Medical Error is estimated to be the third leading cause of death in the U.S.

Accountability encourages safer patient care.

**Fig 1** Most common causes of death in the United States, 2013²

**Fig 2** Model for reducing patient harm from individual and system errors in healthcare


Reproduced from [Medical error—the third leading cause of death in the US, editors Martin A. Makary, Michael Daniel, volume number 353, copyright 2016] with permission from BMJ Publishing Group Ltd.
Continuing with our theme of highlighting famous legal literary works, this issue we are featuring the cover of Michael Connelly’s number #1 best-selling novel “The Lincoln Lawyer.” Published in 2005, the story follows the story of Mickey Haller, who is a Lincoln Lawyer, a criminal defense attorney who operates out of the backseat of his Lincoln Town Car in Los Angeles. “The Lincoln Lawyer” was released as a feature film in March 2011, starring Matthew McConaughey. Connelly is a local resident, splitting his time between Tampa and California.

16 DON’T LOSE YOUR APPEAL OVER THIS PROCEDURAL TRAP
Appellate Practice Section by Ari Fitzgerald

20 ETHICAL REQUIREMENTS OF DIVORCE ADVICE
Collaborative Law Section by Bridget Remington

22 POTENTIAL LANDMINES FOR CONTRACTORS ON FEDERAL PROJECTS
Construction Law Section by Matthew G. Davis

26 FOR THE BIRDS: UNTANGLING A REGULATORY TAKINGS MESS
Eminent Domain Section by Gregory S. Rix

29 SIGNIFICANT CHANGES TO MEDICARE REIMBURSEMENT UNDERWAY
Health Care Law Section by Elizabeth Scarola

30 WAR IN THE AMAZON JUNGLE
Intellectual Property Section by Jim Matulis

32 ELEVENTH CIRCUIT UPHOLDS DREADLOCKS BAN IN THE WORKPLACE
Labor & Employment Section by Jason Pill

44 UNKNOWING WAIVER OF POST-DISSOLUTION DEATH BENEFITS
Marital & Family Law Section by Martin Deptula and Nancy Harris

46 TURNING YOUR MEDIATOR INTO A DECISIONMAKER: “CAN’T YOU JUST DECIDE FOR US?”
Mediation & Arbitration Section by Jim Matulis

58 FLORIDA’S NEW FIDUCIARY ACCESS TO DIGITAL ASSETS ACT
Real Property Probate & Trust Section by Lauren Taylor

60 THE BATTLE OVER THE NEW FIDUCIARY RULE
Securities Section by Daniel P. Dietrich and Justin P. Bennett

62 CITING WRONG BASIS WILL PRECLUDE ATTORNEY’S FEES AWARD
Solo & Small Firm Section by Abraham Shakfeh

64 COURT RESOLVES DISTRICT SPLIT OVER OFFERS OF JUDGMENT
Trial & Litigation Section by Erin G. Jackson and Ashley A. Tinsley

68 TEMPORARY PARTIAL INDEMNITY AFTER WESTPHAL II
Workers’ Compensation Section by Anthony V. Cortese

18 LEADERSHIP IDEALS OF A MULTI-BILLION DOLLAR ORGANIZATION
Bar Leadership Institute Committee by Chance Lyman

36 LAW WEEK 2017 WILL EXPLORE “THE 14TH AMENDMENT: TRANSFORMING AMERICAN DEMOCRACY”
Law Week Committee by Dane Heptner

50 THE VETERANS LEGAL ASSISTANCE REGISTRY: “WE NEED YOU!”
Military & Veterans Affairs Committee by Alexandra Srsic and Bob Nader

54 A CAREER DEDICATED TO SERVICE AND PROFESSIONALISM
Professionalism & Ethics Committee by Hon. Frances A. Perrone

IN EVERY ISSUE
23 SAVE THE DATE
27 NEW HCBA MEMBERS
33 100 CLUB
57 BENEFIT PROVIDERS
72 ADVERTISING INDEX
74 AROUND THE ASSOCIATION
75 CLASSIFIEDS
75 JURY TRIAL INFORMATION
Well, I think I have officially become an old man. No, I haven’t started hitting the “Early Bird” special at the local buffet for dinner. And I haven’t started telling my daughters about how I used to walk to school uphill in the snow both ways (although I will tell them that once they are old enough to appreciate it). But the other day, during a conversation with a colleague, I uttered the words, “That’s not the way things were when we were growing up....” I was thinking about that as I sat down to edit this issue of the Lawyer.

On page 10 is a touching tribute to Dallas Albritton, who passed away in October. I hope you’ll read it. I didn’t know Mr. Albritton personally, but his life story is a fascinating one. As the tribute makes clear, Mr. Albritton’s life was one dedicated to the service of others. But one thing that stood out to me, other than Mr. Albritton’s commitment to pro bono service, was the emphasis he placed on mentoring. In particular, I was struck by how Mr. Albritton became, in the tribute’s words, “father confessor to the Bar,” going to lunch with, befriending, and providing hard truths to troubled lawyers — without judging them. Reading the tribute, I couldn’t help but get that “things aren’t the way they used to be feeling,” although that surely wasn’t the point of the tribute (and I’m not quite Mr. Albritton’s generation).

But as I read further, I came across Judge Frances Perrone’s article on page 54 commending David Rowland, general counsel at the Thirteenth Judicial Circuit, for receiving the Thirteenth Judicial Circuit’s third annual professionalism award. In extolling the virtues that led to Mr. Rowland receiving the award, which recognizes consistent honesty, integrity, fairness, courtesy, and an abiding sense of responsibility to comply with the standards and rules of professionalism in the practice of law, Judge Perrone noted that Mr. Rowland has served as a mentor to dozens of new lawyers. Perhaps more importantly, Judge Perrone noted that Mr. Rowland possesses traits young lawyers would do well to emulate: he’s knowledgeable, thorough, a hard worker, humble, diplomatic, and has a kind manner. Colleen O’Brien, a staff attorney at the Thirteenth Judicial Circuit, commented that Mr. Rowland’s counsel is “sought out as the gold standard.”

Reading the tribute to Mr. Albritton and Judge Perrone’s article got me to thinking about the “that’s not the way things used to be” mindset. I’ve always thought that people who think that way, myself included, tend to idealize the past. But it occurred to me that maybe the issue isn’t idealizing the past, but failing to appreciate the present. I have no doubt Dallas Albritton was one of a kind. But there is David Rowland and others committed to public service and mentoring their colleagues. Reading this issue of the Lawyer made me appreciate the impact Mr. Rowland and others like him have on our Bar today. Perhaps things are the way they used to be.
ne of the best parts of serving as president of the HCBA is the opportunity to participate in the investiture ceremonies of our newly appointed or elected judges. Since taking office, I have had the privilege of speaking at the investitures of a Second District Court of Appeal judge, a federal magistrate judge, and a county court judge. The coming months will be equally busy as our two newest circuit judges and a county judge formally take the bench. It is always inspiring to watch as colleagues, friends, and families have the opportunity to fete the new judge’s accomplishments. Without exception, I have been very impressed with both the legal accomplishments and quality of character of these judges. I am also thankful that these highly accomplished individuals are willing to give up successful, and often lucrative, practices to answer the call of public service. This fact makes recent efforts by certain state legislators to impose term limits on the judiciary all the more disconcerting.

In a recent speech to the Florida House of Representatives, newly elected speaker, Richard Corcoran, who happens to be a lawyer, made it clear that imposing term limits on our judges was very high on his priority list. Using incendiary language that our judges put “power over principle” and fail to “respect the constitution and separation of powers,” Speaker Corcoran received a standing ovation from most of the room. As a trial lawyer, I have had the pleasure of representing clients all over Florida, and I can say without equivocation that Speaker Corcoran’s assessment of our judges is completely off base, especially here in Hillsborough County. While arguments can be made in favor of term limits for our legislators, those same

Continued on page 5
arguments simply do not translate to the judiciary because the judiciary is not a representative body, but a group of highly trained professionals tasked with aiding our citizens in dispute resolution. Having highly qualified and experienced judges is essential to a well-functioning justice system.

I had the opportunity to discuss this issue with Chris Altenbernd, recently retired from the Second DCA. Altenbernd is regarded as one of the most respected legal minds in Florida, and I found his thoughts particularly illuminating, especially with regard to the appellate bench. He said, “Appellate courts need to attract a diverse group of our best and brightest legal minds. At least a third of the new judges need to be highly qualified lawyers in their mid-40s who commit to becoming experienced professional judges who can provide continuity and depth to the judicial system. The refusal of the legislature to assure reasonable pay increases to judges over the last decade has already reduced the pool of these applicants. A system that forced them to retire in their mid-to-late 50s would guarantee that the pool would dry up.”

Ask yourself, what qualified candidate for the bench would leave their practice knowing that in 12 years they will have to return and start all over? I suggest that the answer would be “not many.”

Judges’ hands are often tied by the Code of Judicial Conduct when it comes to advocating for themselves. Therefore, it is incumbent on us as lawyers to stand up for the judiciary. It is imperative that we educate our friends and neighbors about the importance of an autonomous judicial branch. It is critical that we let our legislators know that this is a solution in search of a problem, and that the plan will have a terrible impact on our citizens who need our court system to be well-funded and our judges to be well-qualified.

You may recall several years ago that heavily funded, out-of-state interests were actively trying to interfere with our independent judiciary by influencing the outcome of the merit retention votes of three Supreme Court Justices. The HCBA and our members were at the forefront of that fight. This issue is no less important. All rise.
It Is Not Too Late to Get Involved with the YLD

Connect with the YLD through social media and online.

Although the HCBA Bar Year is halfway through, there is still time to get involved with the Young Lawyers Division (YLD). If you have not yet made it to an event or you want to find out about the next one, please connect with us one of the following ways:

- Facebook: www.facebook.com/Hillsboroughbaryld
- Website: www.hillsbar.com/group/YLD
- Instagram: http://instagram.com/hcbatampabayld

Also, if you are a member of the YLD, you will receive notice of our events via e-mail. If you are interested in a specific event or committee, you also may contact the YLD Board liaisons or YLD committee chairs that are responsible for putting on certain events. The committees, their main events, and contacts are as follows:

**Professionalism & Ethics Committee:** Responsible for planning, coordinating, and overseeing all professionalism or ethics-related continuing education, programming, and projects sponsored by the YLD. Projects/Events: State Court Trial Seminar and Bar Exam Proctors. Board Liaisons: Traci Koster (traci@nelsonlg.com) and Drew McCulloch (drew@mccullochlaw.com). Committee Chairs: Don Greiwe (dgreiwe@dgfirm.com) and Harold Holder (hholder@bushross.com).

**Law-Related Education & Law Week Committee:** Responsible for organizing and implementing various projects and events regarding law-related education and participation in Law Week activities. Projects/Events: Law Week (Classroom Speakers, Mock Trials and Courthouse Tours) and the Judge Robert Simms High School Mock Trial Competition. Board Liaisons: Maja Lacevic (mlacevic@trenam.com), Amy Nath (anath@shrinenet.org), and Alex Palermo (apalermo@burr.com). Committee Chairs: Stephanie Generotti (stephanie.generotti@csklegal.com) and Dane Heptner (dane@usalaw.com).

Continued on page 7
**Member Services Committee:** Responsible for developing and monitoring programs to promote active membership in the YLD, and for delivering services to existing YLD members. *Projects/Events:* Judicial Pig Roast/Food Festival, Coffee at the Courthouse, mentoring programs, Paddle Boarding Wellness Event, and the Judicial Shadowing Program. *Board Liaisons:* Adam Fernandez (afernandez@clarkmartino.com) and Colleen O’Brien (obrience@fljud13.org). *Committee Chairs:* Tom Curran (tcurran@slk-law.com), Yolyvee Gordon (ygordon@bushross.com), and Lyndsey Siara (siaralk@fljud13.org).

**Events Committee:** Responsible for planning, coordinating, and overseeing all YLD social events, member events, sports events, and functions, including sponsorship and fundraising for these events. *Projects/Events:* Happy Hours, Quarterly Luncheons, Golf Tournament, and Cornhole for a Cause. *Board Liaisons:* Jason Whittemore (jason@wagnerlaw.com) and Jeff Wilcox (jwilcox@hwlaw.com). *Committee Chairs:* Zachary Bayne (zbayne@allendell.com) and Andrew Smith (andrew.ws smith@jpmorgan.com).

**Youth Projects Committee:** Responsible for planning, coordinating, and overseeing all youth-related activities and events sponsored by the YLD, including sponsorship and fundraising. *Projects/Events:* Steak & Sports Day and Holidays in the New Year. *Board Liaisons:* Brett Metcalf (brett@metcalffharden.com) and Melissa Mora (melissa.mora@ahss.org). *Committee Chairs:* Ty Lindsey (tlindsey@northstar-bank.com) and Tiffany McElheran (tmcelheran@bushross.com).

**Pro Bono Committee:** Responsible for coordinating and staffing pro bono projects and activities of the YLD. The committee also provides a liaison with Bay Area Legal Services. *Projects/Events:* iLawyer, Attorney ad Litem Program, Family Forms Clinic, and Wills for Heroes. *Board Liaisons:* Katelyn Desrosiers (kdesrosiers@butler.legal) and Laura Tanner (ltanner@burr.com). *Committee Chairs:* Robyn Bonivich (robyn@crlawtampa.com) and Melissa Gonzalez (mng@fllegalgroup.com).

You also may contact me personally at wmelton@bushross.com. We look forward to seeing you at an event soon.
In November 1997, head coach Tony Dungy was leading the Buccaneers to a 10-6 season and a trip to the NFL playoffs for the first time in 15 years; Dick Greco was into his third term as Tampa’s mayor; and the Tampa Bay Devil Rays named Larry Rothschild as the club’s first manager.

Meanwhile, for the HCBA, November 1997 marked a historical milestone as well, as that was the date of the HCBA’s first Bench Bar Conference & Judicial Reception, which was attended by 200 attorneys and judges.

Fast forward 20 years to this past November, when the HCBA celebrated the 20th anniversary of what is now one of the HCBA’s signature events.

This year, more than 600 HCBA members participated in the Bench Bar Conference, Membership Luncheon, and Judicial Reception, held at the downtown Hilton.

“It’s great the Bench Bar Conference has continued for 20 years and has grown the way it has,” said Tom Elligett, who served as HCBA president in 1997.

Elligett, with the Buell & Elligett firm, credits the foresight of his predecessor as HCBA president, Emmy Acton, and the work of Judicial Liaison Committee co-chairs, Robert Warchola and Jennie Tarr, for the success of the first Bench Bar Conference.

“For many attorneys, it was really the first time you could talk to a judge outside of the courtroom in a social setting,” Warchola told me recently.

“You had the opportunity to see the judges in a different light,” said Warchola, an attorney with Shumaker Loop & Kendrick.

“To this day, being able to listen to judges and to learn about their preferences in the courtroom is invaluable,” he added.

Tarr, who works in the Hillsborough County Attorney’s office, said, at the time, other Bar associations around the country had begun having similar conferences, and the HCBA leadership thought the time was right to have its own event.

“It was a unique opportunity to reach out to the judiciary, and we were pleased they wholeheartedly embraced it,” Tarr said.

The theme of this year’s Bench Bar Conference was “Balancing the Scales: Ethics v. Technology/Social Media.”

Thirteenth Circuit Judge Samantha Ward was chair of the HCBA’s Bench Bar Committee this year. She and the other dedicated committee members worked for months planning the conference agenda.

“We try each year to develop a theme each year that is relevant, interesting, and still unique ... while providing as much interaction between the judiciary and attorneys as possible,” Ward said.

In the morning, there were three breakout sessions focusing on effective advocacy and the practical uses and challenges of social media evidence.

And there was the always popular session with Stetson law professor Michael Allen, who focused on recent U.S. Supreme Court decisions.

In the afternoon, there was a series of breakout sessions featuring a “View Towards the Bench” with more than 40 judges representing the Thirteenth Judicial Circuit, Florida Second District Court of Appeal, and various federal courts.

The sessions enabled attorneys to share their concerns with judges in order to improve communication and professionalism.

Continued on page 9
Later, there was a well-attended session featuring a panel of past jurors who shared their experiences as jurors and offered insight about the civil and criminal jury experience.

The luncheon keynote speaker was Florida Supreme Court Justice Charles Canady.

Justice Canady told the attendees “significant changes” are coming to the Supreme Court in the next few years, as four of its seven members will reach the mandatory retirement age of 70 years old.

