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ABOUT THE COVER

The full moon rises over Caladesi Island in the evening twilight just after sunset. Fringing Florida’s most densely populated county, this state park and its sisters, Honeymoon Island and Ancolte Key, provide rare experiences with the region’s original nature.

Photo courtesy of Carlton Ward Photography, www.carltonward.com
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John F. Kynes

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Paige A. Greenlee
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P R / Communication Director
Corrie Benfield
corrie@hillsbar.com
(813) 221-7779

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Credit Where Credit Is Due

Many of you may not realize (I know I didn’t) how many talented people make the Lawyer what it is. Naturally, it starts at the top with the HCBA’s president and executive director.

At first, I was extremely excited that Ben Hill asked me to edit the Lawyer magazine. The excitement turned to nervousness, though, when it dawned on me that I didn’t have the slightest idea what was involved in editing a magazine. As I’ve mentioned before, I think the Lawyer is the best local Bar publication around. I certainly didn’t want to be the one to mess that up (particularly the 25th anniversary edition). It turns out that, with all due respect to my predecessors, editing this magazine is a really easy job.

Many of you may not realize (I know I didn’t) how many talented people make the Lawyer what it is. Naturally, it starts at the top with the HCBA’s president and executive director. Ben Hill and John Kynes have been incredibly supportive, and you’d be hard pressed to find two nicer people to work with. And of course, there are the HCBA section chairs. I had no idea they were responsible for (among other things) finding authors to write articles and making sure those articles are in on time. Luckily, we have no shortage of lawyers willing to write really high-quality pieces for publication.

But it didn’t take long to realize the real secret to the Lawyer’s success. It wasn’t until I sat down to write this message that I learned Corrie Benfield’s official title is “Director of Public Relations & Communications.” Having worked with her for a year, I’m confident that title doesn’t come close to capturing all of the things she does at the HCBA. While many of you may know her from HCBA events, I suspect few have any idea how instrumental she is to the Lawyer.

Thanks to Corrie, my job really starts when I get a magazine proof; by that time, she has come up with very creative ideas for features, compiled article submissions, edited them, somehow arranged the magazine layout, found photos to go along with articles and features, written small features to fill in content, worked with advertisers, and done a million other things I don’t even realize. After I make an edit here or there to the proof to catch the rare mistake that gets by her (I’m convinced she leaves those in on purpose to test me), she edits it again and works with the printer to get the magazine to your in-box. Oh, and did I mention, she has created a blog where she posts your articles and then circulates them on social media.

You only have to read a couple of pages into the Lawyer to find a reference to and (unfortunately, in my case) picture of the editor, but you have to look really hard to find any reference to Corrie. I can assure you that disparity has nothing to do with our relative contributions to the Lawyer. The Lawyer has evolved into such a fantastic publication over the past 25 years thanks to the talents of people like Corrie. I hope those of you who enjoy the magazine will take a moment to thank Corrie (and all of the others working behind the scenes) for making the Lawyer a first-rate publication.

Check out the Lawyer magazine articles online at HCBAtampabay.blogspot.com.
A Final Salute

Under the code name “Operation Respect and Service,” we lifted up a variety of issues and events that not only promoted respect for the law but also served the needs of our community.

It all started so innocently. Despite forewarnings from several predecessors, I refused to believe that anything could pass so quickly. Just yesterday, I was raising my right hand and taking the oath that our then-Chief Judge Menendez was administering. A cup of coffee later, I was watching my successor, Carter Andersen (aka “The Upgrade”), raising his right hand as our current Chief Judge Ficarrotta administered the same oath. As I paused to reflect on how quickly the past Bar year had rocketed by, I couldn’t help but smile. Never before had I served with so many talented folks — both HCBA members and members of our incredible HCBA staff — all of whom are so committed to carrying out our Bar’s mission. And, in the process, never before had I had so much fun serving. Then, it hit me. Isn’t that what the HCBA is all about?

Glancing back on the year, I am proud of, and grateful for, all of the good work that we managed to accomplish together. Under the code name “Operation Respect and Service,” we lifted up a variety of issues and events.
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that not only promoted respect for the law but also served the needs of our community. In the process, it is my sincere hope that we added value to your HCBA membership.

First, we raised and advanced military and veterans issues. We did so via our new and now well-established Military and Veterans Affairs Committee (“MVAC”), a group that not only got after it all year but also positioned us well locally to better serve the legal needs of those who have given so much for our country. In doing so, we highlighted and supported our local Veterans’ Treatment Court. We devoted our first General Membership Luncheon, which aptly fell on 9/11, to appreciating our military. And we participated in a number of other events — from area Stand-Down Days to benefit homeless vets to our Adopt a Veteran program where we delivered much needed clothes, supplies, and other gifts to “adopted” veterans in need. I salute everyone who helped fulfill this aspect of our Bar’s mission this year.

We also celebrated our judiciary and the unbelievable support it continues to provide our Bar. Perhaps this was most evident at our Bench Bar Conference where Chief Justice Jorge Labarga highlighted an impressive lineup of speakers that enabled us to set an attendance record for this annual event. We also recognized a fine group of retiring judges, capping things off with the fun and memorable Toast & Roast of Chief Judge Menendez.

Speaking of records, we may have also set one for the number of investitures in which we participated this past year. Indeed, it remains a real honor for the HCBA to participate in these special occasions. As I said many times this year, the support that our local judiciary gives the HCBA makes us a better connected, more professional, and, where and when appropriate, even a more fun Bar.

We lifted up many other issues ranging from diversity and pro bono service to the importance of young lawyers and professionalism. We also tried to continue offering benefits to our members. From the traditional efforts such as our annual Judicial Pig Roast/Food Festival & 5K Pro Bono River Run to new ones such as our inaugural Health & Wellness Expo and our new HCBA website, we hope that each member felt and appreciated the variety and value of such efforts. And, speaking of benefits, let us not forget the value of this great publication, the 25th anniversary of which we also celebrated throughout the year. While I thank all of you who wrote for or otherwise contributed to the Lawyer this year, I especially salute Ed Comey and his fine work as editor.

I could not close without acknowledging the contributions of two dedicated groups who each enabled any success we had this year. First, I recognize our HCBA Board of Directors, which consistently guided us throughout this past year. As both stewards and ambassadors of our Bar, our officers and directors were active, diligent, energetic, and visible all year long. I thank our board members for their commitment and support. Second, I hold up our HCBA staff. Led by the incomparable John Kynes, our mightily talented yet ever so humble executive director, this staff was truly special. I simply cannot recall working with such an organized, devoted, responsive, collegial, and fun group. Indeed, we members are fortunate to have each of them planning, preparing, working, and serving on our behalf.

Finally, I thank our entire membership for providing me with this unique opportunity to serve as HCBA president. It has always been an honor for me just to be involved with the HCBA, so to lead this great Bar for a year has truly been a privilege. Although our work is never really complete, I salute all who served this past Bar year and gratefully say: Mission accomplished!
As I complete my term as president of the Young Lawyers Division and reflect on my last eight years on the board of directors, I recognize — now more than ever — that it truly takes a collective effort to make an association like ours viable. I think it is only appropriate that special thanks go out to all the volunteer members whom I relied so heavily upon this year, including our board: Jason Whittemore, Jacqueline Simms-Petredis, Web Melton, Ashley Johnson, Maja Lacevic, Stephanie Caldwell, Traci Koster, Dara Cooley, Laura Tanner, Jeffrey Wilcox, Melissa Mora, Alexandra Haddad, Amy Nath, Tammy Briant, and our Judicial Liaison: The Honorable Samantha Ward. I also wanted to thank all of our committee chairs and committee members for their hard work. The success of the YLD was/is because of these members of our association, and I have been honored and privileged to hold the title of president of this incredible group of young lawyers. It was certainly a busy year, which is probably why it passed in the blink of an eye.

As I move on, I am confident that our membership is in good hands with the group returning to serve on the board. We have one of the largest and strongest young lawyers divisions in the state. Our success is rooted in our membership and the support each of our dedicated young lawyers provides to all facets of the YLD. In order to keep that tradition going, I encourage more young lawyers to get involved — early and often — in our association. The Young Lawyers Division is the largest section of the HCBA and promotes fellowship and professional growth of young lawyers. This community of 1,000 professionals serves the needs of young lawyers and the public by offering a wide selection of social, educational, and philanthropic programs. These programs thrive and exist only due to the efforts of our members. It is never “too early” to get involved.

The YLD plays a vital role in our profession and our association. I hope that in the coming Bar year, each member will find a way to serve the organization that serves us and the people of Hillsborough County. Preference forms will be emailed this summer, which will provide all young lawyers the opportunity to get involved in varying capacities with many noteworthy projects such as: the Professionalism and Ethics Committee (State Court Trial Seminar and Bar

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YLD JUDICIAL APPRECIATION LUNCHEON

The Young Lawyers Division hosted a Judicial Appreciation Luncheon on May 7, where Chief Judge Ronald Ficarrotta discussed the State of the Courts. As part of the last YLD luncheon of the Bar year, the YLD presented President Anthony “Nino” Martino with a token of appreciation for his service.

The YLD would like to thank the luncheon’s sponsor:

The Bank of Tampa

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examination proctors), Law-Related Education and Law Week Committee, Mock Trial Committee, Member Services Committee (Judicial Shadowing, Mentoring, Coffee at the Courthouse), Events Committee (Golf Tournament, happy hours, luncheons, Cornhole for a Cause Tournament), Youth Projects Committee (Steak & Sports Day, Holidays in January, lunch for Rampello School), Pro Bono Committee (Wills for Heroes, Family Forms Clinics, Attorney Ad Litem), or the Long-Range Planning Committee, to name a few. Do not miss this opportunity.

I also owe a special thanks to our HCBA office staff for making this a very successful year. John Kynes has proven to be an outstanding executive director for our organization, and with the continued support of Laurie Rideout, Michele Revels, Corrie Benfield, and the rest of the HCBA staff, we will only get better.

Lastly, thank you all — the members of the YLD — for allowing me to serve you as president over the past year. It has been an honor, a joy, and an experience that I will always remember. I look forward to seeing you at upcoming HCBA events in the fall.

Recent & Upcoming YLD Events:

Mark your calendars for the 2015 YLD Golf Tournament to be held October 16. For more information on the YLD’s activities, check out our Facebook page at www.facebook.com/Hillsboroughbaryld.
With the 2014-15 HCBA Bar year behind us, I thought it would be fitting to look back and highlight some of the amazing things about the HCBA from the past year. I also thought I would pay tribute to David Letterman, who retired this past May after providing America more than 30 years of late-night entertainment, with a special HCBA Top Ten list.

I've been a Letterman fan from the beginning, and I must say I still think his shows from the 1980s, when he was at NBC, were among his best. I even attended a show taping once at 30 Rock.

I enjoyed the recurring oddball characters, such as Calvin DeForest, aka, Larry “Bud” Melman, and Chris Elliot, who would come on the show and appear in sketches. I still laugh when I recall the bit with DeForest awkwardly handing out hot towels to new arrivals at the New York Port Authority bus terminal and welcoming them to the Big Apple. And no doubt Elliot’s over-the-top impression of Marlon Brando stands the test of time.

I was much younger then and still can’t believe I was able to stay up on a regular basis to watch a show that began at 12:30 a.m. I guess sleep is overrated. Now, I have trouble staying up to watch Kelly Ring finish the 10 o’clock news. Thank goodness for DVRs.

In any case, all the way from the home office in Wauchula, Florida:

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

Top Ten Amazing Things about the HCBA from the 2014-15 Bar Year

A look back at the past year, David Letterman-style

10. HCBA’s New Website and Online Member Directory. In April, after months of development, the HCBA launched a new website and online member directory. We are excited about all the features this new and improved website has to offer HCBA members, as well as the updated membership management software that goes along with it.

9. Revamped Military & Veterans Affairs Committee (MVAC). One of the top priorities of HCBA President Ben Hill IV this past year was to lift up and re-energize this important HCBA committee. Under the leadership of chair Robert Nader and military liaison Lt. Col. Christopher Brown from MacDill Air Force Base, this committee made great strides in helping both local veterans and active-duty personnel in need of legal assistance. The committee even set up a special Legal Assistance Registry, which can be accessed through the HCBA’s new website.

8. HCBA Diversity Events. At the HCBA’s Diversity Membership Luncheon in January, American Bar Association President-Elect Paulette Brown shared some of the lessons she has learned about inclusion in the legal community. And, in February, law students from across the state joined together with law firms and other legal organizations at the successful

Continued on page 9
EXECUTIVE DIRECTOR’S MESSAGE
John F. Kynes - Hillsborough County Bar Association

Diversity Networking Social, which took place at the Ferguson Law Center.

7. Bar Foundation’s 10th Annual Law & Liberty Dinner. In May, the Hillsborough County Bar Foundation hosted its annual Law & Liberty Dinner, which this year featured NFL legend Terry Bradshaw. President Bill Schifino Jr. and the Foundation’s Law & Liberty Committee should be congratulated on raising a record amount of money to assist local legal-related charities.

6. Silver Anniversary of the Lawyer. It’s hard to believe that HCBA member editors and contributors have been putting out this award-winning publication for 25 years. Congratulations to this past year’s editor, Ed Comey, and to Corrie Benfield, the HCBA’s pr/communications director, for making this year’s editions extra special. The cover photos from noted photographer Carlton Ward were spectacular.

