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

Accountability encourages safer patient care.

Fig 1 Most common causes of death in the United States, 2013

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

Reproduced from Medical error—the third leading cause of death. In the US, authors Martin A. Makary, Michael Daniel, volume number 353, copyright 2016 with permission from BMJ Publishing Group Ltd.
In our last issue of the 2017-18 Bar year, we are highlighting our final scenic spot, the beautiful Second Falls at Graveyard Fields, located off the Blue Ridge Parkway near milepost 418 in the popular Pisgah National Forest in western North Carolina. The photo was taken by Gordon Hill, our immediate past president, during one of his many sight-seeing trips.

The falls are at the junction of two high ridges, where the Yellowstone Prong of the Pigeon River has its headwaters. Capped by mountains exceeding 6,000 ft. in elevation, Graveyard Fields is a high, flat mountain valley. The stunning waterfalls and distinct landscape make it one of the most popular spots along the Blue Ridge Parkway for hiking. The trails lead to three waterfalls: Second Falls, Upper Falls and Yellowstone Falls. The Pisgah National Forest is home of the first tract of land purchased under the Weeks Act of 1911 which led to the creation of the national forests in the eastern United States. It is also home of the first school of forestry in the United States, now preserved at the Cradle of Forestry in America historic site, and boasts two of the first designated wilderness areas in the east.

We have enjoyed highlighting our nation’s beautiful national parks and forests on our covers this Bar year, and thank the members who have kindly lent us their travel photos. We received so many beautiful photos, and wished we could have highlighted more on our covers. So, as a special bonus, we are featuring several additional photo submissions we received of national park scenes on page 58.
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I’ve always felt bad for Kevin Love. As NBA fans know, the five-time NBA All-Star power forward has been subject to trade rumors almost from the moment he was traded from the Minnesota Timberwolves to the Cleveland Cavaliers. Worse, more than once Love has been passive aggressively called out on social media by no less than LeBron James himself. Oh, and his teammates accused him of faking an illness so he didn’t have to play the second half of a game. That’s why I found the March 6, 2018 letter he penned to The Players’ Tribune so courageous.

Just weeks before, DeMar DeRozan, himself a four-time NBA All-Star, tweeted — seemingly out of nowhere — that sometimes depression gets the best of him. In later interviews, DeRozan admitted he has suffered from depression since he was a young kid. And because of that, he learned an important lesson: Never make fun of somebody because you never know what that person is going through.

In his letter, which came on the heels of DeRozan’s frank admission, Love revealed for the first time that he had suffered a panic attack during the first half of a game months before (the same one teammates accused him of faking an illness to get out of). He was startled because he’d never had a panic attack before. As Love tells the story, everything he thought about mental health changed that day.

It was, in his words, “a wakeup moment.” And Love did something about it — something he once scoffed at. He saw a therapist.

Much to Love’s surprise, the focus of the therapy wasn’t on basketball. It was on a range of other issues. One of those was Love’s difficulty dealing with the unexpected death of his Grandma Carol. His therapy sessions — which, in his words, were “awkward and hard” — made him see the power of saying things out loud.

In sharing his experience, Love (echoing DeRozan’s comments) emphasized an often unspoken truth: “everyone is going through something that we can’t see.” And Love’s modest solution — for lack of a better word — is simple: “Creating a better environment for talking about mental health … that’s where we need to get to.”

Mental health, of course, has been in the news lately with the unfortunate passing of Kate Spade and Anthony Bourdain. At the risk of hyperbole, depression has become an epidemic in this country. The problem is particularly acute in the legal profession.

Fortunately, The Florida Bar recently created a Special Committee on Mental Health and Wellness of Florida Lawyers. The committee is evaluating ways The Florida Bar can help lawyers, such as by creating peer-counseling resources or other benefits that focus on exercise, diet, and stress reduction. But one of the committee’s chief functions is working to destigmatize mental illness in the legal community.

I’m not remotely qualified to talk about what causes depression or how to treat it. But I do know that DeMar DeRozan and Kevin Love are right: everyone is going through something that we don’t see. And The Florida Bar’s new Mental Health and Wellness Center (www.floridabar.org/member/healthandwellnesscenter/) is a great resource to help lawyers cope with those problems. But I also know that all the resources in the world won’t do any good if lawyers are afraid to ask for help. It is incumbent upon each of us to create a better environment for talking about mental health.
Farewell and Thank You

It has been a pleasure and a privilege to serve as Bar President.

As Bar President this year, I have endeavored to combat the undeserved negative reputation our profession often has in society by highlighting the great work performed by some of our Association’s legal heroes. For example, Stephen Todd won the statewide Tobias Simon Pro Bono Service Award for contributing well over 2,000 pro bono hours during his career. Stephen Koch left his legal career 15 years ago to serve as President and CEO of Big Brothers Big Sisters of Tampa Bay and was instrumental in expanding the agency’s outreach to thousands more underprivileged kids in desperate need of an adult mentor. Jeanne Tate started the “Lawyers With Heart” initiative that helped raise over $108,000 for Tampa Bay’s 2017 Heart Walk. And Carol LoCicero and Bob Kline founded the Tampa branch of End 68 Hours of Hunger, which collects and delivers food each week to over 200 children who might not otherwise have anything to eat. I hope that you have been inspired by their exemplary work. I believe their service demonstrates that lawyers do more to give back to the community than any other profession.

As I close out my final article, I want to highlight one last legal hero — Lisa Esposito, winner of the 2018 Red McEwen Award. For the last several years, Lisa has led the HCBA’s Community Service Committee and has played a vital part in organizing the Committee’s many service projects. Here is the story of just one of these outstanding projects.

Several years ago, Lisa was looking for a charity to serve. She found A Kid’s Place of Tampa Bay, which

Continued on page 5
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provides loving foster care services for abused, neglected, and abandoned children. When Lisa first visited the facility, she learned about a young high school student living at the foster home who needed an outfit for his homecoming dance. She bought him his first suit, along with everything else he needed to look sharp that night. But she was heartbroken to learn that the family of his proposed date disallowed her from going with him once they learned he was living in a foster home. The young man had a great time anyway, but Lisa decided she needed to do more. As anyone who knows her can attest, Lisa went all in. She decided to throw a large party for the kids, and the HCBA's annual Pirate Plunder Carnival was born.

Now in its fifth year, on May 19th, Lisa led a team of Bar volunteers, as well as numerous sponsors, to put on a fun day that helped the kids forget about their unfortunate circumstances for a little while. Through her fundraising efforts and generous sponsorship support, the kids were treated to carnival games, toys and other prizes, a dunk tank, a bounce castle, petting zoo, face painting, barbecue lunch, snow cones, cookies, and cupcakes. Lisa coordinated a team of approximately 25 volunteers to serve the facility’s 60 foster children. (Photos from this year’s event on page 47.)

Lisa has a tremendous heart and infectious passion for helping those who are less fortunate. Lisa also spends countless hours each December leading the HCBA’s Elves for Elders project at Whispering Oaks nursing home — where approximately 50 Bar volunteers sing Christmas carols and provide stuffed animals and homemade cookies to the underprivileged elderly who are living in the home as wards of the state.

Lisa, your commitment to helping all in need, from the youngest child in foster care to the elderly wards of the state, is inspiring to us all. You exemplify what our profession does best — serving others. And congratulations on some well-deserved recognition to such a humble person who seeks none.

Finally, although I am of course biased, I believe this has been another great year for the Bar. It has been a pleasure and a privilege to serve as Bar President. I cannot think of a better way for me to personally give back to the profession that has been so good to me personally and to my family. But, the work of the Bar could not be done without the judges who contribute so much to our events, our many sponsors, our outstanding Board of Directors, the many committee and section chairs who are on the front lines in putting on the fantastic programs the Bar offers, and of course the Bar staff who works so hard to make sure everything goes as smoothly as possible. Thank you!

**GET INVOLVED**

If you are interested in learning more about A Kid’s Place, please visit their website at http://akidsplacetb.org/How-to-Get-Involved-with-A-Kids-Place-of-Tampa-Bay. As you can imagine, there are several ways to get involved, including opportunities to volunteer and to donate clothing, school supplies, and more.
Bring on the summer.
And just like that, another Bar year has come to an end. The HCBA Young Lawyers Division (YLD) has been very active this year, from hosting several social networking events, to helping our community at the Wills for Heroes and Family Forms Clinic, to holding events to benefit the youth in our community. We had a great turnout at our annual golf tournament, which helps fund many of the programs that we participate in throughout the year. Our annual Holidays in the New Year, Steak and Sports Day, and Law Week Activities went very well this year. Additionally, our Wellness Event held at Camp Tampa sold out within a few days of posting and was a great success. I would also be remiss if I did not thank all those who helped and contributed to this year’s Read to Dream initiative that benefitted hundreds of children in Tampa Bay.

These events are successful because of the commitments made by those YLD members who serve on the board as liaisons to each of our committees, the committee chairs, and committee members who work diligently each year to put on the YLD programming. If you are not already involved with the YLD, I encourage you to do so. The YLD provides so many benefits to our members through the division itself and through the HCBA. There are many options depending on the time commitment you are looking for.

I have been very blessed to work alongside a wonderful group of individuals on our YLD Board: Jason Whittemore, Web Melton, Drew McCulloch, Maja Lacevic, Domenick Lazzara, Adam Fernandez, Katelyn Ferry, Traci Koster, Brett Metcalf, Lyndsey Siara, Amy Nath, Jeff Wilcox, Alex Palermo, John Dicks, and Anisha Patel, who all contributed to the YLD’s successes this year. I am confident that Jason and Jeff will continue to improve upon the YLD as they carry out our purpose over the next year as YLD President and President-elect. These are two of the most dedicated individuals to the YLD that I have had the pleasure of serving with and getting to know. Not only have they both been instrumental members of the YLD Board for a number of years, they are also responsible for the achievements attributed to the YLD’s annual golf tournament and cornhole tournament that for years has benefitted Big Brothers Big Sisters of Tampa Bay. Thank you also for the support of the HCBA Board of Directors and the HCBA staff who have worked side-by-side with us over this past year.

And finally, many of the YLD events and initiatives would not be possible without the support of our community sponsors — The Bank of Tampa, Sabal Trust Company, Morgan Stanley, Bush Ross, Anthem Reporting, Dean Mead, Swift Law, Burnetti PA, and Seacoast Bank. We appreciate you and the commitment you have made to the YLD.

