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This issue’s cover celebrates one of Hillsborough County’s beloved annual events — the Gasparilla Invasion of the Pirates and Parade, which is celebrating its 103rd anniversary this year on January 25. Presented by Ye Mystic Krewe of Gasparilla, this year’s parade will boast over 140 units — including more than 103 elaborate floats, five marching bands, and over 50 distinct Krewes! Hundreds of thousands of residents and tourists attend the parade and related Gasparilla events every year, making January and February a busy season in the region. Pictured on the cover is the Jose Gaspar, the world’s only fully-rigged pirate ship, which annually leads the pirate invasion that begins the annual parade down Bayshore Boulevard and into downtown Tampa. Photo courtesy of Visit Tampa Bay, 2016.
FORECLOSURE DISBURSEMENTS: WHO REAPS THE FINANCIAL REWARDS?
Real Property, Probate & Trust Law Section by Caroline Johnson Levine

ERASING THE PAST WILL BE HARDER IN THE FUTURE
Securities Section by Eric Feld & Josef Rosen

VIRTUAL MEDIATION/ARBITRATION
Solo & Small Firm Section by Anthony J. Garcia

THE TRIAL PENALTY AND THE DISAPPEARING CRIMINAL JURY TRIAL
Trial & Litigation Section by Katherine Earle Yanes

WORKERS’ COMPENSATION CASELAW UPDATE
Workers’ Compensation Section by Anthony V. Cortese

VETERANS TREATMENT COURT: A LESSON IN LEADERSHIP
Bar Leadership Institute by Julia Kapusta

MENTORING MATTERS
Diversity & Inclusion Committee by Joeline J. Hardrick & Brielle F. Tucker

LAW WEEK CELEBRATING THE 100TH ANNIVERSARY OF THE 19TH AMENDMENT
Law Week Committee by Natasha Khoi

NEW LAW GIVES AGENT ORANGE PRESUMPTIONS TO VIETNAM NAVY VETERANS
Military & Veterans Affairs Committee by John V. Tucker

2019 THIRTEENTH JUDICIAL CIRCUIT PROFESSIONALISM AWARDS
Professionalism & Ethics Committee by Hon. Frances M. Perrone

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Hillsborough County Bar Association

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17th Annual Judicial Food Festival & 5K Pro Bono River Run

Saturday, February 29, 2020
On the grounds of the Stetson Tampa Law Campus

10:30 A.M. ~ 5K RACE START
11:30 A.M. ~ JUDICIAL FOOD FESTIVAL

For more information about race registration, food booths and sponsorship opportunities, visit www.hillsbar.com.
A popular meme going around lately states, “Can you believe the year 2000 was 20 years ago? Which is strange, because 1980 was also 20 years ago.” It feels distinctly strange to be welcoming not only a new year, but a new decade. The great news, however, is a new decade brings with it the opportunity to not only reflect on the past 10 years, but also really focus on a vision for this year and beyond. What is your 2020 Vision?

Whether you work in private practice at a small or large firm, government service, or the non-profit sector, be sure to take some time to build your plan for the next year, the next five years, and the next decade. Where is your practice going and how will you get there? What

What is your 2020 Vision?

With the ever-growing number of attorneys in Florida, having a strong vision for your future is more important than ever.

Continued on page 5
steps do you need to take to accomplish those goals? Remember, “a goal is a dream with a deadline,” as Napoleon Hill once wrote. Find your vision, then figure out what it takes to get there, step by step. Then put those goals on paper and get them on your calendar. Even if you don’t get to set the course for your employer, create your own personal business plan and set the course for your life.

With the ever-growing number of attorneys in Florida, having a strong vision for your future is more important than ever. In 1980, there were only approximately 27,000 lawyers in Florida, but by 2000 that number had grown to 60,900 and by December 2019, there were 89,407 attorneys eligible to practice in Florida. That is a lot of lawyers, but there is a lot of need to be met. Find your niche and work toward it.

This issue of Lawyer magazine is chock full of both reflection and vision. Our Executive Director’s article explores the growth and changing demographics of our profession (p.14), and President Grace Yang also explores the changing face of the HCBA (p.8). Don’t miss the State Attorney’s column discussing progress toward justice reform and implementation of Marsy’s Law (p.16). Join us in celebrating the vision and professionalism of the 2019 Thirteenth Judicial Circuit Professionalism Award winners, Jennie Granahan Tarr and John Schifino (p. 62).

Explore the future of virtual mediation with the Solo Section (p.68). And be sure you know the way the law is developing in your area — the Appellate, Intellectual Property, Real Property, Securities, Military and Veterans Affairs, and Worker’s Compensation articles this issue all explore important developments in their respective areas of the law.

Mentorship is always key to bringing forward the next generation of lawyers, and the Diversity & Inclusion Committee article this issue (p.48) brings with it a wonderful story of mentorship and the benefits of the Diversity Access Pipeline program.

And finally, don’t forget that part of the magazine’s self-reflection relies on you to help us identify our most popular and moving covers for the past 30 years. Be sure to check out this issue’s selection of best covers from 2001-2005 (p.76).

As Napoleon Hill also said, “[s]et your mind on a definite goal and observe how quickly the world stands aside to let you pass.” Wishing all of our readers success in 2020 and beyond.

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TO BE ADDED TO THIS LIST, PLEASE EMAIL A LIST OF ATTORNEYS IN YOUR FIRM TO STACY@HILLSBAR.COM.
As the president of the Hillsborough County Bar Association, I have observed and learned about so many good deeds in our community. We should all take pride in and thank our fellow members who work diligently on important matters for their clients in order to make a living and also show immense dedication and care to others.

Our generous members came together during the holiday season in great ways. We donated toys, clothes, and other presents to children and elderly wards of the state. We fed meals. We donated and collected food and other much needed supplies to those with less in our community.

The good work continues through the year. Members speak to students during the Great American Teach-In, lead classes on tours at the Edgecomb Courthouse, and conduct mock trials to determine if Goldilocks trespassed in the bears’ home and if Jack went up the beanstalk and stole from the giant. Other members volunteer in the Wills for Heroes program.

Grateful for Our Members
Who Give Selflessly to Others

May 2020 be a happy, healthy, and wonderful year for you all.

Thank you to HCBA members, who generously donated to Toys for Tots at our Holiday Open House.

Continued on page 9
Continued from page 8

and help veterans and first responders. HCBA members show up to read to elementary school kids in the Read to Dream program and educate classes in civics lessons and different aspects of the law.

Our HCBA Young Lawyers Division has fantastic, enthusiastic members who plan Steak and Sports Day, Cornhole for a Cause, and backpack stuffing school supply drives. Our Community Services Committee always welcomes volunteers and financial support for service projects, including the Pirate Plunder Party at A Kid’s Place, a foster care facility for abused, abandoned, and neglected children.

* * * * *

Our legal community continues its strong commitment to pro bono service, helping low-income residents with important legal needs. The Florida Supreme Court and The Florida Bar give special recognition at the beginning of each year to lawyers, groups and members of the judiciary who have freely given their time and expertise in ensuring access to justice for those who otherwise could not afford it. On January 30, HCBA member Jenay Iurato will be honored with the Florida Bar President’s Pro Bono Service Award for the Thirteenth Circuit for her pro bono efforts on behalf of human trafficking victims. We are grateful to her and so many others who have selflessly provided crucial help to many who need it.

To learn more about pro bono opportunities in our area that would be a good fit for you, visit www.hillsbar.com/page/ProBono.

Our members so frequently participate in such good projects that this column cannot possibly mention them all and give due credit. Divisive rhetoric and hurtful actions concern me. Let us remind ourselves that we can be from many diverse life backgrounds but still be able to come together in support of worthy projects.

Open yourselves to conversations with other people from different backgrounds and perspectives. Learn, grow, and work together. Care for others around you and remember to make time to care for yourselves, too. May 2020 be a happy, healthy, and wonderful year for you all.
Halfway There, But Still Time to Engage with the YLD

If you have not yet joined a committee or attended any YLD events, it is not too late. The winter and spring months are often the “busy months” for the YLD.

We are only at the halfway point for the YLD’s Bar year, but the YLD has already made its mark with great events such as its pro bono luncheon, fall happy hour, holiday happy hour, annual golf tournament, and first wellness event of the year. YLD members showed up in droves to support great causes and network with other young lawyers, and the YLD’s many committees have been hard at work planning the year’s various events.

Even if you have not yet joined a committee or attended any YLD events, it is not too late. In fact, the winter and spring months are often the “busy months” for the YLD, and this year is no exception. If you still want to join a committee but you missed the initial sign-up, here is some information on the remaining events and who to contact to get involved:

The Member Services Committee is planning more wellness events and will host the Coffee at the Courthouse and Judicial Shadowing Day on January 28, as well as supporting the 5K Pro Bono River Run and Judicial Food Festival on February 29. The main contacts are co-chairs...
Sean Bevil, Brittany Bird, Nicole Gehringer, and Giovanni Giarratana, and board liaisons Hannah Becker, Alex Palermo, and Lyndsey Siara.

The Professionalism and Ethics Committee will host the State Court Trial Seminar in June. The main contacts are co-chairs Donald Greiwe, Amanda Keller, and Matthew Parrish, and board liaisons Harold Holder and Sara Peacock.

The Youth Projects Committee will host Holidays in the New Year and Steak & Sports Day in the next few months, both benefiting underprivileged youth in the community. The main contacts are co-chairs Cory Brandfon, Kyle Holmes, and Avila Zepp, and board liaisons Hannah Becker and Tiffany McElheran.

The Long-Range Planning Committee primarily prepares applications for grants and awards to other organizations on behalf of the YLD. The main contacts are co-chairs Rebecca Arends and Kendra Lyman, and board liaisons Lyndsey Siara and Suketa Shah.

The Events Committee will host Spring and Summer Happy Hours, as well as Cornhole for a Cause benefitting Big Brothers Big Sisters of Tampa Bay. The main contacts are co-chairs David Kalteux, Jason Imler, and Courtney Turnquist, and board liaisons Zachary Bayne, Rick Duarte, and Drew McCulloch.

The Pro Bono Committee will continue its support of the Family Forms Clinic, iLawyer, and other pro bono projects. The main contacts are co-chairs Jeffrey Cox, Nicole Del Rio, and Kaley Ogren, and board liaisons Linda Anderson Stanley, Zachary Bayne, and Jason Whittemore.

The Law-Related Education and Law Week Committee will host Law Week in March and the Judge Robert Simms High School Mock Trial Competition in February. The main contacts are co-chairs Dane Heptner and Natasha Khoyi, and board liaisons Katelyn Ferry and Traci Koster.

As you can see, there are still plenty of opportunities for involvement, and now is the time to plan ahead. Follow the YLD on social media, stay informed, get involved, and I hope to see you at an event soon.

