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Gunn Law Group is proud to fight for business insurance coverage for the incredible economic losses sustained during the pandemic.

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We are ending this Bar year of featured cover photos with a beautiful image of the Straz Center in downtown Tampa, taken during the Lights On Tampa public art display in 2015. Lights On Tampa is a public/private partnership between the City of Tampa’s Art Programs Division and the Public Art Alliance, a 501 (c) 3 organization. The program began in 2006 with the desire to bring something bold, of high quality and “on the moment” to Tampa. The objective was to literally put the spotlight on Tampa and its regional assets. The Program returned in 2009 when Tampa hosted the NFL’s Super Bowl XLIII, in 2011 in the (then) new Curtis Hixon Waterfront Park, 2012 for the Republican National Convention, and returned in 2015 to kick-off Gasparilla Arts Month. In 2010, the program was recognized as one of the 50 most significant art programs in the U.S. in the last 50 years (Americans for the Arts). Photo by Matt May, courtesy of the City of Tampa.
38 IMPACTS OF COVID-19 ON BUSINESS VALUATION FOR MARITAL DISSOLUTION
Mental & Family Law Section
by James Edward Stewart

46 THE ELECTRONIC WILLS ACT
Real Property, Probate & Trust Law Section by Elaine N. McGinnis

48 KEY IMPACTS OF COVID-19 ON PUBLIC COMPANIES
Securities Section by Cody Bilgrien

50 THE RETURN TO WORK IN A POST-COVID-19 WORLD
Solo & Small Firm Section by Trescott Gear

52 CONDUCTING AN INTERNAL INVESTIGATION DURING CORONAVIRUS PANDEMIC
Trial & Litigation Section by Kevin J. Napper

56 IMPORTANT RULINGS FOR PRACTITIONERS
Workers’ Compensation Section by Anthony V. Cortese

18 BLI COMMITS TO FINISHING WHAT IT STARTED
Bar Leadership Institute by Amanda Keller & Alicia Whiting-Bozich

22 COMMUNITY OUTREACH IN A COVID-19 WORLD
Community Services Committee by Wendy J. DePaul

32 STANDING TOGETHER AS ONE DESPITE OUR “DIFFERENCES”
Diversity & Inclusion Committee by Tik Sang Kwok

42 VETERANS COURT REAFFIRMS VA DUTY TO MAXIMIZE VETERANS’ DISABILITY
Military & Veterans Affairs Committee by John Tucker

44 PRIMER ON FAIR HOUSING ACT
Professionalism & Ethics Committee by Lynn E. Hanshaw

IN EVERY ISSUE

14 BENEFIT PROVIDERS

26 100 CLUB

37 NEW HCBA MEMBERS

58 AROUND THE ASSOCIATION

58 ADVERTISING INDEX
HCBA Goes Virtual

The new reality this year meant that HCBA has held several virtual events and meetings. We have all learned a lot about Zoom meetings and virtual social events during the last few months, for sure. We hope you will join us at an event soon, whether virtual or (hopefully soon) in-person!

Top: HCBA Board Meeting on May 13.

Left: YLD Virtual Happy Hour on April 8.

Judicial Town Hall Meeting with panelists from the Thirteenth Circuit Criminal Division on May 7.

Virtual Yoga Class with Union Three, held by the YLD as part of Health & Wellness Month activities, on May 7.

Construction Law Section annual case law update CLE webinar on May 14.
Speaker Brian Stayton with The Stayton Law Group, P.A. is pictured with co-chairs Gregg Hutt and Katherine Heckert.
In ten years, I hope our successors don’t look back at this issue of the magazine and think “why were they so obsessed with COVID-19?” The reality is that this pandemic has not only challenged the health and well-being of the entire world, but has also exposed many of the weaknesses in our legal systems, our work systems, and our healthcare systems.

In the face of all of the challenges, our members and lawyers in general continue to lead the way in creating solutions to the problems we face, and building new systems to ensure justice, as this issue of the magazine proves. Our local trial court system continues to work through the challenges of moving civil and criminal cases both in person and using remote means (p.12), while the Second District Court of Appeal has made its public-facing activity entirely remote for the time being with the advent of oral argument by video (p.16). The HCBA, too, has shifted to virtual, offering its members many opportunities to network, learn, and even focus on wellness through virtual yoga class via Zoom (p.3 and p.11).

The HCBA continues to seek out ways to provide outreach to the community without putting those we are trying to help in danger (p.22). The Bar Leadership Institute class of 2020 has committed to stay on for another year to finish the good work they started and serve the community (p.18). While much of the Law Week festivities went remote, we still were able to honor some outstanding student artist by displaying their work at the courthouse, and don’t miss our spread about those fine works in this issue (p.30).

Managing the crisis from a business perspective is an ever-changing area of the law requiring detailed guidance. Three separate sections — the Corporate...
Continued from page 4

Counsel Section (p.28), the Labor & Employment section (p.36) and the Solo & Small Firm Section (p.48) — each address the difficult issues facing employers from their respective areas of expertise and through the lens of their different experiences. All provide important information. The crisis also has implications for publicly traded companies, and our Securities Section breaks down the impact of COVID-19 on reporting requirements (p.48). And when a company is faced with complaints regarding implementation or any other potential liability, the Trial and Litigation Section brings us great guidance on conducting internal investigations against the backdrop of the pandemic (p.52).

The move to online everything, coupled with rising illness, implicates trusts and estate law. The Real Property, Probate & Trust Law Section takes a timely and detailed look at Florida’s new Electronic Wills Act, and its interplay with the new remote notary statute. It is an important reminder that the details matter when engaging in online work. The Construction Law Section’s analysis of cybercrime targeting that industry is a useful primer for any business (p.24), as cybercrime will surely be in the rise with so much important work being done remotely.

And just as importantly, the HCBA continues to lead on social justice issues. This month’s Diversity and Inclusion Committee article addresses the difficult discrimination issues facing Asian Americans during this pandemic, an issue that has only gotten worse since the article was first written (p.32).

And on June 24, our incoming president-elect Cory Person helped bring together HCBA members, along with members of co-sponsoring organizations the George Edgecomb Bar Association, the Hillsborough Association for Women Lawyers, the Fred G. Minnis, Jr. Bar Association, Tampa Hispanic Bar Association, and the Asian Pacific American Bar Association of Tampa Bay, for a Lawyers March for Equal Justice. Lawyers, law office staff, Judges, public officials, and their family members all came out to stand in support of the fact that Black Lives Matter, and that we need to address the systemic racism that leads to overincarceration and police brutality.

Addressing the crowd at the start of the March, which proceeded peacefully from the state George Edgecomb Courthouse to the federal Sam Gibbons Courthouse and back, Person said: “We as lawyers hold a position of unique privilege in our community. How can we talk about equal justice if lawyers aren’t leading that call?”

Thirteenth Judicial Circuit Public Defender Julianne Holt and State Attorney Andrew Warren both participated in the march as well. Holt explained to a reporter that real reform comes from creating equality in health care and housing as well as the criminal justice system. And Warren acknowledged that the prosecutor’s office still has work to do to solve problems in the system, but encouraged fellow lawyers to “Come together with one voice to support a very simple but monumental idea that lies at all of the solutions we’re yet to find: liberty and justice for all.”

Thanks to Cory for his leadership in organizing the March and ensuring that, as he noted at the event, “a new generation of lawyers are picking up the mantle and are marching for this great cause of equal justice.”