As Dorothy Height once said, “Without community service, we would not have a strong quality of life. It’s important to the person who serves as well as the recipient. It’s the way in which we ourselves grow and develop.” Thank you for allowing me the honor and privilege of serving the YLD this past year and allowing me to grow personally and professionally.

**Is Your Contact Information Up-to-Date with HCBA?**
Go on the Member Portal at hillsbar.com today to make sure your profile is correct!
Get Active in the YLD
Keep an eye out for the annual YLD Committee Preference Survey, which has been emailed to all YLD members this summer. Sign up for a committee or two and join in the fun!
Continuing, Ficarrotta talked about Martinez's long and distinguished service in public life, and his lifelong devotion to the Tampa community.

Martinez was elected as the 54th Mayor of Tampa in 1979. And, after his term as governor, he was appointed by President George H. W. Bush to the Cabinet-level position of Director of National Drug Policy Control. He currently is a Senior Policy Advisor with the Holland & Knight law firm in Tampa.

In accepting the award, Martinez talked about the great responsibility associated with making judicial appointments, and he thanked the HCBA for the award. “I will cherish it,” he said.

* * *

During the luncheon, the outstanding work of the HCBA’s Law Week Committee was also highlighted. 

Continued on page 9
The committee was co-chaired this year by Dane Heptner and Stephanie Generotti.

The national Law Day theme the ABA selected this year was: “Separation of Powers: Framework for Freedom.”

And Heptner told the luncheon attendees that more than 80 HCBA volunteer lawyers and judges helped lead mock trials, courthouse tours, and classroom discussions this spring.

Plus, there was a related art competition for students that featured 21 submissions (art contest winners shown in photo above with their artwork at Law Day luncheon). Additional details on the winners and their artwork are on page 38. Overall, more than 3,750 students were involved in Law Week activities, Heptner said.

* * *

Meantime, the annual luncheon also marked the unofficial end to the 2017-18 Bar year.

And under the outstanding leadership of President Gordon Hill and the HCBA Board, it has been a stellar year for sure.

From all the membership luncheons, the annual Bench Bar Conference, the Holiday Open House, all the HCBA diversity events, the HCBA Pig Roast and Food Festival, and 5K Pro Bono River Run, and the Bar Foundation’s annual Law & Liberty Dinner, there was something for everyone.

And that doesn’t even include all the other outstanding CLE programs and community service events. Plus, all the successful events put on by the HCBA’s superb Young Lawyers Division, which was ably led by YLD President Melissa Mora.

Looking ahead, I’m confident incoming HCBA President John Schifino will continue the good work that has made the HCBA the wonderful organization it is today.

Here’s hoping everyone has a great rest of the summer. See you around the Chet.
Embracing Data to Improve Criminal Justice

We must examine the data and use it to drive policies that increase public safety, reduce recidivism, and promote fairness.

We’ve all heard the dispiriting adage about “lies, damn lies, and statistics.” That century-old quote sounds antiquated in today’s era of big data, where number-crunching supercomputers process incomprehensible amounts of information to improve decision-making and outcomes in almost every arena and industry. Unfortunately, our criminal justice system has largely managed to avoid the data revolution … until now. This past session, the Florida Legislature passed a data collection bill that aims to bring Florida’s criminal justice system into the 21st century.

The sad reality is that there is a tremendous lack of criminal justice data at the national, state, and local levels. Federal and state governments have collected certain data for years, but they have largely been limited to crime rates and offense types. Starting July 1, 2018, Florida’s data collection will be far more nuanced, making our state a national leader through this ambitious transparency endeavor. The new law requires criminal justice stakeholders — State Attorneys, Public Defenders, Clerks of Court, and the Department of Corrections — to collect specific data, report it to the Florida Department of Law Enforcement, and publish it online in a searchable format for any and all to see.

The data sought is comprehensive: approximately 100 pieces of information covering, among other things, the defendant, charges, bail, plea, and sentencing. The idea to collect this information is not revolutionary, but implementing the idea is.

The Legislature’s recent embrace of data mirrors the data-driven solutions we have pursued since the beginning of my administration in the State Attorney’s Office. Of course, data-driven solutions require data. Last year, we partnered with Measures for Justice, a national organization whose goal is to collect and publish prosecutorial data from across the United States, to make sure that Hillsborough County was represented in that research. (In designing its data collection bill, the Legislature also worked with Measures for Justice.)

We have also teamed up with the University of South Florida’s Criminology Department to identify implicit bias and other blind spots in how we charge juveniles. Earlier this year, we were selected as one of only four prosecutor’s offices in the nation to participate in a $1.7 million data research project with the MacArthur Foundation and Florida International University to increase effectiveness and fairness in how we prosecute cases. These partnerships are critical in helping us discover, to quote Donald Rumsfeld, the “known unknowns” — the things we know we don’t know — and the “unknown unknowns” — the things we don’t even know we don’t know.

Whereas many prosecutors’ offices have historically been reluctant to open their kimono for fear of what others may see, we have taken the opposite approach. We are willing to bare all for inspection — revealing the good, the bad, and the ugly — not only to be completely transparent but also to improve the work we do every day.

It has been said, “Ninety-nine percent of statistics only tell 49 percent of the story.” We agree, which is why the robust data collection and analysis that we are building is only half the battle. Ultimately, we must examine the data and use it to drive policies that increase public safety, reduce recidivism, and promote fairness, which will become the most important statistic of all.
New Bar Admittee Swearing-In Ceremony

On April 20, HCBA held a swearing-in ceremony for new admittees who passed the Florida Bar exam in the spring. Officiated by the judges of the Thirteenth Judicial Circuit, the admittees took their legal oath at the George Edgecomb Courthouse. They listened to remarks from HCBA President Gordon Hill, YLD President-Elect Jason Whittemore, and Judge Anne-Leigh Moe, who encouraged them and provided advice as they start in their new profession. Congratulations, new lawyers!

The HCBA thanks the ceremony’s sponsor – Stetson University College of Law.
there was a time, not so long ago, that mental health did not get the court’s full attention. Yes, it was discussed somewhat frequently in criminal courtrooms, where competency was questioned and medically evaluated. It also had a place in guardianship matters, where those deemed unable to care for themselves found relief in the supervised care of the court. But now, in the Thirteenth Circuit, our Mental Health Division goes beyond the aforementioned matters.

In January 2017, we launched the Mental Health Court (MHC), where I preside over cases in the Enhanced Offender Diversion Initiative (EODI). Hillsborough County received a grant, in partnership with the court, to provide recovery-oriented services and intensive case management for individuals with severe mental illness. ACTS was selected as the service provider to enhance the Mental Health Pretrial Initiative with a continuum of diversion alternatives.

Continued on page 13
Our first MHC docket was held in February 2017. People who had been introduced to the court via the criminal justice system were transferred to the MHC. Instead of “defendants,” they became known as “clients,” which is often the vernacular in Problem Solving Courts. Originally charged with crimes against persons, drug and alcohol offenses, property crimes, and the like, clients came into a system of care in a way not formerly available. Previously diagnosed with psychosis and mood disorders, most clients are also found to have secondary diagnoses. Chronic, untreated physical illnesses may also require extensive treatment and judicial oversight.

At the one-year mark, the MHC had admitted 44 clients to the EODI. While this is a small number, this group requires much judicial attention and intensive clinical intervention. One of the largest obstacles to overcome is affordable housing. Tampa’s robust economy has posed a problem for the MHC population. While housing prices increase, the options for our clients decrease. Housing issues are even more complicated by client criminal history and limited work history.

While it is too soon to measure MHC trends and successes, we have partnered with USF via a research agreement. The MHC relies on a Risk-Need-Responsivity Model. We work closely with the State Attorney and Public Defender Offices to ensure workflows meet our needs and our clients’ needs. Treatment providers work swiftly to make efficient, appropriate referrals and monitor client progress and evolving needs. And over time, we will assess our adherence to goals, including:

- reduction in arrests or rearrests of clients;
- housing stabilization;
- employment;
- mental health treatment;
- and acquisition of Social Security and other benefits.

The Thirteenth Judicial Circuit Court is committed to addressing the problems of the people we serve. The MHC compliments our realm of treatment courts by destigmatizing mental disease and recognizing the illness as a component in the criminal justice system.
#MeToo – How a Hashtag Can Impact Your Law Firm

We need to move beyond a focus on diversity training or better mentoring in order to focus on structural changes that might check implicit bias.

At a panel discussion held last fall in conjunction with The Florida Bar’s Path to Inclusion Symposium, University of Florida Levin College of Law Dean Laura Rosenbury related how a group of female and male law students met with her to discuss concerns about sexual misconduct and gender discrimination during their summer jobs. Dean Rosenbury agreed to share her views and guidance about this concern:

**Isom:** Dean Rosenbury, do law firms and courts that host summer law clerks sign any kind of agreement as to these clerkships or externships?

**Rosenbury:** Employers using the services of our Center for Career Development must agree in writing to provide our students and graduates with equal opportunity to obtain employment without discrimination or segregation on the basis of race, color, religion, national origin, sex, gender (including identity and expression), sexual orientation, age, or disability. We also require a similar assurance before a student may be assigned to an externship field placement for credit.

Recent events reveal that such assurances may not be enough, however. I would like us to be more explicit that we expect employers and externship supervisors not to subject our students to unwanted sexual advances and other forms of sexual harassment. We will be implementing that change over the summer so that it is in place for the next academic year.

**Isom:** Is there any kind of code of conduct or guidelines that apply to the appropriate standards of conduct between an attorney and a law student who is

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clerking or participating in an externship at a law firm or court?

**Rosenbury:** We have guidelines for externship supervisors regarding the type of work students should be performing and how they should be supervised. We do not have any other guidelines regarding conduct beyond the non-discrimination policy described above.

**Isom:** Do you think one is advisable?

**Rosenbury:** Yes! I would love to work with bar associations and lawyers to develop best practices for creating environments in which students and recent graduates are not subject to unwanted sexual advances and other forms of sexual harassment. I could see such guidelines providing much needed advice and support for both students and supervisors. For example, the guidelines could discuss appropriate boundaries in mentoring relationships and in social settings.

**Isom:** Some youth organizations have a “2 Deep” policy so that a youth is never left alone with an adult. Would such a policy be desirable in this situation?

**Rosenbury:** I don’t think so. Our students are adults, and we all know that one-on-one mentoring is very valuable for students and young lawyers. That said, I urge firms and other organizations to develop “zero tolerance” policies for lawyers who do not respect the boundaries of such relationships.