---

January 8, 2020  
Diversity Membership Luncheon, Hilton Tampa Downtown

February 29, 2020  
5K Pro Bono River Run/Food Festival, Stetson University College of Law Tampa Campus

May 12, 2020  
Law Day Membership Luncheon, Armature Works

May 21, 2020  
Law & Liberty Dinner, Hilton Tampa Downtown

Learn more about HCBA events at www.hillsbar.com.

STAY CONNECTED
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DAVID KNIGHT, ATTORNEY AT LAW
DavidKnight@davidknightlaw.com
(813) 784-8056
212 S. Magnolia Avenue, Tampa, Florida 33606

KNOWLEDGE • EXPERIENCE • JUDGEMENT
YLD Pro Bono Luncheon

The Young Lawyers Division held a special luncheon on October 30 to raise awareness among its members regarding the many pro bono opportunities available within local agencies. The event was a great success with more than a dozen agencies in attendance. Thank you to everyone that attended!
ABA’s Enlightening 2019 Profile of the Legal Profession

“It’s really distressing that the percentage of women equity partners has barely budged over the [past] decade.”

— Roberta Liebenberg, Former Chair, ABA Commission on Women in the Profession

The American Bar Association recently published a noteworthy report on the current state of the legal profession.

The “ABA Profile of the Legal Profession” is a 100-page compendium of legal statistics and trends, and it provides a useful — albeit sometimes glaring — snapshot of the profession.

It includes sections on demographics, wages, law schools, pro bono work, women in the profession, legal technology, and lawyer well-being.

Released in conjunction with the ABA’s 2019 Annual Meeting in San Francisco last August, then-ABA President Bob Carlson said the first-of-its-kind report is “valuable for anyone who wants to understand where the legal profession came from and where it stands today.”

In remarks preceding a special panel discussion about the report, Carlson talked about the “extraordinary transformation” of the legal profession over the years.

He highlighted the progress the legal profession has shown in many areas, such as on diversity issues, but he conceded, “the legal profession evolves very slowly.”

Carlson noted that when he first became a lawyer in 1979, there were about 500,000 lawyers in the U.S., and only 1 in 12 were women.

And today, he said, there are more than 1.3 million lawyers nationally, and more than a third of lawyers are women.

As an aside, the Florida Bar reports there are currently more than 106,000 lawyers in Florida.

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And a further breakdown in the numbers shows there are more than 7,000 attorneys in Hillsborough County.

The ABA report says Florida showed the largest increase in the number of lawyers since 2009 at 28 percent, with Texas next at 22 percent, and then New York at 19 percent.

Regarding diversity, the report says the percentage of lawyers who are racial or ethnic minorities grew slowly over the past decade.

Collectively, the number of minority lawyers nationally grew three percent in the past 10 years, from 12 percent of all lawyers in 2009 to 15 percent in 2019.

The percentage of female attorneys increased slowly over the past decade as well, from 31 percent in 2009 to 36 percent today.

The ABA study also says that although nearly 50 percent of all law school graduates have been female since 2000, the number of females in senior leadership roles of law firms has been largely stagnant for at least a decade.

Overall, the number of female equity partners at law firms is 19 percent, which is only up four percent from 15 percent in 2012.

“It’s really distressing that the percentage of women equity partners has barely budged over the [past] decade,” said Roberta Liebenberg, former chair of the ABA’s Commission on Women in the Profession during the panel discussion.

“It is very clear that the culture and structure of law firms, as well as implicit biases, impact the ability of women to attain equity partner in commensurate percentages as their male counterparts,” Liebenberg said.

One alarming trend, Liebenberg said, is the “dramatic stampede” of women leaving the practice of law as they move into their 50s, a time when they should be at the height of their career.

Liebenberg attributed this attrition of senior female lawyers to various factors, including: the lack of access to business development opportunities, caretaking commitments, the level of stress at work, and the number of billable hours.

She also noted the dissimilar levels of satisfaction women receive for the recognition they receive for their work, and the methods by which compensation is determined.

Some other facts from the ABA report:

• 52 percent of American lawyers surveyed in 2018 provided pro bono services the previous year, with the average lawyer working 37 hours.

• 28 percent of the lawyers surveyed in 2016 say they struggle with depression, and 21 percent of lawyers qualify as a problem drinker, more than triple the rate for the general population at six percent.

• In 2018, 23 percent of lawyers say their law firm has experienced a computer breach, but only 34 percent law firms have cyber liability insurance.

• After several years of decline, law school applications in 2018 were up 7.6 percent from the previous year.

• The average law school graduate had $145,500 in student loan debt in 2016.

If you are interested seeing the full report, you can access it on the ABA’s website at www.americanbar.org/profile.

See you around the Chet.
2019 Year in Review: Criminal Justice Reform Continues in Hillsborough County

Every milestone achieved reflects the hard work of our nearly 300 dedicated public servants and collaboration from our incredible criminal justice partners in Hillsborough County.

We continued to reshape our criminal justice system in 2019. We remain focused on aggressively prosecuting criminals who threaten public safety while finding smarter approaches to steer low-level offenders away from the system. We have implemented strategic, problem-solving approaches that build a safer community while promoting justice and fairness for all. I am pleased to report on the following:

Civil Citation Programs

Working with our criminal justice partner agencies, we have expanded the list of eligible offenses for the juvenile arrest diversion program to include family violence (e.g., sibling against sibling). We have also increased the use of our jurisdiction’s adult arrest diversion program to nearly 1,200 citations a year, a significant increase since 2018. Both programs are useful methods to hold low-level offenders accountable while minimizing the taxpayer resources that would otherwise be necessary to prosecute these types of crimes.

Victims’ Rights

Our state constitution now includes rights for victims of crime — also known as Marsy’s Law. We have updated our victim assistance program to include these recent changes in the law. From victim notification of court appearances to training our staff, to working with other stakeholders, our jurisdiction continues to lead the way in providing support for victims of crime and ensuring their voices are an important part of the criminal justice process. Over the past year, we provided nearly 400,000 victim notifications. Each notification allows a

Continued on page 17
victim to know the procedural steps being taken and how they may be heard during our prosecution of the case.

Community Outreach
In honor of Veterans Day, our office hosted a specialized expungement clinic for the men and women who selflessly served this country. More than 200 citizens completed the fingerprinting, application, and notarization of the sealing and expunction process. Hillsborough County is the only judicial circuit in Florida that has offered these services at no cost. With support from our community partners, we have provided critical services valued at $700,000 to help our fellow citizens move beyond past mistakes.

We launched the SAO Business Academy, a first-of-its-kind program in this county to engage community business leaders with our Office’s work — specifically, to develop an awareness of the challenges facing our criminal justice system.

Transparency
We reached a critical milestone in the FIU/MacArthur research project with the completion of the second in a series of reports entitled, “Race, Ethnicity, and Prosecution in Hillsborough County.” We presented this report during an insightful community conversation with key stakeholders and the media. The next and final stage of this project is the development of Prosecutorial Performance Indicators (PPIs) that will allow our team to redefine success and track the performance of this office beyond conviction and crime rates.

Every milestone achieved reflects the hard work of our nearly 300 dedicated public servants and collaboration from our incredible criminal justice partners in Hillsborough County. We are working tirelessly to advance our core mission of public safety by holding offenders accountable, protecting victims, ensuring transparency, and responsibly using taxpayer dollars. Thank you for your continued support of our work.
The Happiest Day of the Year

84 children were awaiting a permanent adoptive home in Hillsborough County, as of October 31, 2019.

How many court hearings result in everyone leaving with a smile, or even tears of joy? Well, on National Adoption Day, everyone is happy! Each year we celebrate this event, but this year was particularly joyous. November 15, 2019 was our biggest celebration ever!

I was the Emcee of Adoption Rocks!, which was the theme of the day. Mayor Jane Castor, County Commissioner Sandy Murman, and Secretary of the Department of Children and Families Chad Poppell offered personal remarks, which speaks to the importance of this occasion. In all, 61 children were adopted into 39 forever families. Judges Katherine Essrig, Jack Espinosa, Robert Bauman, Kim Hernandez Vance, and Thomas Palermo presided over the adoption hearings. The children celebrated with teddy bears, backpacks full of goodies, face painting, balloon animals, and cake. The Edgecomb Courthouse became the Happiest Place in Hillsborough County, if only for a day.

National Adoption Day is celebrated in the Thirteenth Circuit as part of a national effort to raise awareness about the children awaiting adoption from the foster care systems in the United States. It began in 1976 when Massachusetts Governor Mike Dukakis announced the first Adoption Week, which grew in popularity

Continued on page 19
nationwide. In 1984, President Ronald Reagan proclaimed the first National Adoption Week; and in 1995, President Bill Clinton expanded the recognition to the entire month of November.¹

84 children were awaiting a permanent adoptive home in Hillsborough County, as of October 31, 2019. The Heart Gallery of Tampa² is a great place to learn more about the local children who seek an adoptive parent or family. Please help me spread the word with family and friends to optimize awareness.

Adoption Rocks! ■

² https://heartgallerytampa.org/our-kids/
Meet the Judge: Judge Barber Goes “Off the Record”

When it comes to professionalism, criminal is much more civil than civil.

We are pleased to present an “off the record” interview with the Honorable Thomas P. Barber, who was confirmed as a District Judge on the Middle District of Florida on June 12, 2019. The interview has been edited slightly for clarity.

Q: Judge, I understand you were born in Pittsburgh. Can you tell us a little about your background and how you ended up in Florida?

A: My family moved to Florida before I started school, so I grew up in South Florida, went to kindergarten through high school there ... and then the University of Florida undergrad. I went to law school in Pennsylvania. I thought that going to law school in the northeast would open up a lot of other doors, and I just kind of wanted to see what opportunities presented themselves outside of Florida because I wasn’t sure what I wanted to do. But I got an offer from a Tampa law firm and that’s why I ended up here.

Q: Have you always wanted to be a lawyer or is that something that occurred later in life?

A: I was always interested in civics and government and politics and debate ... and not so interested in math! So my interests kind of led me in that direction.

Q: Your background as a lawyer is somewhat unique. You started in private practice at a large firm, then served as Assistant State Attorney for the Thirteenth Judicial Circuit, and then worked as a Statewide Prosecutor for a couple of years, finally returning to the same commercial firm. What inspired you to seek out those changes during your career?

A: I always wanted to do some type of public service. I talked to the JAG Corps about maybe going into the military and then decided not to do that. I was at a point where I had my student loans paid down, and I also

Continued on page 21
wanted to get trial experience. So that’s why I decided to make a switch, and I got a lot of trials as a prosecutor and was able to get some public service in.

Q: Was there any particular experience as a private practitioner that stood out and that you enjoyed the most?

A: I always enjoyed the cases that had some kind of an international flavor to them, including the one that you and I worked on with the Germans. And I had a case involving a guy who was providing television service in Saudi Arabia. Then he got charged by the religious police for showing pornography — *Charlie’s Angels* reruns. [laughs] So any kind of case that had a little international flair always was interesting to me.