We are grateful to our outgoing board members, officers, and committee chairs for leading us through the first phase of this pandemic, and look forward to the leadership of the 2020-21 board, officers and chairs.
Some of my friends in the HCBA counseled me that I would face at least one unexpected issue or challenge as a bar association president. Well, let me say that serving as the HCBA president during the COVID-19 pandemic definitely tested and challenged me. Like most people, I started to pay close attention to notices and guidance from public health officials about the new virus. I conferred with the HCBA staff, officers, and board members to cancel all face-to-face events and meetings at the Ferguson Law Center and other venues. I began to have many conversations with HCBA staff and section and committee chairs to assess if we could pivot to digital events or if the preferences were to cancel or delay program offerings. Member services, budget and scheduling issues took on new senses of urgency.

We began to separate ourselves physically while trying to connect in other ways with those we care about — family, friends, colleagues and clients — in alternate ways. Technology either helped or caused frustrations, depending on the circumstances. In various degrees, we learned to live and work differently and in changed environments.

Many acts of kindness, generosity, unity, and shared sacrifice have emerged from this time. Members have shown tenacity, care, and resilience. However, I also have continued to see reports of xenophobia, hear and read divisive rhetoric, and see examples of social inequality that concern me and remind me that there is still much hard work ahead. I urge our members to continue to look for opportunities to use your skills and talents to make positive contributions and encourage each other.

I am so grateful to those who have supported me as my term as president draws to an end: my husband James and my sons Jason and Kevin; my many colleagues at GrayRobinson; HCBA Executive Director John Kynes and our entire HCBA staff; my fellow officers and board members; all of the committee and section chairs; the sponsors who supported our program offerings this year; Chief Judge Ron Ficarrotta and all the other judges and friends in the judicial branch who supported the HCBA; past HCBA presidents; and the many volunteers and members who contributed in ways big and small this bar year.

I have felt proud and honored to serve as your president, although COVID-19 certainly caused the bar year to end differently than I envisioned. I extend my congratulations and best wishes to Paige Greenlee and Traci Koster, your next HCBA president and HCBA YLD president, and the incoming boards.

I saw a saying that, “Only when normal things are not normal anymore, do we realize how special normal things are.” I look forward to the day when we can safely do all the special “normal” things together again as HCBA members, or perhaps we will discover new things that we can enjoy together. I wish you all a pleasant, healthy, and safe summer!
2019-20 memories
Thanks to Many for the Success of the YLD

Through these difficult times, our membership shined.

Though my term as president of the Young Lawyers Division ends in unconventional circumstances, I recognize — now more than ever — that our strength lies in our membership, and it takes the efforts of many to continue and build on the YLD’s success. Through these difficult times, our membership shined. When our community was quarantined, restrictions set in place, and many events were canceled, our membership was creative and supported each other through many different virtual avenues — workout classes, happy hours, mental health support, words of encouragement, and the list goes on. When individuals needed support the most, our membership rose to the occasion.

I am privileged to have served as president of one of the largest and strongest young lawyers divisions in the state, and the largest section of the HCBA. This community of nearly 1,000 professionals serves the needs of young lawyers and the public by offering a wide selection of social, educational, and philanthropic programs. These programs thrive and exist only due to the efforts of our members. I hope that in the coming Bar year, each member will find a way to serve the organization that serves us and the people of Hillsborough County. Get involved early and often.

While this year was a success because of the hard work of hundreds, and I would specifically like to thank the YLD Board, whom I heavily relied upon this year: Jason Whittemore, Traci Koster, Alex Palermo, Drew McCulloch, Lyndsey Siara, Tiffany McElheran, Linda Stanley, Hannah Becker, Sara Peacock, Suketa Shah, Katelyn Ferry, Rick Duarte, Zachary Bayne, Harold Holder, Anisha Patel, John Dicks, Ciara Willis, and our Judicial Liaison — The Honorable Samantha Ward. I also would like to thank all of our committee chairs and committee members for their hard work. The success of the YLD is because of these members of our association who donate their time and efforts to promoting our mission.

Last, but certainly not least, a special thanks to the HCBA staff for making this a very successful year — John Kynes, Laurie Rideout, Stacy Williams, Angie Harris, and the rest of the HCBA staff. Their continued support and guidance, especially in difficult times, were vital to the YLD.

As I finish my term, I am confident that the YLD will continue to improve under the leadership of incoming President Traci Koster and President-Elect Alex Palermo. These are two of the most dedicated individuals to the YLD that I have had the pleasure of serving with and getting to know.

Thank you for allowing me to serve as president over the past year. It has been an honor, privilege, and an experience that I will never forget.
YLD Technology Road Show

More than 90 members attended the informative Technology Road Show on March 5, presented by the Florida Bar Young Lawyers Division throughout the state. Thank you to the Florida Bar YLD for providing this great free event, and also to the HCBA YLD Committee members that helped make this event possible!
Hillsborough County Bar Association: Hard at Work for You

The 2020 Liberty Bell recipient, Col. Fletcher, has been a tireless volunteer for many years with the 13th Judicial Circuit’s Veterans Treatment Court and has been a driving force for the court’s success.

In the face of the nightly German army air raids on London in the darkest days of World War II, wartime Prime Minister Winston Churchill famously implored the British people to “stand firm” and “carry on.”

More than an exhortation for the British people to continue to go to their jobs, to continue to shop in their neighborhoods, and to go about the daily business of caring for their families, the Prime Minister’s words were meant to inspire citizens to overcome their worst fears and to be strong in the face of harrowing circumstances — and, most importantly, to never give up.

Today, the world is fighting a new invader in the form of COVID-19, which has disrupted all our lives and forever changed how we live and work.

The pandemic has tested all of us like never before, and requires us to be strong, to be resilient, and to adapt.

The HCBA, under the strong leadership of 2019-20 President Grace Yang and the HCBA Board, pivoted and worked hard to help its members navigate through this unprecedented crisis.

The HCBA has been constantly monitoring and disseminating the latest news from the courts and state and local governments via the HCBA’s social media platforms.

Continued on page 11
Continued from page 10

media platforms, and it created a one-stop resource page on the HCBA’s website for all the latest information.

The HCBA also has conducted a membership survey to gauge how members are being impacted by the crisis, and what work-related challenges they are facing. The survey also asked about what continuing education topics would be most helpful right now. The HCBA will evaluate the responses and will work to tailor its future programming to match the results.

In May, HCBA YLD President Jeff Wilcox and the YLD Board transitioned multiple YLD seminars and events to a virtual format, including several previously scheduled wellness events.

And the YLD is moving forward with the annual YLD State Court Trial Seminar in June in a virtual format.

The HCBA’s Trial & Litigation Section and Marital & Family Section also put on successful virtual judicial town hall webinars in May that provided updates for members on recent court orders and new court procedures during the pandemic.

The webinars featured informative Question & Answer sessions with judges from the 13th Judicial Circuit, who have embraced the technological changes the court has implemented.

In late May, the HCBA collaborated with other voluntary Bar groups to successfully host the 2nd Annual Mental Health Virtual Town Hall.

Also, the HCBA’s Lawyer Referral Service has been receiving over 250 phone calls a week during the pandemic from local residents looking for an attorney, and the LRS office continues to make referrals.

Speaking of carrying on, the HCBA recently named veterans advocate Col. Jim Fletcher (USA Retired) as the 2020 Liberty Bell Award winner.

This prestigious award has been presented annually by the HCBA since 1964 and recognizes outstanding non-lawyer citizens for their work to strengthen the legal system.

Col. Fletcher has been a tireless volunteer for many years with the 13th Judicial Circuit’s Veterans Treatment Court and has been a driving force for the court’s success. The HCBA plans to present the award to him in person sometime in the fall.

As with past crises, Tampa’s legal community has stepped up to support the local community and those in need of assistance.

Recently, for example, attorney Steve Yerrid issued a matching gift challenge to colleagues in the legal and business community to assist Metropolitan Ministries. Yerrid is personally pledging a gift of up to $100,000 to help the organization in its efforts to feed the hungry and help those adversely impacted by the COVID-19 pandemic.