“[The court] will be a different institution,” Justice Canady said, referring to the upcoming appointments to the court.

“Ultimately, our profession exists to benefit the public … We give life to the rule of law, which is the greatest blessing our nation can have,” Canady said.

Also at the luncheon, Thirteenth Judicial Circuit Chief Judge Ron Ficarrotta presented the circuit’s Third Annual Professionalism Award to David Rowland, who has served as the circuit’s general counsel for more than 20 years (see article on page 54).

At the end of the day, hundreds of HCBA members and dozens of judges gathered at the annual Judicial Reception.

Current HCBA President Kevin McLaughlin says the Bench Bar Conference has become such a success because of the support of the judiciary, as well as all the event sponsors, especially longtime Diamond Sponsor, Steve Yerrid and the Yerrid Law Firm.

“The Bench Bar Conference is one of the HCBA’s signature events,” McLaughlin said, “and it is truly emblematic of the unparalleled support, cooperation and camaraderie between our members and the local judiciary.”

See you around the Chet.
Farewell to the Dean of the Bar

Dallas was a true public servant who dedicated a lifetime to the service of others.

Dallas Albritton, one of the great Tampa lawyers of the late 20th century, died on October 1, 2016, at his home in Tampa. He was 88. He practiced law in Tampa until he was 86. Many luminaries of the Bar defined the political force of late 20th century Tampa lawyers, but Dallas Albritton defined their political soul.

In his life, Dallas tried countless cases and counseled countless clients, drawing on a professional and personal grace, unassuming intelligence, humility, and good humor that made it all look easy. Dallas was gifted with an ability to be present and dedicated to any moment spent with another person. Dallas wore his country's uniform, he counseled his clients in their affairs, and he served his fellow lawyers until the day he died.

Early Years

Dallas was the first of three sons of Grace Pratt Albritton, a schoolteacher, and Arthur Dallas Albritton Sr., a builder. He was born in Jacksonville and spent some of his youth in Quincy until his family moved to Tallahassee. Tallahassee in the 1930s and early 1940s was a vibrant collection of businessmen, lobbyists, and politicians, and even as a boy, Dallas was captivated with government and how it worked.

The year before Dallas entered high school, America went to war. Anticipating he would end up in combat, Dallas convinced his parents to let him prepare for it at the Sewanee Military Academy in Tennessee, where every morning began with a service for Academy graduates who had recently fallen in the war. High school boys in 1944 could reasonably believe World War II would rage into the 1950s.

Dallas’ boyhood military training would impact Dallas throughout his entire life. Judge E.J. Salcines,...
who graduated from Riverside Military Academy in Georgia, recalls that even after both had been lawyers for years, upon meeting each other in the street, each would perform a quick military inspection of the other’s military bearing and appearance. Many lawyers remember Dallas’ admonition that lawyers should look the part — suits, long-sleeved white shirts and ties, and laced-up shoes shined to a high gloss.

Of course, WWII ended in 1945, the year before Dallas graduated, and the Army had enough GIs. Rather than immediately enlisting, Dallas entered Stetson University in Deland as a freshman. A year later — 1948 — the Florida College for Women became coeducational and was renamed Florida State University. Dallas transferred from Stetson to FSU, intending to become a psychiatrist.

The atmosphere at FSU was electric. America had a strong sense of purpose, and Dallas’ classmates displayed a powerful impulse to public service. At FSU, Dallas overlapped with Sandy D’Alamberte, Reubin Askew, and others who went on to lifelong public service careers. Dallas stood out for his voracious intellectual curiosity, he was brilliant. The fraternity needed his grade point average to raise its average. Dallas agreed to join, persuaded other smart students to join, got the fraternity off academic probation, and was elected president in his senior year.

While at FSU, Dallas saw many of his classmates — combat veterans returning from WWII — attend college under the newly enacted GI bill, which was passed to repay and assimilate returning soldiers. Dallas saw firsthand how good government could directly contribute to the greatest peacetime expansion in the country’s history. As a result, Dallas abandoned his plan to become a psychiatrist and decided to take a different direction.

Continued on page 12
During his time at FSU, Dallas had tasted politics as campaign manager for the successful student body presidential run of his classmate, future Florida Governor Askew. Feeling the strong pull of public service, Dallas decided to remain at FSU to earn his master’s degree in public administration, a master he believed would help him act on his calling to dedicate his life to the public affairs of his community.

After FSU, armed with his bachelor’s and master’s degrees, Dallas joined the United States Air Force, where he served as a lieutenant from 1951-53. Dallas was charged with providing logistical support for the new Air Force that was being created from the old Army Air Corps, whose bombers and fighter planes had helped win WWII. Dallas applied his two degrees to help the Air Force understand its manpower and administrative needs during this transition.

After his honorable discharge in 1953, Dallas entered Yale Law School. This was unprecedented for a small town Florida boy from Tallahassee. But Dallas’ classmates at Yale recognized his first order intellect from the start. Dallas’ Yale Law School class included men and women who became partners at silk-stocking Northeast law firms, titans of industry, and national politicians. The late U.S. Senator and former elected District Attorney of Philadelphia Arlen Specter counted Dallas as one of his closest friends, and they maintained that friendship over a lifetime.

Respect for All

Yale at the time was one of the few law schools to accept women. Dallas was always proud of Yale for this and was known over his lifetime as a mentor to his female colleagues at the Bar.

Tampa lawyer Lynn Cole, only the third woman hired into the United States Attorney’s Office for the Middle District of Florida, often sought Dallas’ counsel. Dallas encouraged Lynn to think outside the box as an Assistant United States Attorney and to expand into her community, even though at the time there were many fewer practicing women lawyers. Lynn took that advice and over the years came to rely on Dallas for his honest opinion and honest criticism.

Rosemary Armstrong, attorney and executive director of Crossroads for Florida Kids, likewise recalls Dallas’ willingness to consider all perspectives when she, as a young lawyer, served on the HCBA Long Term Planning Committee that Dallas chaired over thirty years ago. Even decades ago, there was nothing chauvinistic or condescending about him. Rosemary recalls Dallas treating everyone with equal respect and dignity, regardless of who it was or where they came from.

Dallas’ daughter and long-time law partner, Rachel Albritton Lunsford, herself a prominent trusts and estates lawyer, remembers her father encouraging her to dedicate herself to her clients, no matter how small their case. Rachel recalls her father treating his clients with equal love, affection, and respect, no matter their background. To this day, Rachel credits her success to the way her father taught her to treat her clients and other lawyers.

Returning Home to Florida

When Dallas graduated from Yale Law School in 1956, many of his classmates encouraged him to join them in the silk-stocking New York law firms they intended to join. His Yale classmates felt Dallas’ intellect would be wasted in a backwater like Florida. But during Dallas’ senior year at Yale, two Tampa lawyers, C.J. Hardy and Truett Ott, a well-known personal injury trial lawyer with whom Dallas had served at MacDill Air Force Base, asked Dallas to join them in their two-man Tampa law firm. Hardy had been an Army sergeant in World War II and Ott a colonel in the United States Air Force Reserves, who later went on to be a state senator and a Second District Court of Appeals judge. Hardy and Ott needed a utility man, and hoped Dallas would agree.

Dallas asked a law school professor what he should do. The professor, whose name is lost to this story, disagreed with Dallas’ Yale classmates who thought he should stay in the Northeast. This professor told Dallas to go back home and make a difference in his community. And that is what he did.

Immediately upon joining Hardy & Ott, Dallas began to immerse himself in city and state civic activities, especially in what was then known as the Tampa Hillsborough Bar Association. Dallas also served as a part-time assistant county solicitor for the criminal court of record, prosecuting criminal cases for County Solicitor Paul B. Johnson. This was before the Florida legislature provided for full-time state attorneys. Over the years, Dallas would take on countless pro bono clients who received the same level of service as Dallas’ paying clients.

Not long after Dallas joined Hardy & Ott, Terrell Sessums joined the firm as an associate, with Dallas as his principal mentor. Terrell, with Dallas’ encouragement, would go on to win an election to the Florida House
of Representatives, where he eventually became speaker of the house. This was only the first political campaign Dallas would work for in his life. He would also work for Governor Askew’s gubernatorial campaign, as well as the presidential campaigns of Jimmy Carter and Bill Clinton.

**Dean of the Bar**

Judge Salcines recalls that during his early years at the Bar, Dallas was a driving force encouraging young lawyers to join the local bar association. Dallas was becoming one of a cadre of lawyers’ lawyers who promoted the necessity of professionalism and mentoring within the Bar. Eventually, in 1965, he became president of the Hillsborough County Bar Association.

Over the years Dallas would be instrumental in the conception and execution of what came to be the Chester Ferguson Law Center. Judge Salcines recalls Dallas patiently but persistently advocating for a permanent location where lawyers could meet and socialize. As Dallas had originally conceived it, the building would not just be a place where lawyers could meet. It would also have a hotel and restaurant for out-of-town lawyers who, when they came to Tampa for a case, would have a place to stay and to eat and to socialize with other lawyers. At the time, the Tampa Hillsborough County Bar Association had no permanent office and was managed pro bono by attorney Joe Miyares, who acted as its secretary. Once a month, lawyers would go to Mr. Miyares’s office and pay their dues.

During the early days of Dallas’ time at the Bar, lawyers would have morning gatherings in the atrium of the “new” air-conditioned courthouse on Pierce and Madison Streets. Judge Salcines recalls that, before this courthouse was completed, judges did not wear robes for summertime cases and presided over cases tried by lawyers in short-sleeved shirts and ties. During those morning gatherings, young lawyers — you could tell who they were because they had the cleanest and most unscarred briefcases — mingled with more experienced lawyers who would share stories of trials and hearings. These stories recounted crazy events, courtroom mistakes, and errors in judgment. Dallas had a vision throughout his professional life of a formal place where lawyers could meet and share these experiences and, he hoped, help each other avoid errors in judgment in the first instance.

Dallas often recollected that when he moved to town, there were only about 600 lawyers in Hillsborough County. One of the more senior lawyers would take a newcomer around and make introductions. Dallas believed that the slow erosion of that sort of mentoring and the anonymity of practice he observed in his later years contributed to the lack of civility among attorneys, just as he thought lawyer advertising contributed to a lack of respect for attorneys in the community at large.

**A Lifetime of Law in Tampa**

After a few years, Speaker Sessums and Dallas decided to leave Hardy & Ott. Along with Sessums’ younger brother, Steve, the three young lawyers opened Albritton & Sessums as equal partners on January 1, 1961. Steve had graduated first in his class from the University of Florida Law School, where he was editor of the *Florida Law Review* and elected to the Order of the Coif. Steve also had been president of Florida Blue Key and, like Dallas, would ultimately go on to become president of the Tampa Hillsborough County Bar Association.

Speaker Sessums remembers starting the firm with just enough money to cover six months of expenses. They rented three adjacent rooms at the First National Bank and hired a carpenter to build them out. Speaker Sessums recalls that, until Hardy and Ott started to send them cases, they were not too busy. Dallas’ son, Brian, recalls his father describing the firm as “specializing in the needs of today’s clients.” It was, as Speaker Sessums recalls, “a retail practice.”

This was a theme that would carry throughout Dallas’ life. Brian Albritton recalls his father avoiding specialization because, when a client came in with a problem, it was the lawyer’s obligation to learn to solve it.
Dallas believed lawyers should pride themselves on learning new areas of law and applying them in the interests of the client who honored that lawyer with the request for help. He often said that “a weekend in the law library can make you an expert.” Dallas’ daughter Rachel Albritton Lunsford remembers her father assisting the same clients repeatedly over decades with all kinds of legal issues. The lawyer’s highest calling, Dallas believed, was counseling clients, and he took pride in his clients considering him “my lawyer.”

Over time, the Albritton Sessums partnership grew to become a Tampa powerhouse. Many of its partners went on to become dedicated public servants. Second DCA Judge Harry Ryder, Speaker Sessums, Second DCA Judge Richard Frank, and County Court Judge Don Castor, among many others, were partners in the Albritton Sessums firm.

Eventually, Dallas decided his firm had grown too large and that the responsibilities of managing so many attorneys and staff on a day-to-day basis was keeping him from the client representation he so enjoyed. With his partners’ blessing, Dallas moved to an office across the hall so he could practice law his way, joined by associates from time to time.

Service to Others

Several years after forming his own firm, Dallas formed a partnership with Tripp Sebring. Tripp was moved by the attention Dallas paid to any problem a client or a fellow lawyer presented to him, no matter how small the problem seemed. Once, Tripp asked Dallas for advice on whether to buy a house. Dallas asked for time to think about it and, a few days later, presented Tripp with a five-page memo outlining his analysis.

Tripp also recalls Dallas as someone who demanded perfect ethical behavior. Dallas could not abide the “white lie.” Client calls were not to be avoided, no matter how busy the lawyer was. He believed the client would understand a lawyer who was doing his or her best but could not answer a question yet, and believed the keystone of the lawyer-client relationship was honesty. Of course, Dallas used language very precisely, and if asked to write a letter of recommendation that he did not feel comfortable giving, might say “I cannot say enough about this candidate...”

Dallas’ daughter, Rachel, also recalls Dallas’ secretaries being fiercely loyal to him. But, of course, this was only because Rachel’s father was fiercely loyal to his secretaries, hanging photos of former secretaries on the “Wall of Fame” in his office with other lawyers and high-profile clients.

Many of the stories about Dallas’ dedication to lawyers cannot be recounted publicly. In many ways, Dallas was father confessor to the Bar. Always guided by his faith, at some point in his life, Dallas experienced a religious experience so transformative that he began to take on an even deeper role in the mentoring of lawyers who, for whatever reason, found themselves in trouble. Dallas would meet those lawyers, befriend them, and make them better. It became known throughout the Bar that lawyers in trouble should let Dallas take them to lunch and lay out their problems. Dallas was unique because he would not judge, but instead would tell that lawyer hard truths in a way that encouraged the troubled lawyer to become better. No lawyer ever left such a lunch without being a better person for it.

Dallas was a true public servant who dedicated a lifetime to the service of others. Practicing law, to Dallas, was a calling. It was never about him but, rather, about whomever Dallas was counseling at that moment, no matter who that person was.

Dallas’ son, Brian, tells this story: After graduating law school, Brian had the opportunity to interview for a clerkship with Judge Terrell Hodges, an up-and-coming brilliant jurist who some thought might even wind up on the Supreme Court. But Dallas hoped Brian would decline the interview and come work for him instead. On the morning of the interview, as Brian was getting dressed to leave the house, Dallas looked at Brian’s shoes. Dallas did not say a word. Instead, he picked up the shoes and shined them to military standards. Brian got the clerkship.
WE NEED YOU TO FIGHT FOR JUSTICE

BALS’ Sustaining Law Firms bring hope, justice & fairness to our community. To become a sustaining law firm, each firm must donate $350 per attorney. To join your colleagues contact us at: P: 813.232.1222 x131 or development@bals.org

www.bals.org

Thank You 2016 Members!