**Isom:** In 2007, Florida enacted Rule 4-8.4(i), which prohibits a lawyer from engaging in sexual conduct with a client under certain circumstances and establishes a rebuttable presumption the sexual conduct exploits or adversely affects the interests of the client or the lawyer-client relationship. Should there be a similar rule for law student clerks and externs?

**Rosenbury:** I favor such a rule. The power dynamic between supervisors and students in summer jobs and externships is similar to that of the lawyer-client relationship. A summer job or externship is like a months-long job interview, and many students may feel pressured to acquiesce to their supervisors’ requests and may be reluctant to report anything that makes them uncomfortable. Once students have full-time employment after graduation, they have more agency to navigate their relationships with supervisors and to report any discriminatory conduct.

**Isom:** Dean Rosenbury, what advice did you give to those law students who asked to meet with you?

**Rosenbury:** Until we have clearly developed guidelines, it is important to be aware of the possibility of sexual advances and other forms of sexual harassment in the workplace and to think about how to respond before the advance or harassment occurs. It is often very hard to figure out what to do in the moment, whether you are subject to the advance or harassment or are a witness. Talking about the possibility beforehand with mentors, classmates, and friends makes it more likely that students will be willing to say no in the moment or intervene. These conversations also emphasize that such conduct is not about the individual student or anything the student

Continued on page 16

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Continued from page 15

has done; rather, this is a long-standing systemic problem that requires sustained attention.

Finally, I have urged all students to report any instances of harassment or discrimination to our Center for Career Development or to a trusted professor or staff member, so that we may alert the employer or externship supervisor (or his or her supervisor). No student should feel pressured to engage in sexual conduct during a summer job or externship, and no student should be subject to discrimination.

Isom: What advice would you give to the law firms and courts who benefit from having law clerks or participation in an externship program?

Rosenbury: I know the vast majority of law firms, courts, and other externship and employment sites are committed to equal opportunity and to providing students with experiences free of sexual harassment and discrimination. I ask all of them to make that commitment explicit to their student employees and externs and to remind students of that commitment on a regular basis. I also ask that employers think about that commitment when structuring mentoring programs and monitoring mentoring and other supervisory relationships. I am happy to talk with employers who would like to strengthen their anti-discrimination policies and practices.

Isom: What did you learn from serving on the The Florida Bar Special Committee on Gender Bias?

Rosenbury: Serving on the committee highlighted the many ways that sexual harassment and gender discrimination are the product of implicit bias rather than explicit bias or animus. The problem goes way beyond sexual advances to encompass a wide range of differential treatment of male and female lawyers, calling for a range of solutions and strategies. Because this differential treatment is often not intentional, we need to move beyond a focus on diversity training or better mentoring in order to focus on structural changes that might check implicit bias in hiring, promotion, and compensation decisions and in mentoring and sponsorship relationships. These structural changes are crucial because gender bias is often unconscious and automatic. Even if we are aware of gender bias and want to fix it, unless we consciously put in place structures to stop it, gender bias may still infect the workplace.

1 See also In re Sexual Harassment Policy and Procedures for Complaint Against Justices and Judges, Fla. Admin. Order. No. AOSC18-6 (February 16, 2018).

Authors: Judge Claudia Rickert Isom – Thirteenth Judicial Circuit Court & Laura Rosenbury – Dean and Levin, Mabie & Levin Professor of Law at University of Florida Levin College of Law

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Professionalism and Ethics Committee Luncheon

The Hillsborough County Bar Professionalism and Ethics Committee hosted a seminar on April 9 entitled “Communicating You, Influencing Others: An Introduction to Impression Management for Lawyers” with guest speaker Kirsten K. Davis, a professor of law from Stetson University College of Law. Thank to the members that attended and learned about this important topic.
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The 13th Annual Law & Liberty Dinner featured one of the nation’s most respected military leaders – Admiral William H. McRaven, USN (Ret.), who is a best-selling author, Navy SEAL, and former Commander of U.S. Special Operations Command, based at MacDill Air Force Base. McRaven regaled the audience with his fascinating stories and leadership lessons as part of the Hillsborough County Bar Foundation’s annual fundraising event on May 17.

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

Money raised at the Law & Liberty Dinner will benefit Crossroads for Florida Kids, Inc.; Gift of Adoption Florida (Tampa); Justice Restoration Center; L. David Shear Children’s Law Center of Bay Area Legal Services, Inc.; The Spring of Tampa Bay; and Voices for Children of Tampa Bay.


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Social media is now a key tool for government and related organizations to communicate with the public they serve, but it presents special challenges for courts. Courts must ensure public records compliance, First Amendment protections, and importantly, impartiality (both in appearance and in fact).

The Florida State Courts System is widely recognized for its public engagement, which can be traced back to the tenure of Florida Supreme Court Chief Justice Charles T. Wells. In the aftermath of Bush v. Gore, a series of anthrax scares at government buildings, and the September 11, 2001 terrorist attacks, Justice Wells established a commission to examine how Florida courts communicate with the public and deal with crisis.1 The commission recommended creating a statewide group of court communication professionals.2 With funding from the Florida Bar Foundation, the Florida Court Public Information Officers (FCPIO) organization was created.3 Earlier this year, the FCPIO recognized Justice Wells with an award for his leadership in developing Florida courts’ public media strategies.

Jo Haynes, Marshal at the Second District Court of Appeal, attributes current court media operations to Justice Wells and the court public information professionals throughout the state. “For those of us who also serve in many other roles, the assistance of the Florida Supreme Court’s public information office that Chief Justice Wells created has been invaluable. Their initial work made it easy for us to follow.”

Ms. Haynes explains that the Second DCA’s social media presence began in limited fashion after realizing that Facebook had generated an incorrect “location” for the Second DCA. The court initially started its own page with the correct location to correct the misinformation. Only recently has the court begun actively posting through its “verified” Facebook page.

Facebook is reserved for “softer” court news. Recent posts include Judge Atkinson’s first oral argument panel and the court’s “traveling” oral arguments held in Ft. Myers and Dade City. Practitioners often tag themselves on Facebook at the court when they appear for oral argument.

The Second DCA largely uses Twitter for more time-sensitive messages. In 2017, its Twitter feed was instrumental in notifying the public about outages and court closures during hurricanes. Second DCA Clerk Mary Beth Kuenzel explains, “Twitter allows us to instantly communicate with our practitioners about problems with court technology. In this age of e-everything, fast delivery of such news is critical for managing work and deadlines.” The court also tweets about the issuance of written opinions.

One challenge is moderating the public’s contributions to the court’s social media pages. Individuals may not create a new post on the court’s page, but anyone can comment on a post. The Second DCA’s Facebook page includes an “Impressum” that sets forth the rules of use and conduct, as well as the consequences when those rules are broken.4

But these rules are necessarily in flux. Recently, the Southern District of New York ruled that a public official — specifically, the President of the United States — does not have absolute discretion to “block” a person on Twitter, and can violate the First Amendment by doing so. This ruling, and those that will undoubtedly follow, will affect how government organizations like courts moderate their social media pages.5

Continued on page 23
Another challenge is broadening the court’s audience on social media. The court is unwilling to “friend” or “follow” other users, an avoidance necessary to maintain its appearance of unqualified impartiality (the court only follows the four other districts on Twitter). So, the court greatly appreciates its current Twitter and Facebook followers, relying upon them to spread its news via likes, retweets, and shares.

If you would like to follow the Second DCA to get the most recent news, updates, and information, or to occasionally help “spread the news,” its social media handles are:

Facebook:  @2dca.flcourts
Twitter:  @2dca_flcourts

You can also continue to get information from the court’s soon-to-be-updated website at www.2dca.org. And if you’re feeling old-fashioned, the Second DCA assures that phone calls remain as welcome as ever.

3 Id.
4 Florida Second District Court of Appeal, Impressum, Facebook (May 26, 2018), https://www.facebook.com/pg/2dca.flcourts/about.

Author: Jared M. Krukar – DPW Legal
My experience in the Bar Leadership Institute has been absolutely outstanding. I had very high expectations. And the BLI far exceeded them! My fellow BLI participants share my enthusiasm for the program.

I’ve learned so much about the Tampa Bay community, its growth, its potential, and its heart. My biggest lesson is captured in the words of Dr. Maya Angelou: “I’ve learned that I still have a lot to learn.” Although Tampa Bay is my home, it was not always so.

Ten years ago, I set down roots in this community and decided to launch my legal career here. When I first arrived, I was excited but nervous because I had no connections here. But through participation in voluntary bar associations like the BLI, I’ve developed close relationships with so many kind, courageous, and smart individuals. I received guidance, leadership opportunities, and, most importantly, an ability to make a positive impact in the community. Through the BLI’s monthly modules, I’ve realized there is so much more to Tampa Bay than meets the eye.

Of all the benefits the BLI offers, the most valuable for me personally has been the mentoring program. I was privileged to have current HCBA President John A. Schifino as my mentor. His commitment to diversity and creating access to opportunities for all lawyers is reflected in his words and deeds. His insight and guidance have been invaluable, and he shares my passion for, and commitment to, meaningful mentoring. I also had the benefit of being mentored by Board Director Cory J. Person because, frankly, mentors are like potato chips — you can’t just have one! As someone who is committed to voluntary bar leadership, professionalism, and diversity, Cory has inspired me to sharpen my communication skills and think creatively about problem solving.

Over the span of more than a century, the HCBA has created a tradition of fostering professionalism, community engagement, mentoring, and, more recently, diversity. Through the BLI, it has forged yet another path to realize its commitment to those goals.

If you are interested in applying for the BLI, do not hesitate.

Whether you’re an experienced attorney or a “baby lawyer,” new in town or a Tampa Bay native, there are abundant opportunities to grow professionally and personally. And you will likely develop a newfound appreciation for this city we all love.

The HCBA will continue its tradition as new leaders emerge and new lawyers join the Bar. By participating in the BLI, you can grab a front-row seat to all the action. I look forward to putting the lessons I’ve learned into practice, taking on new challenges, learning new lessons, and meeting the next crop of leaders to emerge from this program.

Congratulations to the BLI Class of 2017-2018. See you at the top!