Clearly, there is much more work to be done to help the Tampa community get back on its feet.

And no doubt HCBA members will be there along the way to offer their personal support and resources to help those in need.

Because this generation understands — much as Churchill’s generation did — the importance of carrying on no matter the circumstances, and never giving up.

Now’s the Time  

to Renew Your  
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Stay Connected. Look Forward.

We appreciate your support of the HCBA in these uncertain times. Join us as we look forward to better times and stronger connections in the new Bar year. Renew today. Installment plans available.

Go to hillsbar.com to learn more.
COVID-19 Continues

Addressing the needs of the circuit, within the spaces we have, is complicated.

As I write this article, COVID-19 continues to be the most pressing topic of conversation. It is also the reason that we are all familiar with Zoom. While the fact that I had never heard of Zoom before March of 2020 is rather funny, the reality of the pandemic’s impact on legal business is not.

In order to reduce the risk of virus exposure, in-person appearances have been greatly restricted. Between February and April of 2020, security screening at courthouse points of entry decreased by 78%. Our halls have never looked emptier. However, my fellow judges and I are diligently working to ensure that many cases can proceed with minimal delay. Our ability to conduct hearings remotely has been a saving grace. We have learned to use new tools, expanded our technological skills, and relied on each other to ensure maximum judicial readiness.

Various case types are conducive to remote appearances and continued case progression. Circuit and county civil judges issued 10% and 31% more orders, respectively, during a 30-day pandemic period, as compared to the 30 days preceding the pandemic. Juvenile dependency judges saw a 41% increase in orders.

Continued on page 13
Continued from page 12

to demonstrate necessary social distancing spacing. Elevators are largely limited to two riders at a time, which results in more people taking the stairs. And everyone is wearing a face covering.

The resiliency that our legal community has shown is extraordinary, although not unexpected. I am proud of the attorneys, and all who work and conduct business, in the Thirteenth Judicial Circuit. We have encountered many obstacles, but we have found ways to persevere. WE ARE 13 STRONG!
The following businesses have partnered with the HCBA to provide special discounts or offers to our members.

**IT PAYS TO BE A MEMBER!**

HCBA members receive exclusive discounts and services through our Benefit Providers.

To suggest a Benefit Provider, contact Stacy Williams at (813) 221-7779.

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Contact Erin Hesbeens at (813) 872-1228, or call (813) 872-1200.

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To learn more about the Corporate Sales program, please contact Stacey Musser at stacey.musser@ferman.com or 813-625-0220/833-224-7995.

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For more information, visit http://LNSSol.com or contact John Lorelle at jlorelle@LNSSol.com or 813-781-9106.

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Florida Lawyers Mutual Insurance Company (FLMIC) was created by The Florida Bar. HCBA members who are board-certified can receive a 10% reduction in insurance premiums from FLMIC.

For more information, please call (800) 633-6458 or email mailbox@flmic.com.

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Social distancing is alive and well at the Second District Court of Appeal. Notably, the Court began conducting oral arguments remotely in May. We sat down (remotely, of course) with Clerk of Court Mary Beth Kuenzel for a Q&A on the Court’s new pandemic-related procedures.

Q: How are remote arguments going?
A: The first video oral argument was conducted on May 5 with Judge Northcutt presiding, joined by Judges Morris and Rothstein-Youakim. The panel heard argument in five cases. The panel was well prepared on the law and the technology, and the arguments were conducted without incident.

Q: What platform does the Court use?
A: Video oral arguments are being conducted by the Florida appellate courts using Zoom. To date, attorneys have participated by video using devices (computers, laptops, iPads, and smart phones) with a camera and microphone. The platform also allows for audio-only participation with a telephone if needed.

Q: Should practitioners be standing for remote oral argument?
A: It is not necessary to stand for a remote appearance. The Court’s preference is that participants have their camera positioned as close to eye level as possible with the screen showing their head and shoulders. Practitioners should conduct themselves as if they were appearing in person. When not arguing, they should remain as they were (seated or standing) and avoid leaving the video screen or otherwise distracting from the other side’s argument.

Q: Could remote oral arguments become a new norm?
A: The technology has many advantages for judicial proceedings. The Second District covers a large territory, and the Court recognizes that a decision to request OA commits valuable time and money to attend. While it is too soon to say that any changes will be the new norm, I predict that remote OAs could be an option beyond our current crisis.

Q: How have case resolution procedures changed?
A: Almost without exception, the Court’s business is being conducted remotely. The IOPs contemplate electronic voting, and we have expanded this use of our case management system. Judges and staff are discussing motions and cases with email, video meetings, and by phone.

Q: Has the Court seen a pandemic-related case yet?
A: We have received at least one pandemic-related habeas petition; I am not aware of other cases. Certainly, it has been a topic of motions from both incarcerated parties and attorneys.

Sincerest thanks to the Clerk for her continued support of the Appellate Practice Section and HCBA.

Author: Chance Lyman - Buchanan Ingersoll & Rooney PC
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Sustaining Law Firms are recognized in the CBA’s Res ipso Loquitur and the HCBA’s Lawyer Magazine.
F or those new to the area, recently admitted to the bar, or who were engaging in self-isolation long before the pandemic hit, we want to tell you about the HCBA Bar Leadership Institute (“BLI”) program that is open to all HCBA members. The BLI is typically a year-long program consisting of monthly learning modules and site visits. The program also involves the completion of a community service project that is chosen, managed, and completed by the BLI class members, as well as attendance at two HCBA board meetings. For those who are thinking, “this sounds like all work and no play,” the BLI class also gets together once a month for happy hour or plans some other social networking event. The goal of the BLI program is to assist lawyers to develop the skills necessary to succeed in a leadership role for professional and service opportunities, as well as increase the knowledge of service opportunities within the HCBA and other community outreach programs. The hope is to facilitate discussions on issues facing legal professionals, such as time management, public relations, and community involvement. Chairs of the program are chosen from the graduating class of the BLI. Our role is to select and coordinate the modules, oversee the community service project, and assist the class members in the development of their professional and interpersonal skills.

As you may have read in previous articles, the BLI class members attended several modules over the course of the last seven months in an effort to expand their skills as leaders and develop a deeper

Continued on page 19
Continued from page 18

understanding and relationship with local government bodies, businesses, non-profits, and philanthropists in the Tampa Bay community. The modules included visits to the Hillsborough County Veterans Treatment Court, the Port of Tampa, the Moffitt Cancer Center, the Tampa Bay Vipers headquarters, The Lightning Foundation and Tampa Bay Sports & Entertainment, and Water Street Tampa.

As the BLI class was preparing to complete its last two modules and service project, the pandemic hit. Like many leaders and organizations around the country, we closely followed the ongoing developments with the health and safety of the BLI class members in the forefront of our minds. We had some tough decisions to make because unlike other programs offered by the HCBA, the BLI requires each class member to satisfy certain requirements before the class member can graduate. Moreover, the BLI class members change year to year. After much thought and discussion with the leaders of the HCBA, we decided to let BLI class members decide the fate of the 2019-2020 BLI program and provided the class members with several alternatives.

The BLI class members voted to extend the program into 2020-2021 Bar year. Not only will we complete the required modules and service project, we are currently looking at additional ways we can enhance the program for the class members. Since we are extending the BLI program, we will not be accepting applications for new class members. All four co-chairs have also committed to stay on for the additional year. As author and speaker Brian Tracy once said, “Leaders concentrate single-mindedly on one thing — the most important thing, and they stay at it until it’s complete.” The 2019-2020 BLI Class is the true embodiment of that statement.

We look forward to seeing everyone in the fall as the 2019-2021 BLI Class forges ahead to complete the program and finish what they started!