- Gail Martin Abercrombie, P.A.
- Alley, Clark & Grewe
- Anton Castro Law
- Christie D. Arkovich, P.A.
- Banker Lopez Gassler P.A.
- Barnett, Bolt, Kirkwood, Long & Koche, P.A.
- Phillip A. Baumann, P.A.
- Law Offices of Jeffrey A. Berger, P.A.
- Betts Mediations
- Black Swan Legal Counsel, PLLC
- Eric Boles Law Firm
- Buell & Elligett, P.A.
- Gerald T. Buhr, P.A.
- Barnett, Wilson, Reeder, P.A.
- Burr & Forman LLP
- Ronald K. Cacciatore, P.A.
- Carey, O'Malley, Whitaker and Mueller, P.A.
- Carlton Fields
- Carney Law Firm, P.A.
- Law Offices Of Julia Best Chase, P.A.
- Preston O. Cockey, Jr., P.A.
- Rae Ann Compton, P.A.
- Thomas E. Cone, Jr., P.A.
- Law Office of Thaxter A. Cooper, P.A.
- Cortes Hodz Family Law & Mediation, P.A.
- de la Parre & Gilbert, P.A.
- Richard W. Driscoll, P.A.
- Antonio Duarte III, P.A.
- Greg W. Dworzanski, P.A.
- Eaton Law Firm
- Epperson and Rich, P.A.
- The Fernandez Firm
- Florida Asset Law Firm, P.A.
- FORCON International
- Ford Harrison
- Michael Foster, Esq.
- Freeman Mediation Services, Inc.
- Gaylord Merlin Ludovici & Diaz PL.
- George and Titus, P.A.
- Bruce S. Goldstein, P.A.
- Leo D. Gomez, P.A.
- Law Offices of Fritz Gray
- Mac A. Greco, Jr., P.A.
- Melvia B. Green, P.A.
- Greenlee Law, PLLC
- Gunn Appellate Practice, P.A.
- Gunn Law Group, P.A.
- Gunster
- William E. Hahn, P.A.
- R. Jay Harpley Attorney at Law
- Harris & Hunt, P.A.
- Hilary High, P.A.
- Hill Ward Henderson
- Himes & Hearn, P.A.
- Ron A. Hobgood, Attorney at Law
- Holland & Knight
- Holland & Lamoureux, P.A.
- Law Offices of George Hunter, P.A.
- Woodson Isom, Jr., P.A.
- Cole Jeffries, P.A.
- Joyce and Reyes Law Firm, P.A.
- Edwin B. Kagan, P.A.
- Law Office of Ann Loughridge Kerr
- Kirkner Family Law Group, P.A.
- Kynes, Markman & Felman, P.A.
- Lauro Law Firm
- Phyllis A. Lax, Esq.
- Leon & Berg, P.A.
- Vincent A. Leto, P.A.
- Mark A. Links, P.A.
- James B. Loper, Attorney at Law
- Mark Shetton Professional Association
- Mason Black & Caballero, P.A.
- Lawrence E. Miccolis, P.A.
- Mark E. Miller, P.A.
- Kelli L. Mitchell PA
- Munch and Munch, P.A.
- The Law Office of John C. Murrow, P.A.
- Nelson Law Group
- New Tampa Mediation Services, Inc.
- Catherine G. Novack, Esq., Retired
- Michael J. Palermo, P.A.
- Probasco Law, P.A.
- Prugh & Associates, P.A.
- Terrence F. Pyle, P.A.
- John H. Raines III, P.A.
- Rieth & Ritchie, P.A.
- Rissman, Barrett, Hurt, Donahue, McClain & Mangan, P.A.
- Daniel Rivero, Jr., P.A.
- Rojas Law Firm
- Craig E. Rothburd, P.A.
- Rumberger, Kirk & Caldwell, P.A.
- Joseph C. Russo, P.A.
- Rywant, Alvarez, Jones, Russo & Guyton, P.A.
- Law Offices of Julian A. Sanchez, P.A.
- Charles F. Sansone, Esq.
- Gordon J. Schiff, P.A.
- Sharp Partners P.A.
- Silberman Law, P.A.
- Singletary Law Firm, P.A.
- Cary R. Singletary, P.A.
- Law Office of James H. Smith, P.L.
- Malcolm R. Smith, P.A.
- Stichter, Riedel, Blain & Postler, P.A.
- John E. Sullivan, P.A.
- Thomas Nutter Thomas
- Thurber Law Firm, P.A.
- Wagner McLaughlin, P.A.
- Wenzel Fenton Cabassa, P.A.
- Deborah Larmed Werner, P.A.
- Charles S. White, P.A.
- Wiand Guerra King P.L.
- Wilkes & McHugh, P.A.
- Teresa P. Williams, P.A.
- Tom Young, Mediator, Arbitrator, Special Magistrate
- The Yerrid Law Firm
- Richard M. Zabak Mediations
- Zuckerman Spaeder LLP

Photos donated by Thompson Brand Images
If your proceeding is governed by the Florida Rules of Civil Procedure, the answer is, of course, yes. But the foregoing illustrates a potential trap when transitioning between the informality of a small claim and the formality of an appeal: Few of the civil rules apply to small claims, while there is no similar limitation on the applicability of the appellate rules to small claims. To invoke appellate jurisdiction, final orders must be appealed within 30 days of rendition of the judgment. Rendition occurs when a signed, written order is filed with the clerk. The rendition of a final judgment may be tolled, and the time to file an appeal extended, by the filing of an authorized and timely motion for new trial or rehearing.

Under the Rules of Civil Procedure, a motion for rehearing is timely if served within 15 days of the return of the verdict in a jury action or the date the judgment in a non-jury action is filed. An untimely motion for rehearing is considered unauthorized and will not toll the time to file an appeal. The trial court’s consideration of the motion does not authorize an unauthorized motion for rehearing.

Continued on page 17
Warning: Even an apparently timely motion can be unauthorized if the motion is not recognized by the procedural rules governing the proceeding from which the appeal is taken.\(^9\) An illustration of this principle presented itself in a recent appeal of a small claim before the circuit court.\(^10\) In small claims, which are, by design, informal proceedings, only specific rules of civil procedure apply in all cases. Rule 1.530, which addresses motions for rehearing, is not one of them.\(^11\) Additional rules of procedure may be applied upon a party’s or the court’s motion, or by stipulation.\(^12\) In the subject case, neither party had filed a motion to invoke any additional Rules of Civil Procedure.

A motion for rehearing was filed within 15 days of the judgment, and an appeal was filed within 30 days of the resulting order. The appellee moved to dismiss the appeal as untimely, correctly arguing that motions for rehearing are unauthorized by the Small Claims Rules.\(^13\) Fortunately for the appellants, the circuit court acting in its appellate capacity denied the motion.

The procedural trap illustrated in this article is not limited to small claims; other proceedings operating under their own rules that include rules related to rehearing, such as juvenile,probate and guardianship, and civil traffic proceedings, present similar challenges and opportunities.

1. Fla. Sm. Cl. R. 7.020.
5. Id.
6. Fla. R. Civ. P. 1.530(b), (g).
8. Potucek v. Snieja, 419 So. 2d 1192, 1194 (Fla. 2d DCA 1982); Boehm v. Thomas, 963 So. 2d 984, 984 (Fla. 4th DCA 2007) (holding that court lacks authority to enlarge the time for rehearing pursuant to Fla. R. Civ. P. 1.090(b)).
9. See, e.g., E-Z Marine Supply, Inc. v. Wachovia Commercial Mortg., Inc., 875 So. 2d 729, 730 (Fla. 4th DCA 2004) (dismissing appeal as untimely because a motion for rehearing was unauthorized from the otherwise-appealable nonfinal order, thus it did not toll the time for filing the appeal); Arafat v. U-Haul Ctr. Margate, 82 So. 3d 903, 905 (Fla. 4th DCA 2011).
10. Williams v. The Independent Saving Plan Co., Circuit Court Case No. 15-CA-10904 (Fla. 13th Jud. Cir. Aug. 10, 2016). Some details have been omitted to facilitate discussion of the issues.
12. Fla. Sm. Cl. R. 7.020(c).
13. Fla. Sm. Cl. R. 7.020; Arafat, 82 So. 3d at 905 (holding Rule 1.530 is inapplicable to small claims; treating motion as motion for new trial pursuant to Fla. Sm. Cl. R. 7.180); E-Z Marine Supply, Inc., 875 So. 2d at 730.
15. It is not recommended that practitioners consider these reliable ways to invoke the civil rules in small claims.

Author:
Ari Fitzgerald - Thirteenth Judicial Circuit

Learn about upcoming HCBA events at www.hillsbar.com.
It is difficult to pinpoint the most impressive feature of Port Tampa Bay. Having recently toured the Port with John T. Thorington, Jr., the Port’s vice president of government affairs and board coordination, and Charles E. Klug, the Port’s principal counsel, it is clear that top contenders for the distinction would have to include the Port’s staggering $15 billion economic impact; its 80,000 jobs; and the fact that its 5,000 acres make it one of the largest ports in the nation. As the members of this year’s Bar Leadership Institute learned during our first module in October, the Port did not acquire this remarkable résumé overnight. To be sure, the Port’s management and development requires constant care, meticulous attention to detail, and strong leadership.

As Klug explained during the tour, a good leader must always have a strong grasp of the history of his or her subject matter. Reaching back to the origins of civilization, seaports have often played a crucial role in the development of society. Not only have they been instrumental in facilitating commerce, they have traditionally provided one of the oldest, most dependable means of human movement and interaction. Port Tampa Bay’s own rich history is no exception. In the 16th century, Spanish explorer Cabeza de Vaca wrote that our Port “is the best in the world.” Centuries later, it would seem his words still ring true.

The establishment of the modern Port teaches another valuable lesson in leadership: cooperation builds great things. In a display of collaboration perhaps too often lacking in the current political landscape, local, state, and federal government entities worked together with private enterprise during the 19th and early 20th centuries to form the foundation for the modern Port Tampa Bay. Embracing this historical alliance, the Port’s current board of directors includes a blend of government and private interests, with its seven members — the Mayor, a County Commissioner, and five other members appointed by the Governor — two of whom must have maritime industry backgrounds. Since the Port was established, its leaders have remained instrumental in securing its preeminent status. Port Tampa Bay is presently one of the most diversified ports in the nation, handling the largest cargo by tonnage in the state of Florida, while also supporting a large shipbuilding and repair center, as well as a burgeoning cruise passenger business. In keeping with this diversity, great strides have recently been made to expand the Port’s container-handling capabilities to evolve with the contemporary cargo industry.

Looking to the horizon, Thorington discussed the 45 acres of port-owned Channelside land that are currently being eyed for a massive community revitalization project, as well as the opportunities created by the easing of the embargo with Cuba, including a possible ferry service from the Port to the island nation.

Whatever the most impressive feature of Port Tampa Bay may be, one thing is certain: this multi-billion dollar organization has much to teach in the way of leadership.

Since the Port was established, its leaders have remained instrumental in securing its preeminent status.

Author:
Chance Lyman - Second District Court of Appeal
Have Clients with Tax Problems? Look No Further than the Team at Heinkel Tax Law Group!

The Team at Heinkel Tax Law Group includes a former IRS Appeals Officer; a CPA; EAs; a tax attorney and a criminal tax attorney. The Heinkel Tax Team has a combined average experience of over 50 years fighting the IRS and DOR. You can trust YOUR clients to the Heinkel Tax Team. Make the referral and make your clients happy you did.

St. Pete - Clearwater - Tampa: (727) 894-2099

TaxProblemSolver.com
“Get a Good Night's Sleep!”

“A Great Combination of Commercial and Private Banking.”

The Bank of Tampa

20th Annual Bench, Bar Conference & Judicial Reception

ADAMS AND REESE LLP

Proud Sponsor of
HILLSBOROUGH COUNTY BAR ASSOCIATION

ADAMS AND REESE LLP

www.adamsandreese.com
Bank of America Plaza
101 East Kennedy Boulevard, Suite 4000
Tampa, Florida 33602
P 813.402.2880

ALABAMA | FLORIDA | LOUISIANA | MISSISSIPPI
SOUTH CAROLINA | TENNESSEE | TEXAS | WASHINGTON, DC

Author: Donald Mihokovich
Does a family law attorney have an ethical obligation to advise a client of the availability of the collaborative law process as a form of alternative dispute resolution? To decline representation in a family law matter if the attorney does not practice (or support) the collaborative law process? Does the passage of the Collaborative Law Practice Act and the anticipated adoption of proposed rules of procedure and professional responsibility consistent with the Act affect existing ethical obligations?

The essence of the attorney-client relationship is that the client makes decisions regarding the objectives of representation, and the lawyer must “reasonably consult” with the client as to the means of accomplishing those objectives. Many, if not most, family law clients express the desire to reach a peaceful settlement without exacting a significant financial or emotional toll on the family. Achieving a peaceful settlement is, without question, an “objective of representation.” This goal is also the public policy of the State of Florida, as stated in the Act, which also recognizes the collaborative law process as “a unique nonadversarial process that preserves a working relationship between the parties and reduces the emotional and financial toll of litigation.”

If a client’s objective is to achieve a peaceful settlement, the attorney is obligated to “reasonably consult” with the client regarding all possible means of accomplishing that objective. “Consult” means to communicate “information reasonably sufficient to permit the client to appreciate the significance of the matter in question.”

Because the collaborative law process is not only a means to accomplish this objective, but a statutorily recognized means that promotes the public policy of the State of Florida, the attorney should take great care in consulting with the client regarding this option to ensure the client appreciates its significance. Even if the client does not expressly state the objective of a peaceful settlement, this does not excuse the attorney from reasonably consulting with the client regarding all process means, including the collaborative law process.

Attorneys who dismiss or disparage the collaborative law process when consulting with clients whose goal is a peaceful settlement violate the Florida Rules of Professional Conduct. And those who are unfamiliar with, resistant to, or downright hostile toward the collaborative law process may be incompetent to practice in this area of the law, with these kinds of clients, because they lack the “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” These attorneys should decline representation to avoid violating the Rules of Professional Conduct.

1 R. Regulating Fla. Bar 4-1.2.
2 § 61.55, Fla. Stat. (2016). This statute, though on the books, will not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility consistent with the Collaborative Law Practices Act. Ch. 2016-93, § 8, Laws of Fla.
3 Chapter 4, Rules of Professional Conduct, Preamble: A Lawyer’s Responsibilities.
4 R. Regulating Fla. Bar 4-1.1.
5 R. Regulating Fla. Bar 4-1.16.

Author: Bridget Remington – Himes & Hearn, P.A.
Helping You Get to Yes

Reach out to Woody Isom when you need a mediator, arbitrator or special magistrate/master. Certified Circuit Civil and Federal Mediator since 1993, Board Certified Civil Trial Lawyer with both insurance defense and plaintiff experience.

isommediation@gmail.com
www.IsomMediation.com
(813) 629-6388
P.O. Box 320461,
Tampa, FL 33679-2461

Insurance Coverage Disputes
Errors & Omissions Claims
Property Claims
Business Interruption
Extra Expense
Health
Disability
Personal Injury
Wrongful Death
Auto/Motorcycle
Premises Liability
Commercial Litigation
Nursing Home
Medical Malpractice
Product Liability
Aviation

The Law Firm of Chris E. Ragano P.A. is now accepting referrals of Domestic Violence Cases (DVI’s) and Contested Marital & Family Law Cases

813-254-2273
3408 S. Manhattan Avenue
Suite 1
Tampa, FL 33629
CRLawTampa.com

The Services Your Law Firm And Clients Need, All In One Place.

4912 Creekside Drive
Clearwater, FL 33760
www.centersweb.com
(877) 766-5331
Consider the following scenario: your client, a contractor on a federal construction project, submits a pay application requesting payment for materials not yet furnished or installed on the project. Instead, it seeks payment in advance to purchase the materials. No harm so long as your client eventually furnish the materials, right? Or, your client believes the government wrongfully denied a requested change order and submits a claim higher than the amount it is owed with a goal of reaching the actual amount of the claim after negotiating with the government’s contracting officer. There’s nothing wrong with this typical negotiating strategy, right? Wrong.


Significantly, the potential landmines for contractors on federal projects

Construction Law Section
Co-Chairs: Edward J. Kuchiniski - Sivyer Barlow & Watson, P.A.; and Ryan Baya - Mills Paskert Divers

The severe penalties under the CDA, FCA and FFCA underscore the importance of ensuring the accuracy of all claims submitted to the government.

Continued on page 23
same false claim or fraudulent conduct can even subject your client to cumulative penalties under the FCA, the CDA, and the FFCA. Veridyne Corp. v. United States, 758 F. 3d 1371, 1382 (Fed. Cir. 2014).

For claims exceeding $100,000, the CDA requires that a corporate official certify that “that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable.” 41 U.S.C. § 7103(b)(1). Moreover, the CDA provides that if a contractor is unable to support any part of its claim due to a misrepresentation of fact or fraud on its part, “then the contractor is liable to the Federal Government for an amount equal to the unsupported part of the claim plus all of the Federal Government’s costs attributable to reviewing the unsupported part of the claim.” 41 U.S.C.A. § 7103(c)(2). Congress enacted the fraud provision of the CDA “out of concern that the submission of baseless claims contribute[s] to the so-called horse-trading theory, where an amount beyond that which can be legitimately claimed is submitted merely as a negotiating tactic.” Daewoo Eng’g & Const. Co., Ltd. v. United States, 557 F.3d 1332, 1340 (Fed. Cir. 2009) (quoting S. Rep. No. 95-1118, at 20 (1978)). Like the CDA, the FCA provides that “any person...who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval...is liable for a civil penalty plus three times the amount of damages which the government sustains.” 31 U.S.C. § 3729(a)(1).