Q: You were appointed to the County bench by Governor Bush in 2004. When and why did you decide to become a judge?

A: I didn’t have any moment when a bright light turned on. It seemed like an interesting job to me because as lawyers we were always specializing in one type of case, and the judges had the option of doing a lot of different kinds of cases. That interested me a lot.

Q: I see from your judicial profile that you served in the Criminal Division when you were on the County Court bench. Did your prior prosecutorial experience help prepare you for that role?

A: Because I’d worked at the State Attorney’s Office, in County Court I was able as a judge to hit the ground running. I knew all the issues, I knew the lawyers, and it was a pretty easy transition because of that background.

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Q: You also taught for several years at Stetson Law School. What course did you teach there?
A: I still do — I did last night. I teach Trial Advocacy. We learn the basics of opening statements, questioning witnesses, admitting evidence and cross-examination. I think when you teach something, it helps you be sharp and stay on top of things ... Rules of Evidence, stuff like that.

Q: In 2008, you were appointed to the Circuit Court by Governor Crist, where you spent time handling civil, probate, and family law matters. Did you enjoy handling non-criminal matters?
A: Yeah, I've always liked the different types of law. That's one of the good things about federal court — the cases are different. It's not the same thing every day. But in state court, I always gravitated back to doing criminal cases because the criminal lawyers almost always get along with each other; they like each other. It's a very pleasant professional world. If we were criminal lawyers, I could just call you on the phone and say “Mike, you know, I need another 30 days on this,” and you would probably say “Fine” and that would be the end of it. On the criminal side of things, it's very professional, very pleasant. It's actually enjoyable to practice law for the most part on the criminal side of things. So when it comes to professionalism, criminal is much more civil than civil.

Q: Do you think that's because these criminal lawyers are coming into contact with one another on a more regular basis?
A: Absolutely. They know each other; they've worked together for years. Nobody wants to get a reputation for being dishonest or unethical because they know everybody's going to see each other again on another case very soon. And that's one of the things I've been thinking about in connection with doing more hearings in Federal Court. Hearings build some familiarity, build some regular contacts. I think that helps professionalism ... regularly seeing the judge, regularly seeing the lawyers, is good for everybody.

Q: Can you point to any unique or really challenging case during the time you were on the State bench?
A: Yes, there's one that comes to mind. It was in family law involving custody of a boy who was about ten years old. I think my son was about that age at the same time. The boy had been raised by his grandparents essentially and the grandpa had just died, so it was kind of sad. And for whatever reason, his mother, who had not been part of his life, decided to come in, take him back from the grandma, and raise him. Although the grandparents were the only parents he ever really knew, I was required to turn the custody over to the mother since Florida law doesn't really give grandparents any kind of permanent rights. But the little boy did not want to go. I was asked to meet with him, which I didn't do a lot of, but I did with him. The boy came to my office, and he brought his report cards, certificates from school, and good citizenship awards, and awards from Cub Scouts. He was crying and he said basically, “I've done everything right, why do I have to leave my grandma?” And that was a very hard case because all I could really tell him was, “That’s what the law requires.”

Q: That raises an interesting question. I’m sure as a judge, you’re sometimes conflicted between what you’d like to do and what the law compels you to do.
A: Yes. That happens a lot. But you just have to accept the fact that the law is the ultimate authority, not you and what you want to do. It comes up fairly regularly where you have to do things you don’t necessarily agree with.

Q: You also wrote a couple of articles about judicial elections, including an article published here in the Lawyer magazine, entitled Maintaining the Integrity of Judicial Elections. Can you tell us a little about your experience with the judicial election and campaign process?
A: That’s something I’ve just always been interested in: Judicial selection, appointments, elections, how all that works. I was involved in a couple of people’s campaigns when they were running for judge, and I’ve kind of kept my eye on how all that works. It’s interesting to me.

Q: Did you enjoy campaigning?
A: I enjoyed campaigning very much for other people. [laughs] I am glad I did not have to run myself. Because running for judge is very, very hard, and very time-consuming.

Q: You were nominated for the federal bench by President Trump in 2018 and enjoyed the support of both Florida Senators from different parties — which some might say is rather unusual in today’s political climate. Do you have any views on the state of affairs today regarding the confirmation process for federal court appointees?
A: I’d say it’s too politically focused for District Court nominees. The people in Washington are focused on the issues that might come before the Supreme Court or maybe the Circuit Court of Appeals. But that’s not what we are doing at the District Court. They are looking at...
Continued from page 22

one thing, and we’re doing something totally different. The day-to-day job of a District Judge involves hardly any of the political concerns that they have.

Q: You received your Federal Judicial Commission in 2019 and have been on the federal bench now for several months. What would you say is the biggest difference between serving as a State Court Judge and a Federal District Court Judge?

A: The volume of cases is much, much higher in state court. I was literally in court every day in State Court ... not so in Federal Court. And the other thing is as a State Judge, you’re really almost totally on your own. You don’t have any staff other than your judicial assistant. With Federal Court, you have three law clerks, plus other staff attorneys that all help you. So as a Federal Judge, you’re almost managing a staff; as a State Court Judge, you are usually the only person on the front line.

Q: Everyone knows that federal practice is much more paper-driven than State Court practice. What would you say are the pluses and maybe even the minuses of the federal approach?

A: The pluses are that the issues are thoroughly researched and explained in detail. I’d say the minus is sometimes over-kill — it’s a simple issue, but the lawyers make it much more complicated than it really is.

Q: You’ve already mentioned that you will oftentimes entertain oral argument even though usually in federal court, motions are decided solely on the papers. What determines whether you will hear argument on a motion?

A: Well, so far, my practice has been to pretty much hold hearings on almost all motions that involve any kind of a legal issue or anything other than a “no-brainer,” like a simple motion for extension of time, or something like that. And I found that holding hearings actually saves me time because I’m able to talk with the lawyers about what’s really going on in the case and focus on the issues that they need to have answered so that they can move forward with the case.

Q: Are there issues that are brought before you on a regular basis that you wished the lawyers would resolve on their own without judicial assistance?

A: Yes, nobody likes discovery disputes. The Magistrates handle those. If I had to handle those, I would say that I would be frustrated with that. I think law can be practiced with a minimal amount of discovery disputes, and that’s always the struggle.

Q: You’ve been on the state and federal bench for a combined total of about fifteen years now. How does a judge maintain good judicial temperament — what keeps you grounded?

A: I think if you enjoy the job and you enjoy what you are doing, that’s not a problem — it’s not hard to stay grounded because you look forward to going to work every day.

Q: I assume most judges don’t want to get reversed on appeal. Do you follow closely appeals of your rulings?

A: I just assume everybody is going to appeal everything, and the only time I really pay attention to it is if it’s a reversal. And then I read it and find out what it was that I did wrong. What always surprises me about those cases though is the issue or issues that the Court of Appeals drills into is frequently something that we may only have spent a minute or two on. That’s what ends up being the main issue on appeal, but things that we may have fought at length about are not usually the issues that come back on appeal.

Q: What advice would you give to a lawyer who might be thinking about pursuing a judicial career?

A: I think it’s important to get experience in as many different areas as possible. It would be great to have civil and criminal, but if you can’t do that, at least whatever area you are in, to get as broad of an experience as you can. Because when you are a judge, you might be asked to do things you’ve never even heard of.

Q: I noticed on your bio that you’ve been involved in the Cheatwood Inn of Court, the Smith Inn of Court, and also the Herbert Goldberg Criminal Inn. Do you think young lawyers should consider becoming involved in an Inn of Court?

A: I think it’s a great idea ... not necessarily for the substantive programs, but just to meet people and see examples of older lawyers as good role models.

Q: Judge, how have you been able to balance the demands of your career with your personal life?

A: As a judge, you don’t have to be constantly worried about deadlines and client demands so it’s a lot easier to balance your personal life frankly as a judge than it was as a practicing lawyer. That’s being honest.

Continued on page 24
Q: I understand that music has played an essential role in your life ... going all the way back to your days as a trombonist with the Marching Band at UF. Do you still play?
A: Yes, I play for fun at home regularly and it's just been something I've always enjoyed doing and I still enjoy doing. My daughter plays the string bass, my son plays the trombone, and my wife plays the piano. So sometimes we'll put together a little 30-second quick little Christmas song as a group, just for fun.

Q: What else do you like to do to relax and have fun when you're away from the office?
A: I like to travel. I've been to 49 states and six continents. I still need to go to Oregon and Africa. But that's something that I like to do in my free time. And I've been pretty involved in kids' activities also, Boy Scouts, Youth Orchestra, swimming with my daughter. But they are older now; she just started college, and my son's a junior in high school, so I'm doing less of that.

Q: Any of your vacation trips stand out in particular?
A: Yes, the trip we did this summer to Poland, where we visited Auschwitz. That was pretty moving to see what was really going on there.

Q: Last question, Judge — what have you found to be the single most fulfilling aspect of your distinguished legal career?
A: I think as a judge you have the ability to learn how things work from the inside, so if you are doing a business case, you learn how a particular business works. If you're doing a family law case, you can learn how a dysfunctional family works and might fix its issues or not. If you're doing a criminal case, you learn what criminals are thinking and why they do what they do, and why the police do what they do. So that's what is most fulfilling to me is to learn about all these different aspects of our world from the inside, as opposed to watching from the outside.

Author: Mike Hooker - Phelps Dunbar LLP

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**SPECIAL FEATURE**

by Mike Hooker - Phelps Dunbar LLP

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**CHARLES W. ROSS, ESQ.**

**CERTIFIED CIRCUIT AND FEDERAL MEDIATOR**

- Florida Supreme Court Certified Mediator for Circuit Civil, Federal, and Appellate Mediations
- Civil Trial Lawyer since 1979; Martindale-Hubbell attorney rating—AV
- Graduate of Harvard Law School Advanced Mediation Program for Lawyers (2001)
- Selected for Membership in Florida's Legal Elite and Best Lawyers in America
- Member of National Academy of Distinguished Neutrals and American College of Civil Trial Mediators
- Handled over 4,000 mediations including commercial litigation, construction claims, employment disputes, business torts, personal injury lawsuits
- No travel charges for Florida mediations
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**CHARLES W. ROSS, ESQ.**

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Judge Maker noted
“Martin and Whitmire —
like dysfunctional family members — appear to be hopelessly in conflict.”

