.

In Martin v. Life Care Centers of America, 2014 WL 4816006 (E.D. Tenn. Sept. 29, 2014), however, the court expanded the use of statistical sampling beyond calculating damages. In Martin, the government selected a sample of 400 Medicare beneficiaries who received allegedly medically unnecessary services over a seven-year period and, from this sample, extrapolated 154,621 false claims. In denying the defendant’s motion for partial summary judgment, the court rejected the defendant’s due process argument that a claim-by-claim review is necessary. The court was concerned defendants stand to unfairly benefit in a case involving a high volume of claims knowing the impracticability of a claim-by-claim review. To establish False Claims Act liability, the court permitted sampling to extrapolate claims that supported the elements of falsity and materiality. The opportunity to cross-examine the statistical expert offers adequate protection to the defendant.

In United States ex rel. Guardiola v. Renown Health, 2014 WL 5780426 (D. Nev. Nov. 5, 2014) the court compelled the defendant to produce to the qui tam relator, for the purpose of deriving a statistical sample of claims, all Medicare claims data falling within the time span of the False Claims Act statute of limitations. The relator intended to use the sample to extrapolate the number of false claims over the course of the fraud scheme. Guardiola follows the same tack as Martin and AseraCare in expanding the use of statistical sampling to support FCA liability.

The above cases arguably have limited precedential value outside their respective federal judicial districts. Notably, none of the cases permit the use of statistical sampling to prove the elements of scienter or causation. Further, the courts did not pre-approve any sampling methodology, and they encouraged the defendants to vigorously challenge statistical evidence in Daubert motions and at trial.

Author:
Stephen V. Iglesias - Greenspoon Marder, P.A.
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Now that summer is here, hopefully most of us are planning our vacations. Although most summers, I return to my native Puerto Rico to visit family and spend time at the beach, I’m always reading the newspaper (digitally these days) to look for new places to travel. If you’ve been reading the news over the past several months, you may have seen quite a few articles about a new Caribbean destination for travelers: Cuba.

For over 50 years, travel to Cuba has been regulated under the Cuban Assets Control Regulations. Under those the regulations, people subject to U.S. jurisdiction must be licensed to travel to, from, or within Cuba. Licenses are generally available for only 12 categories of travel: family visits, official government business, journalistic activity, professional research and meetings, educational activities, religious activities, public performances or competitions, support for the Cuban people, humanitarian projects, activities of private foundations or research or educational institutes, transmission of information or informational materials, and certain export transactions. Finally, the regulations generally restrict the types of transactions a person can engage in while in Cuba. Licenses are either general or specific. If a person meets the requirements for travel to Cuba under one of those 12 categories, then he or she is entitled to a general license. If a traveler does not meet the specific regulatory requirements for one of the 12 categories, he or she can apply to the Office of Foreign Assets Control (OFAC), which administers the regulations, for a specific license. General licenses, which do not require an application to OFAC, make travel to Cuba far easier.

Recently, OFAC (an arm of the Treasury Department) promulgated amended regulations implementing changes to our foreign relations with Cuba that President Obama announced in December, which were intended to make it easier for Americans to travel to and do business with Cuba. In particular, travel previously authorized by specific license will be authorized by general license. The recent amendments to the regulations also eliminate the need for air carriers and travel agents to obtain a specific license from OFAC to do business; eliminate the per diem cap on spending by Cuban travelers; and permit travelers to Cuba to use debit and credit cards.

If you’re interested in traveling to Cuba for tourism, though, don’t start packing your bags just yet. Although the current administration has eased travel restriction to Cuba, tourist travel is still not permitted. But travel to Cuba is expected to increase under the relaxed travel restrictions. Immigration practitioners would be wise to familiarize themselves with the many changes under the recently promulgated amendments. In the meantime, here’s hoping you have a relaxing summer wherever your travel may take you.

Author: Maria del Carmen Ramos - Shumaker, Loop & Kendrick LLP

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Insurance coverage for intellectual property is often overlooked, despite it frequently being among an organization’s most valuable assets. Fortunately, some protection can be found in a company’s standard Commercial General Liability (CGL) policy.

However, most CGL policies exclude coverage for “infringement of copyright, patent, trademark, trade secret or other intellectual property rights,” unless the infringement occurred in an advertisement and was one of “copyright, trade dress, or slogan.”

Although this exclusion narrows coverage for IP infringement, it doesn’t eliminate it completely. Courts have held that this coverage includes trademark and copyright infringement, and even patent infringement, provided that there is a sufficient causal connection between the infringement and the advertising activities of the insured.

But what if the claims against your client are unrelated to advertising activities? Fortunately, you previously told your client about some relatively new insurance offerings with broader indemnities for IP claims. Many of these products (whether as a standalone IP policy or as part of a cyber liability policy), cover patent and copyright infringement unrelated to advertising activities.

Thanks to your knowledge of insurance options for IP infringement, your client can now afford to fight back against these claims without bankrupting his business.

2 Id.
3 Insurance Services Office, Inc., Commercial General Liability Coverage Form CG 00 01 04 13 at 7 (2012).
6 Elan Pharm. Research Corp. v. Employers Ins., 144 F.3d 1372, 1380 (11th Cir. 1998).
CONSTRUCTION LAW SECTION CLE

The HCBA Construction Law Section hosted a CLE on February 19, covering topics such as judgment enforcement and collection, federal bidding, and public procurement. Michael R. Carey, Stephen D. Marlowe, Steve Bennett, Matthew Davis, Scott Pence, and Don Hemke all spoke at the CLE.

JUDICIAL LUNCHEON: PROFESSIONALISM UNDER PRESSURE

The HCBA hosted a Judicial CLE Luncheon on February 11 featuring Judge Nelly Khouzam, Judge Daniel Sleet, and Christopher S. Knopik. The speakers discussed the importance of staying professional under pressure. Topics included dealing with difficult clients, maintaining civility with opposing counsel during difficult depositions, and dealing with the consequences of being unprofessional.
A great deal of confusion exists among practitioners regarding the recovery of an award of attorneys' fees, particularly regarding compliance with local Administrative Order S-2013-075. Compliance with the Family Law Rules of Procedure and the administrative order is critical to recovering attorneys' fees and costs for your client.

