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ABOUT THE COVER

We continue highlighting the beauty and vibrancy of our community and its architecture in our magazine covers this year. This issue's cover image, entitled Ceremonial Space, features a unique and meaningful installation from the City of Tampa Public Art program. Created by Apache artist Bob Haozous and located on the Riverwalk in Cotanchobee/Fort Brooke Park in downtown Tampa, the cenotaph and Ceremonial Space are a tribute to the history and contributions of the Seminole Indians to our community. For more information on this piece of public art, visit: www.tampagov.net/sites/default/files/art_programs/files/walking_tour_of_public_art_-_full_riverwalk_final.pdf. Photo by George Cott, courtesy of City of Tampa, 2009.
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The HCBA hosted another wonderful Diversity Membership Luncheon in January. Be sure to check out page 34 for pictures from the event. We honored our Outstanding Lawyer Award winner Amy Farrior (see page 10 for more details), the YLD award winners (see page 8) and remembered the Honorable Tracy Sheehan (see page 12).

Our speaker, Sherry Williams, laid out a fantastic challenge to all attendees to commit to diversity every day, and in truly meaningful ways. And that, of course, requires much more than thinking about diversity and inclusion only during a special celebratory month. Ms. Williams encouraged attendees to recognize that diversity and inclusion are not the same thing. Diversity is merely the entry point for creating equality, but true inclusion is critical to successfully building the next generation of lawyers and leaders.

But how? One of the best ways more senior members of the profession can ensure not just diversity but inclusion is to act as true sponsors to younger lawyers. A sponsor is more than a mentor: A sponsor advocates

Commit to Diversity Every Day

One of the best ways more senior members of the profession can ensure not just diversity but inclusion is to act as true sponsors to younger lawyers.

Continued on page 5

Keynote speaker Sherry Williams at HCBA’s Diversity Membership Luncheon.
for the career of the person he or she is sponsoring, in addition to providing mentorship on both substantive legal issues and navigating institutions.

Ms. Williams specifically identified five important qualities she found in the white males who acted as sponsors throughout her career, and encouraged those assembled to apply these qualities to build inclusion.

First, she counseled, “have an openness to, and curiosity about,” those that are different than you. Second, be willing to “engage without ego and listen to others openly,” even when the conversation may be uncomfortable. Third, strive to get to know those you are working with “as an authentic individual person ... not as a stereotype, not as a project, not as a caricature, but ME” — in Williams’ case, “as a Black woman, first-generation professional from working class urban background.” Even though her background and experiences could not have been more different from that of her sponsors, those who truly acted as sponsors worked to know her as a human being.

Fourth, a true sponsor will have a “willingness to have honest and courageous conversations” about work and expectations. Reflecting on her own sponsors, Ms. Williams explained, “some of those conversations were praise, others were constructive feedback. They were undertaken to help me become a better lawyer and professional.” Importantly, “[t]hese men were focused on my improvement, not whether I would be offended or upset by their comments.”

Perhaps the most important of Williams’ lessons was one of grace: Her best sponsors “gave me room to make mistakes and to recover from them.” As Williams explained, “[o]ften diverse individuals in majority environments are not afforded the luxury of making mistakes. Once an error is made, no matter how small, it will derail a young lawyer’s career trajectory. But other, non-diverse individuals, are often afforded the opportunity to make multiple mistakes and still be successful.” We all know that the practice of law is truly a practice — and that every contract clause and litigation tactic is ultimately borne from experience. We must give young lawyers the chance to learn from experience.

As our diversity and inclusion article points out (see page 28), studies show that diverse teams ultimately are more productive and are better for business. It is also more cost effective for legal institutions to invest in future leaders than it is to cycle through employees. If we do the work, our profession will benefit.
We are more than halfway through the bar year, and a lot is happening around the HCBA in support of some of its stated goals.

**Goal:** To improve the judicial system and maintain the highest ethical and professional standards. HCBA’s Professionalism and Ethics Committee luncheon on January 16 shared technology updates in our circuit. On January 28, many judges generously hosted newer lawyers and law students for a Coffee at the Courthouse and Judicial Shadowing Day. This half-day event offered attendees tips and suggestions from a variety of judges about how to be effective and professional members in the bar community. In yet another example, judges, administrators, and more experienced lawyers continue to collaborate in the Thirteenth Judicial Circuit Professionalism Committee to promote ethical and professional standards and provide guidance to those who may need it.

**Goal:** To encourage camaraderie among our members. HCBA events continue to offer our members chances to network with each other and promote collegiality.

Continued on page 7
Continued from page 6

We had strong turnouts for the January Diversity Membership Luncheon and the 5K Pro Bono River Run and Judicial Food Festival in February. Thanks to all the race participants who pledged pro bono hours, and thanks to all the creative booth decorators and chefs who provided delicious food and drinks! Our members continue to enjoy time catching up and learning, too, at our smaller committee and section events. Coming up, we hope events like HCBA night at the Tampa Bay Lightning hockey game on March 15 may offer a break from the rigors of work. Ours is a relationship-driven profession, so we will continue to offer different opportunities to grow your relationships and connections.

Goal: To increase public understanding of how the judicial system works and to serve as a voice for the legal community. Law Week activities will occur from March 9-13 and give opportunities for volunteers to educate and interact with the public in three focused ways: (1) by visiting and speaking to classes in local schools; (2) by leading tours at the George Edgecomb Courthouse; or (3) by putting on mock trials in elementary schools. I have previously participated in all three volunteer opportunities. If you enjoy interacting with K-12 students, or have children or other younger relatives in local schools, this is a fun week each year to consider giving some of your time.

Goal: To promote inclusiveness in the membership and leadership of the association and the legal profession. We have members in their 20s, members in their 80s, and all the years in between! A variety of practice areas and multi-generations are represented in the workplace. As our Diversity Membership Luncheon keynote speaker Sherry Williams urged, we can all do our part to help with recruitment and retention of people of diverse backgrounds, and your HCBA welcomes your participation and ideas. As poet Maya Angelou wrote, “We all should know that diversity makes for a rich tapestry . . . and we must understand that all the threads of the tapestry are equal in value no matter what their color.”
YLD’s Outstanding Young Lawyers and Jurist Awards

The YLD is proud to recognize and thanks Judge Caroline Tesche Arkin, Don Greiwe, and Nicole Del Rio for their substantial contributions to the legal profession, the YLD, and the Hillsborough County community.

During the HCBA Diversity Luncheon in January, I had the privilege of presenting three awards on behalf of the YLD: the Robert W. Patton Outstanding Jurist Award, the Outstanding Young Lawyer Award, and the Outstanding Government/Non-Profit Lawyer Award.

The Robert W. Patton Outstanding Jurist Award recognizes a jurist who has an excellent reputation, a record of integrity as a lawyer and judge, is recognized by Bar members as highly qualified, is active in Bar-related activities, demonstrates concern or willingness to assist young lawyers, and demonstrates respect for young lawyers’ abilities.

This year’s recipient, the Honorable Caroline Tesche Arkin, exemplifies all of these qualities. In her approximately 11 years on the bench, she has presided in nearly every division here in Hillsborough County. As a judge, her dedication to mentoring young lawyers has always been one of her top priorities, as she has mentored through the Hillsborough Association for Women Lawyers, the Tampa Bay Inn of Court, and Stetson Law School, where she also served.

Continued on page 9
Continued from page 8

as an Adjunct Trial Advocacy Professor. She is also a past recipient of the Inns of Court Lincoln Achievement Award, recognizing her leadership with the Inn.

The Outstanding Young Lawyer Awards, both in the private sector and in the government/non-profit sector, recognize attorneys who are YLD members, exemplary in the area of professionalism and in the practice of law in their field of practice, perform service to the community on a personal level, and have been actively involved in the YLD.

Both of these award recipients, Don Greiwe and Nicole Del Rio, certainly meet and epitomize these criteria.