Under both the CDA and the FCA, the government must establish the fraudulent conduct, intent, and its damages by a preponderance of the evidence. 31 U.S.C.A. § 3731(d); Veridyne at 1380-81. Innocent mistakes and negligence are insufficient to trigger the penalties under the FCA and CDA. Ulysses, Inc. v. United States, 110 Fed. Cl. 618, 642 (Fed. Cl. 2013). The FFCA, by contrast, requires the government to establish that the contractor knew its claim was false and that it intended to defraud the government by submitting the claim, by clear and convincing evidence. Daewoo, 557 F.3d at 1341. While this is a high standard, if the government establishes that even one claim a contractor submits is fraudulent, that is sufficient to forfeit all of that contractor’s claims on the project. Veridyne, 758 F.3d at 1377-78 (finding that contractor had forfeited even its equitable claims through its submission of a fraudulent claim).

The severity of penalties under the CDA, FCA, and FFCA underscores the importance of making certain your clients understand these laws and ensure the truth and accuracy of all claims they submit for payment to the government.

Author: Matthew G. Davis - Mills Paskert Divers

Save the Date:

♦ JANUARY 11
  DIVERSITY MEMBERSHIP LUNCHEON, HILTON TAMPA DOWNTOWN

♦ FEBRUARY 18
  DIVERSITY NETWORKING SOCIAL, CHESTER H. FERGUSON LAW CENTER

♦ MARCH 11
  JUDICIAL PIG ROAST/FOOD FESTIVAL & 5K PRO BONO RIVER RUN, ON THE GROUNDS OF STETSON LAW TAMPA CAMPUS

♦ MAY 11
  HCBA LAW DAY MEMBERSHIP LUNCHEON AT THE HILTON TAMPA DOWNTOWN

♦ MAY 18
  LAW & LIBERTY DINNER AT THE HILTON TAMPA DOWNTOWN
HILLSBOROUGH COUNTY BAR ASSOCIATION

Judicial Pig Roast, Food Festival & 5K Pro Bono River Run

Saturday, March 11
On the grounds of the Stetson Tampa Law Campus

4:30 P.M. 5K RACE START
5 P.M. TO 7 P.M. PIG ROAST/FOOD FESTIVAL

To register for the Judicial Pig Roast/Food Festival
& 5K Pro Bono River Run, go to hillsbar.com.

To reserve a booth, contact Michele Revels
at michele@hillsbar.com or (813) 221-7776.

For sponsorship information, contact Stacy Williams
at stacy@hillsbar.com or (813) 221-7779.
Wagner McLaughlin is pleased to announce that
Jim Guarnieri has joined the firm, bringing nearly fifteen years of great experience to our plaintiffs-only practice. Jim will join our other partners representing clients in personal injury, legal and medical malpractice, admiralty and maritime, and class-action claims.

601 BAYSHORE BOULEVARD, SUITE 910, TAMPA
813.225.4000 • 800.360.6439
WAGNERLAW.COM

JONATHAN C. KOCH, ESQ.
Koch Mediation Services
with a dedicated mediation facility at:
701 South Howard Avenue
Suite 202 (above Panera Bread®)
Tampa, Florida 33606
813/253-8888
JonKoch@KochMediation.com
Online Calendar: KochMediation.com

- Certified Mediator, Circuit Courts and Middle District of Florida
- 100s of mediations since 1990
- Invited Member, Nat’l Association of Distinguished Neutrals and Fla. Circuit Civil Mediators Society
- Chosen (as lawyer) by Best Lawyers, Super Lawyers, AV
- Experienced in commercial, sports and entertainment, antitrust, unfair competition, real property, UCC, 1st Amendment, securities, contract, intellectual property, employment, business and other torts, receiver ship and most federal questions. All cases accepted (except family).

WHERE WILL YOU TURN WHEN THE STAKES ARE HIGH?

Our Appellate Team is dedicated to helping you maximize your client's likelihood of success at trial and on appeal. Having served as lead appellate counsel in a wide range of matters, our lawyers have the insight and experience necessary to tackle complex legal issues in the trial court and to protect your client's interests on appeal.

Pictured:


Holland & Knight
Tampa, Florida
www.hklaw.com
813.227.8500
Government action that falls short of these categorical claims (commonly referred to as a partial regulatory takings claim) is analyzed under the ad-hoc balancing test first articulated in Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978). While the Court has been unwilling to develop a “set formula” to determine when “justice and fairness require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons,” it has identified three general areas of inquiry: 1) economic impact on the claimant; 2) reasonable investment-backed expectations; and 3) character of the government action.

Nature of the Takings Claim
One source of the majority’s confusion was from the conflation of the types of takings (per se or partial) with the nature of how the claim is brought (facial or as applied). As Judge Shepherd noted, the panel was under the “mistaken belief that a per se/categorical taking was the equivalent of a facial taking.” The dissent attempted to straighten out the confusion, noting that facial takings “allege that the mere enactment of a regulation” effects a taking. By contrast, an “as applied” takings claim results from the specific application of a regulation to the property, usually in the context of a denial of a permit or other type of government approval.

Irrespective of the type of taking, the nature of the claim may be as either a “facial” or “as applied,” depending on the circumstances.

Conclusion
As Judge Shepherd noted, regulatory takings jurisprudence has historically been somewhat “cryptic and convoluted.” Yet his cogent analysis was crafted almost exclusively using Supreme Court precedent fashioned in the 40 years since Penn Central. With these foundational cases, and the even more recent guidance offered in opinions such as Arkansas Game & Fish Commission v. United States and Koontz v. St. Johns River Water Management District, Florida courts may soon be able to embrace “a less turbid, and more constitutionally sound, regulatory taking framework.”}

Continued on page 27
Continued from page 26

1 2016 WL 5404070 (Fla. 3d DCA Sep. 14, 2016).
2 Beyer v. City of Marathon, 197 So. 3d 563 (Fla. 3d DCA 2013); see also Beyer v. City of Marathon, 37 So. 3d 932 (Fla. 3d DCA 2010).
3 Ganson, 2016 WL 5404070, at *1.
4 Id. at 4.
5 See id. at *3-5. The dissent also identifies a fourth type of taking — taking by exaction, which is a “special application of the doctrine of unconstitutional conditions.” In a similarly challenged analysis, the Third District Court of Appeal, recently declined to recognize a fifth type of taking — condemnation blight — in Teitelbaum v. South Florida Water Management District, 176 So. 3d 998, 1000, 1005-06 (Fla. 3d DCA 2015).
7 Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). Judge Shepherd also offers clarity to this issue, noting that Florida has added the “substantially all” language to the per se takings test, suggesting a “slightly less demanding standard in Florida” than the federal counterpart, which requires a total loss of all beneficial use.
8 Ganson, 2016 WL 5404070, at *3-5.
9 Id. at 6-7 (citing Lingle v. Chevron U.S.A., Inc., 544 U.S. 528 (2005); Palazzolo v. Rhode Island, 533 U.S. 606 (2001)).
10 Id. at *3.
11 See id. at *4.
12 See id. at *3-4.
14 Ganson, 2016 WL 5404070, at *3.

Author: Gregory S. Rix - Moore Bowman & Rix, PA.

HCBA WELCOMES NEW MEMBERS

OCTOBER & NOVEMBER 2016

Amanda Astor
Michael Balducci
Aaron Baroff
Hannah Becker
Jordan Behlman
Christine Behrman de Colindres
Jeff Berglund
Stephanie Bodolay
Stephanie Braat
Susan Brennan
Jonathan Bryan
Heather Bumgardner
Raul Cabrera
Leenetta Carden
Lisa Cetrangolo
Yvette Chapman
C. Todd Chapman
Rebecca Clark
Juliana Cortes
Patrick Creemens
Natalia Dambach
Michael Dastolfo
Gregory Demers
Jonathan Diamond
Sean Douthard
Amanda Duffy
Eric Eber
Farrah Elchahal
Meredith Fee
Paul Ferreira
Nicolette Figueroa
Paul Fischel
Joshua Gehres
Michelle Gervais
Jill Giordano
Greg Green
Zachary Grimland
David Hoffman

Patrick Hood
Megan Jarrett
Mary Keckler
Erin Kelley
Lisa Knox
George Lastinger
Amy Lewis
Kris Lier
Kathryn Lopez
Simone Marstillier
Adam Martin
Sarah McIlrath
Tahirah Payne
Colton Peterson
Tabitha Rainey
Shayaan Raja
Kyle Rea
Edward Reyes
Jeremy Rill
Tania Rivas
Susan Rothstein-Youakim
Jennifer Sarmiento
Natalie Schaap
Ahmed Shaaban
Elisabeth Shaw
Ashleigh Shelver
Teodora Siderova
Cherie Skaggs
Ebony Smith
Kaelyn Steinbraus
Todd Stern
Paul Suppicich
Kendyl Tash
Chad Thuma
Ashley Tinsley
Brenda Tinsley
Claire Walker
Ciara Willis
Phoebe Wise

Author: Gregory S. Rix - Moore Bowman & Rix, PA.
BUELL & ELLIGETT, P.A.

JUST BEING AGGRESSIVE DID NOT SERVE GOLIATH WELL

David’s superior skill carried the day, as depicted by Michelangelo on the ceiling of the Sistine Chapel. Buell & Eligett works to bring superior legal skills to cases they try, appeal or co-counsel.

Plaintiffs’ Personal Injury, Eminent Domain, Insurance Coverage and Appeals

(813)874-2600
www.belawtampa.com

Referral fees paid per Florida Bar rules
SIGNIFICANT CHANGES TO MEDICARE REIMBURSEMENT UNDERWAY
Health Care Law Section
Co-Chairs: T.J. Ferrante - Foley & Lardner LLP; and Sara Younger Seifried - Baycare Health Systems

Much is still unknown about the impact of the election on healthcare. But one thing is certain: As health care costs continue to rise and the baby boomer generation ages, the government will keep pursuing innovative payment arrangements to encourage delivery of the highest-quality, lowest-cost care.

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), bipartisan legislation that replaced the flawed Sustainable Growth Rate, is the most significant change to Medicare provider reimbursement in a generation, and part of a broader strategy to deliver high-quality care at a lower cost.

Beginning January 1, 2007, Medicare Part B clinicians who bill Medicare more than $30,000 a year and provide care for more than 100 Medicare patients annually are subject to MACRA. Clinicians subject to MACRA must choose between taking part in the Advanced Alternative Payment Models (Advanced APMs) or the Merit-based Incentive Payment System (MIPS). Both paths require clinicians to adhere to certain quality and technological standards, and take on financial risk.

**Advanced APMs**

Clinicians receiving 25 percent of Medicare payments or seeing 20 percent of Medicare patients through an Advanced APM need only submit their quality information to the Centers for Medicare and Medicaid Services (CMS). CMS has started announcing which alternative payment models will qualify as Advanced APMs in 2017. So far, they include: “Comprehensive ESRD Care – Two-Sided Risk;” “Comprehensive Primary Care Plus (CPC+);” “Next Generation ACO Model;” “Shared Savings Program – Tracks 2 and 3;” and the “Oncology Care Model – Two-Sided Risk.” Clinicians participating in the Advanced APM track will earn a five percent incentive payment.

**MIPS**

Clinicians choosing to participate in traditional Medicare Part B, rather than an Advanced APM, will participate in MIPS, and are at risk for negative payment adjustments. MIPS-participating clinicians will be rated on a continuous 100-point scale composed of four performance categories:

1. Quality (60 percent for 2017, 50 percent for 2018);
2. Advancing Care Information (25 percent);
3. Clinical Practice Improvement Activities (15 percent); and
4. Resources Use (zero percent for 2017, 10 percent for 2018).

As health care costs continue to rise and the baby boomer generation ages, the government will keep pursuing innovative payment arrangements.

Each point below or above the threshold translates proportionally into financial impacts. Providers earning a score above an annual performance threshold set by CMS receive an incentive, whereas those scoring below the threshold are assessed a penalty. CMS will publicly report MIPS scores annually. Due to the operational burden associated with MACRA implementation, CMS eased 2017 MACRA requirements. As long as participating clinicians submit a minimum amount of 2017 data by March 31, 2018, they will avoid a downward payment adjustment. Financial risk is set to fully begin in 2018.

While it remains unclear how President-elect Trump and a Republican-controlled Congress will affect healthcare, there appears little incentive to repeal MACRA, as the legislation passed with significant bipartisan support. Although repealing the Affordable Care Act could affect how alternative payment models under MACRA are defined and vetted, with MACRA in place, Medicare Part B billing providers will soon begin accepting financial risk.

Author: Elizabeth Scarola - Carlton Fields
As any seller on Amazon knows, success is largely based on “winning the Buy Box.” A Buy Box — known to customers as the “Add to Cart” box — is the white box on the right-hand side of a product page that allows a customer to purchase a product from a specific seller on Amazon. Every seller has a Buy Box, but only the seller that Amazon’s complex algorithms has ranked the highest gets to “win the Buy Box” and have it be the only Buy Box located at the top of the page. It is akin to Consumer Reports’ recommended products, with low price being one of the most important factors in winning the Buy Box. Every other seller’s buy box is relegated to electronic Siberia, known as the bottom of the page. The seller that wins the Buy Box makes, on average, 82 percent of all sales for that product.¹ Winning the Buy Box can make or break a seller.

According to Amazon’s rules, all sellers of the same product are obligated to list their product under the same “ASIN,” or Amazon Standard Identification Number.² An ASIN is sort of like an electronic shelf that holds all of the same type of product offered by competing sellers. For example, all sellers of Duracell Coppertop size D batteries in a ten-pack must

Continued on page 31

Support the HCBA Annual Diversity Networking Social

Saturday, February 18, 1 - 3:30 p.m.
Chester H. Ferguson Law Center, 1610 N. Tampa St., Tampa

The HCBA Diversity Committee’s annual networking event showcases what the Tampa Bay area has to offer by connecting law students with attorneys, judges and members of local legal organizations in a casual, friendly and low-pressure environment.

How You Can Help:

• Become a sponsor. Showcase your commitment to diversity and inclusion, offer career advice and potential mentors to law students, and discuss job or volunteer opportunities available within your organization.

• Spread the word to other organizations, firms or students.

• Volunteer to help organize or assist with the event.

To learn more, visit www.hillsbar.com.
list their offerings under the same ASIN. This allows customers to easily comparison shop, finding the best price and shipping terms.

Since sellers, not Amazon, create the ASIN, oftentimes they believe they own it. And some don’t like to share it. But share they must. In fact, creating a new ASIN for a product that already has one is a violation of Amazon’s rules.3

Sometimes not sharing an ASIN makes sense, such as when another seller is using the same ASIN to sell counterfeits. When a buyer leaves negative feedback on a product, it is tied to that product’s ASIN, so all sellers of legitimate products are hurt. Because Amazon prohibits selling counterfeits, there are procedures in place to report and stop such tactics. Selling products that infringe trademarks or copyrights — even if not counterfeits — also is prohibited, and rights owners can report these violations and block those sellers from using an established ASIN as well.

But when the other sellers’ products are legitimate and identical to the products listed under the ASIN, all sellers are required to share the ASIN. Unscrupulous sellers will sometimes try to stake off their digital ASIN territory to hinder comparison shopping and win the Buy Box by including their own brand name in the title or product description of the product page of a particular ASIN.

For example, let’s assume a company called Battery Warehouse (BW) was the first seller to offer a ten-pack of AA batteries made by Duracell on Amazon. Since this company was first, it gets to create the ASIN and the product detail page. Rather than creating a product page and ASIN titled “Duracell AA Coppertop Batteries, Ten-Pack” that all sellers (and resellers) of Duracell batteries can use, BW wants an advantage. So it creates product detail pages and ASINs for “Duracell AA Batteries, Ten Pack, Sold By Battery Warehouse,” and includes multiple references to its company in the product detail page, such as to its own warranty or shipping methods.

When other sellers of the same batteries try to list their products for sale under the same ASIN, BW threatens the other sellers with trademark infringement lawsuits, since they are using an ASIN that BW claims to own that has its trademark in the title and description. Because many sellers on Amazon are small, most avoid the fight and choose to create a new ASIN for their identical product, even though it violates Amazon’s policy. Although these aggressive sellers have on rare occasions filed suit, there are no reported opinions as of the date of this article.

Time will tell if these trademark owners, or the consumer, will be the king of the jungle.

---

2 See Amazon’s “ASIN Creation Policy,” available at Amazon.com.
3 Id.

Author: Jim Matulis – Matulis Law & Mediation
The Eleventh Circuit Court of Appeals recently provided important guidance on the difference between racial and cultural characteristics in holding that a company’s race-neutral grooming policy, which banned dreadlocks, did not constitute intentional race discrimination in violation of Title VII of the Civil Rights Act of 1964.