5. 12th Annual Judicial Pig Roast/Food Festival & 5K Pro Bono River Run. In March, more than 500 people participated in these unique and fun HCBA events. Special thanks to Judge John Conrad, who chaired the 5K event. Almost 300 runners participated in the run, and more than 2,500 pro bono hours were pledged to support indigent citizens in our community.

4. HCBA’s Young Lawyers Division. Under the leadership of President Anthony Martino and the YLD board members, the YLD had another tremendous year. From the successful YLD Golf Tournament last October to all the other outstanding social, educational, and community events, the YLD continues to further its reputation as one of the most well-respected YLDs in Florida.

3. 18th Annual Bench Bar Conference & Judicial Reception. In October, more than 500 people participated in the HCBA’s signature fall event. Special thanks to Judges Caroline Tesche and Samantha Ward, who were the conference co-chairs. There were a record number of attendees at the various CLE breakout and plenary sessions throughout the day.

2. HCBA Officers & Directors. President Ben Hill IV and the committed group of HCBA officers and directors helped guide the HCBA through another exciting and eventful Bar year. I appreciate their support throughout the past year and am confident incoming President Carter Andersen will do an outstanding job leading the HCBA in 2015-16.

1. Toast & Roast Reception for Retiring Chief Judge Manuel Menendez Jr. In December, more than 800 people attended a farewell reception for the retiring Chief Judge Menendez at the TPepin Hospitality Centre. It was a festive and humorous event for sure, and a great way to send out Judge Menendez, who honorably served our community as chief judge of the Thirteenth Judicial Circuit since 2001.

Here’s hoping everyone has a great summer.
See you around the Chet.

HCBA HOSTS JUDICIAL LUNCHEON

Chief Judge Ronald Ficarrotta spoke about legislative updates at the HCBA Judicial Luncheon on May 6. In addition to the many judges in attendance, Judge Ficarrotta welcomed Clerk of the Circuit Court Pat Frank to the luncheon.
Courts have long had to balance the individual protections guaranteed by the Fourth Amendment with the needs of law enforcement to conduct searches during the investigation of a crime and maintain safety. As technology has progressed, the courts have addressed the application of the Fourth Amendment to new technology. When Fourth Amendment protections apply, law enforcement must follow the proper procedures to obtain necessary evidence during a criminal investigation.

According to the Pew Research Center, in 2014, 90 percent of adults in America owned a cellphone and 64 percent owned a smartphone. With the increased capabilities of the smartphone, as well as the increased reliance on those phones, the cellphone has become a potential source of important evidence in certain criminal cases. This evidence can include anything from photos or videos to emails or text message conversations about criminal acts. Law enforcement must lawfully obtain this evidence for it to be used in a criminal prosecution.

In 2014, the U.S. Supreme Court addressed the issue of whether law enforcement could conduct a warrantless search of the contents of a cellphone. In Riley, the cellphones involved were located on the suspects after arrest. The state sought to justify the warrantless search of a cellphone as a search incident to arrest. When discussing the amount of private information found on a cellphone, the court likened the search to the search of a home and emphasized the fact that the search would be far more extensive than a traditional search incident to arrest. The court found that a search of the digital information on a cellphone should be conducted pursuant to a search warrant, this process allows a judge to determine probable cause for issuance of the search warrant. The court did concede that there could be fact-specific circumstances where an exigent circumstances exception to the warrant requirement could apply.

My office plays an integral role in the review of search warrants prior to their submission to a judge. As your state attorney, I assist law enforcement in legally obtaining evidence that will lead to just convictions, which will keep our community safe.

1 See Katz v. United States, 389 U.S. 347 (1967) (applying the Fourth Amendment to words spoken into a telephone receiver in a telephone booth); State v. Jackson, 650 So. 2d 24 (Fla. 1995) (ruling on the applicability of the wiretap statute to pagers).
4 Id. at 2481.
5 Id. at 2484.
6 Id. at 2491.
7 Id. at 2493.
8 Id. at 2494.
CONSTRUCTION LAW SECTION CLE

The Construction Law Section wrapped up the Bar year with a “Case Law Update” CLE on May 21. Brian Stayton of The Stayton Law Group, P.A., discussed legal issues that surround the construction industry in Florida. The section would like to thank the luncheon’s sponsor: The Bank of Tampa.

NEW ADMITTEE SWEARING-IN CEREMONY

The HCBA hosted a swearing-in ceremony for new admittees to The Florida Bar on April 17 at the George Edgecomb Courthouse. HCBA President Ben Hill IV and YLD board member Web Melton III talked to the new lawyers about the benefits of joining the HCBA as they embark on their careers. Congratulations to all those who were sworn in by Chief Judge Ronald Ficarrotta. The HCBA would like to thank the ceremony’s sponsor:
Clerk Changes to Help You

Where you previously had to visit three separate locations for your civil court business, you can now go to one central location.

It has not always been as easy as we would like for attorneys to navigate the Clerk of Court’s Office. As we transform the way we do business here, with the implementation of the Odyssey system and eFiling, we are also striving to make the clerk’s office more user-friendly in other ways.

Currently, customers must visit three locations to receive the services they need from family law, circuit civil, and county civil. Some of the functions of the departments are similar, but services are performed in multiple departments depending on the case type.

Thus, we have reorganized our civil court customer service area to consolidate the place where you go to conduct business with one of these three departments. Where you previously had to visit three separate locations for your civil court business, you can now go to one central location. All front-counter civil court customer service will be provided at the George E. Edgecomb Building, Room 101, which is directly behind the main entry point of the courthouse.

To prepare for this consolidation, the employees have been trained so they have the knowledge base of these three areas. They are available to perform services, as well as answer your questions about the civil divisions. This includes landlord tenant, dissolution of marriage, foreclosure, and more.

We welcome your feedback on your experience with this reorganization. Our goal is to provide convenience, as well as increased levels of service, to our customers. So let us hear from you.
The Thirteenth Judicial Circuit honored those who are dedicated to giving back to the community during the Eighth Annual Pro Bono Service Awards on April 23 at the Chester H. Ferguson Law Center. Congratulations to those who were honored: Fredrique B. “Dika” Boire, Hillsborough County Bar Association’s Jimmy Kynes Pro Bono Service Award; Isabel “Cissy” Boza Sevelin, Outstanding Pro Bono Service by a Lawyer; Sarah Lahlou-Amine, Outstanding Pro Bono Service by a Young Lawyer; Robin Todd, Outstanding Pro Bono Service by a Paralegal; Open Palm Law, Outstanding Pro Bono Service by a Law Firm; and The Tampa Bay Bankruptcy Bar Association, Outstanding Pro Bono Service by an Organization.
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SUMMER 2015 | HCBA LAWYER 15
Twenty-five years ago, the Hillsborough County Bar Association chose Claude Monet’s *Bridge Over a Pond of Water Lilies* to grace the cover of the inaugural issue of the *Lawyer* because that issue bridged a gap between the old version of the publication and the new one. Interestingly, Monet devoted the last 25 years of his life to painting a series of landscape scenes of a garden, replete with lily ponds, he planted on his property. Apparently, the Japanese footbridge featured in *Bridge Over a Pond of Water Lilies* was featured in 17 paintings in 1899 alone. As Alastair Smart, arts editor and chief art critic for the *Sunday Telegraph*, once observed, Monet’s paintings of the water lilies and footbridge — different versions of the same view at different times of the day under different conditions — served as an alternative diary for him. In retrospect, it is fitting that Monet’s *Bridge Over a Pond of Water Lilies* graced the cover of the inaugural issue of the *Lawyer*.

Before the *Lawyer* made its debut in November 1990, the HCBA principally communicated to its membership by circulating a monthly bulletin aptly named *The Bulletin*. It was a relatively short, black-and-white newsletter that conveyed the latest news around the community. It was workmanlike, both in substance and style. But all of that changed in November 1990 thanks to a seemingly unremarkable meeting between the HCBA and the Hillsborough County Medical Association a year earlier.

In 1989, Ron Russo, the HCBA president at the time, and others met with the Hillsborough County Medical Association to discuss improving relations between the two professions. During that meeting, Russo saw the medical association’s monthly periodical (oddly enough, it was also called *The Bulletin*) and couldn’t help but notice how the substance and style of their *Bulletin* was more professional than our *Bulletin*. After that meeting, Russo had the idea to roll out a new, more professional publication.

The primary concern, of course, was cost. Russo estimated the cost to convert from the old *Bulletin* to something closer to the *Lawyer* of today was $4,000 to $5,000. But Russo was confident that the more professional-style magazine would attract additional advertising revenue to absorb the increase. In the end, the HCBA’s Board of Directors determined the benefits of a more professional magazine far outweighed the costs.

For one thing, a more comprehensive publication (with articles from a variety of substantive law sections) could help improve the administration of justice in our community, not to mention keep members up-to-date on the latest legal issues. In addition to increasing member participation in Bar events, a new and improved magazine could help fuel future volunteer efforts. Russo was convinced the HCBA’s monthly publication was an important — perhaps the most important — factor in shaping volunteer efforts. Besides all of that, a quality, professional organization like the HCBA deserved a quality, professional publication. In short, it was — as Russo said in quoting Victor Hugo when he rolled out the new magazine — “an idea whose time had come.”

*Continued on page 17*
The only thing left to do was to roll out that new idea, a task that fell to Mark Buell. The first order of business was a new name. The HCBA’s Board of Directors decided on The Hillsborough County Bar Association Lawyer. As Buell recalled back then, “Because we are lawyers, our publication should have a name which distinguishes it.” Along with a new name, the Lawyer had a new look. The magazine was now in color, rather than black-and-white. And there was more substance, with publication privileges extended to all of the HCBA’s substantive law sections (including seven new ones); the State Attorney’s Office; the County Attorney’s Office; the Public Defender’s Office; the United States Attorney’s Office; the Thirteenth Judicial Circuit Courts; the United States District Court for the Middle District of Florida; and the United States Bankruptcy Court for the Middle District of Florida. The magazine also doubled in size. It only takes one look at the late version of The Bulletin and early versions of the Lawyer to realize the Board of Directors accomplished its goal of putting out a more professional publication.

What is remarkable, however, is how closely the Lawyer of today resembles the Lawyer of 1990. The original Bulletin was in existence for 25 years, and its evolution over that time is striking. The Lawyer, which has been in existence for the same amount of time, remains largely unchanged. To be sure, the size of the magazine has grown larger over the years, while the number of issues has grown smaller. But there is no question that Russo and Buell created a format that has withstood the test of time.

After 25 years, though, it is important to reflect on whether the Lawyer has accomplished its original goals. Has it helped improve the administration of justice? Has it kept members up-to-date on the latest legal issues? Has it increased member participation in Bar events? Has it helped fuel future volunteer efforts? The answer is an emphatic yes.

It didn’t take long to see that the Lawyer helped influence the administration of justice. Not long after Buell wrote an editor’s message about the shortage of federal judges in Tampa, he received a scathing letter from someone at the U.S. Department of Justice in Washington who was none too happy with Buell’s commentary but nonetheless promised to help ease the backlog of cases here in the Middle District of Florida. As for keeping members up-to-date, this issue, for instance, features an insightful analysis of a recent U.S. Supreme Court decision dealing with the right of judicial candidates to solicit donations. And there can be no serious question the Lawyer has helped promote participation in Bar events and fuel volunteer efforts. For proof, look no further than John Kynes’ article in the last issue about the Judicial Pig Roast/Food Festival and 5k Pro Bono River Run, where the HCBA had more than 500 attendees and received pledges of 2,500 hours of pro bono work.

It has been said that “Claude Monet’s water-lily paintings are amongst the most recognized and celebrated works of the 20th century and were hugely influential to many generations of artists.” It’s obviously a stretch to say that the Lawyer is one of the most recognized or celebrated works of the 20th or 21st century. And, unfortunately, an old issue won’t fetch the $20 million to $30 million that a Monet water-lily painting will at an auction. But it’s not a stretch to say the Lawyer is the best local Bar publication in the state (and maybe the country) and that it has been influential for a generation of lawyers in this community. Twenty-five years ago, Russo predicted that “this new monthly publication will serve our Association in good stead in the years to come”; those words are as true today as they were 25 years ago.

Author: Ed Comey - Law Clerk to Michael G. Williamson, U.S. Bankruptcy Judge

The HCBA would like to thank those who have served as Lawyer editors over the past 25 years:

Vol. 1 (1990-91): Mark Buell
Vol. 5 & 6 (1994-96): John Calhoun Bales
Vol. 7 (1996-97): Margaret Mathews
Vol. 10 (1999-2000): Amy Farrior
Vol. 12 (2001-02): Tom Barber
Vol. 16 (2005-06): Alysa Ward
Vol. 17 (2006-07): Eliane Probasco
Vol. 18 (2007-08): Lesley Friedsam
Vol. 20 (2009-10): Kristin Norse
Vol. 21 & 22 (2010-12): Grace Yang
Vol. 23 (2012-13): Amy Nath
Vol. 24 (2013-14): Rena Upshaw-Frazier
Supreme Court Divided in Judicial Campaign Ruling

“[J]udicial candidates can say thank you, but they may not say please.”