In 1976, Floridians adopted a constitutional amendment altering the appellate structure of the state and strengthening the district courts of appeal.1 The Florida Conference of District Court of Appeal Judges petitioned the Supreme Court to address issues that arose from the amendment. Justice Overton wrote to address these issues: “[T]he suggestion that each three-judge panel may rule indiscriminately without regard to previous decisions of the same court is totally inconsistent with the philosophy of a strong district court of appeal … [I]n most instances, a three-judge panel confronted with precedent with which it disagrees will suggest an en banc hearing. As an alternative, the district court panel could, of course, certify the issue to this Court for resolution.”2

Remarkably, forty years later, whether one three-judge panel can expressly overrule or recede from a prior decision of another three-judge panel remains a point of contention. Recently, the First District Court of Appeal appears to have done just that in a series of cases that conflict with prior precedent. In *R.J. Reynolds Tobacco Co. v. Martin*, 53 So. 3d 1060 (Fla. 1st DCA 2010), R.J. Reynolds argued that “[P]laintiff failed to prove the reliance element of her fraudulent concealment claim because she put on no direct evidence showing [decedent] relied on information put out by the tobacco companies omitting scientific findings on the harmful effects of smoking.” Id. at 1069. The court disagreed because, “the record contain[ed] abundant evidence from which the jury could infer [decedent’s] reliance” on such information. Id.

Yet in both *R.J. Reynolds Tobacco Co. v. Whitmire*, 260 So. 3d 536 (Fla. 1st DCA 2018) and *R.J. Reynolds Tobacco Co. v. Prentice*, 44 Fla. L. Weekly d2603 (Fla. 1st DCA Oct. 24, 2019), divided First District panels appear to have expressly overruled or receded from *Martin*, each with a dissent by Judge Makar. As Judge Makar explains, the First District now requires, “proof that a plaintiff-smoker detrimentally relied on a specific false statement to prevail on a fraudulent concealment theory versus proof of detrimental reliance on inaccurate representations that withheld or concealed material information.” *Prentice*, 44 Fla. L. Weekly d2603. Judge Maker noted, “Martin and Whitmire — like dysfunctional family members — appear to be hopelessly in conflict.” *Id.*

Because “[c]onsistency of law within a district is essential to avoid unnecessary and costly litigation,” *Rule 9.331*, 416 So. 2d at 1128, the intra-district conflict created by decisions following *Martin* could have, and should have, been avoided. As the wisdom of Justice Overton advises, the *Whitmire* and *Prentice* panels should have suggested an en banc hearing or certified the issue to the Supreme Court for resolution. Practitioners, who rely on consistency in the law, should seek to aid the courts in carrying out this responsibility by requesting an en banc hearing or certification when faced with unfavorable precedent, rather than simply urging the Court to recede from prior opinions in this unhealthy manner.1

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2 *In re Rule 9.331*, 416 So. 2d 1127, 1128 (Fla. 1982).

Author:
Kurt J. Rosales -
Vaka Law Group

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Appellate Section Luncheon/CLE

The Appellate Section held an informative luncheon on October 22 with the judges of the Second District Court of Appeal. Thank you to the four judges who kindly participated: Judge Darryl C. Casanueva, Judge Daniel H. Sleet, Judge J. Andrew Atkinson, and Judge Andrea Teves Smith. The panelists discussed how they approach their jobs and their preferences and tips for brief-writing, motions practice, and oral argument.

The Appellate Section appreciates its Luncheon sponsor:
The members of the Bar Leadership Institute attend monthly modules that are designed to teach us how to become effective leaders in our community. After I spent a morning observing Judge Michael Scionti preside over the Veterans Treatment Court with my BLI Class, I walked away with a better understanding of the qualities that it takes to be a successful leader. I believe everyone could benefit from sitting in on Veterans Treatment Court, but for those who do not get the opportunity to see it firsthand, I want to share how Judge Scionti and the veterans going through the program exemplified two important qualities for any leader: compassion and accountability.

Compassion.
Judge Scionti made it clear that the Veterans Treatment Court is not a court of punishment and that compassion is not a sign of weakness. He demonstrated this by empathizing with the veterans instead of merely sympathizing with them. Because he works hard to understand their unique struggles, he also shares their elation when they make progress in the program; he made a point of asking a veteran about his dog and congratulating another veteran for obtaining housing. This is not to say that Judge Scionti is not hard on the veterans when they do not put in the effort to change their behavior; however, he understands that leading by fear is not the most effective strategy. I learned that leaders are more successful at getting results out of others when they treat them with kindness and encouragement instead of judging them by their mistakes. In turn, the veterans were more willing to take responsibility for their actions.

Accountability.
The most uplifting part of the morning was watching the graduation of veterans who successfully completed the program. Judge Scionti offered each of them the opportunity to speak to their fellow veterans in the program, understanding that people often learn best from others who have walked in their shoes. One remark from a young, soft-spoken veteran struck me the most: he told everyone in the room to stop complaining because no matter what they have experienced, someone else has had it worse. Left unsaid was the implication that in order to grow, you must take responsibility for your actions and stop blaming your circumstances. Likewise, as a leader, it is important to understand that you are responsible not only for the successes of the group, but also the disappointments. If you are unwilling to shoulder the blame when things go wrong, you do not deserve the credit when things go right. The veteran’s words

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were met with a round of laughter, but to me, and I’m sure many others, they left an impact.

Overall, I learned that lessons in leadership can be learned not only from those that we expect, like Judge Scionti, but also those that we may overlook, like the veterans going through the program. I look forward to learning more lessons from unexpected places in this coming year.

Author: Julia Kapusta - Second District Court of Appeal
How many times have you come dangerously close to an impasse because one spouse cannot pull the trigger? You watch settlement options go down, costs go up, and her fear — and his frustration — go through the roof.

Leading a client to settlement under these circumstances is risky at best.

Hiring a financial planner can help the less financially savvy spouse get comfortable enough with the future to make a decision in the present. Suddenly, you’re not to blame for suggesting she sell the house; instead, an advisor, working only for her, presents a clear picture of each option long-term, and she chooses. She now sees the value of what you negotiate. Both clients avoid court while reducing delays, costs, and surprises after settlement.

To avoid mistakes, here’s what the team may want to look for in an aligned financial planner:

✓ **Divorce Specialist.** Financial planning in divorce is far more sensitive than, for example, college planning for the typical family of four. Your clients chose family law specialists, not dabblers. Find a financial advisor who has similarly dedicated the firm to divorce.

✓ **Experience and Credibility.** Look for someone who has served in divorce cases, even pro bono; taken collaborative law training; attends AAML certification review courses for a basic understanding of the law; or even completed mediation training. Do they know what factors into alimony — and what doesn’t? Are they proficient with the schedules? Did they earn the Certified Divorce Financial Advisor credential? How have they worked with each attorney?

✓ **A Clean Record.** Recently, I was brought into an ultra-high net worth case to help the wife manage her money. Our federal background check revealed that the family’s broker had seven claims lodged against him, alleging unsuitable investments. He was later the subject of news reports, accused of making a political donation in an attempt to wipe his record clean. Go to brokercheck.com before hiring help for your clients.

✓ **Hourly Fees.** Advisors tied to brokerage houses often cannot charge hourly fees; instead, they bank on managing the client’s money after divorce. How much pressure does that put on your client at an already sensitive time? Hire someone focused on giving your client the best planning advice during divorce; no conflicts, no commissions, no strings attached.

✓ **Fiduciary.** Attorneys are fiduciaries; shouldn’t the advisor be? Not all financial advisors are required to put your client’s interests first. Select a Certified Financial Planner,™ who must act as a fiduciary.

✓ **The Reason Why.** Why divorce? Did the advisor focus on this yesterday? Are they chasing any money in motion? What history and personal commitment does the advisor’s website reflect?

✓ **Professionalism.** Seek someone who knows how to stay out of the team’s way, not make the client positional, and propose options rather than an irrational or unrealistic settlement.

The best teams work together to select the qualified financial planner who can help resolve the case, creating more confident clients who now see their way to success.

**Author:** Tina Tenret, CFP, CDFA - The Tenret Company
Environmental Law and Land Use Section Luncheon/CLE

The Environmental Law and Land Use Section received an update from the City Attorney’s Office at their luncheon on November 6. The panelists — City Attorney Gina Grimes, Deputy Assistant City Attorney Andrea Zelman, and Assistant City Attorney Cate Wells — discussed new and improved processes, organizational structure, new laws and regulations, and services that their office provides. Thank you to our panelists for taking the time out of their busy schedule to participate in this luncheon.
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Lawyers with Heart Team Joins Annual Heart Walk

Thank you to the local legal community members who participated in the annual Tampa Bay Heart Walk on November 9 with the Lawyers with Heart team, co-chaired by attorneys Jeanne Tate and Bob Fulton. The event is a non-competitive walk that supports the work of the American Heart Association and encourages people to take steps toward a healthier lifestyle. Congratulations to the Lawyers with Heart Team, who raised over $100,000 for the second consecutive year.
YLD Golf Tournament

The HCBA Young Lawyers Division had a great turnout for its annual golf tournament on October 11. More than 90 golfers came out for the YLD's signature fundraising event at the Temple Terrace Golf & Country Club. Congratulations to the winning team from U.S. Legal Support: Dan Bittle, Matt Luka, Wes Trombley, and Frank Miranda.

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

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(Left) Colleen Flynn, Joan Vecchioli, Rachael Wood

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23rd Annual Bench Bar Conference, Membership Luncheon & Judicial Reception

The HCBA Bench Bar Conference, Membership Luncheon & Judicial Reception enjoyed record attendance yet again this year as more than 500 attorneys, judges, and other legal professionals came out for a day of great CLE programming and networking on October 3.

The Conference featured breakout sessions on effective advocacy and legal strategies regarding offers of judgment, on Florida’s newly adopted Daubert expert witness criteria, and on recent U.S. Supreme Court decisions and the upcoming term. At noon, the Membership Luncheon featured Thirteenth Circuit Chief Judge Ronald Ficarrotta and Second DCA Chief Judge Nelly Khouzam. The judges spoke on the significant changes that have occurred in the court system over the past few decades, as well as providing an update on future projects. The Hillsborough County Bar Foundation also presented seven local charities with checks totaling $120,000. In the afternoon, the attendees enjoyed the ever-popular “View To and From the Bench” panel discussions with the local judiciary, and a well-attended “View from the Box” jury panel feedback session.

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

The HCBA would like to thank the members of the Bench Bar Committee and all of the event’s sponsors for making this conference possible.

Photography is courtesy of Thompson Brand Images (www.thompsonbrandimages). Thank you also to TCS for providing A/V assistance and signage at the conference (www.trialcs.com). Thompson Brand Images and TCS are benefit providers for the HCBA.

Additional photos from the event are available at www.facebook.com/HCBATampabay.
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Joe Theismann is an entrepreneur and the former star quarterback for the Washington Redskins. He spent the last two decades working for ESPN on their NFL broadcast and the NFL Network. The former Washington Redskins quarterback joined ESPN in April 1988, reuniting with play-by-play voice, Mike Patrick. Theismann joined ESPN after spending two seasons as an NFL analyst for CBS Sports.

A 12-year NFL veteran, Theismann played in 163 consecutive games from 1974-1985 and holds Redskins' records for passing yardage (25,206), completions (2,044) and attempts (3,602). A two-time Pro Bowl selection, Theismann led Washington to a 27-17 victory over the Miami Dolphins in Super Bowl XVII.