Author:
Joseline Jean-Louis Hardrick - Middle District of Florida

Plan to Apply for the 2018-19 BLI Class! More Details Will Be Emailed Soon.
Judicial Luncheon – Civil Panel

Held on April 11 with over 160 attendees, the annual Judicial Civil Panel Luncheon included panelists Chief Judge Ron Ficarrotta, Judge Rex Barbas as the moderator, Judge Emmett L. Battles, Judge Martha J. Cook, Judge Robert A. Foster, Judge Gregory P. Holder, Judge Paul L. Huey, Judge Claudia Rickert Isom, Judge Elizabeth G. Rice, and Judge Cheryl Thomas. Topics discussed included ethics and the new administrative order on jury pre-trial conferences, along with trial orders and foreclosure pre-trial orders. Thank you to the judges for participating and providing insight to the attendees!
As we celebrate the one-year anniversary of Florida’s Collaborative Law Process Act, collaborative attorneys should pause to consider how our role as practitioners can influence public perception of the collaborative process. For the process to flourish, we must vigorously maintain and attend to our professionalism. We risk damaging public perception if we relax and enjoy the benefits of the Act without thinking about our responsibilities.

The Act brings with it a new ethical rule: Bar Rule 4-1.19. But we should not disregard our preexisting professional responsibilities — they continue to be our guiding principles no matter the process — and several deserve special attention.

For example, Bar Rule 4-2.1, which governs the lawyer’s role as an adviser, reminds lawyers that in rendering advice, they may “refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client situation.” This should be second nature to collaborative practitioners. But how does that interface with Bar Rule 4-1.1 regarding competence?

According to Rule 4-1.1, competent representation “requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” The challenge for the collaborative practitioner often lies at the intersection of these two concepts — legal knowledge and non-legal considerations — which, ideally, meet and merge when a competent attorney takes them together to advise a client in a manner that enables the client to make legally informed decisions in an interest-based process.

But there are risks in both directions: excessive focus on the law in a vacuum, without regard to its application or the client’s non-legal interests on the one hand, and relaxing one’s knowledge of the law or loosening legal drafting skills on the other. Unbridled advocacy and “positioning” is inconsistent with the highest levels of professionalism because it ignores the client’s non-legal interest in a less adversarial process and unnecessarily risks impasse. Focusing only on a client’s non-legal interests, rationalizing that collaborative clients require a lesser degree of legal knowledge and advice, similarly lacks the professionalism every client deserves.

A client’s decisions must be informed by both legal and non-legal considerations.

Collaborative clients also deserve to have their representation be afforded the speed and diligence required by Bar Rule 4-1.3. The comments to Bar Rule 4-1.3 note that “[p]erhaps no professional shortcoming is more widely resented than procrastination.”

Collaborative lawyers must guard against devoting less attention to collaborative matters because they have no court-imposed deadlines or hearings. Client satisfaction requires providing clients with at least the timely attention and preparation provided to matters with deadlines.

For the collaborative process to thrive, collaborative clients must not have to choose between traditional representation that delivers professionalism and collaborative representation that delivers lawyering “lite.” Only by delivering collaborative legal representation with the highest level of professionalism, will we succeed.

Author: Ellen E. Ware – Ware Law Group, PA
Collaborative Law Luncheon/CLE

The Collaborative Law Section hosted a CLE luncheon entitled “Collaborative Law: If It's So Great, Why Isn't Everyone Doing It?” on April 25 at the Chester H. Ferguson Law Center. The speakers, Dale Appell with Dale Appell, P.A. and Ellie Probasco with Probasco Law, P.A., discussed the importance of the collaborative process, how to market your practice, and how the Florida Rules of Professional Responsibility relate to advertising.

The Section thanks its luncheon sponsor:
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YLD Judicial Appreciation Luncheon

“Meet the Newest Additions to the 13th Circuit” was the title of this year’s YLD Judicial Appreciation Luncheon at the Chester H. Ferguson Law Center on May 3. The panel of judges who spoke at the luncheon included: Judge Darren Farfante, Judge Daryl Manning, Judge Jared Smith, Judge Carl Hinson, Judge Michael Williams, Judge Miriam Valkenburg, and Judge Christine Marlewski. YLD President-Elect Jason Whittemore served as the moderator. Thank you to the judges who attended and participated in the panel!
The Community Services Committee (CSC) enjoyed another amazing year, due to the support and generosity of our wonderful volunteers and donors. On behalf of the CSC, thank you to all who so generously donated your time and money to help support the incredible causes below!

After the success of the Adopt-a-Veteran event in October (led by Tristan Wolbers of Tajer Wolbers PLLC and Lara LaVoie of LaVoie & Kaizer, P.A.), where volunteers gave their time and donations so generously to fulfill the wish lists of veterans in need, countless volunteers and donors stepped up once again to support the CSC’s Elves for Elders event in December (led by Head Elf Lisa Esposito of the Law Offices of Lisa Esposito P.A.) to help make the holidays brighter for these inspiring seniors. We were able to get every one of the 350 elders adopted and raised an additional $7,000! We would be remiss if we also didn’t thank Jennifer Hamey of Jennifer L. Hamey P.A. for baking over 1,000 holiday cookies to give to every resident of the Whispering Oaks Nursing Home at the event.

In March, the CSC once again hosted Dining with Dignity Week (led by Lara LaVoie) where volunteers spent quality time at Trinity Café, serving sit-down, three-course meals to Hillsborough County’s homeless and working poor. It was truly a rewarding experience for all. Many members of the local judiciary volunteer at this annual event, and it is truly inspiring to see the positive interactions between our judges and those residents who are less fortunate in our community.

Our final event of the year took place in May at A Kid’s Place in Brandon, which is an amazing nonprofit center for abused and abandoned children. To help these wonderful children feel like kids for a day, the CSC threw them their fifth annual Pirate Plunder Party this year. Once again, it was a resounding success thanks to all who donated or came out to help! A big thank you must be given to our two main sponsors this year – Stingray Chevrolet and its finance manager John Whaley and Fernando Rodriguez and his company, National Construction Services.

Everyone had a blast — the kids & the CSC’s volunteers included. We played pirate games, dressed the little buccaneers as pirates (thanks to a donation from Advanced Diagnostic Group), and let them make their very own treasure chests (thanks to donations from Anton Castro Law, as well as Arturo and Vienna Fuentes and Tampa Sweetheart Cigars). The photo booth from Mr. Photobot and DJ Brian Ferrito rocked the house. The face painter and balloon artist from Glitterbug were hits again this year thanks to Mary Simmons, CPA.

At this year’s Pirate Party, the kids were lucky enough to enjoy a new dunk tank, which was sponsored by Drew Daddano and Anchor Trust Management. The kids loved dunking their social workers and house parents – and Drew! The awesome company Best Choice Software sponsored a petting zoo, and the kids absolutely loved the donkey and miniature horse.

The toys were a hit, thanks to many, including the Law Offices of Lisa Esposito, P.A.; the law firm of LaVoie & Kaizer, P.A.; Mary Simmons, CPA, PA; Yvette Hammett; Lee Everett; The Horgen Family; and the Olsen Law Firm. The barbecue was awesome, thanks to BubbaQues and donations from South Tampa Dermatology, as well as Maria Maranda and her State Farm Agency. The desserts also were absolutely delicious, thanks to Petite Madelyn’s Bakery in Valrico, Sandra Puerta (who owns CSB Healthcare Solutions), and Publix (who donated some lovely treats as well — thanks to the help of Tristan Wolbers).

The bouncy house and candy machine were hits as well, thanks to King of Bounce (which does a lot of charity work), and a generous donation from Jennifer L. Hamey, P.A., which made the bouncy house possible. The candy machine was sponsored by Helen Ashley and The Coffeys. Thanks also to Lizzette Marisol Penrod with Stravino Penrod Research Partners and Evolve Professional Landscape Management, each of the 60 little pirates at A Kid’s Place received gift certificates for meals at DairyLand.

Continued on page 29
A huge thanks also goes to the law firm of Shutts & Bowen for sponsoring movie tickets for every child at A Kid’s Place at the Riverview 14 GDX movie theater. The theater even donated snacks at the theater for each child!

Gil Sanchez and both of his firms, Black Rock Trial Lawyers and Tempus Business Strategists, not only helped with the candy and popcorn machines, but Gil also gave some amazing tennis lessons. The yummy popcorn and refreshing icy machine also were made possible through a generous donation from Hill Ward & Henderson (with a special thanks to HCBA immediate past president Gordon Hill).

The CSC is truly humbled and overwhelmed by the amount of donations and volunteer support that we received for this event. The CSC would like to thank all our volunteers, the Hillsborough County Bar Association (with a special thanks to Michele Revels, Laura Rideout and John Kynes), as well as the following additional donors: AJ's Bikes and Boards; Fernando Llop; Older Lundy & Alvarez; Damien Rodriguez; Dimmitt Automotive Group; Seacoast Bank; Harrison Standley and Christy Watchous. We do hope that we didn’t forget anyone!

Finally, the CSC would like to provide a special thank you to Attorney Lisa Esposito for spearheading and chairing the Annual Pirate Party, as well as a thank you to Lara LaVoie, Scott Strange, Cheryl Mosley, Eric Sugrue, Laura Sugrue, Robin Whaley (and her friends Dee-Dee and Rebel), Terri Dino, Liz Tomlin, Krewe of Peg Leg Pirates, Jennifer Esposito, and Crystal Esposito (just to name a few) for making this year’s Pirate Plunder Party the best one yet. (Additional photos from the Pirate Plunder Carnival are on page 47.)

The commitment and dedication of our volunteers and donors makes all of the difference and that is all that matters – thank you!

We also have more great events planned for this upcoming year, and we hope to see many familiar faces back to help. You might just find that you gain more than you give!

For more information about joining the CSC and participating in one of our amazing events this year, please contact Chair Lara LaVoie at (813) 898-6786 or lara@lkinjurylaw.com or Lisa Esposito at (813) 223-6037 or Lisa@lesposito.com.

Authors: Lara LaVoie – LaVoie & Kaizer, P.A. and Lisa Esposito – Law Offices of Lisa Esposito P.A.
In the summer of 2008, *American Idol* topped the Nielsen ratings and Lebron James chased an NBA championship for the Cleveland Cavaliers. Poison’s Brett Michaels starred in a VH1 reality dating show, while Donald Trump hosted a reality show that had not yet drawn celebrity contestants. A little-known Senator from Illinois named Barack Obama emerged as the Democratic Party’s nominee for president. Yes, the summer of 2008 seems just like yesterday and forever ago at the same time.

For Florida contractors, however, the summer of 2008 may be revisited shortly. Why? Because the ten-year statute of repose for construction claims in section 95.11(3)(c), Florida Statutes, will soon expire on those projects.