Greiwe is a graduate of the HCBA’s Bar Leadership Institute and co-chaired the BLI’s Class of 2019. He has also worked tirelessly to support the mission of the YLD as, for the last four years, he has co-chaired the YLD’s Professionalism and Ethics Committee, and has specifically overseen and ensured the success of the Committee’s annual State Court Trial seminar.

Nicole Del Rio has a record of public service, previously receiving the Pro Bono Service Award at FIU’s College of Law, and currently serving as an attorney with Bay Area Legal Services. She is a member of the HCBA’s current BLI class, a co-chair of the Hillsborough Association for Women Lawyers’ Community Outreach Committee, and co-chair of the YLD’s Community Services Committee.

The YLD is proud to recognize and thank Judge Caroline Tesche Arkin, Don Greiwe, and Nicole Del Rio for their substantial contributions to the legal profession, the YLD, and the Hillsborough County community.
Amy Farrior Named 2019 HCBA Outstanding Lawyer; YLD Recognizes Outstanding Jurist and Young Lawyers at Diversity Luncheon

Farrior has been a constant volunteer presence, always offering an encouraging word to HCBA staff members, and providing wisdom and guidance on the sometimes thorny issues that develop.

Congratulations are in order for Amy Farrior, who was named the 2019 HCBA Outstanding Lawyer at the HCBA’s Diversity Membership Luncheon in January.

The criteria for this prestigious award says it should go to someone who, over the years, has exhibited superior legal ability in his or her field of practice, has demonstrated a high degree of professionalism and ethics, is widely recognized as a “mentor” to other lawyers, and someone who has been actively involved in HCBA activities.

No doubt Farrior, who is a litigator with the Buell & Elligett law firm, was an excellent choice.

“Amy has truly distinguished herself as an outstanding attorney, and she has been a wonderful Bar leader and a role model to many in our local Bar.

Continued on page 11
E X E C U T I V E  D I R E C T O R ’ S  M E S S A G E

John F. Kynes - Hillsborough County Bar Association

Continued from page 10

community over the years,” HCBA president Grace Yang told me.

“I believe Amy’s many contributions make her very deserving to receive this prestigious award,” Yang added.

Longtime partners Tom Elligett and Mark Buell nominated her for the award, and Elligett made the announcement at the membership luncheon.

Elligett noted Farrior has been a Florida Bar Certified Appellate Lawyer since 2001 and is AV rated by Martindale-Hubbell.

And he highlighted Farrior’s many years of Bar service and the many leadership positions she has held.

These positions include serving as HCBA president in 2010-11, serving as chair of the HCBA’s Appellate Practice Section, and serving as president of the Ferguson-White Inn of Court.

Farrior also served as president of the Hillsborough County Bar Foundation in 2018-19.

And she currently serves as a representative from the Thirteenth Circuit on the Florida Bar Board of Governors.

Raised in Texas, Farrior got her bachelor’s degree from the University of Virginia and her law degree from the University of Michigan.

In his remarks, Elligett talked about Farrior’s influence on the local Bar community and her positive attitude and contagious spirit.

“Amy’s dedication to the Bar is unparalleled,” Elligett said.

I can personally attest that in my decade-long tenure as executive director at the HCBA, Farrior has been a constant volunteer presence at the Ferguson Law Center, always offering an encouraging word to HCBA staff members, and providing wisdom and guidance on the sometimes thorny issues that develop.

Steve Yerrid, a past recipient of the outstanding lawyer award, also provided a letter of support in Farrior’s nomination package.

“Amy truly exemplifies the traits of an outstanding lawyer in our community,” he wrote.

* * *

Also at the membership luncheon, YLD President Jeff Wilcox presented the YLD’s outstanding jurist and lawyer awards (more details and photos on page 8). The 2019 award winners:

Robert W. Patton Outstanding Jurist Award:
Hon. Caroline Tesche Arkin of the Thirteenth Judicial Circuit

Judge Arkin has been a longtime volunteer and driving force in numerous Bench and Bar activities, such as the HCBA’s annual Bench Bar Conference and local mock trial and moot court competitions. And she continues to be a strong and respected mentor to many law students and young lawyers.

Outstanding Young Lawyer Award:
Donald Greiwe of de la Parte & Gilbert

Greiwe has served as co-chair of the YLD’s Professionalism and Ethics Committee for several years, where he has overseen the committee’s popular annual State Court Trial Seminar. And this year he is helping to coordinate the local YLD seminar involving the Florida Bar’s Technology Road Show.

Outstanding Government/Nonprofit Lawyer Award: Nicole Del Rio of Bay Area Legal Services

Del Rio has distinguished herself representing numerous victims of domestic violence in family court and managing the Social Security Navigator Program at BALS. Also, at the national level, Del Rio chairs the ABA’s YLD Access to Legal Services Committee and the Diversity and Inclusion Team. Locally, she co-chairs the YLD’s Community Services Committee.

Congratulations to all the 2019 YLD outstanding jurist and lawyer award winners. You make us proud.

See you around the Chet.
The year 2019 ended on a sad note for the Thirteenth Judicial Circuit. The Honorable Tracy Sheehan passed away at her vacation home in Georgia. We consider ourselves a court family, and losing Tracy was like losing a loved one.

Judge Sheehan joined the bench in 2007 following a successful election, in which she was unopposed. The lack of opposition was a testament to the high esteem that the legal community had for her. She served in numerous family law divisions over her tenure on the bench, including juvenile dependency and delinquency, domestic relations, and general civil. She retired in 2017, having honorably served the court for 10 years. She was known as a tireless advocate for children and families over the course of her lifetime. She also had much love and compassion for animals, and left behind her beloved dog Gunnar. Many have asked what became of Gunnar. I am happy to say that he is being cared for by a couple who were friends of Tracy.

I fondly remember Tracy’s laughter and boundless energy. If there is a heaven, she is there with the family, friends, and pets lost too soon. That is the image which brings me comfort during this difficult time.
The five elements of our story so far.

CHARACTERS: ten dedicated appellate attorneys

SETTING: a diverse array of practice areas

PLOT: building a reputation for success

CONFLICT: battling for victory in your appeal

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Tampa American Inns of Court

Information & Membership Application
Deadline: May 28, 2020

The American Inns of Court Tampa Chapters invite you to apply for membership.

The American Inns of Court is a national organization designed to improve the skills, professionalism, and ethics of the bench and bar. Tampa’s civil litigation Inns are The J. Clifford Cheatwood Inn, The Ferguson-White Inn, The Tampa Bay Inn, and The Wm. Reece Smith Litigation Inn. Each Inn limits membership to approximately 80 members who are assigned to pupillage groups of eight or nine members. Pupillage groups include at least one judge as well as attorneys of varying experience and areas of practice. The Inns usually meet monthly from September through May for dinner programs, except for The Wm. Reece Smith Litigation Inn which meets monthly for a weekday luncheon. Inn members usually earn one hour of CLE credit for each program attended.

Each year, the Inns invite new members to join for varying membership terms. Members are selected based upon their length and area of practice. Discounted memberships are available for full-time law students who wish to apply. If you are interested, please apply promptly! (Please note: Current Inn members who wish to renew membership in their present Inn need not apply.)

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Past Presidents Luncheon

The Hillsborough County Bar Association was pleased to host a large gathering of our past HCBA presidents and the past presidents of the Hillsborough County Bar Foundation on December 9. These leaders of the local legal community took the time to re-connect and reminisce about their experiences with the HCBA.

Thank you to our luncheon sponsor:

[Image of the Bank of Tampa logo]
NOTICE OF A DCA’S DECISION TO PROCEED EN BANC
Appellate Practice Section
Chairs: Joe Eagleton – Brannock & Humphries and Chance Lyman – Buchanan Ingersoll & Rooney

The amendment to rule 9.331(a) now makes notice mandatory.