In late April, the Supreme Court announced its decision in Williams-Yulee v. The Florida Bar — a case in which the court concluded that Florida’s ban on personal solicitation of campaign funds by judicial candidates does not violate the First Amendment. Writing for the five-justice majority (and at times a four-justice plurality), Chief Justice John G. Roberts Jr. explained that the content-based ban is a constitutional restriction on speech because it is “narrowly tailored to serve a compelling interest.” The case sharply divided the court, which Floyd Abrams, a leading First Amendment lawyer, noted was entirely predictable. It also came as no surprise, he acknowledged, that the case seemingly leaves each of the justices irritated and frustrated with the views of those on the other side.

Josh Wheeler, the director of the Thomas Jefferson Center for the Protection of Free Expression, explains that the majority opinion is premised on one idea: Judicial campaign speech is different from all other campaign speech. This is so, the chief justice explains, because “a State’s interest in preserving public confidence in the integrity of its judiciary extends beyond its interest in preventing the appearance of corruption in legislative and executive elections.” Accordingly, “States may regulate judicial elections differently than they regulate political elections, because the role of judges differs from the role of politicians.” Politicians are expected to be responsive to their supporters, he notes. Judges are not.

The principal dissent, authored by Justice Scalia and joined by Justice Thomas, chides the majority for its willingness to relax the Constitution’s guarantee of freedom of speech. “The first axiom of the First Amendment is this: As a general rule, the state has no power to ban speech on the basis of its content. One need not equate judges with politicians to see that this principle does not grow weaker merely because the censored speech is a judicial candidate’s request for a campaign contribution.” Yet, in a strained effort to uphold Florida’s ban on judicial campaign speech, “the Court flattens one settled First Amendment principle after another,” the dissent concluded.

Even on the majority’s own terms, the dissent argues, Florida’s ban cannot stand because it has “nothing to do with the appearances created by judges asking for money, and everything to do with hostility toward judicial campaigning.” Were it not true, the dissent suggests, Florida’s Code of Judicial Conduct would ban all personal solicitations (which it does not do), rather than personal solicitations related to campaigns. The dissent warns that while the majority appears to be indifferent between the appointment and the election of judges, “no one should be deceived.” “A Court that sees impropriety in a candidate’s request for any contributions to his election campaign does not much like judicial selection by the people.”

Chief Justice Roberts’ opinion also drew scorn from Justice Kennedy, a person in whom the chief justice often finds an ally. “By cutting off one candidate’s personal freedom to speak, the broader campaign debate that might have followed — a debate that might have been informed by new ideas and insights from both candidates — now is silenced.”

The majority countered by pointing out that Florida’s ban strikes a reasonable balance by prohibiting only personal solicitations for campaign contributions — eliminating “the conduct most likely to undermine public..."
confidence in the integrity of the judiciary” — while leaving judicial candidates free to otherwise run effective campaigns in ways that do not detract from the state’s interest, such as raising money through campaign committees, attending campaign functions, and writing thank you notes to campaign donors. This reality belies the dissent’s conclusion, the majority notes, that Florida’s ban (and the court’s judgment) reflects nothing more than a disdain for elected judges.

Stetson Law Professor Ciara Torres Spelliscy says that the majority’s concern with judicial candidates “dialing for dollars” is justifiable. The problem is, she notes, Williams-Yulee does not solve the larger problems: the rising cost of running for judicial office and the frequency of judicial rulings falling in favor of campaign contributors. University of California Irvine School of Law professor and election law expert Rick Hasen looks more favorably upon the decision, concluding that it represents “a huge win for those who support reasonable limits on judicial elections.”

However you see it, Williams-Yulee undoubtedly represents a significant break for the Roberts court on First Amendment cases generally and campaign finance cases specifically. Since Chief Justice Roberts took the helm, the Supreme Court has jealously guarded the right to free speech and has not been shy to strike down limits on political contributions. Based on this, you might have thought that the court would have done away with Florida’s ban by simply adopting a line from Second Circuit Judge Jose A. Cabranes: “Whatever may be said about whether money is speech, speech is speech, even if it is speech about money.” But in the rare case where the chief justice joins the more liberal bloc of the court, the decision came down the other way. As it is, in the words of Adam Liptak, “judicial candidates can say thank you, but they may not say please.”

2 Canon 7C(1) of Florida’s Code of Judicial Conduct.
3 Williams-Yulee, 135 S. Ct. at 1665.
6 Williams-Yulee, 135 S. Ct. at 1667.
7 Id.
8 Id. at 1676 (Scalia, J., dissenting).
9 Id.
10 Id. at 1681 (Scalia, J., dissenting).
11 See id. at 1681 (Scalia, J., dissenting) (While Florida’s ban precludes a judicial candidate from asking “a lawyer for a few dollars to help her buy campaign pamphlets, it does not prevent her asking the same lawyer for a personal loan, access to his law firm’s luxury suite at the local football stadium, or even a donation to help her fight the Florida Bar’s charges.”)
12 Id.
13 Id.
14 Id. at 1683 (Kennedy, J., dissenting).
15 Id. at 1668-69.
19 Id.

Author:
Adam Suess - Law Clerk, United States Bankruptcy Court
In February, Judge Samuel Salario took his place on the newly created 16th seat on the Second District Court of Appeal. Like Judge Matthew Lucas the month before, Judge Salario sat on his first oral argument panel the day after he officially arrived (again, Clerk Jim Birkhold had arranged to get him the files in advance).

Judge Salario was born in Tampa and has enjoyed returning to his hometown after college, law school, and a stint working in Washington, D.C. Judge Salario first migrated to Washington to attend American University, where he was a political science and philosophy major. From there, he graduated from the University of Florida School of Law with high honors and was on Law Review.

After clerking with Judge Wm. Terrell Hodges of the United States District Court for the Middle District of Florida (while sitting in Jacksonville), Judge Salario went into private practice in Washington, first with Holland & Knight and then with Wilmer Cutler & Pickering, now WilmerHale. Judge Salario and his family moved to Tampa in October 2002, when he joined Carlton Fields. Judge Salario concentrated his practice in securities litigation and enforcement and class-action litigation.

Judge Salario was a member of several Bar and securities associations and served on a Florida Bar Advertising Grievance Committee and the Florida Bar Rules of Judicial Administration Committee.

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He has also spoken and written on securities litigation and other topics.

One significant change Judge Salario experienced when moving from private practice to the appellate bench was how quiet it became. He notes his emails dropped from roughly 150 a day to maybe a couple dozen. He says he is also adjusting to reading everything — from briefs to the record — on computer screens, the standard practice in the Second District today.

When not engaged in the law, Judge Salario enjoys spending time with his family: his wife, an appellate lawyer with the United States Attorney’s Office, and their two sons. It was through his sons that he became involved in taekwondo, in which he holds a first dan black belt. His other interests include visiting “old landscapes” of Florida with his family: areas that have retained their old Florida ambiance. Recent outings have included stays in cabins in Cedar Key and Welaka (we didn’t know either — it’s near Palatka).

The HCBA is pleased to welcome Judge Salario to the Second District Court of Appeal as he begins his service on the bench.

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Authors:
Raymond T. (Tom) Elligett Jr.
and Amy S. Farrior - Buell & Elligett, P.A.
One objection that most professionals have heard regarding the collaborative process is that it is too expensive and complicated. Though there are many arguments against this objection, in some cases it is valid. If there are relatively few assets and debts and clients are in general agreement regarding their children, a simplified process may be in order.

What follows is a step-by-step guide to simplify the use of a full team in a collaborative dissolution. This process has been successfully tested in Tampa. It requires more preparation from the professionals and clients than other versions of the full team model; however, it can promote two important goals: (i) speed up the process and (ii) reduce costs to the clients.

Below are simplified protocols for our full team model:

1. A party meets with a collaboratively trained lawyer where the pros and cons of all processes, including litigation, mediation, and collaborative divorce, are explained.

2. The attorney provides the party with names of at least three other collaboratively trained lawyers (and perhaps access to membership lists of local collaborative practice groups), who then provides those names to his/her spouse along with materials about the collaborative process.

3. Once both parties have retained counsel and the spouses have agreed in principle to use the collaborative process, the attorneys choose neutral professionals, and all discuss whether the simplified protocols may be appropriate.

4. The parties then meet (separately or together) with the neutral mental health facilitator. The goal of that meeting is to flesh out interests (as opposed to positions), set out the parties’ goals in the dissolution, and if possible and applicable, sketch a preliminary outline of their preferred parenting plan.

5. Next, the parties meet (separately or together) with the neutral financial professional. At that meeting, they discuss financial issues, determine which documents are needed, and create preliminary financial affidavits.

6. The parties then meet separately with their respective attorneys to review the reports and documents distributed by the neutral professionals. Each attorney also reads the collaborative participation agreement out loud with his/her client and answers any questions, and the parties and attorneys sign the collaborative participation agreement.

7. Before the first and only full team meeting, the attorneys work together to create shell agreements and other documents necessary for signing and filing. Supreme Court forms may be used to the extent possible.

8. At the one full team meeting (which will be, at most, about 4 hours long), the remaining team members sign the participation agreement if they have not already done so, exchange necessary documents, complete and execute the financial affidavits, and finalize and sign the parenting plan and marital settlement agreement.

9. The attorneys then file the necessary pleadings.

10. All (including neutrals, if the clients wish) attend a final hearing for the entry of the final judgment.

The description of the simplified model here is itself in a simplified form. We hope that this will give you a cost-effective plan for uncomplicated cases.

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Community Services Committee
Chairs: Lisa Esposito - Law Offices of Lisa Esposito, P.A.; and Lara M. LaVoie - LaVoie & Kaizer, P.A.

The Community Services Committee (CSC) had another amazing year due to the support and generosity of our wonderful volunteers. After the success of the Adopt-a-Veteran event in October (where volunteers gave their time so generously to fulfill the wish lists of veterans in need), countless volunteers stepped up once again to support the CSC’s Elves for Elders event in December. The CSC was able to get 250 elders “adopted” this year! Without volunteer elves, these inspiring seniors would have had no presents for the holidays.

In March, the CSC participated in Dining with Dignity Week, in association with Trinity Café. The CSC’s friends and family (including members of the Thirteenth Judicial Circuit) spent quality time at Trinity Café serving sit-down, three-course meals to Hillsborough County’s homeless, hungry, and working poor. It was a rewarding experience for all! (See Page 27.)

Our most recent event took place in May at A Kid’s Place in Brandon, which is an incredible nonprofit center for abused, neglected, and abandoned children. To help these amazing children feel like kids for a day, the CSC threw them another Pirate Party this year.

Once again, it was a resounding success thanks to all who donated or came out to help! We had some fun activities, and everyone had a blast — the kids and the CSC’s volunteers included. We played pirate games and allowed every little scallywag to pick prizes out of our treasure chest. We dressed the little buccaneers as pirates and let them make their very own pirate treasure chests. The kids also enjoyed face painting and tattoos (courtesy of Glitterbug). Smokey Bones of Brandon donated the yummy grub, and Tasty Trendy Cakes donated a remarkable pirate cake. Due to the generous discounts provided by both Happy Kids Inflatables and Taylor Rental of Brandon, the kids were also able to enjoy bounce houses, as well as snow cone and popcorn machines.

The CSC is humbled and overwhelmed by the amount of donations and volunteer support that we received for this event. The CSC would like to thank all of our volunteers and the Hillsborough County Bar Association, as well as the following donors: Law Offices of Lisa Esposito, P.A.; Smokey Bones Bar & Fire Grill of Brandon (especially GM Tishara Griffis); Hill Ward Henderson (especially attorney Mary Snyder); Ron Christaldi and Shumaker Loop & Kendrick LLP; attorney Tom Curran; Antion Castro Law; Tasty Trendy Cakes; Maria Maranda and State Farm; Arturo and Vienna Fuentes; Tampa Sweetheart Cigars; Yvette Hammett; Al Martinsky; AJ’s Bikes & Boards, LLC; Fernando Llop and PLSS Paving; Baker Cosmetic and Family Dentistry; The Barefoot Pirate; Rick and Liz Tomlin; Steve and Emily Kuundrat; Roselle Swain; Gigi Pelosi; Doc and Theresa Holiday; Al Martinsky; Glitterbug; Stingray Chevrolet (and manager John Whaley); Bobbie and Dan Aggers; Patricia Palma, P.A; Bolter & Carr Investigations; Osgood and Associates; and Ameriprise Financial. We sure hope we didn’t forget anyone!

For more information about joining the CSC, please contact Chairs Lisa Esposito – (813) 223-6037 or lisa@lesposito.com – or Lara LaVoie – (813) 638-1357 or lara@flinjuryadvocates.com.

Author: Lara M. LaVoie - LaVoie & Kaizer, P.A.

“You make a living by what you get. You make a life by what you give.” — Winston Churchill
**ELEVENTH CIRCUIT IS QUICK ON THE TRIGGER**

Construction Law Section
Chairs: Erik Raines - Hill Ward Henderson; and Mark Smith - Carlton Fields Jorden Burt

The Eleventh Circuit recently reaffirmed the appropriate trigger for determining coverage under a Commercial General Liability (CGL) insurance policy and clarified the scope of covered property damage in a construction case. In *Carithers v. Mid-Continent Casualty Company*, Case No. 14-11639 (11th Cir. April 7, 2015), the plaintiffs filed suit against their homebuilder after discovering a number of defects in their home. After the homebuilder’s CGL insurer refused to defend, the homeowners and homebuilder entered into a consent judgment, which assigned the homebuilder’s right to collect the judgment amount from Mid-Continent. The homeowners filed suit to collect from Mid-Continent.