Theismann was selected the NFL’s “Man of the Year” in 1982 for his community service and dedication to the health and welfare of children. He won the league’s 1983 “Most Valuable Player” Award for leading the Redskins to an NFL-recorded 541 points and a second consecutive Super Bowl appearance.

Theismann also oversees a popular Washington, DC restaurant that bears his name. He is also the author of The Complete Idiots Guide to Understanding Football Like a Pro. He was named the recipient of the 2013 Walter Camp Football Foundation “Distinguished American” Award.

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Adopt-A-Veteran Initiative

The Community Services Committee once again coordinated donations of basic necessities from HCBA members for its annual Adopt-A-Veteran initiative, in honor of Veteran’s Day. The program supports homebound veterans living in foster care through the James Haley Veterans Hospital. Thank you to everyone that donated items!
Construction Law Section Luncheon

On November 14, the Construction Law Section held a luncheon to discuss the timely issue of cybersecurity in today’s workplace. Thank you to Michael Hooker and Jason Pill of Phelps Dunbar for providing insight on this topic to the attendees.

The Construction Law Section appreciates its luncheon sponsor:

Criminal Law Section Luncheon/CLE

The Criminal Law Section held a luncheon on October 31, featuring guest speaker Maria Chapa Lopez, the U.S. Attorney for the Middle District of Florida. Ms. Lopez gave an update on the state of the Middle District and discussed her office’s recent activities. We appreciate Ms. Lopez taking the time to speak to our membership!
Construction defect disputes are often complex matters. The evaluation of repair costs and the proper allocation to responsible parties is an important process that often needs to be addressed as part of the dispute resolution. To date, there is little to no consensus for the method of allocating responsibility and costs to implicated parties.

Over the past several years, our firm has consulted in the evaluation of construction defects and cost of damages for multi-party construction disputes. Through this work, we have developed a standard method to allocate repair costs to implicated parties.

Identify the defect issues

The first step in the allocation process is to identify the defective conditions that are the basis of the claim. This process should follow well-established standards to investigate and develop forensic evidence supporting the allegations being raised. The result must include a well-organized listing of deficiencies that will provide a basis to subdivide the claim.

Identify the responsible parties

Responsible parties are identified by review of the project records, including subcontractor agreements or other supporting documentation, that link a party to defective work. Responsible parties are assigned a percentage of responsibility for each deficiency based upon their contractual responsibility, as well as the effect their work had on the defective condition.

Calculate the cost of repair

The cost of repair may be derived from actual costs incurred or from a cost estimate of work yet to be performed.1 The total project cost must be assigned to all defects.

A complex claim may have multiple cost categories. While some items of costs can be assigned entirely to one defect, other costs may require further breakdown by the assessor.

An example of a complex breakdown of costs is the replacement of a wall system due to multiple defective conditions. In this case, costs are divided among defect categories by considering the portion or area of the overall system impacted by the defect.

Other costs such as project overhead or special equipment can be allocated based upon the defect’s percentage of the overall cost or percentage of a subset of costs that share an item.

Allocate the repair costs to the responsible parties

A party’s allocation of the total project cost can be calculated by multiplying the cost per defect by each party’s percentage of responsibility for a given defect category.

While there could be other valid methods to allocate responsibility and damages, the scientific methods summarized in this article are a reasonable and equitable approach. Any application of this, or any other, allocation method should be used in conjunction with sound professional judgement.

1 The method of review, documentation and validation of the repair cost is not the focus of this article. Methods such as AACE International Recommended Practice No. 31R-03 or other recognized methods may be used for this procedure.

Authors: Gary L. Keene, Michael S. Klimas & John C. Jahreis - Keene Klimas Consultant Group, LLC
In the legal profession, entering into a new endeavor is like learning to swim. You can either jump right in and figure it out, or take baby steps, learn the strokes, and stay afloat. With either option, like swimming, it’s most effective when you have someone there to help motivate you, direct you, and see to it that you reach your goal. That person is a mentor.

A meaningful mentorship relationship requires trust and compatibility. In many different firms and organizations, mentors are assigned based on common interests, experiences, diversity, or practice areas. Other mentoring relationships, like many of mine, form organically. No matter how the relationship is formed, the key is the ability to have someone available for professional guidance or even personal advice. Today, mentorship is often talked about in tandem with the phrase “sponsor.” A sponsor is a person, often one who has obtained a higher level of success within your profession, who advocates for you when you’re not in the room.

* * *

Joseline: I was so pleased to serve as a mentor to Brielle as she embarked on her career. Her story shows the power of building these kinds of relationships and is worth reading.

Brielle: I was blessed to enter into the profession with mentors who have been instrumental in my professional development. I met Joseline while interning at the federal courthouse during law school. While I was only at the courthouse one day a week, she made sure the experience was completely worth it by giving me tips on legal writing, showing me how to become a more persuasive writer, and allowing me to tag along during events for law clerks.

From there I went on to become one of the first scholars in the Diversity Access Pipeline, Inc.’s Pilot Scholarship Program, a program led by Joseline. While interviewing for the program, I met my first sponsor, Judge Catherine P. McEwen. When we first met, I did not know I would soon become a bankruptcy attorney at Bush Ross, P.A. Later, when she swore me in to The Florida Bar, we reminisced about our first encounter. A few weeks later, when an opportunity presented itself to assist Judge Colton’s chambers as a temporary law clerk, Judge McEwen thought of me and encouraged me to apply. Now I serve as a federal judicial law clerk. As I reflect on my years in law school, I know that having met Joseline as a mentor and having her advice and guidance led me to this seat. Even writing this article came about through our mentorship relationship.

* * *

As someone once said, “you can’t cross the sea merely by standing and staring at the water.” There is a sea of opportunities within our profession. Some you know because you’re in the right place at the right time, and others because someone led you to them. With the help of strong mentors, you won’t have to just stare at this sea. Not only, can you cross it, but you will have someone swimming beside you, and that will just make you more eager to get across and help the next swimmer along.

Authors:
Joseline J. Hardrick - WMU-Cooley Law School & Brielle F. Tucker - U.S. Bankruptcy Court, Middle District of Florida
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The patent statutes say that “any new and useful process, machine, manufacture, or composition of matter, or any new useful improvement thereof” may be patented. Sounds simple enough, right? Most would agree that laws of nature, such as gravity, cannot be patented. But what about the discovery that a mutation of a particular gene indicates a greater chance of developing certain types of cancer? Or a diagnostic test that checks whether a patient has that particular gene mutation? What about processes, such as financial transactions, that have been done manually for generations, but are now performed using computers? If the question of patent eligibility doesn’t sound so simple anymore, you’re not alone.

For the last 20 years, courts have struggled with this question. In 1998, the Court of Appeals for the Federal Circuit effectively decided that business methods and software are patent-eligible if they involve some practical application. That decision opened the flood gates for the next ten years, as the U.S. Patent & Trademark Office began issuing software and business method patents at an incredible rate. Then in 2008, the Federal Circuit and the Supreme Court began reigning in these types of patents. In subsequent cases, the Supreme Court has articulated a two-part test that considers whether the invention is “directed to” an abstract idea, and if so, whether the invention includes an “inventive concept” beyond the abstract idea itself. This test, which blends the seemingly separate questions of eligibility and novelty, has led to strong disagreements among the lower courts and invalidated patents on inventions that would have been deemed eligible a decade ago.

For example, in October 2019, a divided Federal Circuit panel found that a method of manufacturing automobile driveshafts in a way that reduces vibration is not patent-eligible. In July 2019, the full Federal Circuit declined, by a 7-5 vote, to review a panel decision finding that a diagnostic test for an autoimmune disease is not patent-eligible. The Federal Circuit judges wrote eight separate opinions, largely agreeing that the diagnostic test should be patent-eligible, but disagreeing over whether Supreme Court precedent allows it to be patented. Several judges explicitly called for the Supreme Court to clarify the patent-eligibility standard, while others called for a legislative solution. And Congress has taken notice — Senators Thom Tillis and Chris Coons have drafted a bill to address patent-eligibility, an issue the senators called “both urgent and critical.” In addition, multiple patent eligibility decisions have been appealed to the Supreme Court, giving the Court opportunities to clarify the issue. While it is unclear what will happen in Congress or at the Supreme Court, what is clear is that the current state of the law on patent eligibility is not sustainable.  

3 See e.g., In re Bilski, 545 F.3d 943 (Fed. Cir. 2008).
4 See Alice Corp. v. CLS Bank Int’l, 573 U.S. 208 (2014).
6 See Athena Diagnostics, Inc. v. Mayo Collaborative Servs., 927 F.3d 1333 (Fed. Cir. 2019).

Author: Ryan M. Corbett - Burr & Forman LLP
Intellectual Property Section Luncheon/CLE

The Intellectual Property Section held an informative luncheon on October 31, with presentations by special guest speakers Dineen Wasylik of DPW Legal, Shaunette Stokes of Stokes Law Group, and Stetson University College of Law Professor Darryl Wilson, who spoke on intellectual property appeals, applications & Alternative Dispute Resolution (ADR).
Recently, the Section hosted a program on emerging electronic evidence issues. The presentation highlighted how advances in, and increased use of, technology has created interesting legal issues in the context of workplace disputes. As a supplement to that presentation, this article covers practical concerns practitioners should consider when advising clients on navigating social media-related employment questions.

Hiring

Individuals regularly use social media platforms such as Facebook, Instagram, Twitter, LinkedIn, etc., to post about their personal and professional lives. And, a 2018 CareerBuilder survey indicated that 70 percent of employers use social media in hiring and another 43 percent use it to check current employees.¹ As a general proposition, neither federal nor state law prohibit an employer from looking up an employee on social media sites or through a Google search. Thus, prospective and current employees should be warned that their social media posts could provide legitimate reasons for an employer not to hire them into a role. Yet, employers should be advised that checking social media is not without risk and could lead to discrimination in hiring claims. Through social media, employers may learn information regarding a candidate’s race, age, religion, or other protected classifications, that may not otherwise be known.

Ultimately, given the prevalence of social media use, practitioners should be aware that any litigation over a hiring decision is likely to involve social media postings. Practitioners should advise clients of the pitfalls from both the employee and employer perspective that could defeat a claim or blow a defense.

Discipline

Social media posts can also cause problems for employers and employees alike as it relates to discipline. Employees should be advised that social media posts can in certain instances be fair game for employer action. Employers should be warned that, if they choose to monitor social media activity of employees, they must do so consistently and be sure not to retaliate against protected speech or lawful off-duty conduct. That being said, certain off-duty conduct should be addressed to the extent it violates company policies prohibiting discriminatory or harassing behavior towards co-workers or otherwise interferes with the workplace. Indeed, if an employer learns that an employee is harassing a co-worker on social media, the employer may be liable for creating a hostile work environment if it does not address the issue. An employer’s response to harassment through social media should be consistent with the response to harassment in other contexts.