To comply with the administrative order, you must initially determine the nature and amount of the fees that you are seeking. Although it sounds simple, the requirements necessary to comply with the order vary based upon these key facts. If you are seeking an award of temporary attorneys' fees in an amount less than $50,000, the requirements and deadlines are different from if you are seeking an award of fees in an amount greater than $50,000. Currently, the order does not specifically address the requirements to recover fees in an amount less than $50,000 after a final hearing, but it is generally good practice to comply with the requirements of the administrative order as much as possible to assist the court in making its necessary findings to award your client fees.

The requirements and deadlines set forth in the administrative order are in the chart on the right:

### Temporary Fees in an Amount Less Than $50,000

<table>
<thead>
<tr>
<th>TASK</th>
<th>DEADLINE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. File temporary relief motion</td>
<td>With temporary relief motion</td>
</tr>
<tr>
<td>2. Financial affidavit per 12.285(c)(1)</td>
<td></td>
</tr>
<tr>
<td>3. File MFD per 12.285(c)(2)-(4)</td>
<td></td>
</tr>
<tr>
<td>4. Set Temporary Relief mediation (submit cover sheet)</td>
<td></td>
</tr>
<tr>
<td>5. Set hearing if mediation results in impasse</td>
<td>Should be scheduled within 14 days of request for hearing</td>
</tr>
<tr>
<td>6. File attorneys' fee affidavit</td>
<td>7 days before hearing</td>
</tr>
<tr>
<td>7. Exchange exhibits and temporary relief memo</td>
<td>72 hours before hearing</td>
</tr>
</tbody>
</table>

### Interim Fees Greater Than $50,000; Fees After Final Hearing Greater Than $50,000

<table>
<thead>
<tr>
<th>TASK</th>
<th>DEADLINE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. File motion for fees</td>
<td></td>
</tr>
<tr>
<td>2. Request hearing on fee motion</td>
<td>With motion</td>
</tr>
<tr>
<td>3. Prepare uniform order setting final evidentiary hearing on attorneys fees and costs</td>
<td>After getting hearing time</td>
</tr>
<tr>
<td>4. File affidavit of attorneys' fees</td>
<td>10 business days after the date of the order</td>
</tr>
<tr>
<td>5. Designate expert</td>
<td>20 days after entry of order (and no later than 5 business days before mediation)</td>
</tr>
<tr>
<td>6. Non-moving party’s response to fees and costs affidavit</td>
<td>15 days before hearing</td>
</tr>
<tr>
<td>7. Attend mediation</td>
<td>7 days before hearing</td>
</tr>
<tr>
<td>8. Moving party’s written response to the non-moving party’s response to fees and costs affidavit</td>
<td>5 days before hearing</td>
</tr>
<tr>
<td>9. DISCOVERY</td>
<td>Must be completed and all motions must be heard no later than 5 days before hearing</td>
</tr>
<tr>
<td>10. Pre-hearing stipulations</td>
<td>5 days before hearing</td>
</tr>
</tbody>
</table>

This chart should not be substituted for a careful reading of the administrative order. The best way for your client to recover attorneys’ fees is to comply with the order and applicable Florida law.

---

1 The order may be viewed in its entirety at http://www.fljud13.org/Portals/0/AO/DOCS/S-2013-075.pdf.
2 This is located at http://www.fljud13.org/Forms.aspx.

Author: Michelle Ralat Brinner – Older, Lundy & Alvarez
LEADERSHIP INSTITUTE HOSTS BUSINESS ROUNDTABLE

The HCBA Bar Leadership Institute met with Bank of Tampa executives for a roundtable discussion February 13 to talk about the interaction between business professionals and lawyers. The bank executives discussed lessons they’ve learned on leadership in the business world.

The Bar Leadership Institute would like to thank The Bank of Tampa for sponsoring the event.

LABOR & EMPLOYMENT SECTION LUNCHEON


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- “people whose only qualification to serve is being an adult with a driver’s license”; or
- “people not smart enough to get out of jury duty”;
- and other remarks even more derogatory.

A better practice is to ask a party at the outset if they have ever been summoned or served as a juror, followed by a statement regarding how much we value the jury system.

**Derogatory Remarks About Potential Expert Witnesses.**

Parties’ self-evaluation of their case cannot reasonably be expected to weigh the potential testimony of a future expert witness once they have been advised that the witness:

- “is nothing more than a hired gun,” or
- “will say anything for whoever pays him/her,” or
- any other remark intended to convey the impression that the jury will not give serious consideration to that expert’s testimony.

Veronica Dagher’s article “Five Ways to Get a Better Deal in Mediation,” *The Wall Street Journal*, March 2015, page B8, offers a great formula for reaching resolution at mediation:

1. “Prepare emotionally.”
2. “Follow the money.”
3. “Choose the mediator carefully.”
4. “Show empathy.”
5. “Have a backup plan.”

**Disparagement of Our Judicial System.**

A significant percentage of parties to mediation have been summoned for jury duty. Many have been chosen to serve, and some have been chosen foreperson. Each one, chosen or not, has had to arrange work schedules, child care, pet care, transportation needs, family meals, polished shoes, etc. Each remembers the effort, energy, and expense required in preparing to show up for performance of their civic duty. Contrary to popular belief, those not chosen to serve often express great disappointment that they were rejected.