The case, *EEOC v. Catastrophe Management Solutions*, 2016 WL 4916851 (11th Cir. Sept. 15, 2016), involved a job applicant whose conditional offer was rescinded because she refused to comply with the company’s demand to cut her dreadlocks in order to conform with the grooming policy. The grooming policy required all personnel to be “dressed and groomed in a manner that projects a professional and businesslike image.” It further required that hairstyles “reflect a business/professional image.” The EEOC sued the employer, claiming that the policy constituted intentional race discrimination under Title VII, and ultimately appealed the dismissal of its complaint.

In affirming the district court’s decision that the grooming policy was not discriminatory, the Eleventh Circuit held that Title VII’s prohibition on intentional discrimination does not protect hairstyles culturally associated with race. In doing so, the court emphasized the distinction between mutable choices, which are not protected, and immutable traits such as race, color, or national origin, which are protected. Under this rationale, the court explained that discrimination based on black hair texture, such as a natural Afro, would violate Title VII. A prohibition on an all-braided hairstyle, however, would address a mutable choice and not implicate Title VII.

The decision is perhaps most notable for its exploration of the definition of “race,” which has proven to be an elastic, if not elusive, concept generally. The court acknowledged that the concept of “race” is a very broad and ever-changing concept, but it declined to expand the interpretation of Title VII by eliminating the biological conception of “race” and encompassing cultural characteristics associated with race.

The decision is relevant for all employers, especially those with employees in Florida, based on its treatment of employer grooming policies. The decision also offers important guidance on other policies that may implicate characteristics of an individual’s race or other Title VII-protected categories that are not “immutable.”

**Author:** Jason Pill - Phelps Dunbar LLP
Hillsborough County Bar Association 100 Club

Law firms with 100% membership in the HCBA

12th Judicial Circuit Court
13th Judicial Circuit Court
2nd District Court of Appeal
Adams & Reese LLP
Addison & Howard, P.A.
Allen Del
Alley Clark & Greiwe
Arla Assuncion, LLP
Anthony J. LaSpada P.A.
Anton Castro Law
Austin, Roe & Patsko, P.A.
Baccarella & Baccarella, P.A.
Bailey Law Group
Bajio | Cuva | Cohen | Turkel, P.A.
Barbas, Nunez, Sanders, Butler & Hovsepian
Barker & Cook, P.A.
Barnett Bolt Kirkwood Long & Coche
Bay Area Legal Services Plant City
Bay Area Legal Services Tampa
Bivins & Henneman, P.A.
Boss Amighi Hoag, P.L.
Bowie Law Group
Brandon Family Law Center, LLC
Brandon Legal Group
Brennan, Holden & Kavoukzis, P.A., Attorneys at Law
Brett Hendee, P.A.
Brickleyer Law Group
Broad and Cassel
Buell & Elliott, P.A.
Burn & Forman
Bush Ross
Butler Weihmuller Katz Craig LLP
Cagianano, Miller & Associates
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
Carlton Fields Jorden Burt, P.A.
Carey, O'Malley, Whitaker & Mueller, P.A.
Carlin Fields Jorden Burt, P.A.
Carman & Bevington, P.A.
The endgame matters.

Ceci Berman & Steve Brannock

An appeal is a company’s last chance to preserve a win or reverse a loss. With over 50 years of experience handling commercial litigation appeals, we can get you to the finish line.
Are you short on CLE Credits?

Go to hillsbar.com to order CLEs on CD, or sign up for one of our many CLE luncheons.
In one of the most famous Supreme Court cases of the last century, Planned Parenthood v. Casey, the Court authored an insightful passage that encapsulates the freedoms that lie at the heart of the Fourteenth Amendment: “These matters, involving the most intimate and personal choices a person may make in lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”

Although the Court was writing about the reproductive rights of women and the legality of certain provisions limiting those rights, this passage rings true for the entirety of the Fourteenth Amendment, which is perhaps the Constitution’s most important amendment for defining individual rights. In order to highlight the importance of this cherished amendment, as well as to educate others of its significance, the American Bar Association has announced the 2017 Law Day theme: “The 14th Amendment: Transforming American Democracy.”

The Fourteenth Amendment, known as one of the Reconstruction Amendments, was adopted in 1868 following the Civil War. Originally drafted to craft and define the rights and liberties of emancipated slaves, the amendment has since become a cornerstone of liberty for all citizens. It established citizenship for hundreds of thousands of Americans, helped define substantive and procedural due process rights, and guaranteed equal protection under the law for all Americans. The first section of the amendment includes a number of clauses that have helped make it the most litigated Constitutional amendment: the Citizenship Clause, the Privileges and Immunities Clause, the Due Process Clause, and the Equal Protection Clause. Over the years, the Supreme Court has interpreted and defined these clauses in some of the most infamous decisions in United States history, including Plessy v. Ferguson (1896), Brown v. Board of Education (1954), Gideon v. Wainwright (1963), Loving v. Virginia (1967), Roe v. Wade (1973), and more recently, Obergefell v. Hodges (2015), regarding same-sex marriage. This year, the Hillsborough County Bar Association joins the American Bar Association in encouraging its members to take part in Law Week, so that we might educate the local community and students about this very important amendment.

Law Week will take place this year from March 6 through March 10, 2017. For those readers unfamiliar with Law Week, it is an excellent opportunity for lawyers of all ages to escape the monotonous drone of office life in favor of interacting with local schools, students, and teachers. The HCBA Young Lawyer Division’s Law Week Committee, headed by co-chairs Dane Heptner and Stephanie Generotti, organizes three activities for attorney-volunteers to participate in: courthouse tours, classroom discussions, and mock trials.

The courthouse tours involve leading groups of students through courtrooms and other areas of the courthouse to give them a glimpse of the rule of law in action.

Continued on page 37
Classroom discussions involve traveling to a local school to lead a class or group of students in a discussion on the law and answer student questions. Finally, volunteers who participate in mock trials team up in groups of two and work with students in presenting a student-friendly case (such as Goldilocks v. The Three Bears). These events not only offer attorneys a chance to step out from underneath the cold luminescence of their office lights to educate students, but they also give participants an opportunity to remind themselves of all the great rights and liberties we are afforded as Americans.

If you are interested in learning more about Law Week 2017 or volunteering, please contact YLD Law Week Committee Co-Chairs Dane Heptner (Dane@USALaw.com) or Stephanie Generotti (Stephanie.Generotti@csklegal.com).

Author: Dane Heptner - Perenich Caulfield Avril & Noyes

Community Services Committee Collects Donations for Local Veterans

The Community Services Committee coordinated donations for 60 veterans as part of James A. Haley Veteran's Hospital’s Homeward Bound for Those Who Served Initiative on October 22. CSC volunteers worked with the Military & Veterans Affairs Committee to adopt veterans in need of basic necessities. The HCBA appreciates all the members who participated in this great service project!

I deeply appreciate the trust expressed by you, my fellow members of the Bar, through your 25 years of Chapter 7 and Chapter 13 bankruptcy referrals. Please call for a complimentary copy of my new book... Bankruptcy: Your Bridge to a Brighter Future What You Need to Know to Gain Your Financial Freedom

Law Offices of Robert M. Geller, P.A.
Old Hyde Park
807 West Azeele Street
Tampa, FL 33606
813-773-3185
AttorneyForTampaBay.com
20th Annual Bench Bar Conference, Membership Luncheon & Judicial Reception

The HCBA Bench Bar Conference, Membership Luncheon & Judicial Reception enjoyed record attendance yet again this year as 600 attorneys, judges, and other legal professionals came out for a day of great CLE programming and networking on November 10.

This year’s conference theme “Balancing the Scales: Ethics v. Technology/Social Media” focused on the privacy, ethical, and practical considerations required of the legal community in today’s evolving technological landscape. The conference began with a popular review of the U.S. Supreme Court’s activities, followed by speakers discussing social media evidence and mediation advocacy best practices. In the afternoon, attendees chose from five “View Towards the Bench” sessions and heard from a panel of former jurors about their experience in the jury box. The conference ended with an insightful presentation on issues related to digital evidence.

Florida Supreme Court Justice Charles Canady was the keynote speaker at the Membership Luncheon, where the Hillsborough County Bar Foundation presented six local charities with checks totaling $100,000. The Thirteenth Judicial Circuit Professionalism Committee also awarded David Rowland with the 2016 Professionalism Award during the luncheon (see page 54).

The conference ended with attorneys, judges, and friends of the legal community mingling at the Judicial Reception in the evening.

The HCBA would like to thank the members of the Bench Bar Committee for all their hard work. A special thanks also goes out to all of the events sponsors, specifically our Diamond Sponsor:

PHOTOGRAPHY IS COURTESY OF THOMPSON BRAND IMAGES. THOMPSON BRAND IMAGES IS A BENEFIT PROVIDER FOR THE HCBA. WWW.THROMPSONBRANDIMAGES.COM.
The HCBA thanks The Yerrid Law Firm for its Diamond Sponsorship of the 20th Annual Bench Bar Conference & Judicial Reception. We appreciate your generous support!
THANK YOU TO THE SPONSORS
of the
HILLSBOROUGH COUNTY BAR ASSOCIATION
20TH ANNUAL BENCH BAR CONFERENCE & JUDICIAL RECEPTION

Diamond

THE YERRID LAW FIRM

Platinum

♦ ABRAHAMSON & UITERWYK
♦ ADAMS & REESE LLP
♦ BRADLEY
♦ BURR & FORMAN LLP
♦ COLE, SCOTT & KISSANE, P.A.
♦ FREE PRESS
♦ HCBA TRIAL & LITIGATION SECTION
♦ HOLLAND & KNIGHT LLP
♦ TCS
♦ THE BANK OF TAMPA
♦ WAGNER McLAUGHLIN, P.A.

Gold

♦ Bajo|Cuva|Cohen|Turkel
♦ BRANNOCK & HUMPHRIES
♦ BUTLER WHEIMULLER KATZ CRAIG LLP
♦ HARRIS & HUNT, P.A.
♦ LAWPay
♦ MASON BLACK & CABALLERO PA
♦ PHELPS DUNBAR LLP
♦ STETSON UNIVERSITY COLLEGE OF LAW
♦ TRENAM LAW

Silver

♦ BANKER LOPEZ GASSLER P.A.
♦ GULFSHORE BANK
♦ GUNN LAW GROUP, P.A.
♦ HILL WARD HENDERSON
♦ SHUMAKER, LOOP & KENDRICK, LLP
♦ SUNCOAST TRUST & INVESTMENT SERVICES
♦ WESTERN MICHIGAN UNIVERSITY,
  Thomas M. Cooley Law School

Bronze

♦ AKERMAN LLP
♦ ANSA ASSUNCAO LLP
♦ BUSH ROSS, P.A.
♦ CARLTON FIELDS
♦ CLARK & MARTINO, P.A.
♦ COURTCALL
♦ CURRY LAW GROUP, P.A
♦ DE LA PARTE & GILBERT, P.A.
♦ EMERGENT MEDICAL CONSULTANTS OF TAMPA
♦ GRAYROBINSON, P.A.
♦ KYNES, MARKMAN & FELMAN, P.A.
♦ LAW OFFICES OF LISA ESPOSITO, PA
♦ LEXISNEXIS
♦ OGDEN & SULLIVAN, P.A.
♦ OLDER, LUNDY & ALVAREZ
♦ RUMBERGER, KIRK & CALDWELL, P.A.
♦ SUNCOAST CHAPTER ASSOCIATION
  OF LEGAL ADMINISTRATORS
♦ TEICHERMAN LAW FIRM
♦ THE LAW OFFICE OF JO ANN PALCHAK, P.A.
♦ THE LAW OFFICES OF KEVIN NAPPER, P.A.
♦ THE SUAREZ LAW FIRM, P.A.
♦ THOMAS & LoCicero PI
♦ TROMBLEY & HANES, P.A.
♦ ZYMPTHONY TECHNOLOGY SOLUTIONS
YLD GOLF TOURNAMENT

The HCBA Young Lawyers Division had a great turnout and beautiful fall weather for their annual golf tournament on October 14. About 100 golfers came out for the YLD’s signature fundraising event at the Temple Terrace Golf & Country Club. Congratulations to the winning team: Hon. James Whittemore, Don Whittemore, Preston Whittemore, and John.

The YLD would like to thank this year’s generous sponsors:

PLATINUM SPONSOR

BEVERAGE CART SPONSOR

NorthStar Bank

SILVER SPONSORS

Anthem Reporting
Banker Lopez Gassler
Bush Ross P.A.
Esquire Deposition Solutions
Florida Lawyers Mutual Insurance Company
Free Press
GulfShore Bank
Hill Ward Henderson
TCS
U.S. Legal Support
Wagner McLaughlin, P.A.

LONGEST DRIVE CONTEST SPONSOR

Raymond James & Associates

CLOSEST TO THE PIN MEN’S CONTEST SPONSOR

Westshore Financial Group

CLOSEST TO THE PIN WOMEN’S CONTEST SPONSOR

Orange Legal

TEE/HOLE SPONSORS

Abbey Adams Byelick & Mueller, LLP
Hood Legal Search, LLC
The Consumer Rights Law Group
Webb Insurance Group
WINNING @ MEDIATION
FREE CLE SEMINAR
for Florida Bar Members
Limited Seating - 1st Come - First Served
RSVP to: Clark@MediationForFlorida.com

PRESENTED BY

www.MediationForFlorida.com

Clark Jordan-Holmes  Walter Aye  J. Kevin Carey
Stephen Cheeseman  Constance d’Angelis

A Seasoned Group of Arbitrators & Mediators

WHERE: Omnia Suite 300,
1501 West Cleveland St., Tampa

WHEN: Friday, February 10, 2017
11:30AM - 1:30PM

813-966-2626
It is not unusual in a marital settlement agreement for a former spouse to secure an alimony or child support obligation with a life insurance policy naming the recipient spouse as beneficiary. It is also common for an individual to designate a former spouse as the beneficiary of a marital asset, such as a pension or annuity. In such cases, it is important to be aware of Section 732.703, Florida Statutes, which states:

A designation made by or on behalf of the decedent providing for the payment or transfer at death of an interest in an asset to or for the benefit of the decedent’s former spouse is void as of the time the decedent’s marriage was judicially dissolved or declared invalid by court order prior to the decedent’s death, if the designation was made prior to the dissolution or court order. The decedent’s interest in the asset shall pass as if the decedent’s former spouse predeceased the decedent.¹

This provision, which became effective on October 1, 2013, nullifies the designation of a former spouse as a beneficiary when that designation was made before the marriage was dissolved. Section 732.703 is problematic when a married couple makes a death benefit designation during their marriage and assumes the designation survives the divorce. For example, a husband purchases a life insurance policy that names the wife as beneficiary. The marriage ends in divorce and the husband secures his alimony and/or child support obligation with the life insurance policy purchased during the marriage. Both parties assume the pre-dissolution designation effectively establishes the former wife as the beneficiary of the policy after the divorce. Under Section 732.703, this assumption is incorrect. Because the designation was made during the marriage, the statute treats the former wife as predeceasing the former husband. This legal fiction nullifies the beneficiary designation and prevents the former wife from receiving death benefits, even though this was the clear intent of the parties.

Though the statute provides limited factual exceptions, the statute can be completely avoided by executing a beneficiary designation or ratification after the dissolution of marriage. Therefore, in order to preserve the promise of post-dissolution death benefits, it is important to include anticipatory language in a marital settlement agreement or final judgment requiring the execution of a post-dissolution beneficiary or ratification of death benefits after the entry of a final judgment.

Section 732.703 is broadly drafted and applies to life insurance policies,² qualified annuities,³ tax-deferred contracts,⁴ “employee benefit plans,”⁵ payable-on-death accounts⁶ and IRAs.⁷ In addition, the statute applies to “all designations made by or on behalf of decedents dying on or after July 1, 2012, regardless of when the designation was made.”⁸ Given the scope and impact of § 732.703, the statute should be consulted whenever a death benefit designation is at issue in a dissolution matter.

¹ § 732.703(2), Fla. Stat.
² § 732.703(3)(a), (f), Fla. Stat.
³ Id.
⁴ Id.
⁵ § 732.703(3)(b), Fla. Stat.

Authors: Martin Deptula and Nancy Harris & Hunt, P.A.
Construction Law Section CLE

Amanda B. Buffinton of Shutts & Bowen LLP and Mark Smith of Carlton Fields spoke to the Construction Law Section on November 17 about defending and asserting claims against architects and engineers. Topics discussed included prerequisites for pursuing design claims; defenses unique to design professionals; insurance coverage; and the importance of scope of contract for design professionals.