The complaint in the underlying action alleged that the defects could not have been discovered until 2010. Mid-Continent argued that because its policies only provided insurance through 2008, it was not liable for the damages (the “manifestation trigger”). The homeowners argued that property damage under a CGL policy occurs when the property is damaged (the “injury-in-fact” trigger). No Florida state court appellate decision has decided which trigger applies, and federal district courts in Florida have been split on the issue. In this case, the Eleventh Circuit applied the injury-in-fact theory and held: “Property damage occurs when the damage happens, not when the damage is discovered or discoverable.”

Another pertinent issue in the case was whether certain damages were resulting damages (covered) or damages to the defective property itself (uncovered). The lower court determined that “the incorrect application of exterior brick coating caused property damage to the brick[,] that the use of inadequate adhesive and an inadequate base in the installation of tile caused property damage to the tile[,] and that the incorrect construction of a balcony, which allowed water to seep into the ceilings and walls of the garage leading to wood rot, caused property damage to the garage.” The lower court included the cost of repairing the balcony itself, which had to be replaced in order to repair the property damage to the garage (“rip and tear” damages).

The Eleventh Circuit held that for the damaged brick and tile, the issue turns on whether the brick [or tile] installation and the application of the brick coating [or tile adhesive] were done by a single sub-contractor. If it was done by a single sub-contractor, then the damage to the bricks [or tile] was part of the sub-contractor’s work, and this defective work caused no damage apart from the defective work itself. However, if the bricks [or tiles] were installed by one sub-contractor, and a different sub-contractor applied the brick coating [or tile adhesive], then the damage to the bricks [or tile] caused by the negligent application of the brick coating [or tile adhesive] was not part of the sub-contractor’s defective work, and constituted property damage.

The court also upheld the cost of repairing the balcony itself, reasoning that the homeowners had a right to “the costs of repairing damage caused by the defective work” and that repairing the balcony was part of the cost of repairing the defective garage.

*Carithers* is a significant opinion for Florida construction attorneys, as it clarifies these often-litigated CGL coverage issues.

**Author:**

*Emily Morrell - Hill Ward Henderson*

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CONSTRUCTION LAW CLE

The HCBA's Construction Law Section hosted a CLE on April 16 to address the “Emergence and Expansion of Private and Public Partnerships.” Guest speaker Todd Mathes, general counsel for Benderson Development Company LLC, highlighted the expansions in Florida.

CSC HOSTS DINING WITH DIGNITY

The HCBA’s Community Services Committee hosted its “Dining with Dignity” event from March 30 to April 3. Volunteers donated time to help Trinity Cafe, a nonprofit organization that serves three-course meals to the area’s homeless and working poor. The committee would like to thank everyone who volunteered.
Collaborative law, which got its start in Minnesota in 1990, “involves a commitment to collaborative, good faith negotiation and a written commitment by the lawyers and their clients to work together to achieve a settlement, and to refer the case to other counsel if they fail.” Collaborative Law in the World of Business, David A. Hoffman, The Collaborative Review, vol. 6, no. 3 (Winter 2003). Although collaborative law has caught on quite well in divorce cases, the business world has been slower to embrace it. Corporate counsel generally have a special relationship with business clients and are well-positioned to recognize that one can make just as compelling a case for using collaborative law in business disputes as in family law disputes. While the dynamics of family matters are different from those in business disputes, factors that have contributed to client satisfaction in collaborative divorce also exist for business disputes.

1. Common Interests. Collaborative law reduces costs by motivating parties to stay at the bargaining table, thereby reducing antagonism. In divorce cases, parents have a common interest in reducing both resentment and transaction costs in order to safeguard their children’s emotional and financial well-being. At the very least, business adversaries have an interest in reducing transaction costs associated with dispute resolution. Even parties with deep pockets may have a limited legal budget.

2. Need for Ongoing Relationships. Collaboration in the resolution of disputes provides a greater opportunity for success in ongoing relationships. For example, in divorce situations, even when the parties do not have children requiring co-parenting arrangements, they often have common property interests that require their continued attention. Many business relationships that lead to disputes are transient. However, a large number of disputes arise among business partners with long-standing relationships that are worth preserving long after the dispute is settled. Moreover, in some cases, the performance of obligations under a settlement agreement may occur over time.

3. Self-Determination/Privacy and Intangible Costs. Through the use of a participation agreement, parties set the schedule, make joint use of experts, and agree on the timing and scope of discovery, as well as the timeframe for resolution in a private collaborative setting. Litigation can be just as intrusive for businesses as it is for married couples. Companies that are required to produce voluminous documents and defend numerous depositions face a greater risk of adverse publicity because their cases are more likely to be of interest to the media. Disruption costs to the business are immeasurable. Incentives for using collaborative law are based on economics, privacy concerns, efficiency, preservation of relationships, and speedy resolution. Kathy A. Bryan, former in-house litigation manager for Motorola, cites similar reasons for stating that collaborative law techniques should be added to the business dispute resolution toolbox. Why Should Businesses Hire Settlement Counsel, 2008 J. Disp. Resol. Issue 1. (2008). By thinking outside the box, corporate counsel can offer collaborative law to clients as a powerful tool in the company’s dispute resolution arsenal.

Author: Guilene F. Theodore - Collaborative Conflict Resolution, PLLC
CORPORATE COUNSEL CLE

The HCBA’s Corporate Counsel Section hosted a luncheon and CLE on March 25 on the enforcement of non-competition and confidentiality agreements against former employees. William P. Cassidy and Matthew J. Meyer both spoke at the CLE.

APPELLATE SECTION WELCOMES NEW JUDGES

The Appellate Section welcomed new judges to the Second District Court of Appeal during a luncheon on May 11. The Hon. Matthew C. Lucas, the Hon. John L. Badalamenti, and the Hon. Samuel J. Salario Jr. met with the section for lunch, which was followed by a CLE on “Unpacking the Appellate Process – An In-Depth Look at Appellate Jurisdiction, Procedures, and Ethics.”
How do you feel about the NSA collecting your phone records? If it doesn’t bother you, don’t read any further. Another law enforcement practice that may be overstepping the Fourth Amendment is drawing attention. Many local law enforcement agencies have begun using International Mobile Subscriber Identity (IMSI) catchers to locate cellphones. When an IMSI is active, it collects the data from every cellphone in range.

According to the ACLU, IMSI devices have been sold to at least 48 law enforcement agencies in 20 states and the District of Columbia. Harris Corporation manufacturers the IMSI devices, which it has sold as StingRay, Kingfisher, and Triggerfish. When activated, a StingRay mimics a cellphone tower, which prompts cellphones to transmit information to the StingRay that identifies the particular phone. Unlike a pen register or trap-and-trace device, which is dedicated to an individual phone line, the StingRay prompts every active cellphone.

The StingRay’s range can be several miles, so it can collect information from scores of phones in heavily populated areas.

Continued on page 31
in range to provide its identifying information. In addition to identifying information, the StingRay collects traffic data (i.e. texts, numbers called, emails). The StingRay’s range can be several miles, so it can collect information from scores of phones in heavily populated areas.

In 2013, Investigator Christopher Corbitt of the Tallahassee Police Department testified that the department had used an IMSI device “200 or more times.” After Corbitt’s testimony in the prosecution of a charge of robbery with a deadly weapon, the State Attorney’s Office offered one defendant a plea to a second-degree misdemeanor rather than disclosing additional information about how StingRays operate. The Washington Post reported that during an appeal of a separate Tallahassee Police Department case, it came out that the department used StingRays 200 times without obtaining warrants. However, at 4,300 uses of StingRays since 2007, the Baltimore Police Department eclipses Tallahassee’s numbers.

Special Agent Bradley S. Morrison, chief of the FBI’s Tracking Technology Unit, Operational Technology Division, has executed at least two affidavits in support of memoranda in opposition to motions to compel discovery concerning ISMIs. In a 2014 affidavit, he stated that ISMIs are “considered homeland security information under the Homeland Security Act.” In a 2011 affidavit, Morrison acknowledged that information from “innocent, non-target devices” may be “incidentally recorded,” but he asserted that the FBI purged all information from a device “at the conclusion of a location operation.” In other words, the FBI is engaging in electronic catch and release of private information of cellphone users every time it turns on an ISMI.

If ISMI information is vital to counterintelligence investigations and protecting the country from foreign powers and terrorists, why is it being used to investigate routine street crime? Why invite scrutiny to an essential tool used to protect national security? ISMIs were being sold and used at the local level at will, while cases challenging warrantless searches of cellphones were winding their way toward the Supreme Court of the United States. In Riley v. California, the court decided that police need a warrant to search even the most rudimentary cellphones. Also, the U.S. Court of Appeals for the Second Circuit held that the Patriot Act did not authorize the NSA to collect bulk telephone data. The FBI and local law enforcement agencies continue to use ISMIs, so challenges to their use are on the horizon.

Author:
George Bedell - George Bedell, P.A.

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**ELDER LAW LUNCHEON**

The Elder Law Section hosted a CLE luncheon on May 29 to discuss “The Use of Annuities in Florida Medicaid Planning.” Speaker Dale M. Krause of Krause Financial Services LLC talked about the future of elder care planning, annuities and VA planning, and annuities and Medicaid. The section would like to thank Krause Financial Services LLC for sponsoring the luncheon, as well.
You’re either part of the solution or you’re part of the problem.” So began my introduction and commitment to diversity and inclusion efforts at The Florida Bar. In March 1999, Justice Harry Lee Anstead was featured in The Florida Bar News, addressing professionalism and diversity. Justice Anstead advocated for greater recognition of diversity as a part of our professional obligation to one another and the public we serve. He mentioned race, gender, and ethnicity as areas where the Bar could improve. It was, I would tell him in an 11-page footnoted letter, fine as far as it went. However, I challenged him to include sexual orientation in the efforts. That letter was the first time I ever remember writing to any “public” person about the issue. It was both education for the justice and a cathartic release for me. My letter concluded:

I realize that there are limitations to what we can do. While we may be able to “lead a horse to water but not make it drink,” we can do better than suggesting politely to the herd that even mavericks really ought not to starve then turn away to gaze into the sunset pretending all is well.

A few days later, my phone rang, and it was Justice Anstead on the line. I gulped and gave one long, last pensive look at my Bar Admission Certificate on the wall and picked up the telephone.

Justice Anstead was gracious. He told me about working as a mover whose African-American co-workers were not allowed to go inside the same restaurant when they took a lunch break. He acknowledged that he didn’t fully understand my perspective but said I had one that ought to be shared. “If,” he challenged, “you want to be a part of the solution, I’ll walk down the hall and ask the chief justice to appoint you to the Supreme Court Commission on Professionalism.”

“But,” he added, “if you aren’t willing to be part of that solution, then you wrote a very nice letter.”

I accepted Justice Anstead’s challenge and the appointment. It changed my life. We are not finished. So, let me ask you the same question: Are you part of the solution, or are you a part of the problem?

Author: Larry D. Smith – Vice-Chair of The Florida Bar Standing Committee on Diversity & Inclusion, 2013 American Bar Association’s Diversity Leadership Award winner, 2013 Florida Bar Henry Latimer Diversity Award winner

A CONSEQUENCE OF CONSCIENCE
Diversity Committee
Chairs: Amanda B. Buffinton - Bush Ross, P.A.; and Jessica Goodwin Costello - Florida Attorney General’s Office of Statewide Prosecution

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LAW & LIBERTY DINNER

The 10th Annual Law & Liberty Dinner featured an evening with NFL legend Terry Bradshaw. One of the most prolific quarterbacks in history, Bradshaw talked to the crowd about appreciating the life and talents you have and filling your life with joy as part of the Hillsborough County Bar Foundation’s annual fundraising event on May 14.

Local news anchor Keith Cate of News Channel 8 hosted the evening’s ceremonies.

Money raised at the Law & Liberty Dinner will benefit Crossroads for Florida Kids, Bay Area Legal Services’ L. David Shear’s Children’s Law Center, The Spring of Tampa Bay, and Hillsborough Voices for Children.

The Foundation would like to especially thank the event’s Marquee Sponsor, The Centers; Premier Sponsors, The Bank of Tampa and The Yerrid Foundation; and Platinum Sponsor, Holland & Knight.

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2015 LAW DAY MEMBERSHIP LUNCHEON

History came to life at the Hillsborough County Bar Association’s Law Day Luncheon on May 20 as Professor Tom McSweeney of William & Mary discussed Magna Carta and its impact on the legal community today. In addition to celebrating the 800th anniversary of Magna Carta, the HCBA celebrated some of our community’s finest law enforcement officers, including Hillsborough County Sheriff David Gee, who received this year’s Liberty Bell Award. Also recognized were Law Enforcement Officers of the Year: Corporal Frank Capitano of the Hillsborough County Sheriff’s Office and Detective Travis Maus of the Tampa Police Department. The luncheon also highlighted the great work of local students who competed in Law Week art and essay contests.
What do I do as a peer mediator? Well, where do I start? As a peer mediator I do many things involved in the school, contests, and charities. Which is not just hard work to me, it makes me feel good inside that you helping your school look beautiful, fellow students, and others in need of money.