Authors: Amanda Keller & Alicia Whiting-Bozich - Phelps Dunbar & Sivyer, Barlow & Watson
As with many aspects of collaborative practice, the decision as to whether the lawyer should attend a meeting with the financial neutral should be made after careful consideration of the needs of the client.

One of the foundational concepts in collaborative practice is that the clients control the outcome and the team controls the process. This doesn’t mean that the decision as to whether an attorney should be at a meeting between the client and the Financial Neutral should be made without input from the client. The cost of the process is a concern for many clients, and the more professionals at a meeting, the higher the cost. However, there may also be efficiency considerations and emotional/psychological considerations that may make a joint meeting between the attorney, the financial neutral and the client the best option.

For instance, if a client has complex financial holdings, it may be more efficient for them to provide an overview of their situation to the financial neutral and attorney at the same time. This also allows both professionals to ask questions from the perspective of their own expertise that will help to elicit all of the relevant information.

While not a hard and fast rule (for reasons I’ll discuss later), my personal preference as a financial neutral is for my initial meeting with each client to be one-on-one. This gives me an opportunity to start to build a relationship with the client. The client has already spent time with their attorney and established a level of trust with them. The financial neutral needs an opportunity to do the same. The more comfortable a client feels with the financial neutral, the more likely they are to have open communication going forward and to use the financial neutral as a resource throughout the process. Legal issues are also less likely to be the focus of the discussion, or more easily set aside for discussion at an appropriate time, if the attorney is not present.

At meetings where option development or evaluation of options is going to be the main topic, I generally find that it is more productive for the attorney to be present. The client gets the benefit of both the legal and financial perspectives and often additional ideas or questions are raised that wouldn’t have resulted without having the attorney as part of the conversation.

For clients feeling particularly overwhelmed (emotional, fearful or lacking in knowledge of financial issues, etc.) and feel more supported by having their attorney there or that specifically request to have their attorney attend, then that preference should be honored.

A client that has particular difficulty with financial concepts, is prone to becoming positional, or is highly focused on legal issues may also benefit from having their attorney with them during financial meetings.

The decision as to whether the lawyer should attend a meeting between the client and the financial neutral is often best made after discussion with the team.

Author:
Kristin DiMeo, CPA/ABV - CBIZ Forensic Financial Services
BUELL & ELLIGETT, P.A.

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COMMUNITY OUTREACH IN A COVID-19 WORLD
Community Services Committee

The year 2020 will be remembered as the year the world was turned upside down by the Coronavirus. We are all doing everything we can to continue living with restrictions that most of us have not encountered in our lifetime. Many are living in fear for themselves and others who have contracted the virus. Schools are closed, and many are out of work. Never has there been such a need for us to help each other get through hard times. Now more than ever, we need community outreach, from both the Hillsborough County Bar Association and us personally, to help our neighbors. The problem with this is that even after the current restrictions and stay-at-home orders are lifted, many people will still be concerned about venturing out of their homes and into society.

So how do we do it? How do we continue with community outreach in a time when we cannot reach out to anyone without gloves and masks? Our Community Services Committee has felt the effect of the restrictions from the pandemic. We had two community outreach events that were cancelled due to social distancing: Dining with Dignity at the Trinity Café and our annual Spring Pirate’s Plunder carnival for the children at A Kids Place. Trinity Café depends on volunteers to serve meals to diners who otherwise might not be able to afford a meal. The foster children housed at A Kids Place look forward to the carnival all year. While the committee plans to reschedule these events in the near future, we would like to suggest other ways to help during this trying period.

First, remain a part of your community. Reach out to your family and friends to make sure they are doing well. Host a Zoom party.

Continued on page 23
or get together with friends. Talk to your neighbors outside. Some communities are setting up car parades and outdoor gatherings (with social distancing of course), just to stay in touch. Not only will this lift other people’s spirits, but it will most likely improve your mood as well.

Second, do pro bono in a virtual environment. We are all handling our work by e-mail, conference calls, Zoom, and Skype. Now we can volunteer the same way. Bay Area Legal Services has converted all of its volunteer opportunities for attorneys to virtual. For example, the Family Forms Clinic at Bay Area Legal Services is scheduling Zoom appointments for volunteer attorneys to help prepare pleadings for pro se litigants. You can contact BALS for information on how to get involved at jhudson@bals.org or register online at bals.org/volunteer/register. BALS is putting together a panel of people that would like to assist parties with legal problems resulting from COVID-19, such as unemployment, family law, or bankruptcy, to name a few.

Are You Safe, a non-profit dealing with victims of domestic violence, has had a noticeable increase in clients since the stay-at-home order went into effect. If you are interested in assisting these families in court, you can volunteer at www.r-u-safe.org.

The Lawyer Referral Service, a part of the Hillsborough County Bar Association, answers phone calls from the public with legal questions, who are then referred to participating attorneys to assist them with their cases or questions. These calls can be forwarded to you at your home or work for social distancing. You can contact Lupe Mitcham at (813) 221-7783 to learn how to participate in the LRS.

You also can volunteer to help represent children and young adults in dependency and delinquency proceedings in Hillsborough County through Crossroads for Florida Kids. As part of this program, you will be partnered with another attorney, and all meetings and court hearings are virtual at this time. To volunteer, please contact Rosemary Armstrong at (813) 873-4790.

Third, volunteering in the community is always an option, and many procedures have changed to allow for safety and social distancing. Feeding Tampa Bay has an urgent need for volunteers in their warehouse to assist in getting good food to the public. Trinity Café has converted their operations to provide to-go meals for the community.

Community outreach is all about making the world a better place for everyone. Anything you can do to help someone else, be it a neighbor or a stranger, makes that happen. Be sure to keep in touch with the Hillsborough County Bar Association and the Community Services Committee for future events. We will be posting rescheduled dates soon for our cancelled events from this spring. I look forward to seeing you there; until then, stay safe and healthy.

Author: Wendy J. DePaul - Cohen & DePaul, PA
If you represent participants in the construction industry and are not worried about cyber-crime, you should be. Although perhaps not as well publicized as the large-scale consumer data breaches that we hear about seemingly daily, the construction industry is increasingly being targeted by cyber-criminals.

Cyber incidents have taken many different forms in the construction industry. Data has been locked, making it unusable until a “ransom” is paid for release of the information. In other instances, cyber-criminals have engaged in electronic sabotage, destroying hardware or equipment. Sometimes, hackers have obtained access to company computer and email systems through malicious email attachments opened by unsuspecting employees.

But unsurprisingly, the most common cyber-crime has been financial theft — usually in the form of some type of “phishing” scheme. “Phishing” attacks can occur in different ways. A cyber-criminal might send an email that appears to be from a co-employee or a person from another company that

Continued on page 25
Continued from page 24

the recipient is accustomed to dealing with (commonly referred to as “spoofing”). Alternatively, a criminal might hack into a company’s email system and send an email from the actual account of a co-employee — although the email looks legitimate and in fact is sent from an employee’s account, it is controlled by the criminal. But however “phishing” emails are sent, such emails usually request that money be sent to an account owned by the cyber-criminal. Unfortunately, the recipient all too frequently falls for the scam and directs payment to the criminal’s account.

The statistics are alarming. According to cybersecurity vendor Symantec, one out of every 39 construction industry email users gets targeted by a phishing scheme. Ransomware infections, in which data is made unreadable, were up 18 percent in 2018. One out of every 382 emails sent in 2018 had some type of malicious content.1 Because a cyber incident can put a company out of business, the consequences of such an attack are potentially devastating.