While the expiration of the repose period is usually “Nothin’ but a Good Time” for contractors, it can often trigger owners into exhuming claims on long-forgotten projects. For many contractors, the prospect of litigating flip phone-era projects is daunting. Finding subcontractors and employees who worked on these projects and who managed to survive the Great Recession tends to be a small miracle. And tracking down contracts, insurance information, and billing records often resembles archaeology. While contractors must say “I Won’t Forget You” to these problems, the first thing they must do when receiving notice of a Summer 2008 project claim is determine the parties against whom they have indemnity rights.

Generally, the limitations period for bringing an indemnity claim “does not begin running until the litigation against the third-party plaintiff has ended or the liability, if any, has been settled or discharged by payment.” *Castle Const. Co. v. Huttig Sash & Door Co.*, 425 So. 2d 573, 575 (Fla. 2d DCA 1982). But for indemnity claims on construction projects, it’s possible that the ten-year statute of

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repose — which cuts off all claims — may run even before the statute of limitations period begins. That was precisely the outcome in Department of Transportation v. Echeverri, 736 So. 2d 791 (Fla. 3d DCA 1999), in which the court upheld the dismissal of the Department of Transportation’s cross-claims for indemnity brought after the repose period expired.

The Echeverri holding means that if a contractor (or sub) does not receive notice of an owner’s claim until the day before the statute of repose expires, the contractor can find itself in the worst possible position — having to litigate a decade-old project against an owner while at the same time being unable to pursue the indemnity and defense rights it contractually bargained for at the time of the project.

If you think this outcome is unfair, then you’re not alone. Contractors who have said, “I Want Action,” have lobbied for recently passed legislation, effective July 1, 2018, amending section 95.11(3)(c) to allow counterclaims, cross-claims, and third-party claims to be asserted up to one year after the statute of repose has otherwise expired. This statute eliminates the unfortunate situation contractors presently find themselves in under the current statute and Echeverri.

Until July 1, 2018, “Life Goes On” for contractors in Florida, but the new legislation certainly gives them “Something to Believe In.”

Author: Erik Raines
— Hill Ward Henderson, PA
Thanks To All Our FOX 13 Ask-a-Lawyer Volunteers!

The attorneys from the Lawyer Referral & Information Service were at it once again in April and May, 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.

- Richard Alexander
- Dale Appell
- Shamika Askew-Storay
- David Befeler
- Alan Borden
- Michael Broadus
- Hunter Chamberlain
- Erik de L’Toile
- Ricardo Duarte
- Marc Edelman
- Christine Franco
- Trescot Gear
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- Nehemiah Jefferson
- Suzanna Johnson
- Keith Ligori
- Jamila Little
- Denny Morgernstern
- John Mulvihill
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2018 Law Day Membership Luncheon

More than 500 HCBA members and guests attended the annual Law Day luncheon on May 9. Joe Lopano, CEO of Tampa International Airport, was the featured speaker, and Florida Bar President Michael Higer gave brief remarks to the attendees. HCBA also presented several awards at the luncheon, including its annual Liberty Bell Award to former Governor Bob Martinez. The award recognizes a non-lawyer citizen whose community services strengthens the effectiveness of the legal system (read more about Martinez’s deep devotion to our community in the Executive Director’s message on page 8.)

Detective Ashely Lindeman with the Hillsborough County Sheriff’s Office and Officer Albis Maceo with the Tampa Police Department also were honored with the 2018 Law Enforcement Officer of the Year Awards (Lindeman and Maceo were not in attendance at the luncheon.) Additionally, six middle and high school students were recognized for their winning Law Week art entries, which were displayed at the luncheon (shown on next page).

The HCBA thanks its luncheon sponsor, The Bank of Tampa, for its support and involvement.

Congratulations to the 2018 Law Week Art Contest winners:

**HIGH SCHOOL**
- Third Place Winner: Dakota Olson from Blake High School
- Second Place Winner: Charlotte Yang from Plant City High School
- First Place Winner: Ross Stoneburner from Blake High School

**MIDDLE SCHOOL**
- Third Place Winner: TJ Terry from Wilson Middle School
- Second Place Winner: Amara Woodward from Wilson Middle School
- First Place Winner: Emma Centrone from Wilson Middle School

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**SAVE the DATE**

Make plans now to attend HCBA’s 22nd Annual Bench Bar Conference, Membership Luncheon & Judicial Reception

**Wednesday, October 3, 2018 - Hilton Tampa Downtown**

**Featured Speakers:**
- Professor Charles Ehrhardt, Professor Emeritus, Florida State University College of Law, presenting on impeachment of witnesses
- Professor Susan McManus, University of South Florida, presenting on November 2018 elections and Florida ballot measures
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Chris Griffin has over 39 years of trial and appellate experience in practically all fields of civil litigation. He has extensive experience in matters of commercial litigation, including cases involving non-compete agreements, trade secrets, business torts, corporate disputes, probate, contracts, real estate, intellectual property, ERISA and many others. Mr. Griffin has tried cases in virtually every circuit of the State of Florida and in the state’s Southern, Middle, and Northern Federal District Courts. He also has argued appeals in all of Florida’s District Courts of Appeal, the Florida Supreme Court, and the Eleventh Circuit Court of Appeals. Because of Mr. Griffin’s extensive litigation experience, he has participated in hundreds of mediations, including those ordered by trial courts as well as those agreed to by parties prior to litigation.

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Appellate Luncheon

The Appellate Law Section held a luncheon on April 18 on the amusing, yet useful, topic of “Boring Appellate Stuff That No One Should Care About – Except You.” The speaker, Matt Conigliaro with Carlton Fields, focuses on appellate and complex commercial litigation and is a former Florida deputy solicitor general.

Following the luncheon, the Section held a four-hour CLE on “The Nuts and Bolts of Appellate Law.” Topics covered included: The Unwritten (and Written) Rules of Appellate Practice, presented by Ceci Berman with Brannock & Humphries; How to Avoid Being Ambushed by New Appellate Rules by Kristin Norse with Kynes, Markman & Felman, P.A.; the Nuts & Bolts of Criminal Appeals by Elba Caridad Martin, Assistant Attorney General, Office of the Attorney General; and Professionalism and Complaints in Appellate Law by Richard Martin with Akerman LLP.

Thank you to the luncheon and CLE’s sponsor:

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Senior Counsel Section Luncheon

The Senior Counsel Section met on May 7 at the Chester H. Ferguson Law Center, and received an interesting update from Julianne Holt, the Hillsborough County Public Defender for the Thirteenth Judicial Circuit. Thank you to Ms. Holt for taking time out of her busy schedule to speak to the Section!
This article summarizes five key takeaways on how the recent federal Bipartisan Budget Act of 2018, signed into law on February 9, 2018, will benefit the telehealth industry.

1. No More Originating Site Restrictions for Telestroke
   Beginning January 1, 2019, the historic geographic limitations and facility-type requirements on originating sites will no longer apply to diagnosing, evaluating, or treating symptoms of an acute stroke when done at certain originating sites. These originating sites are 1) hospitals, 2) critical access hospitals, 3) any mobile stroke unit as defined by the Secretary of Health and Human Services, or 4) any other site determined appropriate by HHS. Note, the new reimbursement applies only to the distant site practitioner’s professional fee, not the originating site facility fee.

2. Medicare Will Reimburse for Telehealth Dialysis Services at the Patient’s Home and at Independent Facilities
   Reimbursement is extended to dialysis services provided remotely to patients located at home or at independent renal dialysis facilities. Effective January 1, 2019, an individual with end stage renal disease (ESRD) receiving home dialysis may choose to receive monthly ESRD-related oversight visits from their home via telehealth if the patient receives a “face-to-face” visit (in this context, meaning in-person) at least once a month during the initial three months of home dialysis and then, after the initial three months, at least once every three consecutive months. Keep in mind, however, that no facility fee payment is available when a patient is located at home.

3. Providers Can Give Free Telehealth Technology/Equipment for At-Home Dialysis Patients
   The provision of free telehealth technologies by a provider of services or a renal dialysis facility to an individual with ESRD who is receiving home dialysis for which Medicare payment is received will not constitute illegal remuneration under the Civil Monetary Penalties Law if: 1) the technology is not offered as part of any advertisement or solicitation, 2) the technology is...
Continued from page 42

for the purpose of furnishing telehealth services related to the individual’s ESRD, and 3) the provision of the telehealth technologies meets any other requirements set forth in Centers for Medicare and Medicaid Services (CMS) regulations.

4. Medicare Advantage Plans Can Finally Include Telehealth Services as a Basic Benefit

The bill gives Medicare Advantage plans the ability to offer telehealth services as part of their basic benefit package (i.e., as if the telehealth services were benefits under the original Medicare fee-for-service program option). But exactly what telehealth services will qualify as a “basic benefit” is not fully defined.

5. The Patient’s Home is an Eligible Originating Site for Accountable Care Organizations

Beginning January 1, 2020, the patient’s home qualifies as an eligible originating site for telehealth professional services provided by a physician or practitioner participating in certain Accountable Care Organizations, unless CMS deems a service inappropriate to furnish in the home setting. As with many of the other changes introduced by the new law, the patient’s home is not eligible for a facility fee.

Author: Thomas (T.J.) Ferrante & Jacqueline N. Acosta – Foley & Lardner LLP

Healthcare Section Luncheon

On May 14, the Healthcare Law Section held their popular annual Florida Healthcare Legislative Update. The speakers Erin Smith Aebel and Dipa Shah with Shumaker Loop & Kendrick, LLP discussed various topics, including medical marijuana and mental health. Thank you to the attendees who braved the rain to participate!

Thank you also to the luncheon sponsor:
n April 2, 2018, the U.S. Supreme Court decided *Encino Motorcars, LLC v. Navarro*, holding that service advisors at car dealerships are exempt from the overtime-pay requirement under the Fair Labor Standards Act (FLSA), 138 S. Ct. 1134, 1143 (2018). Chief Justice Roberts and Justices Kennedy, Alito, and Gorsuch joined in the majority opinion by Justice Thomas.

The “service advisors” in *Encino Motorcars* were responsible for meeting with customers about car issues and selling them accessories, parts, and maintenance and repair work. From 1978 through 2011, the Department of Labor took the position that service advisors met the FLSA’s exemption of “any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles” at covered dealerships. But in 2011, the DOL issued a rule that interpreted the exemption to exclude service advisors.