The section would like to thank its sponsor:

Appellate Section Luncheon

The Appellate Section received an update from Judge Charles Wilson with the Eleventh Circuit Court of Appeals about the newest developments in the circuit at their luncheon on November 16.

The section would like to thank its sponsor:
Turning your mediator into a decisionmaker: “Can’t you just decide for us?”

Mediation & Arbitration Section
Co-Chairs: Amy Tamargo - Tamargo Mediation, PLLC; and Kari Metzger - Metzger Law Group, P.A.

It has been a grueling mediation, but after eleven hours it looks like it is going to impasse. Your client is in a contract dispute with one of its key suppliers. Despite everyone’s best efforts, the two sides can’t agree on how to interpret an important clause. Until the dispute is resolved, the supplier is refusing to supply critical parts. Nearing exhaustion and needing to preserve the relationship with the supplier to meet its customer’s orders, your client asks you, “Can’t we just have the mediator decide who is right?”

“Interesting idea,” you think. The mediator would be a logical choice to serve as a decisionmaker, since she worked in the same industry before going to law school and has litigated many similar cases. And this client has already incurred a lot of fees — yours and the mediator’s — to educate the mediator on this dispute. Most importantly, you respect her judgment, and over the course of the mediation, she has convinced you that she is completely neutral on the key issue.

But you just aren’t sure...

Should you counsel your client to have the mediator change hats and become the decisionmaker? Can the mediator even do that ethically? Should she?

A recent decision from the Mediator Ethic Advisory Committee (MEAC) suggests that, although the mediator can ethically change hats to decisionmaker mid-stream, doing so “is laden with hazards,” and the risks and implications have to be explained by the mediator — and thus understood by you and your client.1

The MEAC opinion first noted that the Florida Rules for Certified and Court-Appointed Mediators don’t prohibit a mediator from switching hats to decisionmaker. It also noted that the parties may exercise self-determination in deciding whether to make the switch — even if the mediator has received confidential information during the mediation.

But the parties need to understand that converting the mediator into a decisionmaker results in a change of the dispute resolution process, impacting self-determination, impartiality, confidentiality and other ethical standards.2 The opinion recites a list of requirements that must be met before a mediator can switch hats, including that the mediator must clearly inform the parties that: (1) the switch will result in conflicts of interest arising, and confidentiality being lost, which the parties are agreeing to waive; and (2) the mediator will no longer be able to mediate the present or related matters for them. The mediator also must ensure that the parties understand that there are other methods of alternative dispute resolution available, and that ultimately it is their decision whether to exercise self-determination by voluntarily agreeing to select this mediator as arbitrator.3

The MEAC decision included a concurrence (in part) and dissent (in part) signed by two of the three panel members, in which the panel members argued that the multiple rules4 and prior MEAC opinions5 prohibit a mediator from serving as both arbitrator and mediator in the same case, regardless of the agreement of the parties.6 The dissent viewed the mediator’s conflict as non-waivable, “since the decision-maker may rely upon information obtained or communications which occurred outside the adjudicatory process.”7

Ultimately, the decision belongs to the parties, as mediation is founded on self-determination. On the one hand, there are certainly efficiencies in time and money in having the

Continued on page 47
mediator resolve the dispute immediately, allowing the parties to resume their relationship in time to fulfill the client’s pending orders. On the other hand, given that the process is “laden with hazards” that “raise serious ethical concerns,” it may be best for you to advise your client to follow the advice of the Fifth District Court of Appeal: “mediation should be left to the mediators and judging to the judges.”

1 Mediator Ethic Advisory Committee Opinion Number 2015-003 at 2 (Feb. 4, 2016), available at http://www.flcourts.org/core/fileparse.php/334/urlt/MEACOpinion2015-003.pdf. The three-person MEAC panel, however, disagreed on whether a mediator also could serve as the arbitrator in a slightly different scenario—after mediation in a court-ordered mandatory non-binding arbitration.

2 Id. (citing Committee Note to Rule 10.310, Self Determination, Florida Rules for Certified and Court-Appointed Mediators).

3 Id. at 2.

4 MEAC Opinion 2015-003 Concurrence (in part) and Dissent (in part), at 1-2 (citing Fla. R. Civ. Med. 10.210, 10.220, 10.230, 10.300, 10.310(a), 10.370(c), and 10.420(a)).

5 Id. (citing MEAC Opinions 2009-002 and 2009-001).

6 Id. at 1.

7 Id.

8 MEAC Opinion 2015-003 at 3.


10 Evans v. State, 603 So. 2d 15, 17-18 (Fla. 5th DCA 1992).

Author: Jim Matulis - Matulis Law & Mediation
THANK YOU!

The Hillsborough County Bar Association appreciates those attorneys who participate in our Lawyer Referral & Information Service.

Manuel J. Alvarez
Donald A. Anderson
Brian J. Anthony
Dale S. Appell
Nicki Fernandez Asmer
Michael Auchampau
Thomas F. Baker
Adam L. Bantner II
Erin Bass
David Befeler
Marshall Berner
Jack Bernstein
Brett Berger
Michael C. Blickensderfer
Alan Borden
Michael Broadus
Garrett M. Brown
Raana Burney
George B. Cappy
Ryan Cappy
Blair H. Chan III
Nick Childress
Shannon Clancey-Kimball
Michael S. Connelly
Vivian Cortes Hodz
Samantha L. Dammer
Joseph Gardner Dato
Omaia Dauta
Jeffrey A. Dowd
Richard Duarte
Marc Edelman
Jose Estrada
Dominic O. Fariello
Eric Feasley
Matthew K. Fenton
Daniel J. Fernandez
Donna Ferrell
Christine Franco
Felipe Fulgencio
Jeff Gano
Karen Gatto
Robert M. Geller
Frank Genco
Daniel M. Genet
James Giardina
Richard Giglio
Michelle Garcia Gilbert
John Golding

Jeffrey Gordon
John Audley Grant Jr.
Bradley Gene Grumley
Raymond A. Haas
Jonathan E. Hackworth
Daniel W. Hamilton
Jennifer Hamey
Lynn Hanshaw
Dane Heptner
Betsey T. Herd
Martin J. Hernandez
Susanne Hernandez
Jose Herrero
Jackson Hilliard
Patrick T. Hogan
Daniela Hogue
John P. Holsonback
David Hurvitz
Klodiana Hysenlika
Ivan Dimitrov Ivanov
Nehemiah Jefferson
Craig A. Jorgensen
Jacqueline L. Jorgensen
Matthew J. Jowanna
Shannon Martin LaFrance
Domenick Lazzara
Haksou Stephen Lee
Jamila Little
Lesly Carmen Longa
Francisca Lopez
Peter N. Macaluso
Michael P. Maddux
Paul S. Maney
Richard Maney
Dominick Michael Maranzana
Neri (Nick) L. Martinez
Leonard A. McCue
Bradley J. McDonald
Michael C. McGinn
Wendy K. McGinnis
William H. McKnight
Kevin McLaughlin
Jennifer Mekrsaitis
Brett Metcalf
Kari A. Metzger
Melissa C. Mihok

Matthew A. Mitcham
Dennis Michael Morgenstern
Sean Moyles
John L. Mulvihill
Fernando Narvaez
Fehintola "Kemi" Oguntebi
Shiobhan Olivero
Lauren Osa
Patricia O. Palma
Frank T. Papa
Rinky S. Parwani
Gary Priny Jr.
Louis D. Putney
Patrick Quarles
Susan Renne
John Richert
Irene Maria Rodriguez
Clara Rodriguez-Rokusek
Gina Rosato
Lawrence Hanna Samaha
Marshall Schaap
Martin Schwartz
Kristin E. Scully
Andrea Tullo Searle
Abraham Shakfeh
Timothy Shanahan
Andrew Shein
Ben Stensschulte
Andrew Steingold
Chris Tanner
Theodore N. Taylor
Betty Thomas
Michael W. Thornton
James Thorpe Jr.
Bradley A. Tobin
Joseph J. Vecchioli
Laura Walker
Roland D. Waller
Robert Scott Walton
Martha Irene Weed
Jason Whittemore
Christian Zeller
Brice Zoecklein

The HCBA’s Lawyer Referral & Information Service is accredited by the American Bar Association.
To join this program, call (813) 221-7780.
JOHNSON
Pope
BOKOR
RUPPEL &
BURNS, LLP
COUNSELORS AT LAW

IS PLEASED AND PROUD TO ANNOUNCE
EFFECTIVE JANUARY 1, 2017

- WILLIAM KALISH
- CYNTHIA A. MIKOS
- JOSEPH W. N. RUGG
- VITAUTS M. (‘VIT’) GULBIS
- GARY WALKER
- PATRICK A. TRABER
- JEFFREY GAD
- JAMIE A. KLAPHOLZ
- YVETTE F. RHODES

HAVE JOINED OUR FIRM
AND WE HAVE RELOCATED OUR TAMPA OFFICES TO

SUNTRUST BANK BUILDING
401 EAST JACKSON STREET, SUITE 3100
TAMPA, FL 33602

(813) 225-2500

TAMPA § CLEARWATER § ST. PETERSBURG § WWW.JPFIRM.COM
Florida has the third largest population of veterans in the nation, with over 1.6 million military veterans who have served our country. Veterans comprise 12 percent of the state’s adult population. Our own Hillsborough County has the second largest veteran population in Florida, with over 94,000 veterans. An additional 220,973 veterans live in Pasco, Pinellas, Manatee, and Sarasota counties. In these counties alone, 22,367 veterans are at or below the federal poverty line.

While cost-free legal resources (such as Bay Area Legal Services, Inc., Stetson’s Veterans Law Institute, and WMU-Cooley Law School Debt Relief Clinic) do exist, these organizations simply do not have the resources to provide services to all of the veterans in need. The HCBA’s Military and Veteran Affairs Committee (MVAC) has made it a priority to try to fill the gap between those veterans and active-duty military personnel who realistically can afford an attorney and those who cannot. The MVAC has compiled a list of attorneys who are willing to assist the veterans and active-duty members in our community, either on a pro bono basis or for a reduced-fee, called the Veterans Legal Assistance Registry (VLAR).

The VLAR was designed to be a referral source for potential clients in 17 subject areas of legal practice. Veterans can access the list through the HCBA website on the MVAC webpage, or they can access it directly by going to: www.tinyurl.com/veteranslegalregistry. On the page, they can browse the list for the type of lawyer they are seeking. Once they find the group of lawyers in the legal area of need, they can call the lawyer directly and inquire about services. It’s up to each lawyer’s office to interview the potential client and determine whether legal services will be provided on a pro bono or reduced-fee basis.

We at the MVAC know that this legal community has great admiration for the men and women who have served or are still serving in the military. Many attorneys want to help but are not sure how. The MVAC has tried to make this opportunity as flexible as possible for those who are interested in volunteering. If you’re considering it, but still aren’t sure, we offer the following testimonials from a few of your peers who have already stepped up to help by joining the VLAR:

“As a disabled veteran, it warms my heart to know that attorneys generously give back to those who served without asking anything in return. As a family law attorney, I personally know that not every litigant can afford to hire legal representation and, but for capable and knowing assistance, a person can lose their way in our sometimes seemingly Byzantine legal process. In family law, that can have extraordinary consequences.”
— David Veenstra, Esq., SMSgt, USAF (Ret)

“One of the most difficult aspects of my transition out of the military was the loss of purpose I felt from no longer being able to support the mission and my friends and colleagues in the military. Working for veterans through VLAR has given me a way to regain some of that sense of purpose. Providing legal support to my veteran clients, whether they are active duty or prior service, lets me feel more connected to my brothers and sisters in arms.”
— Adrienne Holland, Esq.

“My experience is nothing short of amazing in meeting and working with such positive and inspirational people. I was fortunate enough to be afforded the opportunity to help our veterans through the judicial system. It did not take much time on my part, and it certainly meant a lot

Continued on page 51
Continued from page 50

...to these veterans, and gave them one less headache to deal with.”
—Joseph H. Ficarrotta, Esq.

For more information, or if you would like to volunteer for one or more of the subject categories listed below, please contact Bob Nader at rjn@naderlawfl.com or Alexandra Srsic at asrsic@bals.org.


Authors: Alexandra Srsic - Bay Area Legal Services, Inc. and Bob Nader - Nader Mediation Services

MVAC “Fatigues to Robes” Luncheon

In honor of Veteran’s Day, the HCBA Military & Veterans Affairs Committee held a special luncheon on November 3 to recognize 11 local judges who previously served in the military: Hon. Cheryl Thomas, Hon. William Levens, Hon. William Fuente, Hon. Michael Scionti, Hon. Lawrence Lefler, Hon. Herbert Berkowitz, Hon. Lamar Battles, Hon. Gregory Holder, Hon. Ralph Stoddard, Hon. Richard Weis, and Hon. Daryl Manning. Thank you also to all of our members who have served our country in the military!
EMPLOYMENT LAW

- Employee Rights
- Victims of Sexual Harassment
- Unpaid Overtime
- Whistleblowers
- Discrimination/Retaliation
- Breach of Employment Contracts

The Fraley Law Firm, P.A.

Ronald Fraley, an AV rated attorney, has practiced Employment Law in Tampa for almost 30 years.

2525 PARK CITY WAY, TAMPA FL 33609 • 813-229-8300 • VISIT OUR WEBSITE: www.fraleylawfirm.com

NorthStar Bank proudly supports the Hillsborough County Bar Association

Belleair Bluffs
715 Indian Rocks Rd. N.
727.953.9080

South Tampa
402 S. MacDill Ave
813.605.3050

Downtown Tampa
400 N. Ashley Dr.
813.549.5000

St. Petersburg
Loan Production Office
100 Second Ave. S.
727.312.0869

www.NorthStar-Bank.com

Robert Maxim Stoler, Esq.

Certified Circuit and Federal Mediator

- Certified Mediator since 2001
- Board Certified Civil Trial Lawyer since 1995
- “Advocate” level member of ABOTA
- Class “A” office space in downtown Tampa

Auto/Motorcycle • Premises Liability • Civil Rights • Police Liability Claims
- Personal Injury • Product Liability • Wrongful Death • Bad Faith Claims
- Medical Malpractice • Nursing Home • Property Claims

Stoler Russell Keener Verona P.A.

201 N. Franklin Street, Suite 3050, Tampa, Florida 33602 • 813.609.3200 • rstoler@stolerrussell.com
For years you have been trusting us with your clients, family and colleagues.

We are always here when you need us.

813.254.8998 • OLALAW.com

3014 West Palmira Ave, Suite 202, Tampa, Florida 33629
The Thirteenth Judicial Circuit Professionalism Committee proudly presented David A. Rowland the third annual professionalism award at the Bench Bar Conference on November 10. The award recognizes consistent honesty, integrity, fairness, and courtesy, and an abiding sense of responsibility to comply with the standards and rules of professionalism in the practice of law. David Rowland personifies all of these qualities in both his practice and personal life.

Rowland has dedicated his entire professional life to improving the justice system. After graduating cum laude from Stetson University Law School in 1990, Rowland began as a staff attorney with the Thirteenth Judicial Circuit. He quickly rose through the ranks and has served as General Counsel to our circuit for more than 20 years. He has served at the pleasure of three chief judges and superbly leads a team of 21 staff attorneys and a paralegal specialist in researching and advising all 62 judges in the Thirteenth Circuit. He works tirelessly and gracefully to wisely counsel and educate all who seek his keen advice.

Outside the George Edgecomb Courthouse, Rowland serves our entire state through his involvement with the Hillsborough County Bar Association as well as active roles on multiple Florida Bar committees, including the Judicial Administration and Evaluation, Media and Communications Law, and Rules of Judicial Administration Committees. He served on the Florida Board of Bar Examiners from 2007-2012 and continues to serve as a very active emeritus member. Rowland also has presented to judicial committees, various sections of the HCBA, and to the general counsel of every court in the state. Further, Rowland consistently encourages his ever-changing staff to maintain membership with our local and voluntary bar organizations and leads by example to inspire active participation in these groups.

In these aforementioned roles throughout our profession, Rowland has served as a mentor to dozens of new lawyers. His integrity, intelligence, knowledge, thoroughness, work ethic, humility, diplomacy, and kind manner, among other positive traits, serve as excellent characteristics for young attorneys to emulate.