What can be done to minimize the risk of cyber-crime? Expert recommendations include creating strong backup systems, updating antivirus and other software, implementing and enforcing stringent password policies, restricting approval rights and administrative privileges, and conducting a comprehensive security assessment to identify potential vulnerabilities and ways to address them. Additional precautions include training employees about cyber risks, implementing multi-factor authorization procedures that require more than just a password to access systems, and creating an incident response team prepared to act quickly in the event that a cyber event occurs. But even the experts concede that such steps cannot completely eliminate the risk posed by cyber-criminals.

Construction industry participants increasingly are acquiring cyber insurance to protect themselves. While insurance will not prevent cyber-crimes, it can provide a welcome source of funds to pay for a ransomware attack or assist with the costs of regulatory investigations, required notifications, fines, and legal fees and expenses that typically are incurred following cyber incidents.

In short, the construction industry is not immune from cyber-crime. If your clients are not taking steps to minimize the risk of an attack and to be prepared if one occurs, it is probably time that they do so!

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Authors: Mike Hooker, Guy P. McConnell & Jason Pill – Phelps Dunbar
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MANAGING THE CRISIS: CHALLENGES EMPLOYERS FACE AS THEY BEGIN RE-OPENING
Corporate Counsel Section
Chairs: Chris Casper - Caspers Company and Michael Stein - American Integrity Insurance Group

As businesses in Florida begin to reopen, most will not be back to business as usual immediately. Employers will face a host of new challenges relating to COVID-19, including an increased focus on employee safety, requests for accommodations, and risks for discrimination and retaliation claims, while navigating through a web of new and existing laws and governmental agency guidance at a rapidly evolving pace.

Recognizing that employee safety is paramount, the Occupational Safety and Health Administration (OSHA) issued guidance for employers preparing workplaces for COVID-19. Specifically, OSHA recommends the following:

• Develop an infectious disease preparedness and response plan that addresses levels of risk associated with their worksites.
• Implement basic infection prevention measures, such as promoting frequent and thorough handwashing, encouraging employees to stay home if sick, and maintaining routine cleaning and disinfecting of the workplace.
• Develop policies and procedures for prompt identification and isolation of sick employees or employees who may have been exposed to the virus.

Recognizing that employee safety is paramount, the Occupational Safety and Health Administration (OSHA) issued guidance for employers preparing workplaces for COVID-19.

• Develop, implement, and communicate about workplace flexibilities and protections, such as ensuring and making employees aware of sick leave policies that are flexible and consistent with public health guidance.
• Implement workplace controls, such as minimizing contact among individuals, providing training to employees on COVID-19, and providing personal protective equipment, if necessary.

This safety plan should be well-documented and clearly communicated to employees, so they understand the precautions being taken and what is expected from them.

Employers must take additional measures when collecting any type of medical information. If an employer decides to take body temperatures of its employees before entering the workplace, then the employer must ensure that all medical information remains confidential and that it is stored separately from the employee’s personnel file.

If a business is unable to reopen with the full complement of employees that it had prior to closing or reducing its business operations, then it must be careful not to let inappropriate factors determine which employees it will bring back, so as to mitigate the risk of potential discrimination claims. For example, an employer must refrain from making assumptions about which employees will or will not want to return to work due to their age, gender, parental status, pregnancy, or disability. While an employer may have legitimate concerns about bringing employees back who have a higher risk of being more susceptible to severe effects or complications with COVID-19, the Equal Employment Opportunity Commission (EEOC) has made clear that blanket policies excluding such workers would generally run afoul of the Americans with Disabilities Act unless the employer can meet the demanding direct-threat standard.

On the other hand, individuals with underlying physical and mental disabilities may need to request reasonable accommodation from the employer to help them deal with the effects of COVID-19. Employers are required to assess each employee individually and engage in an interactive process to

Continued on page 29
determine whether accommodation is needed. When determining whether an accommodation is reasonable, employers should work toward a solution that helps the employee perform the essential functions of the position, even if that solution is not necessarily the employee’s first choice. Some low-cost and temporary solutions may include rearranging the office, providing protective equipment, erecting barriers to provide separation, offering a modified work schedule, or allowing work to be completed remotely.

Employers will also need to be cognizant of certain federal and state laws such as the National Labor Relations Act or OSHA that protect employees who complain about the terms and conditions of employment and/or workplace safety issues. They must evaluate each complaint and refrain from taking any adverse action as a result of the employee raising the complaint.

As employers face increased litigation risk in the post COVID-19 environment, employers should regularly consult with experienced labor and employment counsel and review governmental agency guidance to ensure that they are properly looking after the health and safety of their employees, while complying with federal and state laws.

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Law Week Activities

The theme of this year’s Law Week was “Your Vote • Your Voice • Our Democracy: The 19th Amendment at 100,” celebrating the 100th anniversary of the 19th Amendment, giving women the right to vote.

More than 2,000 students participated in Law Week activities this year, including mock trials, courthouse tours, classroom speakers, and art contest participants. Thank you to the HCBA members and local judges that volunteered during the week’s activities.

Congratulations to the winners of the annual Law Week High School and Middle School Art Contest winners. The students created artwork based on the Law Week theme.

Art Contest Winners:
1st Place Angelina Tello, Blake High School
2nd Place Taisha Schellhorn, Blake High School
3rd Place Caroline Hedger, Blake High School
1st Place Princess Arrozal, Smith Middle School
2nd Place Isabell Carpenter, Progress Village Middle Magnet School
3rd Place Nala Burns, Tomlin Middle School

Although we were unable to display the artwork and recognize the students at our typical Law Day Membership Luncheon in May, we were pleased to display their artwork at the Edgecomb Courthouse during Law Week, here in this magazine and on our social media pages. The School District has also posted the winning artwork on their website.

Thank you to the YLD Law Week Committee and the Hillsborough County School District for coordinating this year’s Law Week activities.

Your Vote • Your Voice • Our Democracy: The 19th Amendment at 100
Left:
1ST PLACE - HIGH SCHOOL
Angelina Tello
Blake High School

Right:
2ND PLACE - HIGH SCHOOL
Taisha Schellhorn
Blake High School

3RD PLACE - HIGH SCHOOL - Caroline Hedger, Blake High School

1st Place - MIDDLE SCHOOL - Princess Arrozal, Smith Middle School

Left:
2ND PLACE - MIDDLE SCHOOL
Isabell Carpenter
Progress Village Middle Magnet School

Right:
3RD PLACE - MIDDLE SCHOOL
Nala Burns
Tomlin Middle School
The COVID-19 pandemic has caused disorder and unprecedented challenges across America and the rest of the world. Countless people have endured immeasurable pain and suffering associated with contracting the disease or losing a loved one who has succumbed to the disease, financial troubles, or businesses permanently shutting down. In the midst of all the chaos the nation faces, the Asian American community took another hit — increased racism, discrimination, and anti-Asian attacks.

Asian Americans face the same challenges and tribulations as the rest of the country. Yet, the pandemic has exposed the implicit bias and prejudice that some have against Asian Americans. Asian Americans have been victims of verbal and violent physical attacks for no reason other than their race. From hate speech to dirty looks, innocent Asian Americans are suffering and being targeted simply because of how they look. Using the terms “Wuhan virus” or “Chinese virus” to describe COVID-19 has also seemingly painted Asian Americans as the enemy during this pandemic.

What has transpired over the past months produced fear in many Asian Americans. Not only is there fear for the actual disease; fear for their daily interactions with others now also exists. But why should this be tolerated? No one should have to fear being discriminated, hated, or unwanted by their neighbors. No one should have to fear that their business will suffer because the public is purposefully avoiding them. No one should have to fear going to the store or wearing a face mask because others might act dangerously based upon unfounded biases. No one should have to fear being assaulted and attacked simply by existing in the same space as others. No one should have to deal with these fears, yet these fears have increasingly plagued the Asian American community every day since the pandemic began.