Not only do I get the feeling of satisfaction, but I have others that look up to me and I take pride in being someone to be looked upon by. Some people compliment my attitude, enthusiasm, and most of all my leadership. Those people have no idea how much I appreciate that, it makes me feel more like a role model. Just like Magna Carta and how the Englishmen looked up to her for freedom. Before I was a peer mediator I don’t know if I could be a role model, being a peer mediator has taught me a lot of life skills, that really help in my good and bad days.

Now lets move on to the topic of an actual mediation. There are four steps when in a mediation. First you introduce yourself to the kids and ask them what their name is. Then you ask them to tell their side of the story, then vice versa (make sure they do not talk over each other while talking). Then you repeat what they said, so they know you were listening. Lastly you write down ideas that could solve the conflict and the kids will pick a couple to stick with. To me I think the MOST IMPORTANT

Continued on page 43
part of a mediation is resolving the conflict. You want to make sure the person’s conflict is solved before you can go onto to anything else. Just like Magna Carta resolved the conflict with King John and his unsuccessful foreign policies and heavy taxation. When in a mediation you need to let one person express their side of the story then the other. When resolving a conflict you cannot be shy and quiet in a mediation, you need to be open and expressive about it and have a strong voice.

When someone comes up to me and says “I’m having a bad day.” I just remind them of all the good things they have (like a family, house, cars) in life instead of the bad. To think only a few mediators out of the whole school can change so many kids’ perspective about friends, family, and even life.

**LAW WEEK ESSAY CONTEST WINNER**

**Essay by Hannah McElroy**

**Colleen Bevis Elementary School**

Magna Carta. The dictionary definition of Magna Carta is, “Any fundamental constitution or law guaranteeing rights or liberties.” The Magna Carta is one of the most important documents “on the path to democracy” as described in the article, “Why is the Magna Carta Seen as a Key Document in the Founding of the US?” I have found that being a Peer Mediator is linked to the Magna Carta, because “we” both ameliorate (or help) people.

As a Peer Mediator I get to do things that help people in different ways. These ways consist of, helping people with their disputes and keeping the Earth clean. There are three main things that are done. First, I help with providing better friendships to others by being a support system that helps peers solve their feuds. I do this with my partner mediator. Each of us speaks with one of the disputants and through mediation we are able to find a solution to the problem. Another way that we provide assistance is by being available during Teacher Directed P.E. or specials (gym, art, and music). This allows students to get help without missing their academic classes. Finally, as a Peer Mediator I help to protect the Earth. I do this by collecting items at school, such as plastic bottles and glass substances. Once collected, we recycle these items.

The Magna Carta gives a helping hand to people by giving freedom to citizens of the United States. My experience of being a Peer Mediator is intertwined with the Magna Carta because we both help American citizens. The work of a Peer Mediator is definitely hard work, but is worth the satisfaction of bringing people together. The Magna Carta and Peer Mediators are comparable because they both ameliorate others on a regular basis.
Carlton Ward Jr is a conservation photographer and eighth generation Floridian focused on Florida's living heritage. His limited edition photographs are available in sizes ranging from 10x15 to 40x60” and up to 28x84 for panoramic images. The Carlton Ward Gallery also offers portfolio collections including Florida Wildlife Corridor, Tampa Bay, Gulf Coast and Florida Frontier. A selection of custom frames is available for all photographs. The gallery also sells Carlton’s recent books including Florida Wildlife Corridor Expedition and Florida Cowboys. Please visit our gallery in Tampa’s Hyde Park Village.
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TRIAL & LITIGATION AWARDS CEREMONY

The HCBA Trial & Litigation Section honored some outstanding legal professionals at its annual awards luncheon on May 28.

The award recipients were:

- Michael A. Fogarty Memorial “In the Trenches” Award: Marsha Rydberg
- James H. Kynes “In the Trenches” Award: David Weisbrod
- Herbert G. Goldburg Memorial Award: Rob Williams
- Court Family Award: Angie Smith

The section also awarded a $1,000 scholarship to Sienna Osta for her winning essay, “Jury Trials Are Important to American Jurisprudence.”

The section would like to thank the luncheon’s sponsor:
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Summer is in full swing, but as we enjoy summer vacations and family trips, it’s a good time to plan ahead to the next year of Elder Law Section meetings and consider how you may be able to contribute to make our section even better. Perhaps you have some great ideas for CLE topics or suggestions for interesting speakers, or perhaps you could write an article to be published in the Lawyer magazine on behalf of the Elder Law Section. Your contributions help make our section fun and relevant, and your involvement is welcomed and encouraged.

We certainly had some great speakers and interesting topics this year. Most recently, Dale Krause of Krause Financial Services spoke at the May 29 CLE luncheon, providing an overview of Medicaid and VA compliant annuities, options available to deal with non-compliant annuities, and the use of annuities in personal service contracts. In April, we hosted a joint CLE with the Real Property, Probate & Trust Law Section, and Tae Kelley Bronner presented a review of the relevant law regarding the constitutional homestead exemption from claims of creditors and the impact of trusts on the availability of that exemption.

Summer is also a time of transition in the Elder Law Section. Having completed the 2014-2015 year and her second year of service to our section, co-chair Elizabeth Allen will pass the torch to Susan Haubenstock, who served as section chair for several years. Together, Susan and Debra Dandar will strive to continue to bring you interesting speakers and relevant topics, but your suggestions and involvement are greatly appreciated and so important to the growth of our section.

Please enjoy your summer, and if you have suggestions or ideas or would like to submit an article for publication in the Hillsborough County Bar Lawyer magazine, please contact Susan – SGHaubenstock@juno.com or (813) 259-9955 – or Debra L. Dandar – Debra.Dandar@TampaBayElderLawCenter.com or (813) 282-3390.

We look forward to seeing you soon and hope that you have a safe and enjoyable summer.

Authors: Elizabeth P. Allen - Gibbons, Neuman, Bello, Segall, Allen & Halloran; and Debra L. Dandar - Tampa Bay Elder Law Center

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RPPTL & ELDER LAW SECTIONS HOST CLE

The Real Property, Probate & Trust Law Section and the Elder Law Section joined forces on April 23 to present a CLE on “Homestead: A Review of Relevant Cases.” Tae Kelley Bronner discussed restrictions, property subject to constitutional homestead protection, and transfer of homestead property to revocable trusts. Both sections would like to thank the CLE’s sponsor:

MARITAL & FAMILY LAW SECTION LUNCHEON

The HCBA Marital & Family Law Section hosted its final luncheon of the Bar year on April 30. The section welcomed a panel of judges, including Chief Judge Ron Ficarrotta, and thanked outgoing section Chair Kristin Kirkner for her service over the past year.

The section would also like to thank the luncheon’s sponsor:
In a storm of acronyms that has been brewing since 2005, the First District Court of Appeal is set to rule on the interaction of Florida’s Amendment 7 and the federal Patient Safety and Quality Improvement Act of 2005 (the PSQIA) in Southern Baptist Hospital of Florida v. Charles. It is expected to be the first Florida appellate court to decide whether the PSQIA preempts Amendment 7.

The First District will determine whether documents that the hospital assembled or developed within the hospital’s Patient Safety Evaluation System for reporting to a Patient Safety Organization (PSO), both as defined by the PSQIA, will be afforded the federal privilege established by the PSQIA.

The two big issues:

1. **Whether the PSQIA preempts Amendment 7.**
   The PSQIA includes clear and explicit language indicating its intent to preempt state law. See 42 U.S.C. § 299b-22(a)-(b). There is also a strong argument for conflict preemption, as compliance with both schemes is impossible. Amendment 7 gives patients and their representatives access to records of adverse medical incidents, while section 299b-22(a) of the PSQIA declares those same records privileged and confidential except in a limited set of circumstances. Required disclosure under Amendment 7 also stands as a significant obstacle to the accomplishment and execution of the intent of the PSQIA and its associated regulations. The stated purpose of the PSQIA is to encourage providers to join PSOs to share patient safety and quality information “within a protected legal environment” without the fear that the information will be used against them in litigation. Amendment 7, if applied to patient safety work product like the internal documents frequently requested by medical malpractice plaintiffs, would eviscerate that intended protection and serve as a disincentive for providers to participate.

2. **Whether reports of “adverse incidents,” which Florida law requires hospitals to create and maintain — but not report — constitute protected patient safety work product (PSWP) under the PSQIA.** This is the million-dollar question. There is a reasonable argument that sending a report to the state...

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removes it from consideration as PSWP. However, those reports that are collected for review by a PSO, and not required to be reported externally, should not be excluded from the definition of PSWP simply because they also satisfy a licensure or regulatory requirement imposed on the provider. To do so would contravene the stated intent of the PSQIA and would effectively authorize state nullification of federal law simply because the state law regulates health care providers. As argued by the Charles petitioners and amici, the distinction between internal maintenance requirements and external reporting requirements best effectuates congressional intent. Only time will tell, however, whether the First District agrees. Stay tuned.

1 Case No. 1D15-0109, First District Court of Appeal, State of Florida.

2 This article assumes familiarity with the underlying legislative schemes. For a thorough and well-written discussion of the background of the PSQIA and Amendment 7, please see the Charles Petition for Writ of Certiorari and the Brief of Amici Curiae filed in support of the petition.

Authors: Jacqueline R. A. Root and Edward J. Carbone - ROIG Lawyers

CRIMINAL LAW SECTION RECOGNIZES TY TISON

The HCBA Criminal Law Section would like to congratulate Ty Tison, who was this year’s recipient of the Marcelino “Bubba” Huerta III Award for Professionalism and Pro Bono Service. Tison was honored at a luncheon on April 8. Thank you to the luncheon’s sponsor:

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COURT OVERTURNS DEPORTATION FOR DRUG CONVICTION

Immigration & Nationality Section
Chair: Maria del Carmen Ramos - Shumaker, Loop & Kendrick, LLP

Over the last nine terms, the Supreme Court has interpreted the Immigration and Nationality Act (INA) narrowly in three cases — Moncrieffe v. Holder, Carachuri-Rosendo v. Holder, and Lopez v. Gonzales — in favor of aliens. The Supreme Court’s latest decision — Mellouli v. Lynch — represents the latest brick in the road for the court in deportation cases.

In Mellouli, Moones Mellouli, a Tunisian citizen and lawful permanent resident of the United States, pleaded guilty in 2010 to possession of drug paraphernalia (containing four Adderall pills) in violation of a Kansas controlled substance law. Several months after his release from probation, Immigration and Customs Enforcement officers arrested Mellouli as deportable under federal law. Section 1227(a)(2)(B)(i) of the INA authorizes the removal of any alien “convicted of a violation of ... any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21).” Mellouli was deported in 2012 after the Board of Immigration Appeals affirmed his deportation order even though Kansas defines “controlled substance” without reference to 21 U.S.C. § 802 and the Kansas statute includes nine substances not on the federal list. The Eighth Circuit Court of Appeals denied Mellouli’s petition for review. But in 2014, the Supreme Court granted certiorari, and in June, it reversed the judgment of the Eighth Circuit.

A seven-justice majority, led by Justice Ruth Bader Ginsburg, decided that Congress intended to directly tie the removal statute to the federal controlled substance schedules listed in 21 U.S.C. § 802. “To trigger removal under § 1227(a)(2)(B)(i), the Government must connect an element of the

Continued on page 55
COURT OVERTURNS DEPORTATION FOR DRUG CONVICTION
Immigration & Nationality Section

Continued from page 54

alien’s conviction to a drug ‘defined in [§ 802],’” she wrote.10 Because the scope of Kansas’ controlled substance schedules was more expansive than the federal government’s at the time of Mellouli’s conviction, and because Kansas did not “charge, or seek to prove, that Mellouli possessed a substance on the § 802 schedules,” the court concluded that federal law did not authorize Mellouli’s deportation.11 In reaching this result, the court applied a categorical approach, where it “looks to the statutory definition of the offense of conviction, not the particulars of an alien’s behavior,” to determine whether an alien is removable.12

Justice Clarence Thomas, joined by Justice Samuel Alito, argued that the majority’s reading of the removal statute requires too much and dissented. Instead, they would hold, “consistent with the text,” that a conviction under any law that sufficiently relates to 21 U.S.C. § 802 satisfies the requirements of the removal statute, “regardless of whether [the charged] conduct would also [subject a defendant] to prosecution under federal controlled-substances laws.”13 “I would affirm,” Justice Thomas wrote, because the Kansas drug paraphernalia law bears enough relationship to federally controlled substances “under any reasonable definition of ‘relating to.’”14

However you see it, the court’s decision should come as no real surprise. As the country collectively grapples with immigration policy, and as we turn to what will be a long and important political season, expect Mellouli and other decisions like it to frame the larger immigration debate.

1 133 S. Ct. 1678 (2013).
2 130 S. Ct. 2577 (2010).
4 No. 13-1034 (June 1, 2015), slip opinion.
5 Kan. Stat. § 21-5709. After Mellouli’s arrest, jail personnel found four orange pills hidden in his sock. Kansas initially charged Mellouli with trafficking contraband into a jail, a felony, but later allowed him to plead guilty to possession of drug paraphernalia, a misdemeanor. At some point, Mellouli admitted that the orange pills were Adderall.
6 Mellouli, slip op. at 1-2.
8 Mellouli v. Holder, 719 F.3d 995, 999 (8th Cir. 2013).
9 Id. at 1002 [affirming “the [Board of Immigration Appeals]’s categorical determination that Mellouli’s drug paraphernalia conviction was within § 1227(a)(2)(B)(i), without regard to whether the paraphernalia was used in connection with a federally scheduled drug”).
10 Mellouli, slip op. at 14.
11 Id. at 2.
12 Id. at 5-6 (citing Moncrieffe v. Holder, 133 S. Ct. 1678, 1684 (2013)).
13 Id. at 2 (Thomas, J., dissenting).
14 Id. at 5 (Thomas, J., dissenting).