The employer in *Encino Motorcars* appealed a Ninth Circuit ruling reversing the district court’s dismissal of an
overtime claim based on the FLSA’s exemption of “salesman … primarily engaged in … servicing automobiles.” In reversing the Ninth Circuit, the Supreme Court held that service advisors are exempt, interpreting “salesman” and “servicing” to have their ordinary meanings and the use of “or” to have a disjunctive meaning. The employees argued for a distributive interpretation that would apply the exemption to salesmen engaged only in selling, not servicing. The Court, however, found such an interpretation unnatural based on the discrepancy between the exemption’s use of three nouns — salesman, partsman, or mechanic — but only two gerunds — selling or servicing.

The decision in *Encino Motorcars* applies to a narrow group (of car dealership employees), but it could easily become a seminal case under the FLSA because its analysis could be applied to other FLSA exemptions that were not at issue in the case. In interpreting the exemption at issue, the Court rejected “the principle that exemptions to the FLSA should be construed narrowly.” Citing a treatise by the late Justice Scalia and Bryan Garner, the Court reasoned that “the FLSA gives no ‘textual indication’ that its exemptions should be construed narrowly,” so “there is no reason to give them anything other than a fair (rather than a ‘narrow’) interpretation.” Thus, courts interpreting an FLSA exemption “have no license to give the exemption anything but a fair reading.”

Justices Breyer, Sotomayor, and Kagan joined the dissenting opinion by Justice Ginsburg, who wrote that the majority opinion “unsettles more than half a century of our precedent.” Objecting to the majority’s overruling of cases that required FLSA exemptions “to be narrowly construed against the employers seeking to assert them,” the dissenting opinion cited the general rule that exceptions to a statutory provision should be read narrowly “to preserve the primary operation of the provision.” Rejecting this reasoning, Justice Thomas explained in the majority opinion that the dozens of exemptions from the FLSA “are as much a part of the FLSA’s purpose as the overtime-pay requirement.”

This shift from construing exemptions narrowly against employers to requiring a “fair reading” will likely apply to other exemptions under the FLSA and could extend the reach of this decision far beyond car dealerships.

*Author: Harold Holder – Bush Ross, P.A.*
Over the last several years, there has been a growing trend in the Tampa family law courts to appoint a guardian ad litem to represent the best interests of the child in divorce and paternity proceedings. Having handled cases in which a guardian ad litem is appointed and having served as one, I can attest to the usefulness of an independent advocate for the child in difficult cases.

Section 61.403, Florida Statutes, authorizes courts to appoint a guardian ad litem. Parties generally waive hearsay objections, allowing the guardian ad litem to report the child’s testimony to the court, thus relieving the child of this often stressful aspect of the litigation. Most would agree that the appointment of a guardian without a hearsay waiver is not recommended.

After being appointed, a guardian will typically meet with a child several times over the course of a given case to establish a rapport with the child and to provide an environment in which the child can speak freely. The guardian will also meet with any collateral witnesses, including mental health professionals, parent coordinators, doctors, teachers, and any additional witnesses requested by the parties. Ideally, once a guardian is appointed, the parties will contact everyone they anticipate the guardian will want to meet with so the parties can get the third parties to execute waivers. This will eliminate unnecessary delays in the guardian’s investigation.

Once appointed as a guardian, I typically speak with the attorneys first to determine the issues involved. Next, I speak with the parents individually to determine each parent’s perspective on whatever those issues may be. At that point, I typically determine how I will meet with the child based on the child’s age. For young children who cannot provide much input on the relevant issues or their preferences, I like to meet with them at each parent’s home. Significant information can be gleaned by how the child behaves in the presence of each parent. With older children, I prefer to meet initially outside of their home, oftentimes at my office or at a public location such as a restaurant or park. I find children are more willing to speak freely under these circumstances.

After completing his or her investigation, the guardian ad litem will prepare a report detailing all his or her findings and making recommendations based on the issues identified in the order of appointment. These recommendations are typically made in consideration of the factors identified in section 61.13, Florida Statutes. In preparing his or her report, the weight the guardian gives the child’s opinion will vary based on the child’s age and maturity.

The appointment of a guardian ad litem can be a valuable tool in any contested parenting case by providing the parties valuable information, which often leads to settlement of difficult cases, or by providing a concise summary of the testimony and issues in litigation.

Author: Brian Bowes – The Bowes Law Group
Pirate Plunder Carnival

The HCBA Community Services Committee held their fourth annual Pirate Plunder Party on May 19 at A Kid’s Place of Tampa Bay. Volunteers and the committee members organized a variety of great games and activities for the kids, including a photo booth, face painting, balloon artist, petting zoo, bouncy house, and DJ, and provided great food, toys, and decorations to make the event festive. The Community Services Committee is grateful to the many sponsors and volunteers that helped make this event possible for the deserving children at A Kid’s Place.
The New “Forever GI Bill” – What It Means for Veterans
Military & Veterans Affairs Committee
Chairs: Alexandra Srsic – Bay Area Legal Services, Inc. & David Veenstra - Hunter Law, P.A.

With the passage of the Harry W. Colmery Veterans Educational Assistance Act, otherwise known as the “Forever GI Bill,” lawyers advising active duty service members, veterans, and members of the National Guard or Reserves on these benefits should become familiar with these recent changes, as well as where to direct servicemembers and veterans to for assistance.

Passed in August 2017 as Pub. L. 115-48, the Forever GI Bill updated and expanded benefits available to our nation’s service members under the Post 9-11 GI Bill, which itself expanded the Vietnam-era Montgomery GI Bill. Perhaps the biggest and most far-reaching change in the new law, hence the title “Forever GI Bill,” is the elimination of the Post 9-11 GI Bill’s requirement that servicemembers “use or lose” their benefits within 15 years of the servicemember’s discharge or release from active duty.

Now, eligible servicemembers can access these benefits any time after active duty. Additional changes that became effective last August include: assistance for students affected by school closures; the ability to use benefits toward a Non-Institution of Higher Learning for post-secondary on-line education and post-secondary vocational institutions; the ability for reservists to credit as service toward the Post 9-11 GI Bill any of their Reserve Educational Assistance Program eligibility lost because of the program’s sunset; and the removal of the expiration date for qualifying work studies.

In August 2018, a number of new benefits will become available. These benefits include: the ability to transfer entitlements to another dependent if the original dependent dies or if the veteran dies; the dependent who received a transferred benefit can designate a new eligible dependent of the veteran to receive the benefit; modifications to the housing allowance calculated based on the zip code where the student physically attends the majority of classes; additional benefits for Science, Technology, Engineering and Math programs; modifications to the Yellow Ribbon Program; and expanded eligibility guidelines for Guard and Reserve Members. Also on August 1, 2018, servicemembers who were awarded a Purple Heart on or after September 11, 2001, will receive 100 percent of the available Post 9-11 GI Bill benefits for up to 36 months, regardless of how long they served on active duty.

Continued on page 49
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But while the Forever GI Bill generally expanded the benefits available to servicemembers, those who receive education benefits after January 1, 2018, will see their housing allowance available under the program reduced five percent by 2020 from current baseline levels, as well as a reduction to the Survivors’ and Dependents’ Educational Assistance benefit from 45 months to 36 months.

In advising clients on these generous benefits made available to our men and women who are selflessly serving or who have already proudly served in uniform, practitioners need to remain aware that the individual armed services, and not the Veterans Administration, prescribe their own rules for application to and eligibility for the program. Lawyers should also be aware of a major policy change expected from the Department of Defense later this year that will limit the ability to transfer benefits to those servicemembers with less than 16 years of total service.

For additional resources, lawyers and servicemembers should consult their respective service regulations and administrative guidelines and the U.S. Department of Veterans Affairs website dedicated to the Forever GI Bill,2 which includes detailed summaries of benefits, timelines, and fact sheets.


Author: Scott G. Johnson – Shutts & Bowen, LLP

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A special needs trust, sometimes known as a supplemental needs trust, is a specifically designed trust that allows the disabled beneficiary to benefit from the use of trust property while remaining eligible for needs-based government assistance programs, such as Medicaid. This kind of trust is created so that the beneficiary may supplement their usual income with government benefits when they’re unable to pay their living expenses by their own means.

In a special needs trust, distributions of income or principal must be made to preserve the beneficiary’s eligibility for needs-based programs. For example, trust distributions can be used to directly pay providers of medical services but should never be made directly to the beneficiary. It is crucial that trust assets aren’t used to pay for certain expenses, because the trust may be disqualified and the trust property can be counted against the beneficiary for purposes of qualifying for needs-based programs.

The four most common types of disability benefits are Supplemental Security Income (“SSI”), Social Security Disability Insurance (“SSDI”), Medicaid, and Medicare. SSI and Medicaid are needs-based programs, while SSDI and Medicare are not. Thus, it’s generally not necessary to use a Florida special needs trust to preserve SSDI or Medicare benefits. Unfortunately for those who benefit from needs-based programs, it’s easy to be disqualified from these programs. Something as simple as receiving a lump sum of money or assets, such as from an inheritance or court settlement, can disqualify a recipient.

A special needs trust can be monumental in preserving the assets of a disabled beneficiary who receives needs-based government benefits and may be in jeopardy of losing those benefits because of a disqualifying event.

Creating a special needs trust is not much more complicated than creating other types of trusts. But it can be difficult to maintain. Now, thanks to the Special Needs Trust Fairness Act, the disabled person, provided they are mentally capable, can establish and fund their own special needs trust. Before, the special needs trust had to be created by the court or the parents, grandparents, or legal guardians of the disabled beneficiary.

The trust language must follow the laws governing Florida special needs trusts and should direct how trust assets be spent. Specifically, the trust should be designed as a special needs trust under 42 U.S.C. § 1396p(d)(4); the trust should state that the settlor’s intent is to allow eligibility for needs-based government assistance programs, including SSI or Medicaid, for a disabled person by supplementing those government benefits; that trust distributions may be made in the trustee’s sole discretion for maintaining the quality of the beneficiary’s health, education, safety, and welfare when not provided by government assistance; and that the trustee will repay all state Medicaid bills upon termination of the trust after payment of estate expenses.

Special needs trusts can be incredibly important and exceptionally complex. Consult with an experienced estate planning attorney before drafting such a trust.

Author: David Fall – Older, Lundy & Alvarez
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YLD Spring Happy Hour and Wellness Event

The YLD held two great networking events in April and May. The Spring Happy Hour took place on April 25 at Rock Brothers Brewing in Ybor City, and was a great social event for the attendees. During the happy hour, Bay Area Legal Services Inc. also held a membership drive for their new attorney networking group, The Collective.