A recent amendment to Florida Rule of Appellate Procedure 9.331(a) requires Florida’s District Courts of Appeal (DCAs) to notify the parties promptly if a majority of participating judges order that a proceeding will be determined en banc. For many years, the DCAs occasionally notified the parties that a case would be considered en banc, but did not give such notice consistently; instead, notice was provided on a case-by-case basis. The amendment to rule 9.331(a) now makes such notice mandatory.

In the first year under the new rule, the clerks of the Third, Fourth, and Fifth DCAs report that they have not yet had occasion to issue a notice to parties about the commencement of en banc proceedings. The First DCA has issued two notices of the commencement of en banc proceedings. The parties did not move for an opportunity to submit supplemental briefs in either of those cases, but the court issued an order for en banc oral argument in one of them. The Second DCA has issued three notices of the commencement of en banc proceedings, but the parties in the affected cases did not file any motions for supplemental briefing. The clerk of the Second DCA, Mary Beth Kuenzel, says that it is her practice to inquire of the judges if they wish to order supplemental briefing before issuing a notice of the commencement of en banc proceedings.

In the absence of prior notice of the decision to proceed en banc, the parties and their counsel could understandably feel blindsided upon receipt of an en banc opinion. Prior notice of a DCAs decision to determine a case en banc is important to counsel because it provides an opportunity for effective advocacy. The impetus for the amendment to rule 9.331(a) was to require prompt notice of a DCAs vote to proceed en banc, so that counsel could make an informed decision about whether to seek appropriate relief. Such relief would most likely take the form of supplemental briefing, oral argument before the full court, or both.

4 See, e.g., Poleyeff v. Seville Beach Hotel Corp., 782 So. 2d 422, 424 (Fla. 3d DCA 2001) (case decided on en banc hearing after supplemental briefing and oral argument before the full court).

Note, however, that the Second DCA does not conduct oral argument in en banc proceedings. Second District Court of Appeal, Internal Operating Procedures § 6.9(C) (Apr. 12, 2018).

Author: Douglas A. Wallace - Brannock & Humphries
Appellate Law Section CLE

On December 4, the Appellate Section held an informative and engaging CLE on the subject of “Pursuing & Resolving Attorney’s Fee Claims.” The speaker Tom Eligett with Buell & Eligett discussed the procedural requirements for seeking attorney’s fees on appeal, recent cases dealing with attorney’s fees, and highlighted various ways appellate lawyers can recover their fees for litigating an appeal.
In December 2019, the Bar Leadership Institute (BLI) class got the exclusive opportunity to go out on the water on a beautiful Tampa day and explore Port Tampa Bay. Our host was Charles E. Klug, principal counsel for Port Tampa Bay. There could be no better model of leadership than Mr. Klug, who has served as chief legal officer and general counsel since 2004 and was recognized as “Top Corporate Counsel for Government and Non-profits” by the Tampa Bay Business Journal in 2014, based on his leadership, ethical standards and exemplary professional skills. His passion and excitement for the port and all it offers could be felt by the class, and was very contagious.

Since 2004, Port Tampa Bay has grown immensely and is central to our region’s economic growth. Given that South Florida is confined by the Atlantic Ocean to the east and the Everglades to the west, Port Tampa Bay is uniquely situated on the I-4 corridor to serve the fastest-growing region in Florida.

Continued on page 21
Central Florida is home to one of the largest concentrations of distribution centers in the Southeast. According to Port Tampa Bay, Central Florida is expected to outpace the growth of South Florida two to one in the following years. To support this growth, recent transportation improvements now provide Port Tampa Bay with direct interstate access through the I-4 Connector from the Selmon Expressway to I-4. The I-4 Connector increases Port Tampa Bay’s efficiency and, according to Port Tampa Bay, cargo can be at a distribution center’s docking station within 90 minutes of leaving the port.

Port Tampa Bay’s significance to the region’s economy is evidenced by the numbers. Port Tampa Bay handles over 37 million tons of cargo per year and is Florida’s largest port in physical size at 5,000 acres. The diverse range of cargo includes liquid and dry bulk, breakbulk, containers, and automobiles. Not only is Port Tampa Bay one of the world leading ports for fertilizer exports, but Tampa is also home to global exporters such as Amalie Oil. The port is also well-positioned as the closest full-service U.S. port to the Panama Canal for exporting merchandise to Latin America and the Caribbean. It also has a bustling cruise business with nearly one million passengers each year.

The port shows no signs of slowing down. Port Tampa Bay has a capital budget plan to spend $380 million over the next five years for new docks, terminals, and navigational improvements. As the Tampa Bay region and the I-4 corridor continue to grow, so will the port and the economic opportunities for the region. This year is an exciting time to be a Tampa resident, as we are fortunate to live in region that continues to grow and innovate. As lawyers and community leaders, I urge my colleagues to explore Port Tampa Bay, consider joining the Propeller Club, and experience the excitement that is just steps away from downtown. I am excited to continue to explore the Tampa Bay area with my BLI class this year.

Author: Jordan L. Behlman – Greenberg Traurig, P.A.
One of the first steps the practitioner must take in a new matter is determining whether the case is suitable for the collaborative process. Screening process is critical to ensuring a successful outcome. A wide range of factors should be considered when analyzing the appropriateness of the collaborative process for a case. Clients are responsible for the progress of negotiations, and that requires that the parties listen to each other, present reasonable options and share necessary information.

Where a spouse does not accept that the marriage is broken, or is not motivated to cooperatively solve problems, he or she may sabotage the process. Other warning signs may include a lack of trustworthiness by one or both of the parties. If your client reports that his or her spouse is not willing to be transparent and honest or negotiate in good faith, the likelihood of success through the collaborative process is diminished.

Other considerations include a power imbalance in the relationship or a history of domestic violence. While there is a possibility to overcome some issues by creating a safe environment with a strong professional team, there will need to be a strong facilitator, open communication within the team, and a level of self-confidence by the intimidated party. Likewise, when there is an active substance use disorder or where a spouse suffers from an untreated mental health issue, use of the collaborative process should be carefully scrutinized.

Collaborative law demands skills from the lawyers in managing conflict, and the relationship between the lawyers or other professionals on the team may also affect the outcome. Trust in the team — especially between the lawyers — is essential. If you have some suitability questions, but the prospective collaborative team consists of professionals with whom you have successfully worked, this process has a higher level of success. When in doubt, request your team facilitator meet with the parties individually before a collaborative participation agreement is signed to conduct a thorough screening and make a recommendation to the lawyers about proceeding collaboratively.

Author: Christine Derr – Harris, Hunt & Derr

GET INVOLVED! SIGN UP ON YOUR MEMBER PROFILE AT HILLSBAR.COM.
Collaborative Law Section CLE/Luncheon

On November 20, the Collaborative Law Section hosted a CLE regarding “Best Practices and Tips for Collaborative Divorce.” Speakers Judge Wesley D. Tibbals, Jessica Felix with Felix, Felix & Baseman, and Shannon Ciesluk, CPA, with CBIZ MHM discussed the limits of confidentiality in court files in collaborative cases, how to best utilize and delegate to your neutral team members and facilitators, and experiences in their collaborative cases.

Thank you also to the luncheon’s sponsor:

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FINANCIAL ADVISOR
The Florida Legislature has amended Chapter 558, Florida Statutes, to address the Fourth District Court of Appeal’s 2018 opinion in *Gindel v. Centex Homes.*  

In *Gindel,* the Fourth District ruled that the homeowners in a construction defect class action commenced an “action,” for statute of repose purposes, when they served a pre-suit notice of construction defect claim pursuant to Chapter 558, even though they had not also filed a lawsuit or arbitration action.  

The homeowners in *Gindel* closed on and took possession of the townhomes on March 31, 2004, provided Centex a pre-suit notice of construction defect claim on February 2, 2014, and then filed suit on May 2, 2014. The homeowners served the pre-suit notice of claim required by Chapter 558 within ten years of closing on and taking possession of the townhomes but filed the lawsuit more than ten years after closing on and taking possession of the townhomes.  