Author: Adam Suess - Law Clerk,
United States Bankruptcy Court

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The Support Technology & Research for Our Nation’s Growth Act, otherwise known as the STRONG Patent Act of 2015, was recently introduced into the Senate by Sens. Chris Coons, Dick Durbin, and Mazie Hirono. The bill proposes some major reforms: (1) amending some of the recently created post-grant proceeding rules and procedures; and (2) cracking down on abusive demand letters, among others. In the House of Representatives, Rep. Bob Goodlatte re-introduced the Innovation Act, proposing similar reforms. Also, the Targeting Rogue and Opaque Letters Act, otherwise known as the TROL Act, recently passed the House Commerce Subcommittee with bipartisan support.

One of the major changes currently proposed in both the STRONG Act and the Innovation Act involves changing the standard used in claim construction when practicing in front of the Patent Trial and Appeal Board (PTAB). Currently, the PTAB uses the “broadest reasonable interpretation” standard. Both acts propose to use the standard adopted in district court litigation: “the meaning a term would have to a person of ordinary skill in the art at the time of invention.” STRONG also proposes to change the burden of proof at the PTAB to a “clear and convincing evidence” standard, which is the standard currently used in district court litigation.

Additionally, all three acts take on patent demand letters. STRONG would empower the Federal Trade Commission to crack down on abusive and intentionally vague patent-related demand letters. STRONG attempts to lay out the various ways patent demand letters have been deficient in the past and create liability for those who intentionally or recklessly send vague demand letters. This includes actions such as sending a demand letter while knowing of no right to enforce, communicating that legal action will be taken against the recipient, seeking compensation from the recipient when the patent has already expired, and failing to include the identification of a patent or a person having a right to enforce a patent. A person who violated this part of STRONG would be subject to any penalty that could be enforced by the Federal Trade Commission. The TROL Act concerns itself with sending bad faith demand letters, clarifies that such activity can violate the Federal Trade Commission Act, and allows the FTC and state attorneys general to enforce its provisions with civil actions through a showing of “bad faith.” The Innovation Act, on the other hand, has no such FTC empowerment and only limits the establishment of willful infringement if the demand letter was purposefully vague.

The STRONG, TROL, and Innovation Acts propose to continue the reform that started with the America Invents Act in 2012. The acts are reacting to trends in post-grant proceedings, as well as trends in the district courts. The proposed reforms, at first blush, seem pro-patentee and pro-consumer at the same time. All three bills, however, have yet to pass both houses and are awaiting further votes. More changes to their substance may be forthcoming.

Author:
Cole Carlson - GrayRobinson, P.A.
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On February 25, the Department of Labor issued its final rule broadening the definition of “spouse” under the Family and Medical Leave Act (FMLA). The expansion of the definition guarantees that legally married, same-sex couples enjoy the same status under the FMLA as legally married, opposite-sex couples. The final rule went into effect on March 27.

The FMLA allows eligible employees of covered employers to take job-protected leave to care for a spouse with a serious health condition, to address issues arising out of a spouse’s covered military service, and to provide military caregiver leave for a spouse. Covered employers generally include private-sector employers with 50 or more employees in a 75-mile radius and public-sector employers (including local, state, and federal government agencies) regardless of size.

The Department of Labor’s final rule changes the FMLA’s method for determining spousal coverage from the previous “place of residence” rule to a “place of celebration” rule. Under the old rule, spousal status was determined by the laws of the state where the employee resided. Under the new rule, spousal status is determined by the laws of the state where the employee was married. Thus, an employee who is legally married under the laws of a state that recognizes same-sex marriage is entitled to spousal benefits under the FMLA in any state. In practical terms, covered employers must grant spousal benefits under the FMLA to any employee who legally enters into a same-sex marriage, regardless of whether the employer is located in a state that does not recognize same-sex marriage. In addition to extending FMLA rights to spouses in same-sex marriages, the new rule also recognizes the validity of certain same-sex marriages entered into abroad and requires employers to recognize valid common-law marriages. The rule, however, does not protect civil unions or domestic partnerships.

Employees in legal, same-sex marriages — regardless of where they live — now have the same federal family and medical leave rights that opposite-sex married couples have nationwide. The “place of celebration” rule allows eligible employees to take spousal FMLA leave to care for the same-sex spouse with a serious health condition, take qualifying exigency leave for the same-sex spouse’s covered military service, and take military caregiver leave for the same-sex spouse.

Employers should train their leave administrators and managers on the new rule and update existing policies, procedures, forms, notices, and benefit plans to ensure compliance with the expanded definition of “spouse.”

Author: Cullan Jones - Thompson, Sizemore, Gonzalez & Hearing, P.A.
SECURITIES LAW LUNCHEON

The Securities Law Section hosted the final luncheon of its inaugural year on April 22. Judge Herbert Baumann Jr., Judge James S. Moody Jr., Judge Mark A. Pizzo, Judge Samuel J. Salario Jr., and Brian G. Mooney were panelists who discussed decision-making practices in securities matters.

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

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Why are you a lawyer? I have found myself asking this question periodically throughout my brief career. Usually, the question comes up around midnight when I have hours of work left to do and no energy to carry on. Other times, it is when I’m sitting across the table from another attorney who doesn’t seem to approach the practice of law with the honor I feel it deserves (invariably, not a member of our circuit). Regardless of when it comes up, the answer is always the same — to do justice and advance the rule of law when others disregard it. I want to live a life of consequence, to stand against the tides of chaos, and balance freedom with anarchy. It can be hard to remember this laudable concept as a young lawyer, but each year my spirit is renewed by a small committee of very dedicated individuals.

The YLD Law Week Committee reaches out to our community through fellow Bar members who volunteer their time and teach students about the practice of law. This year, more than 2,400 students were able to participate in mock trials, classroom lectures, and courthouse tours. This year’s theme, “Magna Carta — Symbol of Freedom Under Law,” was especially profound as we continue to debate the role of executive powers and judicial checks and balances. The Magna Carta is sometimes viewed as the starting point of democracy, but in truth, it did one simple thing — placed the King of England under the rule of law.

I felt a tremendous sense of pride helping disseminate this message of accountability to our future leaders. It is quite likely many of the students won’t remember the exact details of our discussions, but there is no doubt their lives have been affected. This year, as with every year, our volunteers received packages full of letters from students thanking them for their time and inspiration. These brief notes are sometimes hilarious — Why don’t you work for the big name firm on the billboard? How much money do you earn? — but more than that, they are revitalizing. Each thank you note serves as a small reminder that the next generation still cares about our Great American Experiment.

As a young lawyer, it is not always easy to discern your importance to the world. Events like Law Week help put it into perspective. I would like to thank all of our volunteers and my fellow committee members: Amy Nath, Alexandra Haddad, Maja Lacevic, Sacha Dyson, Clinton Morrell, Melody Manning, Elizabeth Tosh, Crystal Russell, and Carlos Morales — you are an inspiration. Thank you for blessing me with the sense of purpose that will get me through another year of legal nitpicking and attendant foot-high stacks of discovery...

Author: Kevin B. Elmore - The Law Offices of Kevin B. Elmore, PLLC

The HCBA would like to thank all those who volunteered during Law Week this year.
In family law cases where parenting and timesharing are contested, hearsay evidence is often at issue. This is in part because the court’s analysis of the best interest of the child often requires the consideration of out-of-court statements, but also because courts typically seek to protect children from becoming involved as witnesses in these proceedings. Knowledge of the hearsay rule exceptions will assist family lawyers in determining how to present critical evidence to the court within the bounds of the rules of evidence.

**Spontaneous Statement Exception**

Pursuant to section 90.803(1), Florida Statutes, a hearsay statement may be admissible if it was spontaneous and described or explained an event or condition while the declarant was perceiving it. For example, in a case where a child is subjected to an act of neglect or abuse by one parent and immediately thereafter communicates with the other parent regarding what occurred, the child’s statements to that parent may be deemed admissible under the spontaneous statement exception. However, it is important to note that if the circumstances of a purported spontaneous statement indicate a lack of trustworthiness, the statement may be deemed inadmissible. Therefore, the credibility of the proponent of the hearsay statement is an important consideration.

**Then-Existing Mental, Emotional, or Physical Condition Exception**

Under section 90.802, Florida Statutes, a hearsay statement regarding the declarant’s then-existing state of mind, emotion, or physical sensation may be admissible when it is offered to prove the declarant’s mental, emotional, or physical state at that time. A child’s statements regarding his or her physical or mental state as a result of timesharing with one parent (i.e., “I feel anxious when I spend the night at mom’s house.”) may be deemed admissible. Again, the key to the admissibility of a hearsay statement under this exception is the credibility of the proponent.

**Business Records Exception**

It is often important for the court to review a child’s school or medical records when making decisions regarding parenting and timesharing. These records may be admitted into evidence without the testimony of the declarant if the following requirements of section 90.803(6), Florida Statutes, are met: (1) The record is made at or near the time of the event in question; (2) the record is made by (or from information transmitted by) a person with knowledge; (3) the record was made in the course of a regularly conducted business activity; and (4) it was the regular practice of the business to make such a record. These requirements can be proven through the testimony of a records custodian or other qualified witness. However, the proponent can avoid the need for such testimony by obtaining a written certification in compliance with section 90.902(11), Florida Statutes, from the custodian. The proponent must serve reasonable written notice on the other party that he or she intends to rely on the certification and make the evidence available in advance of offering it into evidence.

**Knowledge of the hearsay rule exceptions will assist family lawyers in determining how to present critical evidence to the court within the bounds of the rules of evidence.**

Author: Katherine C. Scott - Harris & Hunt, P.A.
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CONFIDENTIALITY PROVISIONS IN SETTLEMENT AGREEMENTS

Mediation & Arbitration Section
Chair: Hilary High - Hilary High, P.A.

Confidentiality provisions do not shield settlement agreements from discovery.

C onfidentiality provisions are standard clauses in settlement agreements. The parties have finally reached a resolution, and either one or both of the parties would prefer that the terms of the agreement not become public — whether it’s an amount paid, a right waived, or some other obligation. But what is the confidentiality provision good for? While it certainly binds the parties to the agreement, does a confidentiality clause shield the agreement from discovery requests by nonparties to the agreement? Florida’s courts have made it clear that it does not.

Our district courts of appeal have uniformly held that while confidentiality agreements may be necessary in some instances to facilitate settlement, they may not be subsequently employed by a litigant to obscure issues or otherwise thwart an opponent’s discovery.1 One court reasoned that “[w]hile we recognize and respect strong public policy favoring settlement of disputed claims and policy which dictates that confidentiality agreements not be regarded lightly, we find that to prevent any discovery based upon a settlement agreement would result in a defendant being able to buy the silence of witnesses with a settlement agreement when the facts of one controversy may be relevant to another.”2 The court concluded that “an overzealous quest for alternative dispute resolution can distort the proper role of the court” and that “[s]ettlement agreements which suppress evidence violate the greater public policy.”3

In the context of a plaintiff trying to shield discovery based on the assertion of a privilege, the Florida Supreme Court has similarly held:

It does not follow that the protection of the privilege should be expanded to shield a plaintiff who with one hand seeks affirmative relief in court and with the other refuses to answer otherwise pertinent and proper questions which may have a bearing upon his right to maintain his action. To uphold this inconsistent position would enable the plaintiff to use the privilege as an instrument of attack.4

The court concluded:

Plain justice dictates the view that, regardless of plaintiffs’ intention, plaintiffs must be deemed to have waived their assumed privilege by bringing this action.5

So what are confidentiality provisions in settlement agreements good for? They are good for preventing the parties to an agreement from disclosing the terms of the agreement. A confidentiality clause will not, however, shield the settlement agreement from discovery requests by nonparties to the agreement.

When faced with a discovery request or subpoena for a confidential settlement agreement, the settling party should:
1) determine whether the request or subpoena falls within Rule 1.280 and, if so, 2) request his or her own confidentiality agreement or order from the requesting party and limit the use and disclosure of the settlement agreement to the pending action.

1 See, e.g, Smith v. TIB Bank of the Keys, 687 So. 2d 895, 896 (Fla. 3d DCA 1997); Neiman v. Naseer, 47 So. 3d 954, 955 (Fla. 4th DCA 2010).
2 Scott v. Nelson, 697 So. 2d 1300, 1301 (Fla. 1st DCA 1997).
3 Id. (quoting Kalinauskas v. Wong, 151 F.R.D. 363, 367 (D. Nev. 1993)).
4 Stockham v. Stockham, 168 So. 2d 320 (Fla. 1964).
5 Id. at 322 (quoting Indep. Prods. Corp. v. Loews, Inc., 22 F.R.D. 266, 276 (S.D. N.Y. 1958)).

Author: John A. Schifino - Burr & Forman LLP

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REAL PROPERTY, PROBATE & TRUST LAW SECTION LUNCHEON

The Real Property, Probate & Trust Law Section hosted its final luncheon of the Bar year on May 14. Guest speaker Brandon D. Bellew discussed litigation issues relating to survivorship rights in joint accounts.