Without a doubt, the pandemic understandably has created frustrations and feelings of hopelessness. Lives have been significantly altered, and numerous restrictions have been put in place. Indeed, there is great uncertainty of what the future will hold. Times like these will naturally create stress, anger, and other unpleasant emotions. People will want to find something or someone to blame. However, please be reminded that the Asian American community is not the enemy and Asian Americans are not to blame.

Discrimination and racism have no place in our community, and attacking Asian Americans does nothing but create more division in the nation. During these challenging times, it is particularly important for us to be united. Rather than attacking and hating an innocent population, let this pandemic be an opportunity to encourage one another. Let us use our “differences” to overcome a common problem. Together, America can rise from COVID-19 a greater and stronger country, but we must stand together as one.

Author:
Tik Sang Kwok  
- Stetson College of Law, JD 2022, & Asian Pacific American Bar Association of Tampa Bay Member

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Hello from the newest section of the Hillsborough County Bar Association — the Government Lawyers Section! We are the inaugural co-chairs for the newest addition to the HCBA family and are thrilled to share this exciting news with you!

After noticing a deficiency in programming, messaging, and information that directly targets the government sector and acknowledges our unique place in the legal system and community, we presented a proposal to the HCBA Board of Directors to create this new section. We would like to thank the Board of Directors for seeing the value in this new Section and approving its formation.

Additionally, we would like to especially thank Judge Samantha Ward, as she encouraged and collaborated with us in creating this new Section.

The goal of the Government Lawyers Section is to join together government attorneys from all

Continued on page 35
types of government offices under one larger government sector umbrella. The Section will provide a platform for information sharing, programming, and messaging specifically targeted to government attorneys. Through collaboration with HCBA Sections and Committees, as well as other voluntary bar associations, the Government Lawyers Section will aim to expand free and reduced cost program offerings for government attorneys.

We will seek to maximize government attorney involvement in both the HCBA and other voluntary bar associations. The Section will work to reduce the financial barriers to bar association participation, in an effort to acknowledge the importance of and to achieve professional diversity within the HCBA. The Section also recognizes the need to reduce any logistical barriers that prevent government lawyers from participating. For example, the Section plans to offer programming at times and locations more convenient for government lawyers — we realize that a Monday lunch meeting may not work for those in the courtroom every day!

Speaking of programming, exciting ideas are brewing, with working titles including: “You’re a Government Attorney? So What Exactly Do You Do?,” “From Government Attorney to Judge — Journeys to the Bench Without Private Practice,” “The Financial Benefits of Being a Government Lawyer – Pensions, Paychecks, and Benefits Packages,” and “Pro Bono for Government Attorneys – How We Can Help.” We welcome your programming ideas, so shoot them our way!

We are so thankful that the HCBA not only sees the importance of having a diverse membership, but also agrees that Government Lawyers should be recognized for the work we do. All government lawyers, as well as friends or supporters of the government sector, are invited to join. To join, log in to your HCBA account, find the “Sections and Committees” tab, select “Government Lawyers,” and click “Join Group.” There is no extra cost to join. We look forward to meeting all our government attorneys, as well as friends and supporters, soon!

Authors: Christian Katchuk and Lyndsey Siara - Thirteenth Judicial Circuit Legal Department
On April 16, 2020, the Trump administration introduced the guidelines states are encouraged to follow while reopening their economies. Despite this multi-step approach, many states proceeded with their reopening plans without first meeting the recommended eligibility criteria. Florida’s businesses began opening on May 4, 2020.

While we are all optimistic about the end of the shutdowns and returning to “a new normal,” a variety of legal challenges loom over employers as they begin to bring their employees back to work. While different businesses will have specific needs, almost all employers should consider the following two questions when deciding to reopen their businesses: Which employees to bring back, and how to ensure the workplace is safe.

**Determining Who You Should Bring Back**

As current regulations only allow businesses to reopen at partial capacity, employers will first need to determine which employees to bring back to work.

To combat potential discrimination claims, employers should consider allowing employees to return on a voluntary basis. If that is not feasible, employers should determine which positions need to be staffed and use neutral selection criteria to determine which employees should be brought back to fill those positions, such as seniority and job performance. Employers should not make assumptions when deciding who to bring back, however, as those assumptions could lead to unintended discrimination claims — i.e., a “vulnerable” employee (based on age, disability, or pregnancy) should not return to work. Likewise, although not usually regarded as a reasonable accommodation historically, under these circumstances, employers should consider allowing high-risk employees to continue working remotely.

Continued on page 37
While employers can inadvertently subject themselves to discrimination and failure to accommodate claims by requiring employees to physically come back to work, employers can reduce liability by ensuring they make all decisions in a transparent, legitimate and non-discriminatory way.

Potential Workplace Safety Claims

All employers have a duty under the Occupational Safety and Health Act (OSHA) to maintain a hazard-free workplace. If employers are unable to meet that obligation, litigation is likely to follow. In fact, legislators are already anticipating this problem, with White House Economic Adviser Larry Kudlow stating this “is something we are looking at carefully.” In Florida, the effort is being led by Senator Jeff Brandes, R-St. Petersburg, who opined “[t]here is a profound consequence that ripples through the economy if 20 percent of your businesses say, ‘I can’t take on the liability of opening my doors.’”

While only time will tell how federal, state and local governments address the litigation aspect, employers can still do their part to mitigate workplace safety claims. First, employers should consider workplace modifications such as moving workstations, altering layouts and access points, and installing barriers. Second, employers may consider requiring (or at least permitting) PPE, such as gloves and facemasks. Finally, employers should also consider flexible work arrangements with employees working staggered days or times or continuing to work from home.

As businesses plan to reopen, they should work closely with experienced employment counsel to ensure compliance with all legal obligations.

Authors:
Andrew Lincoln & Emily Ayvazian - Jackson Lewis, P.C.
The recent COVID-19 pandemic has caused a significant amount of economic disruption. This disruption will impact the value of businesses and will therefore have an impact on the settlement of divorce cases.

Many businesses have been closed since the middle of March. These businesses, if valued today, may have an indicated fair market value computed under the income approach and the market approach that is lower than the fair market value computed under the asset approach; this may even be the case for some asset-light service businesses.

There are several complications and considerations to valuing a business in the current economic environment: (1) cash flows are uncertain; (2) the pandemic wasn’t known or knowable until 2020; (3) discount rates; (4) real estate prices.

Continued on page 39
Continued from page 38

It is difficult to value a company based on cash flows when you do not know when those cash flows will resume to pre-pandemic levels. Some industries will not be getting back to normal as quickly as others. In the near term, cash flows will continue to be difficult to estimate for many businesses.

In business valuation, the value of a business is affected by information that is known or knowable as of the valuation date. For example, if a business were to be valued as of December 31, 2019, it is reasonable to state that the economic fallout from COVID-19 was not known or knowable as of that date.

If a business were to be valued as of March 31, 2020, it is clear that the economic fallout from COVID-19 was known or knowable at that time.

In courts of equity, the business valuation date may have to be reconsidered and adjustments may need to be made due to the effects of the pandemic.

Consideration must be given to the discount rates (and capitalization rates) calculated utilizing the build-up method. There is an argument that can be made that the current risk-free rate is artificially low and that it should be replaced with a normalized risk-free rate.

Because the build-up method often relies on a 20-year treasury yield, a spot rate today may not actually reflect the appropriate discount rate over the next 20 years for a company. For example, the 20-year spot rate was: 1.02% as of April 29, 2020; 4.42% as of April 29, 2010; and 6.31% as of April 29, 2000.1

Duff & Phelps releases a normalized risk-free rate (currently 3%); they also release a recommended equity risk premium (currently 6%).