The bottom line is that social media posts can be used by employees to show an employer’s inaction and can be used by employers to show that an employee behaved badly. As such, the value of social media postings should not be ignored in company policies, pre-suit considerations, or discovery.

Social media considerations in the employment context are more far-reaching than the scope of this article. Practitioners should continue to watch ongoing developments in this area to properly advise clients and to effectively litigate claims in our current technological climate.


Author: Claire Meharg - Fisher & Phillips
Labor and Employment Section Luncheon/CLE

On November 6, the Labor & Employment Law Section met to discuss trends in electronic evidence. The featured speaker on the topic was Adam Sharp, president and CEO of E-Hounds, Inc. and Data Recovery Labs, Inc. The section appreciates Sharp taking the time to speak to the group.

The Labor and Employment Section also thanks its luncheon sponsor:

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For more information, go to hillsbar.com or call (813) 221-7780 or email HCBA’s Lawyer Referral & Information Service at lris@hillsbar.com.
Thanks to All of our FOX 13 Ask-a-Lawyer Volunteers!

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

- Mark Edelman
- Larry Samaha
- Dale Appell
- Nehemiah Jefferson
- Betsey Herd
- Lynn Hanshaw
- Rinky Parwani
- Tom Hyde
- Joe Southron
- Chip Waller
- Stan Musial
- Dane Heptner
- Richard Alexander
- Michael Broadus
- Alan Borden
- Deb Baker
- Dennis Meyers
- William Caughlin
- Stephen Shaiken
- Luby Myrthil
- Jennifer Hamey
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- William Schwarz
- Rick Duarte
- Valentina Wheeler
- Erik DeL’toile
- James Giardiana
- Matthew Smith
- Kemi Oguntebi
- Kari Metzger
- Justin Infurna
- Klodiana Hysenlika
- John Brewer
- Keith Ligori
- John Mulvihill
- James Falkhory
- Robert Strickland
On August 26, 1920, the Nineteenth Amendment to the United States Constitution became law and granted women the right to vote. In celebration of this victory, perhaps Carrie Chapman Catt most poignantly articulated the significance of what it meant to have the right to vote:

“The vote is a power, a weapon of offense and defense, a prayer. Understand what it means and what it can do for your country. Use it intelligently, conscientiously, prayerfully... Progress is calling to you to make no pause. Act!”

The Nineteenth Amendment secured the right to vote for women, but the principles of equality and the significance of voter participation that were expressed during the fight for women’s suffrage are just as significant today. In honor of 100 years of women’s suffrage, and in an effort to educate others about this very important Amendment, its contributions to notions of equality, and the significance of the right to vote.

Law Week will take place this year from March 9 through March 13. Law Week is an opportunity for attorneys of all ages and experience levels to give back to the community and interact with local schools, students, and teachers. The HCBA YLD’s Law Week Committee, headed by co-chairs Dane Heptner and Natasha Khoyi, have organized three activities for volunteer attorneys to participate in: classroom discussions, courthouse tours, and mock trials.

Attorneys that provide courthouse tours lead groups of students through courtrooms and other areas of the courthouse to give them a sneak peek of the rule of law in action. Meanwhile, classroom speakers travel to a local school to lead a class or group of students in a discussion on the law and answer student questions. Finally, attorneys who participate in mock trials will team up and present the entertaining and renowned case of everyone’s favorite lumberjack, Paul Bunyan. These events offer attorneys the opportunity to step away from the monotonous blue light of their computer screens, and instead, help educate students, while reminding participants of the rights and freedoms we are afforded in this country (as well as the fight for them).

If you are interested in learning more about Law Week 2020 or volunteering, please contact Young Lawyers Division Law Week Committee Co-Chairs Dane Heptner (Dane@USALaw.com) or Natasha Khoyi (NKhoiy@FordHarrison.com).

Author: Natasha Khoyi – FordHarrison LLP

Mark Your Calendars for Law Week 2020!
This first day cover and stamp from 50 years ago celebrated the 50th Anniversary of voting rights for women.

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PROFESSIONALISM IN FAMILY LAW
Marital & Family Law Section
Chair: Katherine Scott - Harris, Hunt & Derr, PA

An adversarial family law system raises the stakes unnecessarily high, exacerbates the antagonism of the couples concerned, and is directly responsible for making it impossible for couples who would otherwise have reconciled to do so.”
— Louis de Bernieres

Family law is a unique, emotionally-charged area of law, because it involves extremely sensitive disputes. Due to the emotional nature of these cases, family lawyers must make an extra effort to resolve them expeditiously to provide families with stability.

Family lawyers must avoid the contentious, personal issues that arise during family law matters. According to The Florida Bar Family Law Section’s professionalism guidance, Bounds of Advocacy, family lawyers must “[e]nsure that concern for a client’s desired result does not subvert our fairness, honesty, civility, respect, and courtesy throughout the process.” Conversely, a lack of professionalism may result in unethical conduct reflecting poorly on both the lawyer and the legal field.

Professionalism can help lawyers navigate and settle the difficult and contentious situations so common in family litigation. Hillsborough Circuit Judge Darren Farfante noted, “Often, issues with professionalism stem from a lack of respect and/or failure to communicate. When attorneys and parties focus on preserving a base level of mutual respect and communicate directly, professionalism typically follows.” Family lawyers can be cordial and friendly without diminishing effective advocacy on behalf of their clients. Lawyers who approach family matters with empathy and an eye towards professionalism will have better outcomes. Therefore, it is essential that family lawyers endeavor to make positive impressions on their clients, judges and opposing counsel.

Two helpful guidelines can be found in Bounds of Advocacy:
1.1 A lawyer must strive to lower the emotional level of family disputes by treating everyone with respect.
2.1 A lawyer should advise the client of the emotional and economic impacts of altering the family structure and explore all options including reconciliation.

Accordingly, family lawyers should be aware of how their actions and words can affect their client’s perspective. Family lawyers who treat their clients with respect will likely find that their clients feel more optimistic about their case and the legal system. But this process alters the family dynamics, finances, and emotions — so lawyers should advise the client of all possible options including reconciliation, counseling, or potential settlements.

Despite the heightened emotions in family law, our oath remains the same. “To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court but also in all written and oral communications. I will abstain from all offensive personality…” This holds particularly true in family law matters, where disputes often involve children, marriages, and finances. Lawyers who practice professionalism in family matters are better equipped to create amicable resolutions to such an emotional area of law.

2 In re Report Family Court Steering Committee, 794 So.2d 518 (Fla. 2001).
4 Id. at 21.

Authors:
Magistrate Mary Lou Cuellar-Stilo - Thirteenth Judicial Circuit and Marisol Ruiz - Glausier Knight Jones
Marital and Family Section Luncheon/CLE

On October 23, the Marital and Family section held a well-attended luncheon and a two-hour CLE. During the luncheon, Dr. Daniel Buffington, president and practice director at Clinical Pharmacology Services, discussed alcohol & drug monitoring and its impact on family law, including how to assess substance abuse disorders and addiction, as well as how to design functional monitoring protocols.

During the CLE, speakers Alexander Caballero of Sessums Black Caballero & Ficarrotta, P.A. and Richard J. Mockler of Tampa Family Law & Mediation provided the attendees advanced strategies and procedures for litigating claims for attorney’s fees and costs.

Thank you to the Section’s speakers and to the luncheon sponsor:

Footprints Beachside Recovery Center
From 1961 to 1971, the United States used a variety of “tactical” herbicides as defoliants in Vietnam and other countries. The most widely used was Agent Orange, which contained the toxic chemical Dioxin. After the Vietnam War, the adverse health effects of exposure to Agent Orange began to appear. In the 1980s, the United States Department of Veterans Affairs (VA) established a presumptions of causation for proving service-connected disabilities for certain medical conditions related to Agent Orange exposure in Vietnam (which did not include Navy veterans who sailed near Vietnam, but never set foot on land). In January 2020, a new law makes it easier for Navy vets who served off the coasts of Vietnam and Cambodia to benefit from Agent Orange presumptions.

In the VA system, a veteran seeking disability compensation must demonstrate that their disabling condition was caused by something that occurred during military service. In VA parlance, this is called a “nexus.” The VA eased the burden of proving nexus by establishing the Agent Orange presumption for 14 conditions outlined in 38 C.F.R. § 3.309(e). The new law lifts the burden of proving actual physical exposure to Agent Orange, something that was nearly impossible previously.

Until this year, the presumptions were only extended to veterans who served on Navy ships that sailed on the rivers and inland waterways of Vietnam, not those who sailed off the coast of Vietnam — the so-called “Blue Water Veterans.” Effective January 1, 2020, Blue Water Veterans are now entitled to the presumption.

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Navy Vietnam Veterans Act of 2019 mandates that veterans who served aboard vessels operating within 12 nautical miles of the territorial waters of Vietnam and Cambodia between January 9, 1962, and May 7, 1975, are presumed to have been exposed to Agent Orange and other herbicides. The Act provided specific geographic names and coordinates off the coasts of Vietnam and Cambodia to accurately identify the 12-mile radius. This means that if a Blue Water Veteran contracts one of the listed diseases, that condition shall be considered to have been incurred in or aggravated” by their service, despite the fact that there was no evidence the condition existed during their military service.

From a practical standpoint, Blue Water Veterans may have to produce evidence of their service within the radius if a vessel they served upon is not on the VA’s list. This might include service records like their Form DD-214, which may list the vessels upon which they served. Other military documents or witness statements from sailors they served with may also provide this evidence. It is also possible to obtain ship logs to document where vessels sailed. However, the new law lifts the burden of proving actual physical exposure to Agent Orange, something that was nearly impossible previously. Practitioners who are contacted by veterans who have been denied the presumption by VA should immediately begin working with their clients to develop proof of their service on ships that sailed within the 12 nautical mile zone to obtain the benefit of the presumption.

8 VA maintains at least a partial list of ships that qualify at https://www.va.gov/shiplist-agent-orange.pdf [last visited 9/21/2019].

Author: John V. Tucker - Tucker Law Group, P.A.
The Thirteenth Judicial Circuit Professionalism Committee proudly recognized two special members of our legal community with the Sixth Annual Professionalism Awards, presented at the HCBA Bench Bar Conference in October.

Jennie Granahan Tarr received this year’s Professionalism Award for Government Service. Nominated by Rudin Haidermota, Ms. Tarr’s contributions to the legal profession and Hillsborough County made her a brilliant recipient of this special honor. Ms. Tarr serves as the Chief Assistant County Attorney with the Hillsborough County Attorney’s Office. In this role, she represents and advises the Board of County Commissioners, the County Administrator, and all departments and agencies under the County Administrator. Individuals within and outside of her organization have nothing but the highest praise for Jennie Tarr’s work ethic, leadership, and gracious spirit.