The trial court found the homeowners had commenced an “action” upon filing the lawsuit, which it found untimely because it originated after the expiration of the 10-year statute of repose for actions founded on the design, planning, or construction of an improvement to real property set forth in section 95.11(3)(c), Florida Statutes (2014). The homeowners contended they would have filed the lawsuit earlier, but for the mandatory pre-suit procedures in Chapter 558.  

Notwithstanding section 558.002(1), which provides that an “action means any civil action or arbitration proceeding,” the Fourth District opined that section 95.011 more broadly defines an action as “a civil action or proceeding” with little context to limit the meaning and without reliance on or reference to Chapter 558. As a result, it agreed with the homeowners that Chapter 558 is a mandatory “proceeding” and thus an “action” for purposes of the statute of repose, and concluded the homeowners had commenced an action when they served Centex with the pre-suit notice of construction defect claim pursuant to Chapter 558.  

Only a few months later, during the 2019 legislative session, the Florida Legislature addressed *Gindel* by amending section 558.004, Florida Statutes, to provide that “[a] notice of claim served pursuant to this chapter shall not toll any statute of repose period under chapter 95.”

The amendment, which became effective July 1, 2019, clarifies that claimants must file an actual lawsuit in order to commence an “action” for statute of repose purposes.

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**Authors:**  
Jaret J. Fuente & Monica L. Strady – Carlton Fields
Construction Law Section CLE/Luncheon

On January 16, the Construction Law Section hosted a CLE on the Miami-Dade College Parking Garage collapse. The speaker David Fusco, P.E., LEED AP, who leads the Tampa office of Thornton Tomasetti, has considerable experience in new building design, renovations, forensic investigations and project management. Throughout his career, Fusco has played a leading role on a range of high-profile projects in the U.S. and internationally.

Thank you to the luncheon’s sponsor:

[Image of LexisNexis]
Review: New Book By Judge Block On Embracing Humanity In Rendering Sentences

Criminal Law Section
Chairs: Justin Petredis - Law Offices of Justin Petredis, P.A. & Matthew Alex Smith - Office of the State Attorney

United States District Judge Frederic Block (E.D.N.Y.) wrote an incredibly insightful book entitled Crimes and Punishments: Entering the Mind of a Sentencing Judge about his sentencing experiences in the federal system. Because the design of the federal system seeks to obtain convictions as expeditiously as possible, most of federal criminal law revolves around sentencing. And yet few books explore the very human side of sentencing from a judge’s perspective. This book — a must read for all judges and practitioners who deal with these complex issues — does just that. Most critically, Judge Block explores the human dimension of trying to reach a just result, while confronting his life experiences that may affect his ultimate decision. Judge Block recognizes, as Justice Oliver Wendell Holmes, Jr. did a century ago, that the life of the law is human experience, not logic. The notion that judges robotically call “balls and strikes” belies modern neuroscience and human understanding. We must all, judges included, accept that decision-making involves internal biases lurking in our subconscious, despite our best efforts to justify our acts with reasonable explanations.

Judge Block begins this journey with the U.S. Sentencing Guidelines, now thankfully advisory, but still the bedrock of federal sentencing. He questions how any fair system can allow a judge to sentence an individual based on alleged acts never charged, as well as charges resulting in an acquittal by a jury. Despite his grave misgivings, he sentences according to the rule of law, but acknowledges the toll this takes upon a judge who believes in fundamental constitutional principles such as due process, the presumption of innocence, and trial by jury. The tension between strictly following the law and pushing the boundaries in the right direction where judicial discretion allows becomes evident as his story proceeds.

He then gets to the meat of the book: sentencing defendants who come before him where a judge must consider all of the facts and circumstances of a person’s life, the seriousness of the offense, and societal interests. Here it becomes interesting. Judge Block weaves into real cases his life experiences as a sentient human being and lawyer and confronts how the past may influence the present. For example, he lost a brother to drug abuse (unknown in the criminal justice system) could influence his sentencing decision.

Throughout it all, the judge candidly perceives and considers how all of these conscious and subconscious factors creep into the ultimate outcome of a sentence. Rather than ignore his life experiences, Judge Block brings them to the table and examines how they affect the very human enterprise of judging another person. This requires a degree of courage and vulnerability rarely found in the rough and tumble of the criminal justice world.

Continued on page 27
Judge Block devotes his last chapter to *U.S. v. Nesbeth*, 188 F. Supp. 3d 179 (2016), where he expressly considers the collateral consequences of a conviction in sentencing a young, first-time, drug importation defendant. He struggles with balancing the requirements of sentencing law, while noting that punishment does not end following the completion of a sentence. Judge Block frankly admits that he was influenced by recent scholarship about mass incarceration and the corrosive effects of rendering a person “civilly dead” as a result of a criminal conviction. The *Nesbeth* decision moves the needle in the right direction, while remaining true to the boundaries set by the sentencing guidelines. No doubt Justice Holmes would approve.

Author: John F. Lauro - Lauro Law Firm

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**Jenay Iurato Recognized with Florida Bar President Pro Bono Service Award**

The Florida Bar recognized 22 lawyers for their work on behalf of low-income and disadvantaged clients at a Jan. 30 ceremony at the Supreme Court of Florida. We extend our congratulations to HCBA Member Jenay Iurato, who received the President's Pro Bono Service Award for the Thirteenth Judicial Circuit.

In the past seven years, Iurato has dedicated herself to assisting human trafficking survivors and serving as trial/co-counsel with Brent Woody, Esq., founder of the Justice Restoration Center (JRC), a nonprofit serving human trafficking clients. The JRC is currently serving close to 200 clients, all on a pro bono basis, with expungement of their criminal records and other legal services. Not only have JRC’s clients benefitted, but her fellow attorneys are more aware of human trafficking because of Iurato’s hard work. Her passion for raising awareness of human trafficking continues to expand as she serves as a guest lecturer on and organizer of various panels relating to human trafficking. Iurato participated in a small focus group over the last couple of years to help encourage the Thirteenth Judicial Circuit to implement a human trafficking court. In part because of her persistence, this will soon become a reality. Iurato earned her Juris Doctor from Stetson University College of Law in 2000 and serves as co-managing member with her husband, Kevin Iurato, at Iurato Law Firm, PL., in Tampa.
Emotional intelligence, also known as emotional quotient (EI/EQ), varies by person and organization, impacts all people, and can be learned. EI encompasses interdependent competencies of self-awareness and responsiveness to others, expanding into empathic perception of others’ feelings, appropriate response to the feelings of others with empathy, and managing or assisting others in managing emotional responses. In other words, EI allows people in the workplace to respond more inclusively and empathetically to their fellow employees. For this reason, the concept of emotional intelligence is often coupled with diversity initiatives (EID) in order to build intercultural literacy and sensitivity.

The term EI entered the mainstream in 1995, when journalist Daniel Goleman expanded upon an academic journal article by psychologists John Mayer and Peter Salovey, and authored the now-classic...

Educational institutions, companies, groups, and individuals throughout the world utilize EI testing and training, to great effect. For example, Goleman’s book highlighted school programs aimed at increasing social or emotional learning, finding the programs improved children’s self-awareness and confidence, helped them to manage disruptive emotions and impulses, and increased empathy. He found that these programs lead to better behavior and academic performance.

The work of psychology professor Roger Weissberg, through his Collaborative for Academic, Social, and Emotional Learning (CASEL), provides more evidence of the benefits of EI and EID programming. A CASEL 2011 meta-data analysis of 213 studies of school-based, universal social and emotional learning (SEL) programs, found student gains in social-emotional skills, classroom behavior, improved attitudes about self, others and school, and an 11 percentile point gain on standardized tests. In addition, conduct problems and emotional distress decreased.