It is important to not overemphasize the impact of the economic fallout on the discount rate and projected cash flows. Some industries will carry more risk than others in the future, and that may have to be addressed in the industry risk premium or company-specific risk premium.

It is still unclear how real estate prices are going to be affected by COVID-19. This is something to pay attention to, considering real estate is the most valuable asset in some divorce matters.

The duration of the current economic downturn is unknown. For businesses valued during the pandemic, the asset approach will still represent the floor value.

While it is important to capture this risk when valuing a business, it is also important to not overemphasize this risk. The economy will presumably rebound as it has in all of the previous economic downturns.

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1 Source: Treasury.gov.

Author: James Edward Stewart, CPA/ABV, CFE - Baker Tilly Virchow Krause, LLP
Marital & Family Law Section
Luncheon & CLE

On March 5, the Marital & Family Law Section held an informative luncheon and CLE. At the luncheon, speaker Dr. James McHale of the Family Study Center at USF St. Petersburg spoke on adverse childhood experiences (ACES) in divorce. During the extended 4-hour CLE following the luncheon, two panels discussed various aspects of family law. Judge Wesley D. Tibbals was joined by several other judges from the Thirteenth Judicial Circuit on the topic “A New Decade of Family Law.” Ellie I. Probasco, Probasco Law & Amy D. Singer, Allen Dell, P.A. then provided an overview of “Procedural, Practical & Professionalism Issues in Family Law Practice.”

The Section thanks its luncheon sponsor: Morgan Stanley
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The U.S. Department of Veterans Affairs (VA) administers a disability compensation system which pays veterans compensation based on diseases or injuries that are connected to their military service. VA Disability compensation is based on a graduated schedule which assigns designated percentage ratings that increase as symptoms increase in severity. VA compensation includes the possibility of increased “extraschedular” compensation over and above the designated percentages when a veteran’s symptoms exceed those in published Diagnostic Codes.

In Morgan v. Wilkie, 31 Vet.App. 162 (May 16, 2019), the U.S. Court of Appeals for Veterans Claims (CAVC) reaffirmed the VA’s duty to maximize awards of disability compensation, including properly considering extraschedular benefits. In Morgan, the CAVC considered the claim of Howard Morgan, who served in the U.S. Navy between 1965 and 1971. Years later, suffering from failing hearing, he filed a claim with the VA for service-connected disability compensation. In 2012, VA granted service-connection for his hearing loss, but found that Morgan’s hearing impairment was not bad enough under VA’s rating scheme to result in payment of benefits, what is called a ‘noncompensable’ or 0% rating. In 2016, VA increased Morgan’s evaluation to 10%, but did not consider further compensation.

Morgan appealed to the Board of Veterans Appeals seeking increased compensation, but the Board did not consider extraschedular compensation. The Board found that his disability was adequately contemplated by the rating schedule based on a mechanical application of audiometry test results. In fact, Morgan had explained to VA that his hearing was so bad that he had to open the windows of his car to hear surrounding traffic, and that he could not hear his preacher in church or his grandchild, factors which on their face are more severe than those included in the Diagnostic Code for hearing loss. Morgan sought a greater rating in his appeal, but the Board rejected his claim.

The CAVC rejected the Board’s analysis, establishing a mandatory workflow for VA to evaluate compensation claims and repeated VA’s duty to maximize a veteran’s benefits. This duty is rooted in 38 C.F.R. § 3.103(a), which requires VA to “render a decision which grants every benefit that can be supported in law while protecting the interests of the Government.” The Court instructed VA to first consider each of the multiple “ready-made” schedular tools that exist before addressing the issue of extraschedular referral. These tools include, but are not limited to:

Continued on page 43
Continued from page 42

(1) secondary service connection; (2) analogous ratings, (3) assigning the higher evaluation when two evaluations are being considered; (4) resolving reasonable doubt in favor of a veteran when rating disabilities; (5) rating a single disability under multiple diagnostic codes, (6) issuing an award based on unemployability (the veteran’s inability to secure or follow an occupation); and others. The Court emphasized VA’s obligation to maximize benefits “requires VA to search all avenues of schedular rating [explicitly raised by the claimant or reasonably raised by the record] before resorting to an extraschedular analysis.”

Practitioners must evaluate Regional Office and Board decisions within this framework. This will identify errors by VA and allow veterans to clearly raise issues during agency appeals to properly develop a record and avoid unnecessary remands. These issues must include claims for extraschedular consideration when the facts warrant consideration beyond the six schedular tools that already exist within the VA system.

Author: John Tucker - Tucker Law Group, P.A.
It seems only appropriate that the last words I share before stepping down as committee co-chair speak to my passion. I had the honor of trying the first fair housing jury trial in the history of the Middle District twenty years ago. I cried during closing. I held my client’s hand waiting for the jury. We hugged when we won.

Fair Housing laws safeguard protected classes from discrimination involving the sale, rental and financing of housing. The original federal law included protections for race, color, religion, sex, and national origin. In 1988, handicap and familial status were added. Florida Statutes follow the federal categories. Tampa and Hillsborough County add age, marital status, sexual orientation and gender identity or expression.

Violations include discrimination by an advertiser, owner, builder, developer, realtor, lender, appraiser, etc. by steering a potential tenant away from certain rentals, a potential buyer from purchasing in an area of his/her choice, different terms or conditions in rentals, sales and financing (including refinancing), discrepancies in permitted use of facilities — the pool, clubhouse, tennis court, and even the person’s front yard. For example, you can have a height restriction but cannot disallow a swing set and allow a birdbath. You can require swim caps or diapers in a pool but cannot discriminate by age. You cannot limit a family with children to rear apartments and singles to the front. Disabled individuals must be allowed to make appropriate modifications to their premises, both structurally and through policies that allow for equal use and enjoyment including the proper use of support animals.

Violations can be direct or indirect, i.e. disparate impact. Coercion, intimidation, threats, or interference with someone who exercises their right or encourages another to exercise their right is prohibited. Exceptions include §760.29 exclusions, organizational, religious or certain social club-run residences, and properly designed older-age communities.¹

The statute of limitations to file a fair housing complaint is one year. Complaints can be filed online for Hillsborough County at hillsboroughcounty.org or inside Tampa city limits at tampagov.net. An investigation will be initiated to determine if there is reasonable cause to believe discrimination occurred (a “for cause” finding) or did not occur (a “no cause” finding). Part of that investigation may include informal mediation, conciliation, and informal fact and discovery sharing that can prove helpful to both parties. Failure to resolve at that level allows for the filing of an administrative, federal or state complaint with varying options for recovery. Locally, the agencies contracted to assist include Bay Area Legal Services, Inc. and the Tampa Office of Human Rights.

In closing, thank you to everyone who made me feel welcome and a part of the Hillsborough County Bar. The virus has postponed my retirement for a bit, so I look forward to watching this Committee continue to grow.


Author: Lynn E. Hanshaw – Langford & Myers, P.A.
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The Electronic Wills Act, which provides the opportunity for online remote notarization and remote witnessing of wills, is effective July 1st.

If a testator is a “vulnerable adult,” a Will is not valid if witnessed electronically; witnesses should be physically present for such persons, see §117.285(5)(c), Florida Statutes. A “vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging, as defined in §415.102(28), Florida Statutes.

In addition to strict execution requirements, the self-proving clause of an electronic will must designate a qualified custodian, and must state that the electronic record that contains the electronic will is held in the custody of a qualified custodian at all times before being offered to the court for probate, §732.523(2)(3), Florida Statutes.