Her board certification in City, County, and Local Government Law and training as a certified Civil/County Mediator reflect her impressive legal acumen. She generously gives of her time outside of the office, actively serving various organizations including the Junior League of Tampa, Leadership Tampa, HCBA, HAWL, FAWL, and the International Municipal Lawyers Association. Many individuals look to her as a mentor and admire her care for family, friends, co-workers and even animals in need. Judge Cindy Oster noted in her tribute to Jennie Tarr, “She instills the concept that not only should lawyers adhere to the basic standards and rules of professionalism in the practice of law, but should additionally pursue excellence in their work, with honesty, integrity, fairness, and courtesy.”

Another leader in our profession and community received the Professionalism Award for Private Practice. John Schifino, nominated by the Hillsborough Association for Women Lawyers, stands out as a gentleman who champions the pursuit of justice, professionalism and high ethical standards in law and in life. Last year’s award recipient, Mr. Rob Williams, shared heartfelt thoughts about his former law partner and mentee in announcing Mr. Schifino as this year’s recipient.

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As a shareholder with Gunster, Mr. Schifino maintains an active practice litigating in state and federal courts at the trial and appellate levels. Beyond the courtroom, he has served and chaired Florida Bar Committees on Diversity and Inclusion and Professionalism as well as a Florida Bar Grievance Committee. He served as President of HCBA last year and chaired various HCBA sections prior to his presidency. He serves as a Master in the William Reece Smith, Jr. Litigation Inn of Court, Board of Directors for HAWL, Board of Directors for PACE Center for Girls, a Project H.E.L.P. volunteer, and Read to Dream volunteer. Mr. Schifino not only coached youth athletics, but led the governing organizations for Hillsborough County Lacrosse and Bayshore Little League.

All of these formal titles sit in the shadow of Mr. Schifino’s personal relationships as a husband, father, son, brother and loyal friend. He formally and informally mentors colleagues and youth through each of his endeavors.

The blessing of these two intelligent, compassionate and dedicated professionals elevates our local Bar.

Congratulations and heartfelt thanks to Jennie Tarr and John Schifino for your leadership and for creating a gilded path of professionalism for all to admire and emulate.

Author: Hon. Frances M. Perrone – Thirteenth Judicial Circuit Court

HCBA WELCOMES ITS NEW MEMBERS
OCTOBER/NOVEMBER 2019

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Alexandra Sanchez Farren
Christina L. Flatau
Blake A. Fromang
Joseph Sean Garrido
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Maddison Gudgel
Ryan M. Guerin
Sy-Woei Hao
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Sara Jawad
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Michael Liles
Erik R. Lundberg
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Matthew Swihart
Hillary Thornton
Richard T. Tschantz
Brielle Tucker
Danya Mara Vargas
Breonna Renee Washington
Cymoril M. White
Hillsborough's Residential Mortgage Foreclosure Mediation Program is an excellent resource to negotiate a resolution and avoid foreclosure.

Foreclosure proceedings are an unpleasant affair, where generally there is much to be lost by many parties. Mortgagees may have defaulted on their loans because of unforeseen financial difficulties and may be fearful of their pecuniary and housing future.

Alternatively, a bona fide lender made it possible for the mortgagee to enjoy their dream home. A mortgagee’s default requires a mortgagor to begin legal proceedings to inform the court that the residence should be returned to the bank, with the ultimate goal of reselling it. These legal proceedings increase the final debt to the mortgagee, through accrued interest, court costs and attorney’s fees. Oftentimes, neither party is enriched by this unfortunate process, and lenders will offer loan modifications or short sales to avoid foreclosure.

It is important to note that mortgagors who wish to recoup

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their money in a foreclosure sale have to comply with very specific
deadlines established in Florida Statutes §§ 45.031 and 45.032. In Bank
of New York Mellon v. Glenville, 252 So. 3d 1120 (2018), the Florida
Supreme Court clarified these statutory deadlines. The Glenvilles
obtained a first mortgage from JP Morgan Chase and proceeded to
obtain second and third mortgages from the Bank of New York Mellon
and Florida Housing, respectively. JP Morgan instituted a foreclosure
action against the Glenvilles, and a final judgment set a public auction
date of July 2, 2015. A winning bid and sale occurred, and a certificate
of sale was issued on July 6. On July 14, the Clerk of Court issued a
certificate of title, and a certificate of disbursements was issued on
July 29, which reflected a surplus of $86,093.27.

As background, when a foreclosure sale occurs, and a surplus is
available, the remaining mortgagors and mortgagee must file a claim
for those funds within sixty days of the sale. The Glenvilles and Florida
Housing both filed their claims within sixty days of the public auction
sale date. However, Mellon filed its claim sixty-one days after the
auction. The trial court and the Second District Court of Appeal
found that Mellon untimely filed its claim. However, the Second
District certified conflict with the Fourth District Court of Appeal in
Straub v. Wells Fargo Bank, N.A., 182 So. 3d 878 (Fla. 4th DCA 2016),
which found that the “sale date” was the date that the clerk issues its
“certificate of title.”

In Glenville, the Florida Supreme Court resolved the DCA conflict
and determined that the statutory date of sale is not the date of the
public auction, nor is it the date of the certificate of title. Rather, the
date of sale specifically means the actual date that the clerk issues a
certificate of disbursements.

In every foreclosure there are substantial assets to be lost or disbursed,
and it is important for practitioners to be aware of the statutory
deadlines to file a proper claim, or significant funds can be forfeited.

One option to consider in these situations — the Hillsborough’s
Residential Mortgage Foreclosure Mediation Program is an excellent
resource to negotiate a resolution and avoid foreclosure. The Supreme
Court of Florida created the program in 2009 when it presented each
judicial circuit with the challenge of developing and implementing
the program. The Thirteenth Judicial Court selected the Hillsborough
County Bar Foundation to serve as program manager for the mediation
program. Even though the statewide program has ended, the Thirteenth Judicial Circuit continued the program locally through Administrative Order S-2015-015. For more information about the Residential Mortgage Foreclosure Mediation Program, call (813) 490-5042.

Author: Caroline Johnson Levine - Bay Area Legal
Services, Inc.
The Financial Industry Regulatory Authority (FINRA) recently approved changes to the expungement process for customer complaints. Likely to the chagrin of financial advisors but to the delight of consumer protection advocates, the changes, which have been submitted to the SEC for final approval, all appear to make obtaining an expungement more difficult.

In December 2017, FINRA issued Regulatory Notice 17-42, requesting public comment on potential changes predominantly impacting FINRA Rules 12100, 12805, 13805 and 13806. While primarily taking aim at expungement requests “where the underlying customer-initiated arbitration is not resolved on the merits or the associated person files a separate claim requesting expungement of customer dispute information,” the changes apply to all requests for expungement.

In the Notice, FINRA noted its “long-held position that the expungement of customer dispute information is an extraordinary measure...” and explained its rationale for the changes based on criticisms of the expungement process, especially where the underlying dispute between the customer and respondent had been settled without a hearing of the merits. In particular, FINRA stated: “In these instances, critics argue that the panel from the underlying customer case has not heard the full merits of that case and, therefore, may not have any special insights in determining whether to grant a request for expungement of customer dispute information under Rule 2080. Further, claimants and their counsel have little incentive to participate in an expungement hearing after the underlying customer case settles and typically do not participate in such hearings. Thus, during these expungement hearings, the panel may receive information that is one-sided, which may favor the associated person requesting expungement.”

The amendments, which apply to various scenarios involving expungement, are primarily as follows:

**All Requests for Expungement of Customer Dispute Information**
- The FINRA Code would be amended so that in all requests for expungement of customer dispute information: (1) the associated person who is seeking to have his or her CRD record expunged must appear at the expungement hearing; and (2) to grant expungement, a three-person panel of arbitrators must unanimously agree that expungement is appropriate under Rule 2080 and find that the customer dispute information has no investor protection or regulatory value.

**Expungement Requests During the Underlying Customer Case**
- The associated person, if named in an action, only has one opportunity to request expungement;
- Remove the option to file an expungement request outside of the underlying customer case against a customer;
- Create a one-year limitation period for requests for expungement that were not decided during the underlying customer case.

**Expungement Arbitrator Roster**
- Establish a roster of public chairpersons with additional qualifications to decide expungement requests filed against a firm under the Industry Code.

Based on the proposed changes, Firms and their Associated Persons will likely face a higher burden when seeking expungement, and they should be prepared to comply with the new procedural rules.

Authors: Eric Feld - Wiand Guerra King & Josef Rosen - GrayRobinson
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While many are unaware of this advanced style of dispute resolution, virtual mediation (v-mediation), aka e-mediation or online mediation, can be highly effective, providing ease of communication and greater flexibility to all parties. It should not be assumed that v-mediation is only useful for litigators; alternative dispute resolution can be an effective way to resolve business disputes, contract issues, and many other legal matters before a lawsuit is filed. County mediations will surge in 2020 due to the recent increase in relevant jurisdictional limits from $15,000 to $30,000.

For starters, location can be a challenge; using technology can make mediation or other methods of dispute resolution more easily accessible. One of the primary uses of v-mediation is for the resolution of online disputes, such as issues between buyers and sellers on platforms like eBay, Amazon and the like. It is increasingly common for parties like insurance adjusters to be geographically diverse from injured plaintiffs and others. Corporate disputes are more frequently occurring between parties that are not located in the same city, and many companies want to stamp out potential problems without having an issue go viral. Further, some parties are simply not comfortable meeting in person — online mediation resolves these challenges.

With current technology, high quality, low-cost video conferencing is abundantly available and is being used more frequently amongst lawyers and law firms. Many mediators rely on their ability to “read the room” and observe non-verbal cues. V-mediation can capture these same cues like body language and facial expressions, as well as individual speech patterns and intonation. Face-to-face meaningful conversations can still happen, without the headaches, stress, anxiety, and expenses of road/air travel and opportunity costs.

Lawyers and mediators: it is critical to understand that the overall strategy in v-mediation/arbitration remains the same as with traditional; it is simply using technology to achieve the same goals. One of the first tasks any mediator must achieve is building rapport, which is even more important when mediating electronically. The mediator will make additional considerations to ensure everyone can access the conference technology without issue. Attendance at v-mediations is far easier for all those who are involved, allowing focus on the real issues at hand. Reframing problems and disputes remain a point of focus, and parties should leave feeling as if they have the resolution on their own, which increases the likelihood they will stand by their commitment to any agreement.

Some attorneys may be uncomfortable at first when considering v-mediation instead of conducting their business in person. In certain circumstances, such as when all parties reside in close geographic proximity and are comfortable appearing in person, traditional mediation may still be the top choice. Mediation is becoming an effective tool at resolving legal issues before incurring the additional expenses of filing a lawsuit. In today’s evolving legal climate, parties in dispute are increasingly more likely to be cost and time conscious and willing to try new methodologies to reach a successful resolution.

Author:
Anthony J. Garcia - Garcia Mediation
Solo/Small Firm Section Luncheon

On November 14, the Solo/Small Firm Section held a luncheon on the important topics of managing stress, eliminating interruptions, and taking better care of your clients and yourself. Thank you to Denise Gamez, a well-respected practice growth advisor, speaker, and blog writer, for leading the discussion.