The section would like to thank the sponsor:

C1 Bank

A team from the Thirteenth Circuit Pro Bono Committee's Pro Bono Partnership visited Riverview Public Library recently as part of the partnership's Library Education Series. Carter Andersen and J.T. King talked about bringing and defending claims in small claims court, Ari Fitzgerald spoke on how to bring and defend landlord-tenant cases, and Bankruptcy Judge Cathy Peek McEwen presented on home-saving alternatives in bankruptcy.

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When I was shipped off to Fort Jackson for Army basic training in 2007, one of the first lessons I learned was that military members are governed by a different set of laws — The Uniform Code of Military Justice (UCMJ). Under the UCMJ, soldiers can be charged, tried, and convicted of a range of crimes, including common-law crimes such as arson and military-specific crimes such as desertion. It is also possible for a military member to be convicted in both state and military court for the same offense (no double jeopardy). My battle buddies and I were surprised to learn that the UCMJ had some odd laws. One odd law governed intimacy with my wife (I will not discuss that here). The intimacy law has since changed, but there are some other odd laws that still stand.

**Dueling**

There must be some historical reason why the military decided dueling was an issue that had to be dealt with under the UCMJ. The UCMJ defines dueling as: (a) the accused fought another...
ODD LAWS GOVERNING THE MILITARY
Military & Veterans Affairs Committee

Continued from page 68

person with deadly weapons; (b) the combat was for private reasons; and (c) the combat was by prior agreement. The military took this issue so seriously that it decided the maximum punishment should be a dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year.

Drinking liquor with a prisoner
Again, this must have been a serious problem for the military to warrant codifying this law. Actually, I can see a situation where a military member is ordered to guard another brother/sister in arms and decides that having a drink (or 10) with a fellow member is not such a bad idea. The maximum punishment for the “drinking buddy” offense is confinement for three months and forfeiture of two-thirds pay per month for three months.

Indecent language
After serving four years in the military, I had no clue that using indecent language was punishable. It would be interesting to research the history of this law and why it became necessary to punish a military member for “cursing like a sailor.” According to the UCMJ, “‘Indecent’ language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought.” The punishment is worse if it is communicated to a child younger than 16. In such a case, the maximum punishment is dishonorable discharge, forfeiture of all pay and allowances, and confinement for two years. In other cases, the maximum punishment is bad-conduct discharge, forfeiture of all pay and allowances, and confinement for six months.

Abusing a public animal
Public animals include any animals owned or used by the United States. The UCMJ gives an example of military working dogs. Who in their right mind would attempt to abuse a military working dog? They are wonderful, obedient, yet vicious animals (take a tour of MacDill Air Force Base for an exhibition). Anyone stupid enough to do this should get a stiff punishment, but the military decided the maximum punishment is confinement for three months and forfeiture of two-thirds pay per month for three months.

There are other odd laws under the UCMJ that I could not discuss because of the word limitations of this article. Some examples: straggling (never fall back in a march); jumping from a vessel (this must have been a Navy problem); communicating a threat (I wish my drill sergeant in basic training knew this one — he threatened to maim me on several occasions for being stupid). Although I presented these laws as a topic of amusement, I do not mean to make light of the importance of the UCMJ and its necessary role in keeping law and order in the military ranks.

Author:
Robert Stines - Phelps Dunbar LLP
Presenting Florida foreclosure case evidence should be straightforward. However, some of Florida’s more litigious circuits raise the bar for proving a foreclosure case. Evidence requirements routinely include the note, mortgage, payment history, breach letter, assignment of mortgage, affidavits, screen shots of acquisitions and default letters, power of attorney, certificate(s) of merger, corporate name change(s), and information about the platform system used to track payment(s).

To quote The Wizard of Oz, “We’re not in Kansas anymore, Dorothy.”

For loans transferred from one servicer to another during the case, the witness should know the chain of ownership (origination to date of trial) and articulate specific steps to verify information. Section 90.803(6), Florida Statutes (2014), “provides a hearsay exception for records of regularly conducted business activity.” A.S. v. State, 91 So. 3d 270, 271 (Fla. 4th DCA 2012). Businesses rely upon their records “in the conduct of [their] daily affairs” and “customarily check [them] for correctness during the course of the business activities.” Charles W. Ehrhardt, Florida Evidence § 803.6 (2014 ed.).

Personal knowledge is crucial for establishing the reliability and accuracy of prior (servicer) records. Testimony should establish: (1) the proffered document is (was) a true and accurate representation, (2) the proffered document is (was) kept during the course of regularly conducted activities by a person with knowledge of the event or activity, (3) the person making the record had a duty to accurately compile the information, and (4) it is the regular practice to make such a record. Yisrael v. State, 993 So. 2d 952, 956 (Fla. 2008).

“First, the proponent may take the traditional route, which requires that a records custodian take the stand and testify under oath to the predicate requirements.” Yisrael, 993 So. 2d at 956 (citing § 90.803(6)(a), Fla. Stat. (2004)). “Second, the parties may stipulate to the admissibility of a document as a business record.” Id. “Third and finally … the proponent has been able to establish the business-records predicate through a certification or declaration that complies with sections 90.803(6)(c) and 90.902(11), (citation omitted); Hunter v. Aurora Loan Servs., LLC, 137 So. 3d 570, 573 (Fla. 1st DCA 2014); Cayea v. CitiMortgage, Inc., 138 So. 3d 1214, 1217 (Fla. 4th DCA 2014); Holt v. Catchas, LLC, 155 So. 3d 499 (Fla. 4th DCA 2015), sheds some guidance and seems to indicate familiarity with specific record-keeping systems (past and present) is needed. In Bank of New York v. Calloway, 157 So. 3d 1064 (Fla. 4th DCA 2015), the court reaffirmed the introduction of a payment history.

To ensure best practices, always consult with your foreclosure and litigation counsel.

Author: Jennifer Lima-Smith – Gilbert Garcia Group, P.A.

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Reflecting upon our section’s first year, we are grateful for our committees, panelists, moderators, article contributors, HCBA staff, and, of course, our members, whose efforts and participation made our first year a success. Here is the recap.

We held three luncheons. All were well attended (50 to 70 people). Our first, titled “Recent Enforcement Efforts & Current Focus in 2014,” provided an opportunity to interact with civil securities regulators in Florida. Burton Wiand of Wiand Guerra King P.A. moderated our panel, which featured Elisha L. Frank, assistant regional director for the U.S. Securities and Exchange Commission (SEC); Dawn Calonge, surveillance director for the Financial Industry Regulatory Authority (FINRA); Pamela P. Epting, director of the Division of Securities for the Florida Office of Financial Regulation (OFR); and Lee Kell, chief of the Bureau of Enforcement for the OFR.

Our focus turned to the criminal side during our second luncheon, “Pinstripes and Prison-Stripes: Criminal Implications of Securities Enforcement.” Brian Albritton of Phelps Dunbar, LLP, served as moderator. The panel included Andrew Sekela, supervisory special agent for the FBI; Andrew Warren, U.S. Department of Justice Criminal Division, Fraud Section; Michael Williams, Florida Attorney General Office of Statewide Prosecution; and Christopher Cutler, Foley & Lardner LLP, vice chair of the Securities Enforcement and Litigation Group.

Taking a hiatus for a social event, we hosted a Holiday Meet and Greet and a toy drive that benefited the Guardian ad Litem program. Our donors provided heaps of toys, and we raised money for 80 attendees to eat and drink, gratis, thanks to our generous sponsors: The Bank of Tampa; Cole, Scott & Kissane, P.A.; GrayRobinson, P.A.; Wiand Guerra King P.A.; and Heaven Sent Legal-Process Server.

Our last event of the year, “Lunch and Learn: Q&A Session with Our Decision Makers,” allowed participants to meet with those who decide securities matters in state, federal, and appellate court, as well as in arbitration. Moderated by George Guerra of Wiand Guerra King P.A., our esteemed panelists included Hon. Samuel J. Salario, Jr., Florida Second District Court of Appeal; Hon. James S. Moody, Jr., United States District Judge, Middle District of Florida; Hon. Mark A. Pizzo, United States Magistrate Judge, Middle District of Florida; Hon. Herbert Baumann, Jr., Thirteenth Judicial Circuit; and arbitrator Brian G. Mooney.

We would like to extend special thanks to our Regulatory and Litigation Committee members for making all of this possible: Colleen Fitzgerald, Scott Ilgenfritz, Gianluca Morello, Chris Polaszek, Eric Ludin, the Hon. Samuel Salario, Matthew Schwartz, Lonnie Simpson, Dionne Fajardo, Marc Abramson, John Lauro, Mike Matthews, Andrew Warren, Jordan Maglich, John Benson, Joena Bartolini, and Bill Paul.

We are already gearing up for the year ahead with much enthusiasm. As always, we encourage feedback and ideas concerning how to better serve our members (we are up to 141!) in 2016.

Sincerely,
Dominique Heller and Jared Perez
Section Co-Chairs
It has been a banner year for all attorneys in the Hillsborough County Bar Association. However, our section is privileged to report on what must be one of the most outstanding accomplishments. As more than a few of the readers are likely aware, last year the Board of County Commissioners discovered that the law library had become a largely unsupervised entity over the years. A supervisory board — The Law Library Advisors — spawned from that discovery and has labored in cooperation with the county administrator, Library Services, and the impressively dedicated and professional staff of our James J. Lunsford Law Library (just to name a few of the contributors) to take bold and exciting action to carry our law library into a new chapter of its existence. If we have one of the best local Bar associations in the country, why can’t we have one of the best public law libraries?

The law library, which has forever existed on its own, now has all of the resources and leverage of the county. Here are just a few of the developments:

• The law library catalog has been integrated into the public library catalog so that users throughout the county are aware of our holdings. The website has been linked to the Thirteenth Judicial Circuit, Clerk of Court, Bay Area Legal Services, and the Hillsborough County Bar Association’s website, among others.
• There is now Internet and better Wi-Fi access, and the phone system has been transferred to VOIP (to conform with most other county entities).
• The accounting got a scrubbing. The library now procures through the county.
• The library’s staff and security needs have been reviewed and improved to ensure that our hardworking public servants are as safe as possible (and us, too) while they are on the job.
• The library has negotiated the most robust possible Westlaw (no Lexis) package, and it is monitoring the electronic subscriptions each month to determine what is used and what isn’t so that we purchase the products with the most appeal to its core users.
• The library is studying patron visitation to evaluate its hours.

• And if you did not know — the law library now offers five-day checkouts of complete sets of continuing education CDs from The Florida Bar. The late-fee structure was just changed so that after the five days, if the set has eight CDs, it will be $8 per day. It still works out to be $1 per day per CD, but now you can have more than one CD at a time. Please be mindful of your neighbors!

Library Services, which oversees the county’s entire library system, could not be more excited to add this jewel to the library system. It is hoped that the law library will, through careful and measured steps, eventually provide greater access to its resources through all of the local public libraries. There could even be law library substations in those public libraries serving the county’s other large populations centers.

All of these developments position the passionate servants of our law library and Library Services to fulfill their mission with more enthusiasm and more energy. This is a great moment for our law library. You should stop by and see for yourself.

Author: James A. Schmidt - James A. Schmidt, P.A.
LEADERSHIP INSTITUTE DONATES SCHOOL SUPPLIES, VISITS MACDILL

Members of the HCBA Bar Leadership Institute partnered with the Hillsborough Education Foundation and Yoobi to deliver school supplies to students at Shore Elementary on April 9. Then on May 15, the class visited MacDill Air Force Base for a tour.

Thank you to the institute’s sponsor:
Recently, the Florida Supreme Court issued two opinions with regard to offers of judgment made pursuant to Florida law: *Pratt v. Weiss*, 161 So. 3d 1268 (Fla. 2015), and *Audiffred v. Arnold*, 161 So. 3d 1274 (Fla. 2015).

In *Pratt v. Weiss*, two defendants claimed they were a “single offeror” and their liability was “coextensive” even though they were separate entities. The court found that despite their coextensive liability, when the two defendants made an offer of judgment, they needed to have apportioned the total amount as between each of them, so that the plaintiff could know how much he would receive from each entity. From the *Pratt* case, we learn that when evaluating offers of judgment made before 2011, if two defendants will be dismissed, both defendants need to make the offer and apportion the total amount between them. Since 2011, however, Rule 1.442(c)(4) allows unapportioned joint offers of judgment to be made by or served on a party when that party is alleged to be solely vicariously, constructively, derivatively, or technically liable.

In *Audiffred v. Arnold*, the court invalidated an unapportioned offer of judgment that was made by a single plaintiff, when that offer really should have been made by both the plaintiff and her husband (who had a consortium claim), and held that the offer should have apportioned the total amount between the plaintiff and her husband. If the *Audiffred* offer of judgment had worked as intended, both the injured plaintiff and the consortium plaintiff would have dismissed their claims in exchange for a single payment from the defendant to just the injured plaintiff. In the disputed offer of judgment, the two plaintiffs offered the defendant the opportunity to buy peace with two plaintiffs for the price of one (essentially offering a bonus or incentive to the defendant). These types of offers had been supported by prior case law, and some district courts of appeal had approved similar offers by defendants. The *Audiffred* decision holds that this type of bonus offer from plaintiffs is not enforceable for fee-shifting purposes. It also expressly disapproves of the district court cases that allowed similar offers by defendants. The direct lesson from *Audiffred* is that an offer of judgment made by one plaintiff that involves dismissal of itself and another plaintiff is going to be construed as a joint offer of judgment that must be apportioned. Like *Pratt*, *Audiffred* relates to offers served before the 2011 amendment to Rule 1.442. Going forward, we will simply need to rely on Rule 1.442 to determine whether the total amount of an offer of judgment from two offerors must be apportioned.