**Access to a jury of their peers is the vehicle the parties have chosen to provide a solution to what so far has been an unsolvable, life-altering situation for at least one of them. They believe in it, and they trust it. The mediation conference is their “first day in court.” Trust is diminished with each deprecating utterance to the jury system, the judiciary, opposing counsel, or other anticipated participants in the problem-solving process.**

**Don’t puff, be accurate, and always be the client’s champion!**

**Author:**

James W. Whitney - Whitney Mediation Service, Inc.
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STEWARDS FOR THOSE WHO HAVE BORN THE BATTLE
Military & Veterans Affairs Committee
Chair: Bob Nader - Nader Mediation Services; Military Liaison: Lt. Col. Christopher Brown - 6th Air Mobility Wing

Numerous others provide crucial advocacy and assistance, including the Veterans of Foreign Wars of the United States (www.vfw.org) and the American Legion (www.legion.org). Being knowledgeable about these resources and making a proper referral can make a tremendous difference in the lives of veterans.

A veteran’s benefits are generally dependent upon the characterization of service as reflected on their DD Form 214 upon discharge and other information contained in their Official Military Personnel File (OMPF). Requesting an OMPF can be an important first step toward gaining access to benefits and may be made through the submission of a Standard Form 180 (SF-180) to the applicable governmental agency listed on the form. The SF-180 can be found through the Nation Archives at www.archives.gov/veterans.

The type of discharge a veteran receives is important as it is based on the nature and quality of the veteran’s military service. The highest characterization of service is an Honorable Discharge and entitles veterans to all of their earned benefits. When discharged through the administrative separation process, a veteran can also receive a General Discharge Under Honorable Conditions or an Under Other Than Honorable Conditions (UOTHC) Discharge. Service members can also be separated without a characterization in service.

Uncharacterized discharges are generally the result of an entry-level separation where the service member served less than 180 days on active duty or is otherwise unable to complete initial entry training. Any discharge with less than an honorable characterization can significantly diminish a veteran’s access to benefits.

If a veteran was discharged with less than an honorable characterization of service, or if his or her OMPF contains an error that precludes access to veteran’s benefits, the veteran can request an upgrade in discharge or a correction to military records. Requests for discharge upgrades are not automatic and generally require a showing that the veteran’s characterization of service was inequitable. Corrections to military records and requests for discharge upgrades are made by completing forms DD 149 and DD 293, respectively, and each must be submitted to the appropriate governmental agency.

Continued on page 54

“To care for him who shall have born the battle and for his widow and his orphan ...”

President Abraham Lincoln spoke these hallowed words during his Second Inaugural Address on March 4, 1865, which foreshadowed the Civil War’s end and underscored the importance of stewardship for our nation’s veterans — and today this stewardship continues.

As attorneys, we can be especially important stewards for veterans, so it is critical we know what to do or where to turn when they call our offices seeking assistance. Commonly, veterans seek legal counsel to help them obtain the various veterans benefits they have earned for their service. Even if the legal services are not ultimately rendered by us, there are a vast array of resources available, including many veterans service organizations (VSOs), which can provide veterans with assistance. The Department of Veterans Affairs, whose mission also contains the same excerpt from President Lincoln’s address, maintains a current directory of VSOs at www.va.gov/vso.

Some VSOs provide traditional veterans-related legal services, such as the National Veterans Legal Services Program (www.nvls.org).
Continued from page 55

military review board agency for review. These forms can also be found online through the National Archives.

By being knowledgeable about the abundance of resources available to veterans and taking the time to provide the right guidance, we as attorneys can provide more than just legal services — we can continue President Lincoln’s noble call to care for those who “have born the battle.”

Author:
Jeffrey C.
Blumenauer - Blumenauer Hackworth, P.A.

REAL PROPERTY, PROBATE & TRUST LAW SECTION LUNCHEON

The RPPTL Section hosted a luncheon featuring Erik DeGregorio, president of the PenFacs Group, on February 12. DeGregorio discussed advanced tax-favored accumulation, distribution, and transfer methods to enhance moderate to ultra-high net worth clients’ retirement and estate plans.

The RPPTL Section would like to thank the luncheon’s sponsor:

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**MAY - JUN 2015 | HCBA LAWYER**
YLD QUARTERLY LUNCHEON

The HCBA's Young Lawyers Division joined with members of the Marital & Family Law Section to address same-sex marriage and adoption at their quarterly luncheon on March 26. Speakers Kim Byrd, Jeanne Tate, and Ellen Ware discussed the potential impact and legal considerations of Florida courts’ recognition of same-sex marriage.

The YLD would like to thank the luncheon’s sponsor:
the modifications invalid. The trial court agreed with the children’s arguments at summary judgment and invalidated the trust protector’s modifications.

Florida’s Fourth District Court of Appeal reversed the trial court’s decision, holding that: (1) trust protectors are authorized under Florida law; (2) the powers granted to the trust protector in the trust instrument in question were authorized by Florida law; and (3) the settlor’s intent to use a trust protector instead of the court system to resolve the dispute between his wife and children should be upheld under Florida law.

First, the court held that because the Florida Trust Code confers on a trustee “or other person a power to direct the modification or termination of the trust,” trust protectors are authorized under Florida law. See Minassian v. Rachins, 152 So. 3d 719 (Fla. 4th DCA 2014). Trust protectors are individuals who are appointed by the terms of the trust to carry out specific duties separate and apart from those given to a trustee. Traditionally, trust protectors were rarely used in trust documents, mainly due to the uncertainty of how the courts would interpret the use of their powers in conjunction with Florida statutes. In recent years, Florida estate planning attorneys have begun to use trust protectors more frequently to modify trust provisions, especially in “friendly” situations where litigation was unlikely. Minassian, however, will pave the way for estate planners to feel more comfortable using trust protectors even when potentially litigious heirs are involved.

In Minassian, the settlor named his estate planning attorney as his trust protector. According to the attorney, the settlor had specific instructions about how his trust should be administered for his wife’s benefit after his death. The settlor anticipated that his children (the remainder beneficiaries), would be infuriated with his plan and that one or more of them may try to sue his wife (the sole trustee after the settlor’s death) for breach of trust. After the settlor’s death, the children filed suit against his wife, alleging that she had breached her fiduciary duties by improperly administering the trust. During the litigation, the estate planning attorney used his powers as trust protector to modify certain parts of the trust’s provisions. These modifications were inconsistent with the position that the children had advanced in the litigation. The children thereafter filed a supplemental complaint to declare

Barring a future negative opinion from the Florida Supreme Court, trust protectors are here to stay and will likely be used more often in years to come.