Though Rowland’s visibility remains somewhat limited, the impact he makes on our courts and our profession is boundless. Chief Judge Ron Ficarrotta points out, “As Chief Judge, I rely on David’s sound and reasoned advice on a daily basis. I am proud of the Thirteenth Judicial Circuit and our judiciary’s well-deserved reputation.

Continued on page 55

Did You Know That Government Attorneys Can Join the HCBA for a Reduced Rate?
Go to hillsbar.com to learn more!
for professionalism, and I truly believe David Rowland is a keystone to that reputation.” Former Chief Judge Manny Menendez, in his nomination of Rowland for this award, added: “He worked tirelessly to help organize and establish the circuit’s professionalism committee, and continues to work with the bar in keeping the committee active and on task.” Former Chief Judge Dennis Alvarez noted Rowland is a phenomenal person who absolutely deserves this award. Retired Judge Jim Barton also proclaimed that Rowland is “the glue that holds the Thirteenth Circuit together.”

The praises of Rowland poured in for the committee’s review from current and former judges, staff attorneys, neighbors, and colleagues from other agencies. Former staff attorney Jacob Hanson expressed, “Dave does not view professionalism like a cap he can put on and take off at his leisure, but views it as something much more integral to who he is. That makes him a model of professionalism, both inside and outside the legal profession.” Staff attorney Colleen O’Brien declared, “Rowland’s wise assessment and counsel of any situation is sought out as the gold standard.” Judge Samantha Ward, who also nominated David for this award, summarized the nomination, “He epitomizes what we hope lawyers bring to our profession.” Congratulations to David Rowland for this well-deserved award.

Author:
Hon. Frances A. Perrone – Thirteenth Judicial Circuit
3 Business Jury Trials So Far in 2016
3 Verdicts Awarding 100% Damages

The Contingency-Fee Business Litigation Attorneys

January 29, 2016
Max King Realty, LLC
v. Ramar LLC, et al.

Description:
Damage to Real Property

Damages Requested:
$423,000

Jury Verdict:
$423,000

May 13, 2016
Safe American Security, Inc., et al.

Description:
Breach of Contracts

Damages Requested:
$782,560

Jury Verdict:
$784,898

March 22, 2016
Florida Outdoor Properties, Inc.
v. American Citrus Products Corp., et al.

Description:
Real Estate Commission

Damages Requested:
$427,800

Jury Verdict:
$427,800

Refer Your Client’s Business Dispute to a Firm that Tries Cases and Wins!

MORGAN & MORGAN
BUSINESS TRIAL GROUP
Contingency-Fee Litigation

813.318.5186 | www.ForThePeople.com/BTG

Offices: Atlanta | Ft. Lauderdale | Ft. Myers | Jacksonville | Naples | New York | Orlando
Sarasota | St. Petersburg | Tallahassee | Tampa | West Palm Beach
IT PAYS TO BE A MEMBER!

HCBA members receive exclusive discounts and services through our Benefit Providers. To suggest a Benefit Provider, contact Stacy Williams at (813) 221-7779.

FREE MINARET DIAMOND RELATIONSHIP ACCOUNT

HCBA members qualify for a free Minaret Diamond account with The Bank of Tampa, with no minimum balance or monthly service fee. Benefits include checking accounts; free checks; leather checkbook covers; no foreign ATM fees; refund of surcharge fees charged by other bank ATMs of up to $25 per month; no surcharge fees at any Publix Presto! ATM; Personal Online Banking and Mobile Banking with free CheckFree WebPay; and much more. Contact Erin Hessheem at (813) 872-1228, or call (813) 872-1200, www.bankoftampa.com.

LAWPAY

3-MONTH FREE TRIAL

Backed by over 90 bar associations and designed specifically for the legal industry, LawPay offers a secure and convenient tool for receiving online credit card payments — the fastest way to get paid. One major benefit of LawPay is the ability to correctly separate earned and unearned payments. LawPay protects your firm from commingling client funds. For over a decade, LawPay has provided knowledge, experience, and support to over 25,000 law firms. Contact 866.376.0950 or visit www.lawpay.com/hillsbar.

10% DISCOUNT

HCBA members get 10 percent off at this world-class photography studio. Thompson Brand Images will come to your office for firm photos, headshots, holiday parties and other special events. Contact Bob Thompson at (813) 994-2000 or bob@thompsonbrandimages.com.

10% DISCOUNT ON TRIAL RESEARCH

From exhibit boards to trial graphics and other professional presentations, this expert team provides a wide range of services. HCBA members receive a 10 percent discount on all trial research including mock trials. Visit www.trialcs.com for a list of services.

30% DISCOUNT ON PRODUCTS

LexisNexis offers HCBA members a 30 percent discount on all books and online legal research packages. For more information on this member discount, please contact Chad Thuma at (813) 215-8749 or chad.thuma@lexisnexis.com.

10% PREMIUM REDUCTION FOR BOARD-CERTIFIED ATTORNEYS

HCBA members who are board-certified can receive a 10 percent reduction in insurance premiums from Florida Lawyers Mutual Insurance Company. For more information, please call (800) 633-6458 or email mailbox@flmic.com.

10% DISCOUNT ON INDIVIDUAL DISABILITY INCOME INSURANCE

Protect one of your most valuable assets … your income! HCBA members receive a 10 percent permanent discount on Individual Disability Income Insurance through the Berkshire Life Insurance Company, a wholly owned stock subsidiary of The Guardian Life Insurance Company of America. Products, provisions, and availability may vary. For information, please contact Jay Langford at (813) 289-3632 x125 or jay.langford@glic.com.
Before the Florida Fiduciary Access to Digital Assets Act went into effect on July 1, 2016, Florida did not have any laws governing the access and disposition of an individual’s digital assets, such as emails, texts, financial accounts, social media accounts, online photographs, and other electronic records, during incapacity or upon death. Custodians that maintain or store digital assets denied fiduciaries access to an individual’s digital assets in accordance with terms-of-service (“TOS”) agreements (which can provide that all rights cease on death and that all data will be deleted) or federal privacy laws prohibiting disclosure.

The legal duties imposed on a fiduciary charged with managing tangible property, including the duties of care, loyalty, and confidentiality, also apply to the management of digital assets. Now, under the Act, personal representatives, trustees, guardians, and agents with power of attorney have legal authority to access, control, and manage digital assets and electronic communications. The Act expressly provides procedures for fiduciaries to request that custodians disclose or terminate digital assets.

To gain access to digital assets, fiduciaries must provide proof of their authority. If the custodian fails to comply with a fiduciary’s request, the fiduciary may seek a court order directing compliance. Notably, the Act distinguishes between the disclosure of the content of electronic communications (the substance not readily accessible to the public), and the catalog of electronic communications (identifying each person, the time and date, and the electronic address).

For example, a custodian must disclose to the personal representative the deceased user’s catalog of electronic communications and other digital assets, unless the user prohibited disclosure. But the personal representative’s access to the content of electronic communications requires the deceased user’s express consent or a court order. Regardless, if a user has deleted a digital asset, the custodian is not required to disclose it.

The Act provides an order of priority as to an individual’s directions regarding his or her digital assets upon incapacity or death: An “online tool” (an electronic service provided by a custodian allowing the user to provide directions for disclosure or nondisclosure of digital assets) overrides a contrary direction in a will, trust, power of attorney, or other record, as long as the online tool allows the user to modify or delete a direction at all times. If there is no online tool, then the user may provide directions in a will, trust, power of attorney, or other record.

Finally, in the absence of any direction (e.g., an online tool, will, trust, power of attorney, etc.), the TOS agreement controls. Advisors may consider counseling clients on: (1) keeping up-to-date inventories of electronic data, with log-in IDs and passwords, and storing them in a secure location; (2) using online tools regarding disclosure of digital information; and (3) including provisions in wills, trust agreements, and powers of attorney dealing with access to and disposition of digital assets. Individuals can plan for the management and disposition of their digital assets, similar to their tangible property, and specify whether digital assets should be preserved, distributed to heirs, or destroyed.

Author:
Lauren Taylor – Shutts & Bowen LLP

The legal duties imposed on a fiduciary charged with managing tangible property also apply to the management of digital assets.
Real Property, Probate & Trust Section Luncheon

The RPPTL Section received an update on probate rules issues from J. Richard Caskey with J. Richard Caskey, P.A. on November 17 at their luncheon. Thank you to the members that attended!

The section also appreciates their luncheon sponsor:

Sabal Trust Company

BLI Visits Port of Tampa

The Bar Leadership Institute visited the Port of Tampa on October 20 and learned about the significant role it plays in the local economy. Learn more about the Port of Tampa on page 18.

To submit news for Around the Association or Jury Trial Information, please email Stacy@hillsbar.com.

To view additional HCBA news and events, go to www.facebook.com/HCBAtampabay.
On April 6, 2016, the U.S. Department of Labor (DOL) issued its final rule expanding the definition of the “investment advice fiduciary” under the Employee Retirement Income Security Act of 1974 (ERISA) and modifying the exemptions for investment activities. The new rule, which will be phased in starting in April 2017, is anticipated to draw battles over its expansion of the circumstances under which providing investment advice could give rise to a fiduciary duty.

Specifically, by expanding the definition of a fiduciary, the rule casts a wide net in assigning fiduciary responsibilities to many investment professionals who did not previously consider themselves to be fiduciaries. As a consequence, the potential liability for large groups of investment advisors has greatly increased, which could have “catastrophic consequences” for their members, as some opponents contend.

One such battle was recently decided and came out in favor of the DOL. On June 6, 2016, the National Association for Fixed Annuities (NAFA) sued the DOL in federal court in the District of Columbia, challenging the new rule and seeking a preliminary injunction to stay its implementation. NAFA’s principal arguments against the new rule were that: (1) the DOL exceeded its authority to regulate IRAs; (2) the new rule improperly includes insurance agents as fiduciaries and creates private rights of action, which only Congress can do; and (3) the DOL’s Notice of Proposed Rulemaking failed to provide adequate notice, under the Administrative Procedures Act, that the rule would subject fixed indexed annuities (“FIAs”) to onerous compliance obligations. NAFA contended that the new rule would have disastrous consequences, including lost jobs, fewer choices for consumers, and increased litigation.

After hearing oral argument and considering cross-motions for summary judgment by NAFA and the DOL, the district court rejected NAFA’s arguments, denied its request for a preliminary injunction, and granted summary judgment in the DOL’s favor, upholding the validity of the new rule. The court explained that the DOL acted within its statutory authority when expanding the applicability of fiduciary responsibilities under the new rule, and provided a satisfactory rulemaking and notification process. The court found that the DOL sufficiently explained how the relationship between advisors and investors has changed and that the new rule is appropriate due to the increased complexity and variety of financial products in the marketplace.

Further, the court found that NAFA lacked standing to complain about the rule’s potential to “sweep in some relationships that are not appropriately regarded as fiduciary in nature,” because this likely consequence was unrelated to NAFA or its members’ sale of annuities.

This was an important victory for the DOL because it is currently defending several other pending lawsuits filed by financial industry groups challenging the new rule. The rulings in these other matters will become increasingly important, as will NAFA’s anticipated appeal, since time is running out before the rule becomes effective.

2. Id. at *2.
3. Id. at 20.
4. Id. at *21.
YLD Celebrates Pro Bono

The Young Lawyers Division held a special luncheon on October 19 to raise awareness among its members of the many pro bono opportunities available with local agencies. The event was a great success, with more than a dozen agencies in attendance.

The YLD would like to thank Westshore Financial Group for sponsoring its luncheon.
Because attorney’s fees can easily mount, recovering them from the opposing party is important. So it’s important not to let an award of attorney’s fees slip through your fingers because of an improper citation. Unlike the English Rule, the American Rule is that each party bears its own attorney’s fees and costs, unless the parties’ contract or a statute provides otherwise. *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1148 (Fla. 1985). A party seeking prevailing fees and costs under a contract or statute is required to file a motion under Rule 1.525. *Massey v. David*, 979 So. 2d 931, 951 (Fla. 2008). Rule 1.525 requires a prevailing party to file a motion for costs and attorney’s fees within 30 days of the judgment or dismissal.

Like any other motion, a motion for attorney’s fees and costs must comply with Rule 1.100(b), which requires motions to state their grounds with particularity. In the context of a motion under Rule 1.525, this means citing to the appropriate basis for attorney’s fees and costs. *European Bank Ltd. v. Online Credit Clearing Corp.*, 969 So. 2d 450 (Fla. 4th DCA 2007). In *European Bank Ltd.*, defendants, Sami Slim and Online Credit Clearing Corporation, prevailed on fraud, contract, and other claims when the court dismissed European Bank’s claims with prejudice because its former director failed to appear for deposition.

The defendants timely filed a motion for attorney’s fees based on the parties’ agreement, Florida’s Fraudulent Transfer Act, and section 57.105, Florida Statutes. Well after the 30-day time period under Rule 1.525, Slim filed an amended fee motion adding a proposal for settlement under section 768.79, Florida Statutes, as a basis for fees. The Florida Fraudulent Transfer Act was found not to be a valid basis for attorney’s fees, so the only remaining issue was entitlement under the proposal for settlement.

The Fourth District Court of Appeal held that Slim’s amended fee motion, which was the basis of its claim for fees under the proposal for settlement, could not be considered because it was not filed within 30 days of the final judgment. Only the original fee motion, which did not mention the proposal for settlement, was filed within the required 30 days. Because the original fee motion did not state a valid claim for attorney’s fees, it did not meet the requirements of Rule 1.100(b), and as a consequence, the defendants were not entitled to attorney’s fees.


In *Gillis*, which was a landlord-tenant action, the prevailing party mistakenly cited to section 627.428(1), Florida Statutes, instead of section 83.48, Florida Statutes, as the basis for fees. Because the prevailing party failed to cite to the proper statutory basis for fees, the court ruled the prevailing party was not entitled to fees or costs. The takeaway from *European Bank* and *Gillis* is clear: plead the proper basis for fees in your Rule 1.525 motion or watch your fee claim slip through your fingers.

**Author:** Abraham Shakfeh - Shakfeh Law, LLC

---

**UPDATE YOUR MEMBER PROFILE AT HILLSBAR.COM**
Photography
Websites & Social Media
Marketing & Advertising
Made Simple & Easy...
We come to you!

Bob Thompson, Owner

PORTRAITS
- Individual
- Group
- Studio Style
- Environmental

MARKETING
- In Action
- On The Go
- Interior
- Exterior

Your Place or
Ours

Call Today
813 994 2000

Featured Law Firm:
HD Law Partners

Visit:
www.TSAttorneyPhotos.com

Your preferred HCBA
Vendor for over 7 years!

thompson
BRAND IMAGES

NEW STUDIO Location 1710 Newberger Rd. Lutz Florida 33549
Call 813 994 2000
Court’s Resolves District Split Over Offers of Judgment

Trial & Litigation Section
Chair: Caroline Johnson Levine – Office of the Attorney General

Offers of judgment made under section 768.79, Florida Statutes, and Rule 1.442 of the Florida Rules of Civil Procedure may serve as a beneficial alternative to lengthy litigation. However, while offers of judgment encourage settlement, the question of an offer’s validity has itself become a litigious issue.

On October 20, 2016, the Florida Supreme Court, in Kuhajda v. Borden Dairy Co. of Alabama, resolved a split between the First and Fourth District Courts of Appeal over whether an offer must strictly comply with Rule 1.442(c)(2)(F), even where the underlying complaint does not seek attorney’s fees. No. SC15-1682, 2016 WL 6137289, at *1 (Fla. Oct. 20, 2016). Specifically, Rule 1.442(c)(2)(F) requires offers to specify whether attorney’s fees are included and whether attorney’s fees are part of the legal claim.

This district split stemmed from differing interpretations of the Florida Supreme Court’s decision in Diamond Aircraft Indus., Inc. v. Horowitch, 107 So. 3d 362 (Fla. 2013). In Horowitch, the Court held that an offer was invalid for failing to strictly comply with Rule 1.442(c)(2)(F). Id. at 376. Notably, however, attorney’s fees were sought in the underlying complaint.

Citing to Diamond Aircraft, the First DCA in Borden Dairy Co. of Alabama, LLC v. Kuhajda subsequently held that an offer was invalid for failing to strictly comply with Rule 1.442(c)(2)(F) even though the plaintiff did not seek attorney’s fees in the underlying complaint. 171 So. 3d 242, 243 (Fla. 1st DCA 2015). This holding directly conflicted with the Fourth DCA’s decision in Bennett v. American Learning Systems of Boca Delray, Inc., which held that offers need not strictly comply with Rule 1.442(c)(2)(F) when attorney’s fees are not sought in the pleadings. 857 So. 2d 986, 988 (Fla. 4th DCA 2003).