These cases demonstrate that the Florida case law relating to offers of judgment and proposals for settlement is constantly shifting. Because new cases continually adjust the application of the offer of judgment statute and rule, it is important to continually review offers of judgment in light of the changes in the law.

*Author: Ellen K. Lyons - Carlton Fields Jorden Burt, P.A.*
AROUND THE ASSOCIATION

Erin Smith Aebel, a partner at Shumaker, Loop & Kendrick, LLP, spoke at the invitation of Nex tech at a national seminar for health care providers on February 27 at the Disney Swan Resort. Erin discussed “Patient Privacy Check Up: How to Keep Your Practice Out of HIPAA Hot Water.” Aebel also spoke to the Tampa Chamber of the Professional Association of Physician Office Managers on March 18 about physician contract negotiations and health law compliance. Aebel focuses her practice on health care and data breach.

Mustafa Ameen, of the Law Office of Ameen & Shafii, joined the teaching ranks at Western Michigan University (WMU) Thomas M. Cooley Law School’s Tampa Bay campus in May. Ameen serves as an adjunct faculty member and teaches Florida Drunk Driving Practice.

Eric N. Appleton, a shareholder at Bush Ross, was recently certified by the Florida Supreme Court as an Appellate Mediator. Appleton has been certified by the Supreme Court of Florida as a Circuit Court Mediator since 2011. Appleton’s law practice focuses on assisting commercial and residential community association officers, directors, and property managers, as well as developers and real estate owners, with litigation, arbitration, mediation, and corporate matters.

Steven M. Berman and J. Todd Timmerman, partners at Shumaker, Loop & Kendrick, LLP, were guest lecturers at the University of Florida College of Law Advanced Bankruptcy Seminar on March 20. Berman and Timmerman spoke about intellectual property claims in bankruptcy. Berman focuses his practice as a business bankruptcy litigator, and Timmerman focuses his practice on intellectual property, litigation, and appellate law.

Claire Bailey Carraway has rejoined Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., as a shareholder in the Tampa office. Carraway’s practice areas include commercial real estate, environmental law, and land development and zoning.

Joseph P. Covelli, a shareholder at GrayRobinson, has been awarded an “AV Preeminent” rating by Martindale-Hubbell, signifying the highest accolade an attorney can receive for legal ability and adherence to professional standards of conduct, ethics, reliability, and diligence. Covelli is a real estate attorney at the firm.

Maria del Carmen Ramos, a partner in the Tampa office of the law firm of Shumaker, Loop & Kendrick, LLP, has been appointed to a three-year term on The Florida Bar’s Judicial Administration and Evaluations Committee, which is concerned with obtaining and retaining qualified judicial officers, as well as making judicial offices more attractive to qualified attorneys. Ramos, who devotes a substantial portion of her practice to counseling clients on immigration and employment issues, was also invited by Rep. Kathy Castor to attend the Family Defender Orientation, which was a discussion to better educate state partners on the new guidelines of President Obama’s executive actions on immigration accountability and the resources available in the Tampa Bay area. Ramos was also invited by the International Visitor Leadership Program to speak to a delegation of distinguished visitors from Russia as part of the Labor Migration and Migrant Adaptation Program. In addition, Ramos was selected to be part of Class III of The Florida Bar Wm. Reece Smith, Jr. Leadership Academy as an Academy Fellow. The academy’s mission is to identify, nurture, and inspire effective leadership within The Florida Bar and the legal community.

Christian Givens, a partner at Givens Givens Sparks, PLLC, has been named to the 2015 list of the Nation’s Top One Percent by the National Association of Distinguished Counsel. NADC is an organization dedicated to promoting the highest standards of legal excellence. Givens focuses his practice on family law.

Andrew Jenkins, a shareholder at Bush Ross, P.A., was recently elected to serve a three-year term on the firm’s board of directors. His practice focuses primarily on commercial finance, secured lending, mergers and acquisitions, and general corporate law.

Rhea L. Law of Buchanan Ingersoll & Rooney received the 2015 “Most Powerful and Influential Women of Florida” award, a recognition that highlights high-ranking female executives in various industries who exhibit the

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AROUND THE ASSOCIATION

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tenacity it takes to excel in their field. Law was honored April 30 at the Sixth Annual Florida Diversity and Leadership Conference in North Miami. Law serves as chair of Buchanan Ingersoll & Rooney’s Florida offices and is a member of the board of directors. She focuses her practices in the areas of government, environmental law, and land use.

Jamie Moore Marcario has joined Greenburg Traurig PA as an associate with the firm. Marcario focuses her practice on labor and employment law, with an emphasis on defending employment discrimination, harassment, wrongful termination, retaliation, and civil rights cases in state and federal courts.

Suzette M. Marteny, a partner in the Tampa office of Shumaker, Loop & Kendrick, LLP, hosted and was a panelist at World IP Day Detroit on April 23. The seminar focused on music and other areas, such as inventions, processes, and trade names. Marteny is a registered patent attorney and assists companies and individuals in obtaining, leveraging, and litigating patents, trademarks, copyrights, and trade secrets.

Victoria McCloskey, a shareholder at Bush Ross, was recently elected president of the Hillsborough Association of Women Lawyers. McCloskey’s practice focuses on health care defense litigation and general civil trial matters.

Kristin A. Norse, a shareholder at Kynes, Markman & Felman, P.A., was sworn in as president of the Florida Association for Women Lawyers at FAWL’s annual gala on June 24, in conjunction with the annual meeting of The Florida Bar. The mission of FAWL is to actively promote gender equality and the leadership roles of FAWL’s members in the legal profession, judiciary, and community at large. Norse has also been appointed vice chair of the Appellate Court Rules Committee of The Florida Bar. Norse concentrates her practice in the area of civil appeals and litigation support in state and federal courts.

Andrew E. Peluso, an associate at Hill Ward Henderson, was selected for the 2015 Emerge Tampa Bay Leadership Team, chairing the Public Policy Committee. The committee is in charge of cultivating awareness for Emerge Tampa Bay members and encouraging them to have a voice on issues and policies affecting Greater Tampa Bay. Peluso’s practice primarily focuses on general commercial litigation.

Paul Pizzo, Of Counsel with the firm of Buchanan Ingersoll & Rooney, was recently installed as the president of the University Club of Tampa. Founded in 1946, the University Club is Tampa’s oldest business lunch club. Pizzo is a certified mediator by the Florida Supreme Court. He focuses his commercial litigation practice on contract claims, trusts and estates litigation, and health care, transportation, real estate, partnership, and shareholder disputes. Hala Sandridge, co-managing partner at the firm, will also be serving on the board of directors. Sandridge is board certified in Appellate Practice and chair of the firm’s Appellate Practice Group. She focuses on all facets of civil appeals.

Patrick J. Poff, a shareholder at Trenam Kemker’s Tampa office, was one of four attorneys nationwide elected to the 12-person Governing Committee of the American Bar Association’s Forum on Construction Law at its April 16 national program in Boca Raton. Poff is the immediate past chair of the forum’s Division on Insurance, Surety and Liens and will serve a three-year term on the Governing Committee. Patrick is a Florida board-certified construction lawyer and chairs his firm’s Construction Law Industry Team.

Laura Prather has joined Jackson Lewis P.C. as a managing shareholder at the Tampa office. Prather specializes in the representation of management in all facets of labor and employment law.

Matthew Ransdell has joined Jackson Lewis P.C. as an associate with the firm. Ransdell focuses his practice on labor and employment law.

Cynthia N. Sass of the Law Offices of Cynthia N. Sass, P.A., a Tampa labor and employment law firm, spoke at an event hosted by The College of Labor and Employment Lawyers on January 24 regarding settlement negotiation strategies and the recent legal challenges to confidentiality, cooperation, and non-disparagement provisions.

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AROUND THE ASSOCIATION

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Sass also participated in the live webinar “Advanced E-Discovery: Database Issues in Employment Cases,” sponsored by the American Bar Association on March 11, and at the 2015 Midwinter Meeting of the Employment Rights and Responsibilities Committee of the American Bar Association’s Labor and Employment Law Section’s presentation, “To Catch a Thief: Prosecuting, Defending and Insuring Claims for Cyber Espionage,” on March 27.

Jason Stearns of Phelps Dunbar has been chosen by The Florida Bar to be a member of Class III of The Florida Bar Wm. Reece Smith, Jr. Leadership Academy for the 2015-2016 year. The leadership academy is a one-year training program designed to bolster the selected academy fellows’ professional development, leadership skills, knowledge, and experience. Stearns practices in the area of complex commercial litigation.

Lawrence Ingram, a partner at Phelps Dunbar LLP, provided a seminar to the staff and management of Northeast Underwriters, a St. Petersburg independent insurance agency. The subject of the seminar was Florida law regarding insurance agents and was based on Ingram’s almost 25 years of representing Florida’s independent insurance agents.

John V. Tucker, founding shareholder with Tucker & Ludin, P.A., presented a lecture at the National Organization of Veterans’ Advocates conference in San Francisco titled “Getting the VA to Accept Standard Vocational Principles.” Tucker focuses his practice on disability insurance, ERISA, and veterans’ service-connected disability benefits.

Katherine Earle Yanes, a shareholder with Kynes, Markman & Felman, P.A., received the Florida Association for Women Lawyers’ 2015 Leader in the Law Award at FAWL’s annual gala on June 24, in conjunction with the annual meeting of The Florida Bar. Yanes has also recently been appointed to The Florida Bar’s Federal Practice Committee. Yanes concentrates her practice in the area of criminal defense and appellate law in state and federal courts.

Hill Ward Henderson and Tampa Bay WaVE have announced their partnership through Hill Ward Henderson’s support of the FirstWaVE Accelerator Program. The firm will speak to startups during the “Legal Series” workshops that will help them move forward with their ideas, companies, and obtaining outside capital for continued growth.

GrayRobinson, P.A., has been named one of Tampa Bay’s 2015 “Top Workplaces” by the Tampa Bay Times. GrayRobinson employees nominated the firm and were surveyed about several topics, including practices and policies that make these companies the top places to work.

Greenberg Traurig has signed a 10-year lease for 20,000-plus square feet of “Class A” space, occupying the entire 19th floor of the Bank of America Plaza building. The deal is one of the largest in Tampa this year, based on square footage. Greenberg Traurig will occupy its newly designed and constructed offices this fall.

Kelley Kronenberg, a national, full-service law firm, is expanding its reach into the Florida market with the addition of a Bankruptcy Practice Group. The new group, which joined the firm’s Tampa office in April, is the result of Kelley Kronenberg acquiring Dennis LeVine & Associates, a bankruptcy law firm in Tampa, and its team of attorneys and administrative staff. The new Bankruptcy Practice Group includes Dennis J. LeVine, David E. Hicks, and Alison V. Walters.

Western Michigan University Cooley Law School’s Tampa Bay campus held its first Florida graduation ceremony on April 19. Some 115 students who earned their juris doctor degrees were presented with diplomas during ceremonies at the University of South Florida’s Marshall Student Center. The campus began holding classes in May 2012.

For more HCBA news, go to www.facebook.com/HCBAtampabay. To submit news for Around the Association, email Corrie Benfield at corrie@hillsbar.com.
For the month of: February 2015
Judge: Hon. Scott Stephens
Parties: Matthew Hoffman v. Keith Knutsson, Integrale Investments LLC, and PCGL, LLC
Nature of case: Breach of contract, fraudulent inducement, and conveyance. Former real estate partners allegedly breached buyout agreement.
Verdict: Net verdict for Keith Knutsson for $4,200,000; verdict for Matthew Hoffman against Integrale Investments LLC (no assets) for $4,665,582.18. Fees, costs, and interest to be determined.
Note: This is a correction of misprint in the last issue.

For the month of: March 2015
Judge: Honorable Rex M. Barbas
Parties: Matthews vs. SEMCO Inc.
Attorneys: For plaintiff: Steve Yerrid and David D. Dickey; for defendant: Dan Shapiro, Randall West, and Katie Smith
Nature of case: Building construction; failure to properly prepare building site, causing collapse into foundation.
Verdict: Plaintiff awarded $64,500,465.60

Comparative negligence against each party: zero plaintiff, 10 percent employer

For the month of: April 2015
Judge: Hon. James M. Barton II
Parties: Rafael Ramos-Lopez v. SeaWorld Parks & Entertainment LLC d/b/a Busch Gardens
Attorneys: For plaintiff: Todd Long and Loves Camarena; for defendant: Robert L. Bland and Carie L. Hall
Nature of case: The plaintiff claimed an actor pushed a steel barrel into his leg at Howl-O-Scream at Busch Gardens while performing a scare, allegedly injuring his leg, lower back, and neck and requiring a two-level back surgery.
Verdict: $274 in past medical expenses; $1 past pain and suffering; $1 in future pain and suffering

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