Continued on page 59
TRUST PROTECTORS: FOURTH DCA ISSUES A TRAILBLAZING DECISION

Continued from page 58

non-delegation rule, since it is the settlor, and not the trustee, who is delegating the modification power to the trust protector. Minassian, 152 So. 3d at 724. Third, the court held that sections 736.0410 through 736.04115 and section 736.0412, Florida Statutes, do not provide the exclusive means by which one may modify a trust under the Florida Trust Code. Rather, section 736.0808(3), Florida Statutes, provides that a trust instrument may confer the power of direct modification to persons other than trustees. Id. Lastly, the court held that where it was the settlor’s intent to resolve ambiguous language in the trust instrument by the use of a trust protector, “[r]emoving that authority from the trust protector and assigning it to the Court violates the intent of the settlor.” Id. at 727.

Barring a future negative opinion from the Florida Supreme Court, trust protectors are here to stay and will likely be used more often in years to come. Now that Florida attorneys finally have an appellate decision upon which they can rely, estate planners and litigators alike should be studying the Florida Trust Code so they are ready to defend, or attack, the actions trust protectors may take in the future.

Authors: Allison Christensen and Jamie B. Schwinghamer - Hahn Loeser & Parks LLP

MARITAL & FAMILY LAW SECTION LUNCHEON AND CLE

The HCBA Marital & Family Law Section hosted a luncheon and CLE on February 18 on “Attorney Billing Practices, Ethical Considerations, and Fee Recovery in Family Law Cases.” Natalie Baird and Martha Weed were the guest speakers.

The Marital & Family Law Section would like to thank the luncheon’s sponsor:
T

HROUGH the years, Florida has experienced a number of Ponzi schemes or similar fraudulent investment schemes. To address the aftermath of those schemes, including trying to gather and return money to victims, regulators frequently ask courts to appoint equity receivers over entities used to perpetrate the schemes. As part of court-appointed receivers’ efforts to marshal assets, courts routinely allow them to pursue so-called clawback cases against recipients of money or other assets from the schemes. These cases are designed to “clawback” money or other assets that were unlawfully diverted from entities used to perpetrate the schemes, and they are often brought against individuals and entities that helped promote or otherwise sell investments in the scheme and against investors in the scheme who received back more than the amount they invested. The main cause of action used by receivers in these cases is a cause of action under state fraudulent conveyance statutes.

Most states have adopted some form of the Uniform Fraudulent Transfer Act. Included among those states is Florida, which has codified the Florida Uniform Fraudulent Transfer Act at section 726.101 et seq., Florida Statutes (FUFTA). Like the uniform act, a claim under FUFTA’s “actual fraud” provision (§ 726.103(1)(a), Fla. Stat.1) essentially requires “[1] a creditor to be defrauded, [2] a debtor intending fraud, [3] and a conveyance of property which is applicable by law to the payment of the debt due.” *Wiand v. Lee*, 753 F.3d 1194, 1199-1200 (11th Cir. 2014) (quoting *Johnson v. Dowell*, 592 So. 2d 1194, 1196 (Fla. 2d DCA 1992)).

In the receivership context, there has been some confusion and disagreement among courts over how those three basic elements are satisfied. In *Lee*, the Eleventh Circuit Court of Appeals clarified how those elements are satisfied in the receivership context under Florida law. The court explained that when operating a fraudulent investment scheme through an entity, the perpetrator of the scheme does not have authority to transfer money and other assets from that entity to investors and others as part of the scheme. *Lee*, 753 F.3d at 1202-03. As a result of those unauthorized transfers, the entity has claims against the scheme perpetrator, and thus the entity is a “creditor” of the scheme perpetrator, and the scheme perpetrator is a “debtor” under FUFTA. *Id.* at 1203. The court then explained that the last basic element — what FUFTA identifies as the transfer of “property of a debtor” (see §§ 726.102(2), (12), Fla. Stat.) — is satisfied because the money or other assets transferred by the scheme perpetrator could have been applied to payment of the debt due from scheme perpetrator to the entity through which the scheme is perpetrated. *Id.*

1 Under this provision, a “transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (a) with actual intent to hinder, delay, or defraud any creditor of the debtor.

2 The plaintiff in *Wiand* — Burt Wiand — is a founding member of Wiand Guerra King P.L., where the author practices. Wiand Guerra King also represented Wiand in that case.

**Author:** Gianluca Morello - Wiand Guerra King P.L.
THE PROCESS OF CONVERSION FROM A CORPORATION TO AN LLC
Tax Law Section
Chairs: Brian R. Harris - Akerman LLP; Justin Klasky - Owens Law Group, P.A.

The LLC is the preferred form for new entity formations in Florida. Profit corporation filings have declined from 170,207 in 2004 to 102,412 in 2014. That represents about a 40 percent decline.1 Annual new filings for partnerships of all types show an even more dramatic decline during this same period.2 The only form of entity that saw an increase in new filings over this period in Florida was the limited liability company (LLC), with filings at 94,348 in 2004 and 197,286 for 2014, marking a 109 percent increase.3

The history of the LLC shows this to be a recent trend. There are many existing corporations and other business entities in Florida that, if formed today, would choose to be an LLC. This article will summarize the process of converting from a corporation to an LLC under sections 607.1112 through 607.1114 and 605.1041 through 605.1016, Florida Statutes, with attention to the tax aspects.

The first step of any conversion is a thorough review of the corporate books and records to ensure proper compliance with all requirements and procedures — both internal and statutory. Of particular statutory concern is the triggering of appraisal rights under section 607.1302, Florida Statutes.

After a review of the corporate records, the corporation can then move forward with the required plan of conversion under section 605.1041, Florida Statutes, and in accordance with sections 607.1112 through 607.1114, Florida Statutes, which may involve certain notices, meetings, approvals, and written actions.