These benefits are amplified in the workplace, particularly when diversity is added to the mix. Tom Kelley, partner at industrial design firm IDEO, co-authored The Art of Innovation: Lessons in Creativity from IDEO, America’s Leading Design Firm (2001) with Jonathan Littman, based on IDEO’s experiences with teams. They found that diverse teams innovate more quickly with more creativity in shorter time frames. IDEO deliberately composed teams with diversity based upon gender, age, race, culture, experience, work experience, educational level and background. The firm and its clients benefitted.

With the implementation of social and emotional learning programs in schools, emotional intelligence and diversity training and development starts at an earlier age and leads to a workforce and to organizations receptive to a diverse and creative team, and a more cohesive and diverse society.

Many people recognize that EI and EID better predict success in life. Intelligence and education contribute to initial success, but long-term success requires building relationships, collaborating with others, and resolving issues within a team. When development of EID takes place at home and in school, organizations and communities benefit from people who embrace diversity and utilize it as the great asset it is: an opportunity to not only develop new relationships but to maximize talent and business success. It is never too late to build these important skills for success.

Author: Michelle Garcia Gilbert – Gilbert Garcia Group, P.A.
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YLD Holiday Happy Hour

The Young Lawyers Division had a festive night on December 11 at their annual Holiday Happy Hour, which took place at the Old School Bar and Grill. Thank you to the YLD members that attended and to our co-sponsors: Kerkering, Barberio & Co, CPAs and Milestone Reporting.

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Ownership of a valid copyright requires that the work be independently created by the author and have some “minimal degree of creativity,” as required by *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., Inc.* The Eleventh Circuit recently waded into this area of law in May 2019 when it decided *Pohl v. MH Sub I LLC.* The question is: Did the Court get it right?

Dr. Mitchell Pohl is a dentist based in Florida who took before and after photographs of his patient’s teeth to show his efforts in cosmetic dentistry. Dr. Pohl personally took these photographs. After performing a reverse image search, Dr. Pohl determined that the defendant published certain images of his patients without authorization. Dr. Pohl subsequently filed suit.

The district court, in a decision on summary judgment riddled with puns about teeth and dentistry, determined that the images lacked the creativity and originality to be entitled to copyright protection. Specifically, the district court found that the photographs served “a utilitarian end — to identify goods or services that a viewing customer can expect from the business.” Of particular importance to the district court was that the photographs did not have some “creative spark,” as delineated in *Feist,* because Dr. Pohl did not know whether he used a digital or film camera, did not know whether the patient was sitting or standing, did minimal posing, and made no specific lighting choices. The district court concluded that there was nothing remotely creative about Dr. Pohl’s photographs.

The Eleventh Circuit strongly disagreed. It explained that originality is not difficult to establish because the author need only independently create the work (as opposed to copying it from other works) and imbue it with “some minimal degree of creativity.” Indeed, the Court found that the “vast majority” of photographs qualify, so long as there is some showing that the author “exercised some personal choice in the rendition, timing, or creation of the subject matter,” including decisions concerning posing, lighting and evoking an expression.

Looking at the district court’s decision, the Eleventh Circuit critiqued the failure to credit certain evidence that contradicted the conclusion reached by the district court. Specifically, the Court highlighted evidence that Dr. Pohl staged the subject and set the lighting, albeit not in a professional manner, as well as selected the timing and subject matter of the photographs. These facts taken together showed that Dr. Pohl had “something in mind when he took the pictures,” which created a genuine issue of material fact concerning the creativity of the photographs “no matter how crude, humble or obvious” the choice may have been. As a result, the Eleventh Circuit reversed and remanded to the district court.

This decision shows that originality is a low hurdle to overcome, but what remains may be so minimal that enforcement may be difficult. It is important for copyright holders and accused infringers to take a step back and look at the whole work when mounting a challenge to or defense of originality.

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2 770 Fed. Appx. 482 (11th Cir. 2019).

**Author:**
Cole Carson – Gray Robinson, P.A.
Hillsborough County Bar Association 100 Club

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Diversity Membership Luncheon

On January 8, HBCA hosted its annual Diversity Membership Luncheon at the Hilton Tampa Downtown. Members enjoyed a presentation on the importance of diversity and inclusion from the event’s keynote speaker, Sherry D. Williams, who is the former Vice President, Deputy General Counsel, and Global Chief Ethics & Compliance Officer for Jabil, Inc. (Read more on page 4.) In addition, HCBA was pleased to present four annual awards at the luncheon. (Read more on page 8 and page 10.)

Thank you to the luncheon’s co-sponsors:

Photography is courtesy of Thompson Brand Images and A/V assistance and signage at the luncheon is courtesy of TCS. Thompson Brand Images and TCS are benefit providers for the HCBA. www.thompsonbrandimages.com and www.trialcs.com. Visit Facebook.com/HCBATampaBay to view additional photos from the luncheon. See Thompson Brand Images ad on page 67. See TCS ad on page 61.
In recent years, there has been an increased focus on the standards applied by regulators when determining whether distinct business entities share sufficient control over a group of employees, such that they may be considered “joint employers.” Confusion stemming from divergent joint employer standards has prompted administrative agencies to provide clarification. In November 2019, the federal government released its Fall 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions (the Agenda), with the goal of more effective and less burdensome regulation. Per the Agenda, three agencies—the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), and the Department of Labor (DOL)—each plan to issue regulations governing joint employment by the end 2020, if not sooner.

The NLRB has proposed to update its joint employer test under the National Labor Relations Act by eliminating a controversial 2015 standard set in the NLRB’s Browning-Ferris decision, which permitted a joint employer finding even where a company has only “indirect” control over another company’s workers. In 2018, the NLRB proposed a rule that would effectively reinstitute a pre-Browning-Ferris standard that designates a business as a joint employer only if it “possess[es] and actually exercise[s] substantial direct and immediate control” over the employees’ essential terms and conditions of employment, such as hiring, firing, discipline, supervision, and direction, in a manner that is not limited and routine. The NLRB is expected to finalize the rule in the near future.

Soon after the comment period on the NLRB’s regulation closed, the DOL published its notice of proposed rulemaking, proposing to update its 60-year-old framework for analyzing joint employment under the Fair Labor Standards Act. Taking effect on March 16, 2020, the DOL’s new four-part balancing test assesses whether the potential joint employer:(1) hires or fires the employee; (2) supervises and controls the employee’s work schedules or conditions of employment to a substantial degree; (3) determines the employee’s rate and method of payment; and (4) maintains the employee’s employment records. The intent behind the DOL’s proposed rule was to specifically focus on whether an employer exercises sufficient control over an employee’s terms and conditions of employment to qualify as a joint employer.

Following in the footsteps of the NLRB and DOL, the EEOC included a notice in the Agenda that it plans to release a notice of proposed rulemaking outlining the agency’s standard for evaluating whether affiliated businesses qualify as joint employers. The EEOC categorized its proposal as “amendments” to various laws the agency enforces, including Title VII.

Continued on page 37
Continued from page 36

of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. A proposed rule has not yet been released.

Three federal agencies taking action in the joint employer realm is indicative that the Trump administration seeks to foster consistency through a unified standard. For now, the determination of “joint employers” varies by agency, but changes in 2020 may provide some much-appreciated clarification.


Author: Austin A. Laurienzo - Phelps Dunbar LLP
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KNOWLEDGE • EXPERIENCE • JUDGEMENT
In 2018, The Florida Bar Family Law Rules Committee proposed an amendment to Fla. Fam. L. R. P. 12.407, regarding attendance and testimony of children at depositions and family law proceedings. The change eliminated the provision which allowed a parent to, at their discretion, bring a child who was a witness, potential witness, or related to a family law case to the courthouse for a family law proceeding “in an emergency situation.” As amended, the rule allows a child to attend a deposition or family law proceeding only when a parent has obtained a prior order based on good cause shown.