On May 16, the YLD held their annual wellness event for members at CAMP Tampa. The attendees participated in an indoor cycle sculpt class and, after the workout, received a healthy snack from Fresh Kitchen.

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Although the SEC and the Florida legislature have recently clarified the regulatory regime for business brokers in Florida, Florida attorneys and business owners often remain perplexed about the applicable licensing requirements. Fortunately, the governing rules are now, for the first time, neatly housed in just two locations.

In its July 31, 2014 “No Action Letter,” which was amended February 4, the SEC’s Division of Trading and Markets clarified the historically controversial exemption from broker-dealer registration under Section 15(b) of the Exchange Act. This guidance, commonly referred to as the “M&A Brokers” letter, lays out a safe harbor for brokers selling a “control” interest in a privately-held company to an “active” buyer (or group of buyers not pooled by the M&A broker). Both “active” and “control” are well-defined in the letter as part of ten enumerated criteria forming a conjunctive test that an unregistered M&A broker must pass to legally sell equity interests in a business and collect a success fee tied to the value of the transaction without any involvement of the SEC or FINRA.

Shortly after the SEC issued its M&A No Action Letter, the North American Securities Administrators Association issued its Model Rule for states on this matter. Florida adopted the rule, effective July 1, 2016, as section 517.12(22), Florida Statutes. The new provision largely parallels the SEC’s guidance but provides relief from registration as a broker or dealer under our state securities laws. The biggest difference between the two is, unlike the SEC’s guidance, which applies to the sale of any privately-held entity, the state law limits the exemption to transactions involving target companies that had less than $25 million in EBITDA or less than $250 million in gross revenue (with inflationary adjustments) in the fiscal year immediately preceding the fiscal year during which the M&A broker begins to provide its services.

For our business-owning clients in Florida, securities regulations are now clear, if not well-known. Business brokers can charge up-front fees, retainers, and transaction-based success fees without registering as a broker-dealer at either the federal or state level.

Continued on page 55

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Continued from page 54

level, so long as the transaction ultimately consummated complies with both of these two sets of rules.

Now that this clarification has been provided, some securities license holders have explored the benefits of giving up their federal broker-dealer and state broker registrations. In addition to its extra compliance costs, registration also attracts a Securities Investor Protection Corporation charge equal to 15 basis points of the broker-dealer’s net operating revenue.

While the securities regulations are costly, the alternative, registering with the Department of Professional Responsibility as a real estate brokerage company under chapter 475, Florida Statutes, has its own hassles. Any firm offering business brokerage services in Florida that is not a registered broker-dealer or a registered real estate brokerage company commits a third-degree felony. It is therefore worth verifying that any broker proposing to work with your clients is correctly registered in one of these two manners.

Author: Clinton Johnson – Benchmark International

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Securities Section Luncheon

The topic of this spring’s Securities Section luncheon was “Transforming Broker Dealers into Fiduciaries and the Associated Litigation Risks.” Held at the Chester H. Ferguson Law Center on March 22, the luncheon’s featured speaker was Gene Maloney, the Executive VP and Corporate Counsel for Federated Investors Incorporated.

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Thank You to the Members Who Submitted their National Parks Photos!

This Bar year, we enjoyed highlighting our beautiful national parks on the cover of this magazine. We received so many wonderful photos from members, that we could not feature all of them on the covers. So we are including several more here for everyone to enjoy. We hope these provide inspiration to visit our national parks this year!

Bryce Canyon National Park, UT by Brian Sparks

Crater Lake National Park, OR, by Gordon Hill

Mesa Verde National Park, CO, by Tom Elggett

Bison Jam, Yellowstone National Park, WY, by Brian Sparks

Pictured Rocks National Lakeshore, MI, by Tom Elggett

Mount Rainier National Park, WA, by Anthony Cuva

Angel’s Landing, Zion National Park, UT, by Gordon Hill

Arches National Park, UT by Gordon Hill

Buffalo Jam, Yellowstone National Park, WY, by Brian Sparks

Pictured Rocks National Lakeshore, MI, by Tom Elggett

Angel’s Landing, Zion National Park, UT, by Gordon Hill
Glacier Bay National Park, AK, by Brian Sparks

Yosemite Falls, Yosemite National Park, CA, by Anthony Cuva

Yosemite National Park, CA, by Tom Elligett

Male Orca, Kenai Fjords National Park, AK, by Brian Sparks
Thanks to all the attorneys and judges who attended the Senior Counsel Section luncheons in the 2017-2018 season. We are grateful to have had such interesting speakers and such great attendance.

Because of Hurricane Irma, our first luncheon was not held until October, when former Governor Bob Martinez was our featured speaker. Martinez, the only Governor of Florida from Tampa, discussed the “business of politics,” contrasting politics in the 20th century with politics of the 21st century.

In the 20th century, the election business plan terminated on Election Day. Politicians used television broadcasts, newspaper advertisements, and direct mail, but there were few, if any, political consultants and no political action committees. In the 21st century, the business model changed dramatically. Some candidates never stop campaigning even after Election Day. Newspaper advertisements are more sophisticated, but often more brutal.

In November, we were honored to receive Tim Marks, President and CEO of Metropolitan Ministries. After many years in the corporate world, Tim joined Metropolitan Ministries in 2006. Its mission is to alleviate suffering, promote dignity, and instill self-sufficiency for homeless and at-risk families. Metropolitan Ministries works in partnership with non-profit groups and public agencies to be an effective caregiver to poor and homeless. They give hope to those in desperate need.

Florida Supreme Court Justice Fred Lewis was our January luncheon speaker. Justice Lewis was appointed to the Supreme Court in 1998. Justice Lewis expressed his concern for the health and wellness issues facing Florida’s lawyers. He explained that statistics have demonstrated the need to provide more resources to ensure that lawyers in Florida are developing a better quality of life. Over 75 people came to hear Justice Lewis, including several members of the judiciary.

Cynthia Gandee Zinober, the Executive Director of the Henry B. Plant Museum, spoke at our March luncheon. She told the story of the Tampa Bay Hotel from its beginnings in 1881, through the tumultuous years of the Spanish American War, and the remarkable impact Henry Plant had on the growth of Tampa. The museum is the portion of the Tampa Bay Hotel that retains its original form and character. Most of the furnishings in the museum were purchased for the hotel by Henry Plant and his wife Margaret. They reflect the opulence and the lavish lifestyle of America’s Gilded Age.

Our final speaker was Julianne Holt, who has been the Public Defender for the 13th Judicial Circuit for 25 years. She explained the key role played by the Assistant Public Defenders in the criminal justice system, not only by working in the courts, but also by being involved in the community.

I would like to give a special thanks to Leonard Gilbert, Richard Martin, Judge Susan Bucklew, and Antina Mobley for introducing our speakers; Judge Greg Holder, Magistrate Judge Mary Lou Cuellar Stilo, and Judge Daryl Manning for leading the Pledge of Allegiance; and to Andy Mayts, Kevin McLaughlin, Judge Paul Huey, and Gil Singer for offering the invocation at our luncheons.

Please join us in September for the next Senior Counsel luncheon featuring Second District Court of Appeals Judge Anthony Black.

Author: Thomas Newcomb Hyde - Attorney at Law
Florida Supreme Court Justice Fred Lewis and Chair Thomas Newcomb-Hyde

Leonard Gilbert, Frank “Sandy” Rief, III, Former Governor of Florida Bob Martinez, and Chair Thomas Newcomb-Hyde.

Florida Supreme Court Justice Fred Lewis speaking to the Section in January.
Our May 2nd Trial & Litigation Section CLE on jury instructions and verdict forms was an excellent program. The topic does not receive a lot of attention, but is near and dear to the heart of every jury trial lawyer. We were honored to have Judge Nelly Khouzam and Judge Matthew Lucas, of the Second DCA leading the CLE, along with respected practitioners Kristin Norse of Kynes, Markman & Felman, P.A. and Jessica Costello of the Attorney General’s Office of Statewide Prosecution. Their presentations were fast-paced and covered a variety of important issues in two short hours.

Judge Lucas began with a 40-minute presentation on civil jury verdict forms. He explained the importance of preparing an accurate and comprehensive verdict form and recommended that practitioners begin earlier than usual because of their crucial importance. Judge Lucas demonstrated the difficulty of preserving a clear and understandable record, and he used several specific examples to show how easy it can be to unintentionally create a confusing and indecipherable record. He also emphasized the importance of a clear and logical flow of directions to avoid error.

Judge Lucas explained that a simplified general verdict was previously preferred, but the current trend in civil cases is towards using a special interrogatory verdict to preserve the jury’s specific findings of fact. Reviewing a general verdict, an appellate court can only infer the jury’s factual findings and overturn the entire verdict. Special verdict forms allow an appellate court a more reasoned review of a verdict based on a jury’s specific findings. Special verdicts also allow an appellate court to overturn only erroneous portions of a verdict, possibly relieving the parties and trial court of a full retrial.

Ms. Costello, a respected prosecutor, gave an excellent 20-minute presentation on criminal jury instructions. She shared the wisdom of a practitioner in the trenches, pointing out common pitfalls and suggesting strategies to avoid them. She also explained the importance of the strategic bench brief, or “Supporting Memorandum of Law,” on difficult legal issues that bear on particular jury instructions. The room was full of young prosecutors and public defenders in rapt attention during her dynamic presentation.

Judge Khouzam and Ms. Norse led us to a strong finish with a 40-minute information-packed presentation on particular appellate considerations related to jury instructions and verdict forms. They explained the key issues and highlighted the leading cases related to the mixed standard of review for error in jury instructions and the standard instructions and their use; the use of special (non-standard) instructions and the parties’ rights to some special instructions; and the preservation of error, including the necessity of specific contemporaneous objections and the submission of alternate proposed instructions to preserve certain issues for appeal. They covered in detail the types of errors in civil and criminal jury instructions and verdict forms and addressed harmless versus harmful and fundamental error. Their presentation materials are a goldmine for practitioners.

We had our best attendance ever at our section CLE this year, and the room was full of energy for an engaging and valuable two hours. We hope to see you next year.