Only after the proper plan of conversion has been adopted can the corporation file either a certificate of conversion under section 607.1113, Florida Statutes, or articles of conversion under section 605.1045, Florida Statutes, with the Department of State. Both include articles of organization for the new LLC.

Once officially converted, the LLC should then adopt an operating agreement that, at the very least, governs relations among the members, relations between the members and the LLC, the rights and duties of the management, the activities and affairs of the LLC, and the conduct of those activities and affairs, including accounting and tax concerns.

2 Id.
3 Id.
4 IRC § 368(a)(1)(F).
5 See IRM Section 3.13.2.9.20.

Author: Justin J. Klasky - Owens Law Group, P.A.
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United States Supreme Court Justice Ruth Bader Ginsburg said, “Lawyers have a license to practice law, a monopoly on certain services. But for that privilege and status, lawyers have an obligation to provide legal services to those without the wherewithal to pay, to respond to needs outside themselves, to help repair tears in their communities.”¹ On April 23, 2015, at the Eighth Annual Thirteenth Judicial Circuit Pro Bono Service Awards Ceremony, the following were honored for responding to needs outside themselves in order to serve our community: attorneys Frederique B. “Dika” Boire, Isabel “Cissy” Boza Sevelin, and Sarah Lahlou-Amine; paralegal Robin Todd; the law firm of Open Palm Law; and the nonprofit legal organization the Tampa Bay Bankruptcy Bar Association. The award nominations were submitted to the Thirteenth Judicial Circuit Pro Bono Committee, chaired by Rosemary Armstrong. The ceremony was hosted by the committee, the Bay Area Legal Services Volunteer Lawyers Program, and the Hillsborough County Bar Association.

Fredrique B. “Dika” Boire has been practicing law in Hillsborough County for 30 years, until recently in private practice as a board-certified marital and family law attorney and as a certified family law mediator. Throughout her long career, Boire has represented indigent clients, mentored other volunteer attorneys, created pro bono programs, and served in leadership positions to further the public good.

Boire is a former chair of the HCBA Marital & Family Law Section. During her term, the section developed the General Masters program that is now referred to as the General Magistrate program. For 10 years, she chaired the Bench/Bar Program that resolved problems between lawyers and judges. She was instrumental in setting up an interdisciplinary committee to represent people involved in custody cases when a judge needed an attorney or mental health professional to help the court in deciding custody. The services were performed pro bono or at a reduced rate, depending on the party’s finances. She has provided hundreds of pro bono hours representing poor and working poor clients in family law and juvenile matters. She also assisted in launching the Guardian Ad Litem Program in the Family Law Division and served as a Guardian Ad Litem herself. Moreover, a significant amount of her mediation cases were performed pro bono.

Boire has unfailingly used her legal skills and indefatigable passion to benefit the Tampa Bay community and is a deserving recipient of the 2015 Jimmy Kynes Pro Bono Service Award.

Outstanding Pro Bono Service by a Lawyer
Isabel “Cissy” Boza Sevelin is a sole practitioner whose entire practice consists of providing pro bono service to clients. Prior to opening her pro bono practice, Sevelin was a federal judicial law clerk for nine years with the United States Bankruptcy Court for the Middle District of Florida.

Sevelin has donated her time in the areas of family law, domestic violence, and dependency, and by drafting advance directives. She volunteers for the Bay Area Legal Services’ Volunteer Lawyers

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Program, working at the Domestic Violence Assistance Project clinic and on the Case Referral Panel. She is also extensively involved with the nonprofit organization Are You Safe Inc., whose mission is to provide legal and social services to victims of domestic violence, and the nonprofit organization Crossroads for Florida Kids Inc., representing children in dependency proceedings, including those charged with delinquencies. Further, Sevelin serves as a volunteer teen court judge through the Juvenile Diversion Program and as a Guardian Ad Litem in dependency court.

In 2014, Sevelin donated 863 hours of pro bono service to indigent members of our community.

Outstanding Pro Bono Service by a Young Lawyer

Sarah Lahlou-Amine is an attorney at the law firm of Buchanan Ingersoll & Rooney, practicing in the areas of state and federal appellate litigation, commercial litigation, and insurance coverage litigation.

Lahlou-Amine has contributed more than 600 hours of legal pro bono service in less than nine years of practice and has spent hundreds more hours in the administration of a variety of pro bono programs, including through her roles as chair of the Florida Bar Appellate Practice Section’s Pro Bono Committee, co-chair of the 13th Judicial Circuit Pro Bono Committee’s Law Firm Subcommittee, co-founder of the Tampa Bay Pro Bono Partnership, former chair of the Hillsborough County Bar Association Appellate Practice Law Section’s Pro Bono Committee, former chair of Fowler White Boggs’ Pro Bono Committee, and informal mentor to countless attorneys around the state who have come to rely on Lahlou-Amine to connect them with pro bono projects that fit their personal interests.

A self-dubbed “pro bono matchmaker,” Lahlou-Amine truly enjoys recruiting other attorneys to tap into the profound value of helping others the way she has done since her days as a young law student at Stetson University College of Law, where she contributed to a variety of pro bono projects and earned the William F. Blews Pro Bono Service Award.

Outstanding Pro Bono Service by a Paralegal

Robin Todd is an immigration paralegal at the law firm of Shumaker, Loop & Kendrick and the project administrator for the Tampa H.E.L.P. (Homeless Experience Legal Protection) clinic. Founded in New Orleans in 2004, Project H.E.L.P. is the backbone of the clinic, which has helped more than 100 clients in less than a year. Todd has been instrumental in ensuring that the clinic is fully staffed with volunteer lawyers and staff. She attends nearly every weekly clinic, monitoring intake, client process flow, and time allocation. After each 90-minute clinic, she diligently completes follow-up paperwork and confirms that client files are properly updated and maintained. She donated 75 hours of pro bono time to Project H.E.L.P. in its first six months.