The rule change was intended to specifically make it more difficult for parents to take matters into their own hands and decide unilaterally there was an “emergency” that warranted the child’s attendance at a family court proceeding. Instead, the Committee recommended that this critical decision-making authority be vested solely in the presiding judge.

The amendment is based on a growing acknowledgment of the damaging effect such entanglement with litigation has on a child’s welfare. Specifically, it has been found that conflict subjects a child to “a feeling of chronic stress, insecurity, and agitation; shame, self-blame, and guilt; a chronic sense of helplessness; fears for their own physical safety; a sense of rejection, neglect, unresponsiveness, and lack of interest in the child’s well-being.”

However, the new rule has introduced complications: more judges are strictly interpreting the showing of “good cause” required for an order permitting appearance and/or testimony of a child. Additionally, given the exigencies often surrounding instances in which child testimony is sought, lawyers and desperate parents have had to resort to extreme measures, including having children circle the courthouse or wait in nearby areas while motions regarding testimony are heard. Other parents feel compelled to simply ignore the rule.

The limitations of the rule are critical to help preserve the innocence and emotional well-being of children; however, when strictly enforced, the rule may also make it more difficult for a parent to present evidence of a significant event to which the child is a witness, which may in turn negatively affect the child. The bar and bench should be attentive to the effect of this rule change and strive to find the appropriate balance between protecting children from involvement in litigation and allowing a parent to present prompt testimony regarding critical matters affecting their children’s welfare.

Notably, the 2018 Committee Note accompanying the rule clarifies that children unconnected to litigation may be brought to the courthouse or a deposition for educational purposes or other, non-case related reasons. Lawyers and parents should be mindful of the intent of the rule and do what they can to protect children from unnecessary involvement in litigation.

1 Elizabeth Ellis, The Trowbridge Foundation, What Have We Learned from 30 Years of Research on Families in Divorce Conflict?, at 2, citing Elizabeth Ellis, Divorce Wars, Interventions with Families in Conflict (APA Books 2000).
Marital & Family Law Luncheon

On January 15, the Marital & Family Law Section held a popular luncheon entitled “Top 20 for 2020: Things Every Family Law Practitioner Should Know.” Attorney Christine Derr with Harris, Hunt & Derr provided an overview of essential information for family law practitioners to help the Section members start the year out strong.
When the United States commenced Post-9/11 military action in the Middle East, the U.S. Department of Defense (DoD) disposed of its trash with a practice that had been banned stateside for decades: burn pits. The DoD and its contractors set aflame all forms of detritus, to include military equipment, medical and human waste, and everyday items, such as plastics and electronics — often adding jet fuel as an accelerant.

These burn pits produced several toxins: polycyclic aromatic hydrocarbons, volatile organic compounds, furans and dioxins, and heavy metal dust. These mixed with the local dust, which itself was extremely fine, measuring one-tenth the size of beach sand.

Together, this mixture of fine particulate matter brought about acute and chronic health problems to servicemembers living and working near burn pits.

With VA stonewalling, and no effective legislation to end it, Post-9/11 veterans’ fight for VA benefits will likely continue for decades. Continued on page 43
While deployed, affected servicemembers routinely suffered from “The Crud,” a colloquial term for flu-like symptoms. Today, over a decade after returning, deployed veterans report respiratory disorders, autoimmune disorders, and cancers at significantly higher rates than non-deployed populations.

Determining these disabilities’ relationship with burn pit exposure is difficult because they often lack a conclusive etiology or pathophysiology. Many develop several years after exposure, so intervening factors confound a cause-effect analysis. For others, medical testing indicates few (if any) abnormalities, so doctors cannot pinpoint a clear cause.

Veterans seeking disability benefits from the U.S. Department of Veterans Affairs (VA) face a steep uphill battle despite the relatively low “as likely as not” legal standard of connecting their disabilities to military service. The VA’s stance is that research does not adequately link burn pit exposure to long-term health problems, so it denies 80 percent of burn-pit related claims, deeming the conditions are either not diagnosed or not sufficiently connected to military service.

This scenario of toxic exposure, enigmatic disabilities, and high VA denial rate parallels that of Vietnam War-era veterans exposed to Agent Orange and other herbicides. They have been fighting for decades to receive treatment and compensation for their herbicide-related disabilities.

Congressional action to ensure burn pit veterans receive VA benefits has been slow. Every year, legislators eagerly announce bipartisan bills that would press the VA to provide benefits to more burn pit veterans. However, measures that would cost significant money fade away during the budgeting process and end up as incremental measures rolled into the National Defense Authorization Act (NDAA). The 2019 NDAA merely required DoD and VA coordination in understanding burn pit effects and implementing a burn pit registry education campaign. Similarly, the 2020 NDAA only required the VA to integrate its burn pit registry into health records and required the DoD to disclose all burn pit locations and make a plan to phase out burn pit use.

With VA stonewalling, and no effective legislation to end it, Post-9/11 veterans’ fight for VA benefits will likely continue for decades, as it has for Vietnam-era veterans who were exposed to toxic herbicides more than forty years ago and are still fighting for their benefits to this day.

Author: Ronald “Rocky” Roodhouse, LL.M. - Advocate for Burn Pits 360
Starting October 1, 2019, Florida homeowners, realtors, and title companies will have several new remedies for open and expired building permits.1

Open and expired building permits cause an array of complications, including delay or cancelation of closings when such permits are not resolved. In response, real estate attorneys, closing agents, and title companies routinely search for open or expired building permits before closings. In addition to affecting potential property sales, these permits may prevent current property owners who are planning to start a new project, from obtaining the necessary permits. Property owners intending to sell or renovate their property are finding open and expired permits anywhere from 20 to 30 years old. When a property owner discovers such permits, the resolution process has been challenging and complicated. Agencies often require new permits, additional construction to satisfy open permits, and possible fines for the property owner.2

The new law provides options for property owners dealing with an open building permit from a previous owner. Beginning in October 2019, property owners, even those not listed on the application for the building permit, may close open building permits, so long as the property owner complies with the statutory requirements.3

The law also provides flexibility for property owners attempting to satisfy the permit requirements. Specifically, a property owner may retain the original contractor, or hire a different contractor — licensed in Florida — to perform the work needed to satisfy the conditions of the permit.4 If the property owner discovers there is an expired permit, and the local enforcement agency determines the requirements are substantially complete, the permit may be closed without the property owner having to obtain a new building permit.5 Further, the required work may be done pursuant to the building code in effect at the time of the initial permit, as opposed to the time the property owner discovered the permit.6

The new law also provides solutions for aged and open building permits lacking a final inspection. After six years, local enforcement agencies may close an open building permit if the agency determines no apparent safety hazards exist, though the law does not define the phrase “no apparent safety hazards.”7 Additionally, local agencies may not penalize the new property owner because the previous owner failed to properly close the building permit.8
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As the Powerball jackpot neared $1.6 billion, investor Mark Cuban opined that “you don’t become a smart investor when you win the lottery.”

Cuban’s observation could be applied to accredited investors with limited investment experience. The SEC has indicated that accredited investors are financially sophisticated and able to sustain the loss of their entire investment principal, which “renders the protections of the Securities Act’s registration process unnecessary.” Thus, issuers can offer accredited investors investment opportunities in “early stage and high growth firms, in the Regulation D market that are not available to investors in registered securities offerings.” The SEC’s Amending the “Accredited Investor” Definition proposal puts forward new categories that allow additional natural persons and entities to qualify as accredited investors. The SEC’s proposal is a positive development for capital formation, but the proposed natural persons categories create new issues to resolve.

Regulation D provides issuers safe harbors to offer and sell securities without registering the securities under the Securities Act of 1933. Rule 501 of Regulation D currently provides two primary ways a “natural person” can become an accredited investor:

- Individuals or married couples with a net worth exceeding $1 million, excluding the value of their primary residence; or
- Individuals with an income greater than $200,000 or married couples with an income greater than $300,000 in each of the past two years that anticipate earning the same amount in the current year.