Author: Morgan W. Streetman – Streetman Law
Trial & Litigation Section Awards Luncheon

The HCBA Trial & Litigation Section presented its annual awards on May 2 at a luncheon at the Chester H. Ferguson Law Center. The recipients recognized with this year’s awards were:

- Herbert G. Goldberg Award: Thomas Granahan
- James Kynes “In the Trenches” Award: Christopher Moody (not in attendance)
- Michael Fogarty “In the Trenches” Award: Anthony T. Martino
- Court Family Award: Sandi Hecksher (J.A. to Judge Michelle Sisco)
- Annual Essay Scholarship Contest Winner: Mark Streufert (winning essay on page 64)

Judge Herb Berkowitz also was recognized with an Award for Distinguished Service at the luncheon. He is retiring from the bench and served as a judicial advisor to the Trial & Litigation Section’s Executive Committee.

Congratulations to the recipients for their hard work and dedication!

Thank you also to the luncheon’s sponsor, Orange Legal.
JURY TRIALS: THEATER OF THE VOICES OF THE STARS AND STRIPES

Trial and Litigation Section – Annual Student Jury Essay Contest Winning Essay
Chair: Brandon Faulkner – Holland & Knight, LLP

The following is the winning essay from the HCBA Trial & Litigation Section’s annual student jury essay contest. Congratulations to Mark Steufert for the winning submission.

I believe that jury trials are important to American Jurisprudence because the law often lags behind societal evolution, and jury trials keep fresh perspectives in the courtroom.

Jury trials are a critical balance to judicial authority, by securing the involvement of diverse minds in the judicial process, and relieving some of the heavy burden of the shoulders of Lady Justice and maintaining a luster and shine in her eyes.

A trial by jury offers a form of security from centralized power. For example, if a litigant wants to unlawfully influence the officers of the court, the list of targets is small and the threat of arbitrary rule is great. Alternatively, jurors provide a fresh perspective to the proceedings and require lawyers to be honest in harnessing the horses of their client’s interests towards the brightest and clearest chariots of persuasion, which can provide their clients with their greatest day in court. Jury trials also limit the influence of wealth and power, and prevent the development of a society led by arbitrary rule, tyranny, and corruption.

Importantly, jury trials keep citizens engaged in the American system of law and justice. Jury trials can be a vehicle to raise societal concerns that deserve extra attention from appellate courts. Previously, there existed larger public audiences of trials, as courtrooms were the popular theaters of the day. Currently, movie theaters, the internet, and social media have a stronger appeal than the pews and benches of the solemn halls of courthouses. As a result, jury service has become more important as it keeps the public engaged in resolving the flaws and causes of societal degradation.

Finally, jury trials provide the litigants with diverse viewpoints and fresh ideas. Judges are subjected to similar crimes and claims on a regular basis, and that saturation may lead to the desensitization of the gravity of these matters on the lives of the parties in interest. Society appears to reflect that desensitization with the advent of school and public mass shootings, such as the recent massacres in our Sunshine State. We need to curate an interest in citizens to become involved in the direction of our society. Jurors of diverse backgrounds are selected to serve the interests of justice every week, because their input and feedback is needed from each voice that resides under the Stars and Stripes, in order to keep our great Nation as pure and innocent as possible in its pursuit of fairness and justice.

Therefore, jury trials are important to American Jurisprudence in order to minimize avenues of corruption; keep the public engaged in the civic duty of the courtroom; and keep America’s courts relevant, alive, and aglow. Jury trials provide jurors with the opportunity to relate to other citizens and unite their education and analysis to the story unfolding on the stand. This ensures that the storytellers will await their fate from the mixed and monumental effort of the jury box and bench.

Author: Mark Steufert – WMU Cooley Law School Student

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Recently, the First District Court of Appeal issued two decisions dealing with the burden of proof: *Inmon v. Convergence Employee Leasing*, No. 1D17-0815, 2018 WL1833380 (Fla. 1st DCA Apr. 18, 2018) and *Rodriguez v. Tallahassee Fire Dept.*, No. 1D17-2224, 2018 WL 1341644 (Fla. 1st DCA, March 15, 2018).

In *Inmon*, the claimant’s widow (Inmon) was a construction worker who had been working out of town with his supervisor. After work, Inmon’s supervisor dropped him off at a bar a few miles away from their hotel. Later, while Inmon was walking back to his hotel, he was hit by a truck and killed. The employer agreed Inmon’s death was within the course and scope of employment. But the employer argued that benefits were not payable because Inmon’s death was caused by intoxication.

The JCC agreed, denying death benefits because Inmon’s death was primarily occasioned by his intoxication. The JCC concluded that as a result of his intoxication, Inmon had been in the middle of the road at the time he was hit. The First DCA held that the JCC’s finding was not supported by competent substantial evidence.

In particular, the First DCA noted there was no direct evidence Inmon was in the middle of the road at the time he was hit. It was merely an inference. And the JCC’s finding that Inmon was in the road because he was intoxicated was merely an inference stacked upon an inference, which is not permitted. Because no competent substantial evidence supported the JCC’s finding, the First DCA reversed the JCC’s finding and awarded Inmon’s widow death benefits.

In *Rodriguez*, a firefighter (Rodriguez) pursued impairment benefits for cardiac arrhythmias that had been accepted as compensable. Although Rodriguez had a cardiac ablation to treat the condition and his authorized treating doctor advised him to take one aspirin a day afterward as ongoing care, the treating doctor assigned a zero percent impairment rating under Florida Guidelines. An IME for Rodriguez, however, opined that the impairment rating should be 16 percent because an ablation is analogous to having a pacemaker, which supports a 16 percent rating. Because of the disagreement over the impairment rating, the JCC appointed an EMA, who ultimately agreed with the 16 percent rating.

But the JCC found the EMA opinion to be without merit. According to the JCC, an ablation is not analogous to a pacemaker. The JCC also determined that an aspirin is not a drug adequate to support an impairment rating. So the JCC denied benefits.

The First DCA agreed that under the Guides, an ablation is not analogous to a pacemaker. But the First DCA reversed the JCC’s ruling that the recommendation of an aspirin a day was not adequate to support the rating based on a drug given to prevent symptoms of cardiac arrhythmia was reversed. Although aspirin is not a covered “medicine” under section 440.13(1)(l), the Guides allow a rating based on “drugs,” and aspirin is within the common definition of drugs. Therefore, the First DCA concluded the JCC erred in discounting that evidence.

*Author: Anthony V. Cortese – Attorney at Law*
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Diversity Committee Annual CLE

The Diversity Committee’s held its annual CLE luncheon on April 19 at the Chester H. Ferguson Law Center, focusing on Inclusive Communication. Led by speakers Devona F. Pierre, Ed.D. with the University of South Florida’s Diversity & Equal Opportunity Office and Camille Blake, Esq., the Director of Equal Opportunity and Compliance at USF, the CLE covered specific words and phrases that are commonly misused in communication regarding age, class, disabilities, ethnicity, gender, language, looks, race, religion, and sexual orientation, and offered recommendations on how to better communicate about differences.
For the month of May 2018
Judge: Honorable Dan Merritt, Sr.
Parties: Emily Flint, et al. v. Hernando HMA LLC d/b/a Spring Hill Hospital
Attorneys: for plaintiff: Henry E. Valenzuela; for defendant: Denise E. Dawson
Nature of case: Medical negligence claim on behalf of brain damaged infant
Verdict: Case settled confidentially during trial

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Bay Area Legal Services - Bay Area Legal Services (BALS) is pleased to highlight their new milestone in gender parity, by swearing in all-female officers for their board of directors. They were sworn in by another female leader in the Tampa Bay community, Judge Marva L. Crenshaw - Second District Court of Appeal, who acknowledged the following new officers: Chairperson: Dionne M. Blaesing; Chair-Elect: Gwynne A. Young; Treasurer: Leslie Schulz-Kin; and Secretary: Kathleen Kloiber Koch.

Steven M. Berman - The law firm of Shumaker, Loop & Kendrick, LLP is pleased to announce that Tampa partner Steven M. Berman has been elected to the American Bankruptcy Institute Board of Directors for a three-year term, effective April 19, 2018. Berman also was a guest lecturer at the University of Florida College of Law Advanced Problems in Bankruptcy and Creditor-Debtor Law seminar in April.

Steven L. Brannock & Ceci C. Berman - Steven L. Brannock and Ceci C. Berman of Brannock & Humphries presented on “Seeking Appellate Review of Land Use Decisions” at The Florida Bar’s 41st Annual Local Government Law in Florida seminar.

Kristen Chittenden - Lykes Bros. Inc. announces the appointment of Kristen Chittenden to the new position of staff attorney and corporate secretary. In this new role, Chittenden will maintain all corporate records of Lykes Bros, provide legal representation and serve as the liaison for outside counsel.

J. Ronald Denman - The Bleakley Bavol Law Firm announces that the firm will be now named Bleakley Bavol & Denman, reflecting J. Ronald Denman as a named partner of the firm.

Christine Derr - Harris, Hunt & Derr, P.A. is pleased to announce that Christine Derr has joined Harris & Hunt, P.A. to form Harris, Hunt & Derr, P.A. The practice focuses exclusively on marital and family law.

Matthew Hall - Hill Ward Henderson is proud to announce that attorney Matthew Hall has been appointed chair of The Florida Bar’s Federal Court Practice Committee.


Jin Liu - Carlton Fields is pleased to announce that Tampa Shareholder Jin Liu has been admitted as a Fellow to the American College of Mortgage Attorneys (ACMA). Membership to the College is by invitation only upon nomination and election.

Marshall Dennehey Warner Coleman & Goggin - Marshall Dennehey Warner Coleman & Goggin, a civil defense litigation firm has expanded its Florida Casualty Practice with the additions of Michael J. Bradford and Julie A. Aiello in the firm’s Tampa office. Bradford joins as a shareholder and Aiello joins as an associate.

Phelps Dunbar - Phelps Dunbar has expanded its Tampa business practice with the appointment of Partner Elise Batsel to Business Practice Group Leader and recent recruitment of Counsel Jennifer Murphy.

Brent Steinberg - Swope, Rodante P.A. is proud to announce that attorney Brent Steinberg has been promoted to partner. The firm first welcomed Steinberg as a law clerk in 2009 and then as an associate attorney in 2010, after he graduated from the University of Florida Levin College of Law.

Gregory C. Yadley - Partner in the Tampa office of Shumaker, Loop & Kendrick, LLP, Gregory C. Yadley participated in the "Basics of Private Equity Fund Formation" presentation, which was sponsored by the American Bar Association Business Law Section, Middle Market & Small Business Committee, at the ABA's Spring Meeting in Orlando in April.

To submit news for Around the Association, please email Stacy@hillsbar.com. To view additional HCBA news and events, go to www.facebook.com/HCBAtampabay.
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