When asked why she contributes pro bono services, Todd told the following story of a homeless woman who attended Project H.E.L.P.’s very first clinic: “One of our first clients that day, on leaving, told us how grateful she was to those of us that were there to help her. She continued, telling us that it was obvious that we were important, and how moved she was that we made time for someone like her. She began to cry, saying that no one ever saw her because she was homeless, and now she was finally seen by someone, someone who was important. What an eye-opening moment for all of us that were there.”

Outstanding Pro Bono Service by a Law Firm

Open Palm Law was founded in 1994 by attorney Joryn Jenkins. The law firm’s mission is to provide affordable, ethical, creative, and caring legal services. In June 2012, Jenkins founded the Pro Bono Project for the Collaborative Divorce Institute of Tampa Bay (later renamed the Next Generation Divorce Pro Bono Project), offering free collaborative divorce services to qualified clients who otherwise might not have been aware of the less stressful alternative to traditional divorce proceedings.

In 2014, the firm’s attorneys and staff contributed nearly 300 hours of pro bono legal services to indigent individuals. Open Palm Law’s attorneys and staff also work with Bay Area Legal Services and other organizations that offer pro bono divorce services to train and mentor their

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staff and volunteers on the collaborative divorce practice.

Outstanding Pro Bono Service by an Organization
The Tampa Bay Bankruptcy Bar Association formally launched its Pro Se Assistance Clinic in August 2013 with the mission of assisting the thousands of pro se debtors and creditors who are required to navigate the bankruptcy process within the United States Bankruptcy Court for the Middle District of Florida. This has been critical in the Middle District, which has been the second- or third-busiest bankruptcy court in the country in recent years.

The clinic is staffed by experienced members of the Tampa Bay Bankruptcy Bar Association who generously volunteer their time and offer free, on-site, one-on-one information and guidance to each pro se debtor or creditor seeking a consultation. It is open three days per week for a total of seven hours. The TBBBA and its volunteers provide all necessary funding, coordination, and administrative oversight to operate the clinic. In the past 12 months, TBBBA members have volunteered more than 375 hours to the Pro Se Assistance Clinic and have seen more than 300 pro se creditors and debtors.

The Thirteenth Judicial Circuit Pro Bono Committee commends the service of the 2015 award recipients.

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Stephen Mark Todd
Zilia C. Vasquez
Miriam Velez-Valkenburg
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Adam Alaece
Herbert Ray Allen II
Jacqueline Ambrose
Amy Bandow
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Fredrick H.L. McClure
Marian McGulloch
Melinda McLane

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Thirteenth Judicial Circuit Pro Bono Committee

Continued from page 66

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Janae Thomas
Colin Thompson
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Michael Tyson
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Joseph H. Varner III
James R. Wiley
Mark Wolfson

20-49 Pro Bono Hours
Deborah Adles
Sara Alpert
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Scott Anderson
Michael D. Annis
Dale Appell
Lynwood Arnold
Raz Axente
Lori Y. Baggett
Douglas Baker
Sean Becker
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Katelyn Derosiers
Michelle Drab
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Megan Ellis
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Author: Rachel May Zysk - The Suarez Law Firm
Every day presents a reminder that we live in the age of Big Data. Scan the daily headlines and you will see a story of hackers pulling off the largest data heist in history or a leaked report of the NSA sifting through emails of every American. The corollary to this age of Big Data is the age of little privacy. Our courts are falling in line. The court in Nucci v. Target Corporation, 2015 WL 71726 (Fla. 4th DCA Jan. 7, 2015), delved into the subject of privacy for users of social media and concluded that our right to privacy is smaller than many of us thought.

In Nucci, the court was presented with a petition for writ of certiorari on an order compelling discovery of the plaintiff’s photographs from her Facebook account. The order compelled production of all photographs on the plaintiff’s social media sites for two years before and after the incident. The order did not limit the request even to photographs just of the plaintiff. Importantly, the court noted that the plaintiff objected only generally to the request on privacy, relevancy, burdensomeness, and overbreadth grounds and did not object to any specific photographs or state any specific concerns of privacy as to any particular photograph or class of photographs. The court upheld the trial court’s order compelling the production. It reasoned that such photographs are “powerfully relevant” to proving the quality of a plaintiff’s life before and after an injury. In what some social media users might characterize as a facile understanding of how social media sites are used, the court compared Facebook photos to a “day in the life video.” Finally, the court concluded that there is no right to privacy in Facebook photographs no matter how restrictive the user’s privacy settings on Facebook.

The case should be an eye-opening reminder to users of social media. The indelible data imprint left by social media and other forms of online data may one day be used in contexts for which the data were not intended.

The defendant served a discovery request that sought all social media postings related to the mother’s relationship with her daughter and her other children, her relationship with other family members or boyfriends, and mental health stressors both before and after the accident. The trial court compelled the production, and the mother petitioned for certiorari. The Second District granted certiorari and reversed the order. It held that the request was the type of carte blanche discovery that should be limited to relevant matters. Such requests must be more specific to pass muster.

Social media is fair game in discovery as long as the requests are focused and limited to likely relevant matters. The lawyer defending against such social media requests should ensure such requests are appropriately focused and should be prepared to educate the uninitiated jurors to the context of Facebook and other social media posts.

Author: Charles T. Moore - Morgan & Morgan
TRIAL & LITIGATION SECTION QUARTERLY LUNCHEON AND CLE

The HCBA Trial & Litigation Section hosted its “State of the Courts” luncheon on February 26. Chief Judge Ron Ficarrotta, Judge Caryl Delano, Public Defender Julianne Holt, and Kristen Over from the State Attorney’s Office were the guest speakers. After the luncheon, the section joined with the Mediation & Arbitration Section to host a CLE on “Litigation & Mediation: Best Practices & Practical Tips.” At the CLE, Judge Herbert M. Berkowitz, Hilary High, Woody Isom, Caroline Johnson Levine, and Jason Sampson discussed ethical issues before, during, and after mediation and litigation, as well as emotional intelligence for lawyers in mediation.