The SEC proposal introduces two new categories in which natural persons can become accredited investors. The first category includes individuals who have attained professional credentials that demonstrate a background and understanding of securities and investing. This category may include, inter alia, CFA’s, associated persons of broker-dealers and investment advisers, or persons “having been in the securities industry” as a lawyer or accountant.

The second category would include knowledgeable employees of a private fund that are investing in their employer’s fund.

The SEC’s proposal is positive for companies, because it will facilitate capital formation and provide high-growth investment opportunities to more investors. However, the SEC should place limits on the percentage of net worth that these proposed accredited investors could invest in private offerings, because they have lower financial means than existing accredited investors and, thus, are less able to recover from losses.
a loss of their entire investment principal. Additionally, the SEC’s first proposed category must be drafted in a way that will provide issuers with certainty as to who qualifies as an accredited investor. If the SEC implements its proposal, then investors who have a background and understanding of securities and investing — in addition to lottery winners — will have additional ways to invest in exempt offerings.


3 Id at 13.

4 Id at 21–22.

5 Id at 23.

6 Id. at 41.

Author: John P. Noonan, Esq.
Senior Counsel Section Luncheon
On November 18, the Senior Counsel Section was pleased to host Senior United States District Court Judge James S. Moody, Jr. who presented on the topic of “A Ph. D. in Fraud.” Judge Moody described how criminals fraudulently deceive their victims, and outlined how prosecutors can convict these criminals by introducing evidence to establish their record of deceiving tactics.
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Thanks to All of our FOX 13 Ask-a-Lawyer Volunteers!

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

- Mark Edelman
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The world as we know it is becoming increasingly connected by technology, and business is no exception. Law firms of any size should require little convincing of the significance of internet marketing for developing online presence. Despite this, solo practitioner and small firms may find it challenging to balance daily operations with marketing needs. While some law practices can hire a marketing firm to manage their presence, not all firms have the immediate capital for this.

One way to develop online presence in your own time is through small-scale marketing practices. These actions don't have to be overly complex, especially for those firms just starting to focus on their online presence. When considering time commitment or capital necessary to market your practice, it may make sense to start small.

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Small. Small content marketing steps are still more effective than no steps at all.

Here are three content marketing practices you can utilize at once that won’t cut into your legal work.

Microblogging

If you already have a website, you can boost its ranking by continually adding content. An easy way to do this is to write regularly scheduled, short posts of 250 to 500 words for your blog. Write about what you know and what’s on your mind, using your work as the basis for topics.

This may lead you to write a microblog about mediating contract breaches or negotiating settlement terms, which in turn shows your knowledge of how to handle these issues. Use your strengths and areas of expertise to your benefit.

Social Media Marketing

Another practice you can try is using social media platforms like LinkedIn and Facebook in a similar way to a blog. What type of information can you share across these platforms that expresses your expertise in a topic while extending your name further in the marketplace?

Whether it’s sharing a microblog or writing a post related to your work, tailor your message to the audience and site. Follow common practices related to word count, external links, and hashtags on each medium, and keep an eye on what other attorneys are doing online so you can stay with the crowd and get ahead of competition.

Local SEO

Finally, another important element of content marketing is local SEO (or search engine optimization). A quick and easy practice is keeping your My Business listing on Google up to date.

If you haven’t already, claim your Google My Business listing at google.com/business, and check that your website, phone number, location, and hours are correct. After that, use the Posts section to share business knowledge and market your firm. You can even share those microblogs you’ve been working on there.

Content Marketing Matters

Whatever marketing steps you take, make sure to follow these best practices:

- Create and share content consistently, whether that’s monthly or weekly.
- Market what you know and what you do to maintain a legitimate image.
- Keep your posts conversational by writing the way you speak.

Author:
Michael Monarrez
Puckett – Site Social SEO

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It is clear that altering evidence in a case, in order to zealously represent a client, is not covered by the impeachment rule.

The agony and ecstasy of trial work is what draws the most adventurous of lawyers to make maximum efforts for clients. However, as lawyers, we must always remember that we are constrained by the facts and the law. In Florida Bar v. Schwartz, the Florida Supreme Court recently expressed its dissatisfaction with a lawyer and referee’s analysis of corrupting evidence in order to impeach a witness.

Schwartz was retained to represent a serial felony defendant and in preparation for trial, he scheduled a deposition for the crime victim and attempted to impeach her memory and credibility by altering evidence in the case. Schwartz presented copies of the original photo lineup to the victim at deposition, where “the victim had originally signed her name and identified the defendant by circling both the defendant’s photograph and the designation below it of subject number five.”

At the disciplinary hearing, the referee found that Schwartz did not possess a wrongful motive or intent to corrupt the discovery process. However, the Supreme Court rejected the referee’s findings and explained that a violation of the rule barring fraud or deceit requires that “the Bar must prove intent.” However, proving intent can be satisfied “merely by showing that the conduct was deliberate or knowing.” “Therefore, the motive underlying the lawyer’s conduct is not determinative; instead the issue is whether he or she purposefully acted.”

The Supreme Court clarified that Schwartz’s actions did not adhere to the ethical rules and asserted that “[o]ur consideration of the defense-altered exhibits leads to the inevitable conclusion that they are deceptive on their face.” The Supreme Court held that that the referee’s findings were “clearly erroneous” and required “a newly appointed referee for a hearing limited to a determination of recommended discipline.” It is clear that altering evidence in a case, in order to zealously represent a client, is certainly not covered by the impeachment rule.
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Maximum medical improvement (MMI) is defined as the “date after which further recovery from, or lasting improvement to, an injury or disease can no longer be reasonably anticipated, based upon reasonable medical probability.” § 440.02(10), Fla. Stat. Two recent decisions apply this definition in unusual situations.

In Olvera v. Hernandez Construction, Olvera was working and fell from a roof, severely fracturing his left arm. Care was authorized with an orthopedic surgeon who performed two surgeries. Olvera continued to have substantial symptoms, but the doctor released him as reaching MMI with an impairment rating and work restrictions on May 31, 2016. Subsequently, Olvera did not return to work.

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In June 2018, Olvera selected and saw another orthopedic surgeon, for an independent medical exam (IME). This doctor opined that Olvera was not at MMI and was not able to work. He recommended additional electrodiagnostic tests and possible additional surgery. Litigation followed for the tests and for temporary indemnity benefits. An Expert Medical Advisor (EMA) was appointed to address the conflict in medical opinions. The EMA opined that the electrodiagnostic tests should be done, that additional surgery was needed, and that Olvera was not at MMI. Electrodiagnostic tests were done before Dr. Klein was deposed, and he said at his deposition that they confirmed the need for an additional surgery. Dr. Klein agreed, on cross examination, that Olvera would be at MMI unless and until surgery. After receiving the electrodiagnostic tests, Dr. Leach recommended a surgical evaluation by another doctor. Olvera testified at the final hearing that he wanted to have the surgery.

The subject of the final hearing was not authorization of surgery, due to procedural rules, but instead was whether Olvera was entitled to temporary indemnity benefits (TPD) from May 31, 2016, until surgery could be performed. The Judge of Compensation Claims denied the claim for additional TPD benefits and held that Olvera continued to be at MMI from May 31, 2016, until the issue of surgery was decided in the pending litigation. The First District reversed and remanded the denial, holding that the opinion of the EMA that MMI had not been reached was clear and unequivocal, and is to be presumed to be correct unless there is clear and convincing evidence to the contrary.