In resolving this conflict, the Florida Supreme Court in Kuhajda adopted the Fourth District’s reasoning and declined to invalidate the plaintiff’s offer of judgment solely for violating a requirement in Rule 1.442 that section 768.79 does not require. 2016 WL 6137289, at *4.

The Court concluded that the plaintiff’s failure to include the attorney’s fees language in the offer did not create an ambiguity because the plaintiff never sought attorney’s fees in her complaint. Id. On this basis, the Court held that an offer need not strictly comply with Rule 1.442(c)(2)(F)’s requirements when attorney’s fees are not sought. Id. at *3.

The Kuhajda decision simply rejects a “form over substance” bright-line rule in favor of a “substance over form” analysis. While a “substance over form” analysis may lead to more issues than a bright-line rule, the Kuhajda decision likely will help courts avoid rejecting otherwise compliant and unambiguous offers in the future.

Authors:
Erin G. Jackson and Ashley A. Tinsley - Thompson, Sizemore, Gonzalez & Hearing, P.A.

Join a section or committee today at hillsbar.com.
Construction Law Section Hears From Judge

On October 20, the Construction Law Section received an update from Judge Mark Kiser with the Circuit Court – Foreclosure Division, who also is a Board-certified construction attorney. He additionally provided practical tips to the group on the interplay of foreclosure actions and construction liens.

The section would like to thank First Citrus Bank for sponsoring its luncheon.

Bankruptcy for Beginners Seminar

The HCBA hosted a free pro bono seminar/CLE with the Tampa Bankruptcy Bar Association, Bay Area Legal Services, and the U.S. Bankruptcy Court, Middle District of Florida, on October 20 at the Chester Ferguson Law Center. The event was a great success with a capacity crowd. Thank you to everyone that worked to make this event happen!

The HCBA Trial & Litigation Section was pleased to sponsor the 20th Annual Bench Bar Conference and Judicial Reception. To learn more about the Trial & Litigation Section and how to join this 600 member-strong group, visit hillsbar.com.
Same Tampa Attorneys. Expanded National Impact.
FAMOUS FOR CAPTURING
THE WORLD’S MOST FAMOUS.

PLATON

Save the date for an evening with the one-name photography phenom and master storyteller whose portraits have graced the world’s most influential magazines, including Rolling Stone, Vanity Fair, Esquire, GQ, and TIME.

DISCOVER MORE AT PLATONPHOTO.COM

FOR SPONSORSHIPS, CALL DARLENE KELLY: 813.221.7774. FOR RESERVATIONS, CALL HCBA: 813.221.7777.

PRESENTED BY HILLSBOROUGH COUNTY BAR FOUNDATION
In Jones v. Food Lion, 2016 WL 6609492 (Fla. 1st DCA Nov. 10, 2016), the First District Court of Appeal considered whether the Florida Supreme Court’s recent decision in Westphal v. City of St. Petersburg, 194 So. 3d 311, 327 (Fla. 2016) (Westphal II), which struck down a reduction on temporary indemnity benefits for total disability, extended to temporary indemnity benefits for partial disability. The First DCA ruled that the reasoning in Westphal II did in fact extend to temporary partial indemnity benefits.

In Westphal II, the Florida Supreme Court ruled that certain amendments to the Florida Workers Compensation Act reducing temporary total indemnity benefits to 104 weeks were unconstitutional. As a result, a previous version of the statute allowing for 260 weeks of temporary indemnity benefits was revived. Although the Westphal II Court criticized other provisions in the Act, its holding was limited to temporary total indemnity benefits.

Not long after Westphal II was decided, various claimants asserted a right to 260 weeks of temporary partial indemnity benefits. Although the claimant in the Westphal II case was only claiming temporary total indemnity benefits under section 440.15(2)(a), Florida Statutes, the language of the decision spoke in terms of temporary disability benefits, and the logic of the decision applied equally to temporary partial indemnity benefits under section 440.15(4)(e). In Jones v. Food Lion, 2016 WL 6609492 (Fla. 1st DCA Nov. 10, 2016), the First DCA was confronted with this question, and agreed with the claimant that he would be entitled to the same 260 weeks of temporary partial indemnity benefits. The First DCA cited the recent Florida Supreme Court decision in Westphal II: “Applying that reasoning here leads to the conclusion that, as of the time of the hearing below, claimant was entitled to temporary partial disability benefits and remained eligible until the expiration of 260 weeks.” Id at *2.

The Jones case started with a claimant pursuing temporary total disability benefits. The Judge of Compensation Claims held that the claim was premature because Westphal I, which allowed such a claim, only applied to temporary total indemnity and not to temporary partial, which is what Jones was pursuing. Between the judge’s decision and this ruling in Jones, Westphal II was decided by the Florida Supreme Court. The First DCA accordingly affirmed the Judge of Compensation Claims’ ruling in Jones but, on other grounds, found the claim to be premature because the claimant was entitled to 260 weeks of temporary partial indemnity benefits under the Florida Supreme Court ruling in Westphal II.

Author: Anthony V. Cortese - Attorney at Law
Workers’ Compensation Section Luncheon

The Workers’ Compensation Section heard from Michael J. Winer, Esq. and David K. Beach, Esq. on October 4 regarding the timely subject of “Claimant’s Attorney’s Fees after Castellanos and Miles.”

The section would like to thank Injured Workers Pharmacy for sponsoring this luncheon.

RPPTL Luncheon

The Real Property, Probate & Trust Section learned about the dangers of cyber fraud and issues related to closings and real estate transactions on October 13 from John Gonzalez with Fidelity National Title Group.

The Section also would like to thank Fidelity National Title Group for sponsoring its luncheon.

HCBA members receive discounts on room rentals at the Chester H. Ferguson Law Center.

Call (813) 221-7777 for more information.
Health & Wellness Expo

HCBA members and their staff took advantage of free flu shots, health screenings and information, and special giveaways during the Third Annual Health & Wellness Expo on October 26. About 100 members visited the 20 organizations featured at the event, including OneBlood, Passport Health, CycleBar South Tampa, American Heart Association, Massage Envy, Bella Prana Yoga Studio, Tampa YMCA, and BayCare Health. The HCBA appreciates the support of NorthStar as its event sponsor.
ADVERTISING INDEX

Adams & Reese LLP ................................................................. 19
Bay Area Legal Services ........................................................... 15
Baumann Kangas Estate Law ..................................................... 19
Bradley ...................................................................................... 22
Brannock & Humphries ............................................................ 34
Buchanan Ingersoll & Rooney PC ............................................. 66
Buell & Ellett ............................................................................. 28
Burr & Forman LLP ................................................................. 7
Charles W. Ross ................................................................. 5
Diversity Networking Social .................................................. 30
First Florida Investigations, LLC ................................................ 4
Free Press .................................................................................. 7
Gunn Law Group ..................................................................... Inside Front Cover
HCBA Trial & Litigation Section ............................................. 65
Heinkel Law Group ................................................................. 19
Holland & Knight ................................................................... 25
Ism Mediation ......................................................................... 21
Jill G. Lowe, PA ................................................................. 6
Johnson, Pope, Bokor, Ruppel & Burns LLP - Scott Ilgenfritz .... 11
Johnson, Pope, Bokor, Ruppell & Burns LLP ......................... 49, 73
Koch Mediation Services ....................................................... 25
Law Office of Robert Eckard & Associates .............................. 31
LawPay .................................................................................. Inside Back Cover
Mediation for Florida .............................................................. 43
Morgan & Morgan Business Trial Group .............................. 56
NorthStar Bank ................................................................. 52
Older, Lundy & Alvarez ......................................................... 53
Robert Bonanno ................................................................. 10
Robert M. Geller, P.A. ............................................................. 37
Skoda Minotti .......................................................................... 16
Stoler Russell Keener Verona PA ............................................. 52
TCS .................................................................................. 22, 76
The Bank of Tampa ............................................................. 19, Back Cover
The Centers ........................................................................ 21
The Fraley Law Firm, P.A. ..................................................... 52
The Law Firm of Chris E. Ragano P.A. .................................. 21
The Yerrid Law Firm ............................................................ 40
Thompson Brand Images ........................................................ 63
Tim Bower Rodriguez, P.A. .................................................. 35
Trenam Law ........................................................................ 35
Wagner McLaughlin, P.A. ................................................... 25

Want to advertise your business to THOUSANDS OF ATTORNEYS in the Tampa Bay area?

Call (813) 221-7777 for information about advertising.
Johnson Pope has outgrown its Tampa space

Sublease available - Downtown Tampa

Prestigious Northern Trust Bank Building

Features:

- Approximately 12,300 Usable Square Feet
- Available January 1, 2017 - Expiration Date: December 31, 2021
- Below market, full service lease rate
- Landmark classic Colonial building with amazing architectural features within the space
- Your sign on over your entrance at 403 East Madison Street
- Easy walking distance to Courthouse, restaurants, entertainment and housing
- Covered parking available across the street
- Furniture available
- 15 exterior offices, 3 conference rooms, numerous clerical areas and large file and storage area

Contact: Evelyn Delgado, COO
(813) 225-2500 • evelynd@jpfirm.com
Ceci C. Berman - Ceci Berman of Brannock & Humphries presented regarding an “Introduction to Appellate Practice” at The Florida Bar’s Basic Appellate Practice seminar.

Bradley Arant Boult Cummings LLP - is pleased to announce that Christina E. Blood and Diana N. Evans have joined the firm’s Tampa office litigation group as associates.

Carlton Fields - Carlton Fields shareholders Kathleen S. McLeRoy and Gwynne A. Young have been re-appointed by Florida Chief Justice Jorge Labarga as members of the 23-person Florida Commission on Access to Civil Justice.

Carlton Fields - has unveiled LaunchtoThrive.com, a microsite that provides legal documents, resources, and free counsel to entrepreneurs in the technology industry. The aim is to help startups in regional tech-growth markets master multiple business challenges by providing startup-specific legal services and support at no cost.

Ronald A. Christaldi - Shumaker, Loop & Kendrick, LLP is pleased to announce that Ronald A. Christaldi, partner in the Tampa office, is the recipient of the Lions Eye Institute for Transplant and Research 2016 Light of Sight Award.

Jessica Costello - Jessica Costello of the Florida Attorney General’s Office was named to the Tampa Bay Business Journal’s “Up and Comers” Under 40 Hall of Fame, in recognition of contributions to the business community as a young professional.

Victoria Cruz-Garcia - Victoria Cruz-Garcia of Givens Givens Sparks was awarded two scholarships in her name at the 10th annual Tampa Hispanic Bar Association (THBA) gala dinner and ceremony on Nov. 3. The Cruz-Garcia Scholarship is for current students in a Florida law school who have demonstrated excellence in academics, shown a strong record of service to their community, and have expressed a desire to remain in or return to the Tampa Bay area following completion of their legal studies.

James E. Felman - Kynes, Markman & Felman, P.A. is pleased to announce that The American Bar Association Criminal Justice Section honored James E. Felman with its Charles R. English Award at the Criminal Justice Section Awards Luncheon on Nov. 4 in Washington, D.C.

Celene H. Humphries - Celene H. Humphries, an appellate specialist with Brannock & Humphries, recently presented several seminars on a number of topics for the Florida Justice Association, including proposals for settlement, experts, and trucking law.

William Judge - Shareholder William Judge of Hill Ward Henderson was recently accepted for membership to the International Association of Defense Counsel.

Matthew Lastinger - Holland & Knight is pleased to announce that Matthew Lastinger has joined the firm as an associate in the Tampa office.

Ernie Marquart - The law firm of Shumaker, Loop & Kendrick, LLP is pleased to announce that Tampa partner Ernie Marquart has been appointed to a three-year term on the board of trustees for the Academy of the Holy Names.

Kevin J. Napper - announces the formation of The Law Offices of Kevin J. Napper, P.A. Napper has over 32 years of experience in criminal trial law and will continue his representation of corporate executives and public and private companies in government investigations and prosecutions. He also represents physicians and healthcare executives in professional liability and regulatory matters.

Phelps Dunbar - Phelps Dunbar is pleased to welcome new associates Valerie Assad, Sarah Gottlieb and Matthew Perez. Assad and Gottlieb will practice in the firm’s Tampa office’s insurance and reinsurance group, while Perez will practice in the labor and employment group.

Maria Del Carmen Ramos - The law firm of Shumaker, Loop & Kendrick, LLP announces that Tampa partner Maria del Carmen Ramos spoke at the Tampa Bay Paralegal Association’s 2016 Annual Seminar entitled “Paralegal Training Camp — The Essential Skills for the Paralegal Warrior!” on Nov. 11.

Dipa Shah - Shumaker, Loop & Kendrick, LLP welcomes Dipawali “Dipa” S. Shah, who has joined the Tampa office, Of Counsel, in the healthcare, corporate and bankruptcy, Continued on page 75
insolvency and creditors rights practice groups.

Robert Stines - Phelps Dunbar litigation attorney
Robert Stines has been appointed to the Gasparilla International Film Festival’s board of directors.

Jessica S. West - Shumaker, Loop & Kendrick, LLP is pleased to announce that Jessica S. West has joined the Tampa office as an associate attorney in the health care practice group.

Ciara Willis - Dean Mead welcomes Ciara C. Willis in its Tampa office as an associate attorney in the litigation practice group.

Robert Stines - Phelps Dunbar litigation attorney
Robert Stines has been appointed to the Gasparilla International Film Festival’s board of directors.

Jessica S. West - Shumaker, Loop & Kendrick, LLP is pleased to announce that Jessica S. West has joined the Tampa office as an associate attorney in the health care practice group.

Ciara Willis - Dean Mead welcomes Ciara C. Willis in its Tampa office as an associate attorney in the litigation practice group.

**CLASSIFIED ADVERTISING**

**Professional office space** for rent on Armenia, two blocks north of Kennedy. Two offices - for attorney and support staff. Secured lobby, LED sign, elegant conference room, copy machine, telephone service, beautifully remodeled throughout. $1150 for both offices. Perfect setup for a solo practitioner needing professional polish. Contact Líá Shafer (727) 647-8682.

Do you have office space available for sale or rent or want to publicize other services? Place a classified advertisement here for only $100 for 50 words or less. Contact Stacy at stacy@hillsbar.com for more information.

**Executive Office Suites for Lease** – 620 Twiggs St., Tampa, FL 33602. Near Federal Courthouse, County Courthouse and Law Library. Individual or combined units – luxury that is affordable. Call or text to schedule showing. (813) 731-8200.

**JURY TRIALS**

For the month of August 2016
Judge: Hon. Rex Barbas
Parties: Haas & Wilkerson Insurance, Inc. v. JCJ Amusements, LLC
Attorneys: For plaintiff: Robert Stines and Jonathan Hempfling; for defendant: Kerry C. McGuinn
Verdict: Total verdict for plaintiff/counter-defendant

For the month of October 2016
Judge: Hon. William Levens
Parties: Randall Sears v. Laser Spine Institute
Attorneys: for plaintiff: William Hahn; for defendant: Christopher Schulte
Nature of case: Medical malpractice (alleged improper spine surgery)
Verdict: For the defendant. Defendant’s motion for attorneys’ fees and costs pending.

For the month of October 2016
Judge: Hon. Paul Huey
Parties: Jessy Chaanine v. All Crane Rental of FL
Attorneys: for plaintiff: Darrell Kropog and Brandon Scheele; for defendant: Jeff Pearson and Stephanie Valentine
Verdict: $447,115
Visit our website for full services and see how we can help your next case.

Video Services

“A Leading Trial Consulting Company Driven by, Knowledge, Integrity, and Performance. Committed to our clients’ Success.”

[Contact Information]

www.trialcs.com  info@trialcs.com  (800) 395-7994
LawPay
THE WAY ATTORNEYS GET PAID

Proud Member Benefit Provider

Pay Invoice

Completely Secure

1.95% & 20¢ per transaction  |  No swipe required  |  No equipment needed  |  $5–$20 monthly

The proven payment solution for lawyers.
Managing payments and growing revenue for over 30,000 law firms in the US, LawPay is the only solution recognized by the ABA. Designed specifically for the legal industry, LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind your credit card transactions are handled the right way.

LawPay.com/HillsBar  |  866.376.0950
We attribute our success to the success of our clients. For almost four decades we have been Tampa Bay’s leading community bank. When we put our community first, everyone wins.

BankofTampa.com