The Trial & Litigation Section would like to thank the luncheon’s sponsor: FindLaw.
ELDER LAW SECTION CLE LUNCHEON

The HCBA Elder Law Section hosted a luncheon and CLE on March 13. “An Insider's Tips Regarding Veterans' Benefits and the VA Healthcare System” was presented by Javier Centonzio and April Hill, who gave an overview of the Department of Veterans’ Affairs, including VA compensation and pension tips.

The Elder Law Section would like to thank the luncheon’s sponsor:

Thank you to our volunteers for March’s Ask-a-Lawyer on Fox 13!

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- David Chalela
- Jaclyn Evilsizor
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AROUND THE ASSOCIATION

Erin Smith Aebel, partner at Shumaker, Loop & Kendrick, LLP, has been appointed to the Board of Directors of the St. Petersburg Museum of Fine Arts. The purpose of the Museum of Fine Arts is to increase knowledge and appreciation of art, to collect and preserve objects of artistic interest and merit, to protect works of art, to provide facilities for research, and to offer instruction and opportunities for aesthetic enjoyment of art. Aebel focuses her practice on health care and data breach.

Alexander Caballero, partner at Mason Black & Caballero P.A., has been named a fellow in the American Academy of Matrimonial Lawyers — one of only 1,600 lawyers in the U.S. to hold this credential. Membership in the organization indicates the highest degree of professionalism and excellence in the practice of family law.

Michael G. Cooke, an attorney at Greenberg Traurig, P.A., has been selected as a member of Law360’s 2015 Environmental Editorial Advisory Board. Cooke is one of 16 environmental lawyers across the country named to the 2015 board. Cooke concentrates his practice in administrative law, including environmental, utility, and land use law.

Kacy Donlon and Dionne Fajardo of Wiand Guerra King P.L. presented an anti-money-laundering webinar to Financial Services Institute members on January 15, titled “A Penny for Your Thoughts: Recent AML Enforcement Cases.” Donlon concentrates her practice on the defense of businesses and individuals involved in the securities and financial services industries. Fajardo’s practice includes representation of broker-dealers, investment advisors, and their associated persons, as well as regulatory matters.

Michelle Drab, Web Melton, and Josh Welsh have been named shareholders of Bush Ross, P.A. Drab’s practice focuses on general civil litigation, primarily in the areas of contract disputes, professional liability, and residential and commercial mortgage foreclosures. Melton's practice focuses on assisting association officers, directors, and property managers with corporate operations, including litigation, arbitration, mediation, and transactions. Welsh’s practice focuses on motion practice, litigation support, and appeals.

Thomas Newcomb Hyde has been appointed by Gov. Rick Scott to the Judicial Nominating Commission for the Thirteenth Judicial Circuit for a term that began September 10, 2014, and ends July 1, 2018.

Peter B. King, a founding member of Wiand Guerra King, was recently inducted as president of the Tampa Bay Chapter of the Federal Bar Association, the largest voluntary bar organization in the U.S. devoted to the federal courts and federal court practitioners. King practices commercial and complex litigation.

Kevin P. McCoy of Carlton Fields Jorden Burt has been elected to shareholder at the firm’s Tampa office. McCoy practices complex commercial and civil litigation with an emphasis on efficient dispute resolution.

Carol Moody, Senior Advocacy Unit team leader at Bay Area Legal Services, was awarded the 2014 Jane Kennedy Excellence in Aging Award by the Southeastern Association of Area Agencies on Aging (SE4A) for her outstanding contributions in promoting the safety, welfare, and well-being of older people in the Southeast.

Andrew M. O’Malley, an attorney for Carey, O’Malley, Whitaker & Mueller, P.A., and Kevin McCoy, an attorney shareholder at Carlton Fields Jorden Burt, have been selected to serve as the 2015 chair and chair-elect for the Board of Directors of Bay Area Legal Services Inc.

Andrew J. Patch has been elevated to Of Counsel at the Tampa office of Greenberg Traurig, P.A. Patch is a member of the Litigation Practice Group and concentrates his law practice on International Trade Commission’s Section 337 litigation matters.

Scott P. Pence of Carlton Fields Jorden Burt has been elected to shareholder at the firm’s Tampa office. Pence’s practice focuses primarily on representing developers, owners, architects, and contractors in the preparation, negotiation, and administration of contracts and forms.

Shannon M. Sheppard has been appointed as a managing shareholder at Smolker, Bartlett, Loeb, Hinds & Sheppard, P.A. Sheppard will oversee all aspects of

Continued on page 72
firm management, including strategic and long-range planning, business development, and client relations. She focuses her practice on commercial real estate transactions and professional and business licensing.

**Murray B. Silverstein** has been elevated to shareholder at the Tampa office of **Greenberg Traurig, P.A.** Silverstein, a member of the Litigation Practice Group, focuses his practice on business, commercial, and real property litigation.


**Robert Stern**, a shareholder at **Trenam Kemker**, has been appointed as a trustee for the University of Florida by Gov. Rick Scott. In this role, Stern will assist UF in its budgetary process, with the provision of important resources and by facilitating mentor programs. His practice focuses on commercial real estate, with an emphasis on transactional and financing matters.

**Robert M. Stoler, John D. Russell, Robin P. Keener, and Catherine M. Verona** have formed **Stoler Russell Keener & Verona, P.A.** in downtown Tampa. **Greg A. Gidus and Joel R. Mohorter** have joined the firm as associates.

**Seth P. Traub** has been named a partner at **Shumaker, Loop & Kendrick, LLP**. Traub is a member of the Bankruptcy and Creditors Rights and Litigation practice groups. His principal areas of practice include business litigation and appellate representation, with a focus on creditors, trustees, and business entities litigating disputes in bankruptcy court.

**Luis Viera** of **Ogden & Sullivan** was elected vice chairman of the City of Tampa Civil Service Board. Viera practices in the areas of automobile liability, personal injury, and transportation litigation.