In Crispin v. Orlando Rehabilitation Group/Gallagher Bassett, the claimant, who was 73 years old when injured, reached MMI and was accepted as permanently, totally disabled (PTD). For workers over age 70 when injured, PTD benefits end five years after the determination. Crispin had a surgery during the five subsequent years, and the doctor placed her at MMI from the surgery 10.5 weeks later. Crispin argued that those 10.5 weeks should be reclassified to TTD, and she should receive an additional 10.5 weeks of PTD as a result. The First District affirmed a ruling that the five years of PTD benefits ends five calendar years after it starts and is not extended by an interim surgery. [1] 283 So. 3d 447 (2019). [2] 283 So. 3d 339 (2019). [3] § 440.15(1)(b), Fla. Stat.
Sarah Anderson – Freeborn & Peters LLP is pleased to announce that Sarah M. Anderson has joined the firm’s Tampa office as an associate in the Litigation Practice Group and as a member of the Insurance and Reinsurance Industry Team.

Caroline Black Sikorske – Sessums Black Caballero Ficarrotta congratulates Caroline Black Sikorske, who has been admitted to the International Academy of Family Lawyers.

Alexander Caballero – Sessums Black Caballero Ficarrotta congratulates Alexander Caballero, who was appointed by Governor DeSantis to the Second District Court of Appeal Judicial Nominating Commission for a term ending July 1, 2022.

Victoria Cruz-Garcia – Robert Sparks Attorneys’ lead trial attorney, Victoria Cruz-Garcia, has been named secretary of the Tampa Hispanic Bar Foundation (THBF), the non-profit component of the Tampa Hispanic Bar Association (THBA).

Jennifer A. Ficarrotta – Jennifer A. Ficarrotta of Sessums Black Caballero Ficarrotta was a panelist for the Clearwater Bar Association’s “The Six: A Great Debate,” a discussion about the pros and cons of collaborative divorce and litigation.

Fisher Phillips – Fisher Phillips welcomes Michael Miller and Timothy Tack, who joined the firm to expand PEO service offerings across the country.

David Hayes – Bajo Cuva Cohen Turkel, P.A. is pleased to announce that David Hayes has been elected to shareholder of the firm. After graduating from the University of Michigan and Florida State University Law School, Hayes practices in civil litigation with an emphasis on business litigation.

Ryan Lee Hedstrom – Gunster is pleased to announce the addition of attorney Ryan Lee Hedstrom to the firm’s business litigation practice in Tampa as an associate.

Hill Ward Henderson – Hill Ward Henderson congratulates Zachary Watt (Corporate and Tax group) and Matthew Hall (Litigation group), who were elected to shareholders.

Holland & Knight – Holland & Knight congratulates Eric Almon, David Lisko and Jameson Rice, who have been elected to partnership.

Lawrence P. Ingram – Freeborn & Peters LLP is pleased to announce that Lawrence P. Ingram, managing partner of the Tampa office, has accepted an invitation to join the International Association of Defense Counsel (IADC), the preeminent invitation-only global legal organization for attorneys who represent corporate and insurance interests.

Johnson Jackson PLLC – Johnson Jackson PLLC is pleased to announce the promotions of two of its attorneys. Christopher C. Johnson has been promoted from senior associate to partner with the firm. Bridget E. McNamee has been promoted from senior associate to Of Counsel with the firm.

Sarah E. Kay – Sarah E. Kay has opened Kay Family Law PLLC at 2602 W. Cypress St. in Tampa. The firm offers comprehensive family law and educational legal counseling to families with special needs children, and advocates for children’s educational rights.

Sterling Lovelady – Sessums Black Caballero Ficarrotta recognizes Sterling Lovelady, who is serving for the

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second year as an Attorney Ad Litem for Crossroads for Florida Kids, a nonprofit organization that handles complex legal representation for disadvantaged children and young adults in Hillsborough County.

Kristin K. Morris – Shutts & Bowen congratulates Kristin Morris of the Tampa Business Litigation Practice group, who was named a partner in the firm.

Somadina Nwokolo – Bradley Arant Boult Cummings LLP welcomes Somadina Nwokolo, who has joined the firm’s Tampa office as an associate in the Government Enforcement and Investigations Practice Group.

Jon M. Philipson – Thomas & LoCicero PL is pleased to announce that its members have elected Jon M. Philipson, an attorney in the Tampa office, to partner.

Andrew D. Reder – Andrew Reder of Sessums Black Caballero Ficarrota has been accepted for membership in the J. Clifford Cheatwood American Inn of Court.

Thomas J. Seider – Brannock & Humphries congratulates Tom Seider, who has become a shareholder with Brannock & Humphries. At the firm since 2014, Seider concentrates his appellate practice on personal injury litigation and complex commercial disputes.

Ella Shenhav – Shutts & Bowen LLP congratulates Ella Shenhav, who was recently appointed to serve on the board of directors of Bay Area Legal Services (BALS).

Shutts & Bowen LLP – Shutts & Bowen LLP is pleased to announce that the Tampa office was recently recognized as a Top Ten Company Contributor for funds raised toward American Cancer Society’s Making Strides of Tampa presented by Seminole Hard Rock Hotel & Casino.
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ADVERTISING INDEX
The Hillsborough County Bar Foundation presents
AN EVENING WITH JOE THEISMAN

Joe Theismann is an entrepreneur and the former star quarterback for the Washington Redskins. He spent the last two decades working for ESPN on their NFL broadcast and the NFL Network. The former Washington Redskins quarterback joined ESPN in April 1988, reuniting with play-by-play voice, Mike Patrick. Theismann joined ESPN after spending two seasons as an NFL analyst for CBS Sports.

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

Theismann was selected the NFL’s “Man of the Year” in 1982 for his community service and dedication to the health and welfare of children. He won the league’s 1983 “Most Valuable Player” Award for leading the Redskins to an NFL-recorded 541 points and a second consecutive Super Bowl appearance. His career ended abruptly in 1985 after sustaining a broken leg during a game against the New York Giants.

Theismann began his career in 1971 with the Toronto Argonauts of the Canadian Football League, after being drafted by the Miami Dolphins and Major League Baseball’s Minnesota Twins.

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

FOR SPONSORSHIP OR TICKET INFO.
Contact: Darlene Kelly (813) 221-7774
Kelly@hillsbarfoundation.com
Holiday Open House
The Hillsborough County Bar Association hosted about 300 lawyers, judges, family members and friends at the Holiday Open House on December 5. Attendees enjoyed a festive atmosphere as they gathered to celebrate, socialize, and re-connect before the year came to an end.

The open house was a success, thanks in part to the generosity of our sponsor:

Photography is courtesy of Thompson Brand Images. Thompson Brand Images is a benefit provider for the HCBA. www.thompsonbrandimages.com. Visit Facebook.com/HCBATampaBay to view additional photos from the luncheon. See our ad on page 67.
For the month of: Nov. 2019
Judge: Hon. Catherine Combee
Parties: Edward Lubin, M.D.; Gessler Clinic, P.A.
Attorneys: for plaintiff: Thomas Nicholl of Thomas Nicholl Law Firm; for defendant: Chris Schulte and Megan Collins of Weekley Schulte Valdes Murman Tonelli for Dr. Lubin; Mark McLaughlin and Damien Hoffman of Beytin, Mclaughlin, Mclaughlin, O’Hara, Kinman & Bocchino, P.A. for Gessler Clinic, P.A.
Nature of case: Medical Malpractice
Verdict: Defense Verdict

For the month of: Nov. 2019
Judge: Hon. Richard A. Nielsen
Parties: Michael Washington v. Florida Department of Transportation
Nature of case: Premises Liability
Verdict: Defense Verdict
Photography
For Marketing, Advertising and Websites

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Lawyer Magazine 30-Year Anniversary: Favorite Covers from 2006-2010

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

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

In this issue, we are featuring the five favorite covers from 2006-2010, the fourth interval of five years that the magazine was published. (Note: Because there were more than 40 magazines for this period, HCBA staff voted and narrowed down the choices to 12, and then members voted on their favorite five from those choices.)

Keep an eye out for another online poll in early April to vote for your favorite covers from 2011-2015 for the next issue!
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