The Section also appreciates its luncheon sponsor:

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FINANCIAL ADVISOR

Read to Dream Initiative Volunteers

HCBA is proud to be involved with the John F. Germany Young Readers “Read to Dream” Initiative, in which local volunteers read to elementary school-aged children and provide books in at-risk or under-served communities. Thank you to all of the members who have volunteered and read at local schools recently.

The Read to Dream Initiative is the vision of the late John Germany, a student during the Depression years in Hillsborough County public schools, who graduated from Plant City High School in 1940. Germany was an attorney, judge, founding member of the Holland & Knight law firm, leader in the development of the downtown Tampa library which bears his name, and a lifelong reader and dreamer. John Germany always credited his long and fine career and love of reading, to a gift of a book which he received at a young age.
For decades, the percentage of criminal defendants who go to trial has steadily decreased. A recent National Association of Criminal Defense Lawyers (NACDL) report, “The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It,” both illuminates and explains this concern.

According to the NACDL Report, jury trials now occur in less than three percent of state and federal criminal cases. Criminal defendants in Florida are even less likely to take a case to trial. Statistics from the Florida Office of the State Courts Administrator show that out of the 164,820 felony criminal cases filed in Florida Circuit Courts in 2017-18, only about 1.6 percent of cases were resolved by jury trial, while the overwhelming majority of cases were resolved prior to trial, most often with pleas or other dispositions such as diversion programs.

The reasons for this decline in the criminal jury trial are no mystery. A variety of systemic issues, including draconian mandatory minimum sentences and sentence reductions for defendants who plead guilty and/or assist the government, means that defendants who take cases to trial receive substantially higher sentences. For example, the NACDL Report demonstrates that in federal criminal cases sentenced in 2015, the average sentence for a defendant who pled guilty was 3.3 years, while the average sentence for a defendant who went to trial was 10.8 years — more than three times as long. The much-higher sentences imposed after a trial create tremendous pressure on defendants to plead guilty.

Defendants’ understandable reluctance to risk trial has important consequences. The right to a jury trial is enshrined in our Constitution, because jury trials are in important check on government power and provide defendants with substantive and procedural protections. The heavy penalties attached to taking a case to trial can result in innocent people pleading guilty. As the NACDL Report explains, “[o]f the 354 individuals exonerated by DNA analysis, 11 percent had pled guilty to crimes they did not commit, and the National Registry of Exonerations has identified 359 exonerees who had pled guilty.”

The NACDL Report proposes the implementation of procedures to ensure that defendants who go to trial are not punished for doing so by receiving substantially increased sentences. Since its release, it has gained widespread attention and support across the political spectrum. NACDL executive Norman Reimer has explained that the report has “garnered voices from across the ideological perspective, the academy, and the practicing bar all decrying the evisceration of fundamental rights caused by the trial penalty. Penalizing individuals by imposing extra years of imprisonment simply for exercising basic rights is stark injustice and there is an emerging consensus that it is time to stop it.”

In the face of this consensus the members of the executive, legislative, and judicial branches must work together to protect the right to trial.

Author: Katherine Earle Yanes - Kynes, Markman & Felman

Trial and Litigation Section Luncheon

On October 16, the Trial and Litigation Section held its quarterly luncheon with a special guest speaker, Florida Bar President John Stewart, who gave an update on The Florida Bar and its new initiatives.

We appreciate President Stewart taking time out of his busy schedule to speak at our luncheon!

Also thank you to the luncheon’s sponsor:

Also thank you to the luncheon’s sponsor:

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The First District Court of Appeals recently announced several decisions of importance for practitioners.

In *Blanco v. Creative Management Services*, No. 1D18-3745 (Fla. 1st DCA 2019), the court ruled on a hearsay issue conflicting with the leading treatise. Before taking a job with his employer, Blanco smoked cigarettes for 17 years, used an inhaler frequently, and had a medical diagnosis of probable chronic obstructive pulmonary disease (COPD). In his claim, Blanco said his job required him to work with airborne dust and debris that made his condition worse. After eleven days of work, he went to an emergency room and was diagnosed and treated for advanced COPD and an exacerbation of asthma.

Blanco’s IME doctor testified that there had been a temporary exacerbation of the preexisting condition as a result of workplace exposure. His employer/insurance carrier attacked Blanco’s credibility and offered an unauthenticated IME report that said the major contributing cause of the problems was not the workplace. The Judge of Compensation Claims denied

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benefits, relying in part on the employer/carrier’s IME report, despite a hearsay objection.

The First District held that an IME report can be admitted and relied upon over a hearsay objection, without a deposition to authenticate the report or opinions. The opinion cites conflict with a leading text on IME reports, *Florida Evidence*, by Professor Charles Ehrhardt (West Publishing) (1999 ed.)

In another recent case of note, *Liberty Mutual v. Miller*, 278 So.3d 948 (Fla. 1st DCA 2019), the First District dismissed an appeal of a decision denying a motion to enforce settlement, because it was not a final order or an appealable non-final order.

In a third recent case, *Hernandez v. Food Market Corp*, No. 1D18-4406 (Fla. 1st DCA 2019), a claimant, who was an illegal alien, admitted she gave an invalid Social Security Number on a form to claim benefits, because she believed that she would not receive benefits unless she gave a Social Security Number. Interesting arguments on immigration and federal law were raised, but the benefits were denied on the premise that intentionally giving the false number constituted fraud, which results in forfeiture of benefits under the Act.

In a final recent case of note, an award of costs to the employer/carrier was affirmed in *Coto v Univision*, No. 1D19-0533 (Fla. 1st DCA 2019). In the case, the day before a final hearing on a PRP injection and surgery, the employer/carrier authorized the PRP injection, and the claimant voluntarily dismissed the petition for benefits in hopes the PRP injection would be successful without the surgery. Subsequently, the surgery at issue was authorized. The employer/carrier filed a petition for costs and was awarded $1,074.34 because of the voluntary dismissal. The award was affirmed per curium, with a comment in the concurrence that the Legislature should, “consider whether an employee who files a petition for benefits in good faith should be subject to the imposition of costs.”

**Author:** Anthony V. Cortese – Anthony Cortese, Attorney at Law
Rebecca Arends – Rumberger, Kirk & Caldwell congratulates associate Rebecca Arends for her appointment to the Suncoast Chapter of The Leukemia & Lymphoma Society Board of Trustees. Her three-year term runs from August 2019 through June 2022.

Jessica Baik – Rumberger, Kirk & Caldwell welcomes recent Stetson University School of Law graduate Jessica Baik to the firm’s Tampa office. Baik will focus her practice in the area of casualty litigation.

Deborah Brown – Deborah Crumbley Brown is pleased to announce the formation of Brown Law and Consulting, PLLC, a boutique law firm offering mediation, workplace investigations, preventive legal and HR services, and higher education consulting.

Darnesha Carter – Carlton Fields welcomes Darnesha K. Carter, who has joined the firm’s Tampa office as a member of the firm’s Business Litigation Section of the National Trial Practice Group.

Kamala E. “Kami” Corbett – Hill Ward Henderson is pleased to welcome Kamala E. “Kami” Corbett as a shareholder in the firm’s Land Use and Real Estate group.

Colby Ellis – Johnson Jackson PLLC announces the addition of attorney Colby Ellis to its team. Ellis worked with the firm last summer as its first summer associate.

Julio C. Esquivel – Shumaker, Loop & Kendrick, LLP congratulates Julio C. Esquivel, who has been appointed as chair of the Tampa Bay Economic Development Corporation (EDC) Investor Relations Committee for the 2020 fiscal year. Additionally, the firm announces he served as a panelist at the Hispanic Business Summit presented by the Tampa Bay Business & Wealth Magazine (TBBW) in October.

Simon Gaugush – Carlton Fields is pleased to welcome white-collar crime attorney Simon Gaugush to its Tampa office. Gaugush, who spent more than a decade as a federal prosecutor, focuses his practice on white-collar criminal defense, opioid-related litigation, corporate internal investigations, cyber offenses, False Claims Act (qui tam) cases, and complex civil litigation.

Celene H. Humphries – Celene Humphries of Brannock & Humphries presented “57.105 Motions and Defense Motions for Fraud on the Court,” which focused on remedies for spoliation of evidence, for the Florida Justice Association.

Maegen P. Luka – Congratulations to Maegen Luka of Brannock & Humphries, who was honored with the “Protector of the Realm Award” at the Tampa Bay Trial Lawyers Association’s annual gala.

Andrew J. Mayts – Shumaker, Loop & Kendrick, LLP is pleased to announce that Partner Andrew J. Mayts served as a panelist for the Society of Real Estate Professionals (SOREP), at the “Help Us Help You: Meet Greater Tampa Chamber of Commerce (GTCC)” breakfast in October 2019. Mayts is on the Policy Council for the GTCC, which carries the banner for Tampa’s business community by offering leadership programs, policy advocacy, and business resources.

Caitlyn Parsley – Adams and Reese welcomes Caitlyn Parsley, who has joined the firm’s Real Estate Team in the St. Petersburg office. Parsley’s practice focuses primarily on real estate matters in Florida, involving both transactions and litigation.

Mark Rankin – Shutts & Bowen congratulates Mark Rankin, who was recently recognized as a “2019 Champion” at the Best Buddies Champion of the Year Gala.


Cynthia Sass – Cynthia Sass of the Sass Law Firm spoke at the panel discussion on First Amendment in Public Employment at the 45th Annual Public Employment Labor Relations Forum sponsored by the Labor and Employment Law Section and City, County and Local Government Law Section of The Florida Bar.

Jennifer Soberal – Rumberger, Kirk & Caldwell welcomes Jennifer Soberal to the firm’s Tampa office. Soberal focuses her practice in the areas of casualty and product liability.

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Richard T. Tschantz – Carlton Fields welcomes environmental lawyer Richard T. Tschantz to its Government Law and Consulting practice. He joins the firm’s Tampa office after three decades in the public sector, most recently as general counsel of the Environmental Protection Commission of Hillsborough County.

March 2001 issue featuring the interior of the historic Tampa Theatre in downtown Tampa.


March 2003 issue featuring “I’ll See Ya in Court,” 2001 by Charles Fazzino.


**Lawyer Magazine 30-Year Anniversary: Favorite Covers from 2001-2005**

To celebrate the 30th anniversary of the HCBA Lawyer magazine this Bar year, we have been highlighting some of the beautiful covers the magazine has displayed over the years.

For each issue, members can vote through an online survey for their top five covers for each five-year period that the magazine has been published.

In this issue, we are featuring the five favorite covers from 2001-2005, the third interval of five years that the magazine was published. (Note: Because there were more than 40 magazines for this period, HCBA staff voted and narrowed down the choices to 12, and then members voted on their favorite five from those choices.)

Keep an eye out for another online poll in early February to vote for your favorite covers from 2006-2010 for the next issue!
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