**Jeffrey W. Warren**, president of **Bush Ross, P.A.**, was a featured speaker at the 39th Annual Alexander L. Paskay Memorial Bankruptcy Seminar. The seminar is a CLE program honoring the lifetime achievements of the late Judge Alexander L. Paskay. The program featured prominent regional and national speakers, joined by bankruptcy judges, who discussed both commercial and consumer bankruptcy issues.

**Susan Miles Whitaker**, managing attorney for **Bay Area Legal Services’ Legal Information Center**, was presented with the Theodore Millison Professionalism Award plaque. Tampa’s Family Law Inn of Court’s Professionalism Award is the highest honor that the inn presents. Whitaker focuses her practice in family law.

**Edmund S. Whitson III** is joining the Tampa office of **Arnstein & Lehr** as a partner in its Litigation Practice Group. Whitson handles complex litigation matters in both district and bankruptcy courts, and he deals with sophisticated collection/garnishment and judgment recovery litigation.

**Howard J. Williams** has joined **Golden Scaz Gagain, PLLC**, as an associate in the firm’s general liability practice group. Howard will focus his practice on the defense of retail, premises, automobile, and trucking liability claims.

**Brian C. Willis**, an associate at **Shumaker, Loop & Kendrick, LLP**, has been elected vice-chair of the Citizen Advisory Committee for the Hillsborough County Metropolitan Planning Organization (MPO). The MPO is responsible for establishing a continuing, cooperative, and comprehensive transportation planning process for Hillsborough County. Willis was also a panelist at Tampa Bay Startup Week, discussing “Fostering a Startup and Innovation Ecosystem.” He focuses his practice on contract and lease disputes, easements, and restrictive covenant violations.

**Gregory C. Yadley**, partner at **Shumaker, Loop & Kendrick, LLP**, was principal chair of the 33rd Annual Federal Securities Institute in Miami on February 5 and 6. The institute, a major advanced-level securities law symposium, featured leading practitioners, members of the judiciary, and officials of the...
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Securities and Exchange Commission to discuss the cutting issues of securities regulation and litigation and mergers and acquisitions. Yadley practices corporate and securities law at the firm.

Grace H. Yang, a shareholder in GrayRobinson's Tampa office, has begun a two-year term of service on the board of directors of the Westshore Alliance. Established in 1983, the Westshore Alliance is a business-based, membership-driven organization dedicated to improving the quality of life for employees and member companies in the Westshore Business District of Tampa. Yang's areas of legal practice include food law, land use, and liquor licensing.

Stolberg & Townsend, P.A., has relocated to a new office at 3321 Henderson Blvd., Suite 201, Tampa FL 33609-2931. The building is also home to Tampa Title Company and Gibbons, Neuman, P.A. The firm practices in all areas of injury and disability law, including auto accidents, personal injury, medical malpractice, wrongful death, social security disability, workers' compensation, and state disability retirement.

The Family Law Inn of Tampa is now officially the Stann W. Givens Family Law Inn of Tampa. Givens Givens Sparks founding partner Stann Givens began this Tampa chapter of The American Inns of Court 20 years ago and remained its leader for 19 years. Givens focuses his practice on family law.

Morgan & Morgan's business litigation practice group is seeking attorneys with 4-8 years of commercial litigation experience for its Tampa, Orlando, and West Palm Beach offices. Competitive compensation with no ceiling, comprehensive benefits, challenging work, and no billable hours. Ideal candidates will possess experience in all phases of commercial litigation, strong academic credentials, excellent research and writing skills, and be highly motivated. Large law firm experience is a plus, but not required. Send cover letter and resume to resume.btg@forthepeople.com.

TO SUBMIT YOUR CLASSIFIED AD, email Corrie Benfield at corrie@hillsbar.com. $100 for 50 or fewer words, and $2 per word for each word over 50.

MAY 14
Law & Liberty Dinner at Hilton Tampa Downtown

MAY 20
Law Day Luncheon at Hilton Tampa Downtown

JUNE 17
Installation of Officers & Directors at Chester H. Ferguson Law Center
## JURY TRIAL INFORMATION

**For the month of:** December 2014  
**Judge:** Hon. Scott Stephens  
**Parties:** Ralph James vs. City of Tampa  
**Attorneys:** For plaintiff: Thomas Dandar; for defendant: Kristin Serafin Ottinger  
**Nature of case:** Personal injury; plaintiff alleged permanent injury to neck and back as a result of an accident with a city garbage truck.  
**Verdict:** Plaintiff awarded $3,315.

**For the month of:** February 2015  
**Judge:** Hon. Rex M. Barbas  
**Parties:** Nghia Thai vs. City of Tampa  
**Attorneys:** For plaintiff: Suzanne Hernandez and Melissa “Missy” Polo; for defendant: Kristin Serafin Ottinger and Toyin K. Aina-Hargrett  
**Nature of case:** Breach of contract, fraudulent inducement, and conveyance  
**Verdict:** Complete defense verdict.

**For the month of:** March 2015  
**Judge:** Hon. Claudia R. Isom  
**Parties:** Lekia Murray v. City of Tampa  
**Attorneys:** For plaintiff: Kenneth Mather, Ginger Barry Boyd, and Ken Bell; for defendant: Thomas P. Scarritt Jr., Wrede Kirkpatrick, and Martin J. Champagne Jr.  
**Nature of case:** Driver claimed neck injuries resulting in total disc replacement, due to city asphalt truck reversing into her vehicle  
**Verdict:** Complete defense verdict; motion for costs forthcoming.

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To submit news for Jury Trial Information, email rita@hillsbar.com.

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BUELL & ELLIGETT, P.A.

Thomas Edison, a prolific inventor and successful businessman, held a record 1,093 US patents. Among his most famous inventions were the phonograph, the motion picture camera, and a long-lasting practical light bulb. While many think he invented the light bulb, he actually made a superior and more successful bulb.

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