Due to our current circumstances, clients are eager to utilize remote online notarization and remote witnessing to execute testamentary documents. However, it is important for practitioners to become very familiar with Chapter 117, Part II, [Online Notarizations], as well as the new statutes under Chapter 732 of the Florida Probate Code, and all other applicable laws, before taking advantage of remote notarization pursuant to the Electronic Wills Act.

1 If a Will is not self-proven, it may be admitted to probate upon the oath of any attesting witness taken before a circuit judge, commissioner appointed by the court, or clerk. Or, if the witnesses cannot be found, the nominated Personal Representative, or an uninterested party who believes the writing to be the decedent’s Will, see §732.503(2)(3), Florida Statutes.

2 This also applies to a trust with testamentary aspects under chapter 736, a health care advance directive, a waiver of spousal rights under §732.701 or §732.702, or a power of attorney authorizing any of the transactions enumerated in §709.2208. See §117.285(5), Florida Statutes.

Author: Elaine N. McGinnis - Law Office of Elaine McGinnis, P.A.
Real Property, Probate & Trust Law Section CLE

On March 12, the Real Property, Probate & Trust Law Section held a CLE on the topic “Land Use and Property Rights Litigation.” The Section thanks its speaker, Kasey A. Feltner from the Tampa office of Shutts & Bowen LLP, and also its luncheon sponsor: Seacoast Bank.
Under the current federal regulatory scheme, public companies may be required to comment on current events in the reports they file pursuant to the Securities Exchange Act of 1934 (“Exchange Act”). For example, many public companies have found it necessary, in their Exchange Act reports, to discuss the impacts of Brexit or blockchain technology on their business.

In this regard, with respect to the effects of COVID-19, companies filing Exchange Act reports are advised and directed to review certain mandated disclosure topics in order to provide comprehensive disclosure to investors on topics such as:

- **Risk Factors** – Companies should update the risk factors presented in their reports to address risk issues presented by COVID-19. Hundreds of reports filed in 2020 included new or revised risk factors relating to COVID-19.

Companies should refrain from including boilerplate COVID-19 risk factors (such as the general economic impact of COVID-19) and instead tailor their risk factors to specific material risks faced by the company as a result of COVID-19.

- **Management Discussion & Analysis (“MD&A”)** – Companies should carefully review and update their MD&A if necessary to address any company specific trends, financial conditions, and/or material changes that will be faced by the company as a result of the effects of COVID-19, including paying particular attention to any material locations, suppliers, or customer relationships that are likely to be impacted by COVID-19.

- **Non-Public Information** – Companies should be attentive to any statements being made by the company’s agents or affiliates relating to the effects of and actions taken in response to COVID-19. Such statements may contain material nonpublic information and thus require simultaneous public disclosure of the information in order for the company to comply with the provisions of Regulation FD.

The SEC has taken the unusual step to give public companies the option of delaying the filing most of its periodic reports for up to 45 days beyond the original deadline in circumstances where the company is materially impacted by the COVID-19 pandemic.

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KEY IMPACTS OF COVID-19 ON PUBLIC COMPANIES
Securities Section

Continued from page 48

Although, as a result of uncertainties regarding COVID-19, companies may be unable to include disclosures regarding all of the material impacts that COVID-19 might have on their operations or financial condition, providing investors with some meaningful measure of disclosure regarding the anticipated impact of COVID-19 can help to ensure that investors are being kept up to date on those material impacts that are currently reasonably known to the company.

Additionally, because of the dramatic effects that COVID-19 has had on business economics and staffing, the Securities and Exchange Commission has taken the unusual step, by issuance of an order, to give public companies the option of delaying the filing of most of its periodic reports for up to 45 days beyond the original deadline in circumstances where the company is materially impacted by the effects of the COVID-19 pandemic. Reports filed within the extension will be deemed timely if all conditions for extending the deadline are met.

1 In order to utilize the delayed filing deadline, issuers must file a Current Report on Form 8-K which (i) informs investors that the company is relying on the Commission’s order to delay the filing, (ii) provides a brief description of the reason for the delay, (iii) includes an estimated date by which the report will be filed, (iv) incorporates an appropriate risk factor relating to COVID-19, and (v) explains the inability of any person to furnish any opinion, report, or certification by the initial deadline. See Exchange Act Release No. 34-88318 (March 4, 2020), https://www.sec.gov/rules/other/2020/34-88318.pdf; See also Exchange Act Release No. 34-88465 (March 25, 2020), https://www.sec.gov/rules/exorders/2020/34-88465.pdf.

Author: Cody Bilgrien – Trenam Law
American employers have a lot on their minds these days: how to make payroll, how to attract consumers, and how to stay on top of ever-changing state and federal laws. An additional source of angst for employers, and a reasonable concern for employees, is how employers handle a return to work over the rest of 2020 as COVID-19 stay-at-home orders are relaxed. Employers need to be mindful not only of the health and safety of their workforce, but also of potential liability issues that could arise.

COVID-19 has confounded even the brightest scientific minds, and the virus’s unique danger and viciousness puts a significant strain on an employer attempting to bring everyone back to the office park. PPE, or Personal Protective Equipment, will likely need to be issued to each employee at the employer’s cost. This can include face masks, face-shields, and gloves, especially if the employee is in a client-facing role such as in a bank or grocery store. Employers may also be forced to administer daily temperature tests to their employees, such as many restaurant industry establishments are currently implementing.

Employees do, however, have some autonomy in this shifting climate, especially if employees believe the various health-related constraints employers will be placing on them are invasive. According to studies from Business News Daily, remote employees (or work-from-home employees) work on average 1.5 more days per month than their office-bound counterparts, which extrapolates to up to three extra weeks of work per year. Highly skilled employees who have performed superior work while confined to home the last six to eight weeks may be able to convince skeptical employers that a work-from-home arrangement could exist permanently. This would reduce by some factors the daily COVID-19 oversight employers will have to extend, and may in fact prove a boon to the employer.

Employers may face increased scrutiny from a liability standpoint. If an employee becomes infected from the virus after returning to work, a skilled personal injury attorney may attempt to make the case that the employer is liable for damages on a negligence basis. This will be a difficult case to win, especially given the virus’s incubation period, as well as a growing plurality of potentially infected persons being asymptomatic.

Employers must take note not to explicitly violate any state or federal labor laws when implementing these COVID-19 precautions. If an employee is feverish or has an actual diagnosis of COVID-19, they should be afforded all reasonable accommodations, and separations of employment or terminations should only be administered as a last resort or after all available sick leave and paid or unpaid time off has been exhausted. In addition, any employee who may be laid off as a result of the pandemic should be afforded the opportunity to remain on the employer’s health insurance plan for an indiscriminate period of time. Employers and employees often have an uneasy relationship, but when a global crisis hits, they need to unite to stop the spread.

Author: Trescot Gear – Gear Law, LLC
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As the COVID-19 pandemic upsets and unsettlements businesses in the US and abroad, companies (and their in-house counsel) are learning fast how to cope with the wide-ranging effects and collateral consequences of the virus, including how to conduct business in these unprecedented times.

In times of tremendous stress and financial turmoil, sometimes criminal wrongdoing or other malfeasance surfaces. If past experience is any guide to the future, the coronavirus might bring to light unethical, improper, or even criminal conduct, even if that conduct has nothing to do with the virus. History teaches us that extreme pressures sometimes cause people (and companies) to do things they otherwise might not do.

How should/can companies best respond to allegations of wrongdoing over the coming weeks and months while this pandemic runs its course?

During tough times, the need for internal investigations might actually increase and intensify rather than subside. The initial question then becomes, when confronted with wrongdoing in this environment, should a company conduct an internal investigation, defer the investigation, or simply look the other way? The answer to that initial question should be informed by the best investigative protocols which include a review of the nature and seriousness of the allegation(s). The more serious the alleged wrongdoing, the more likely that some kind of response is needed now, even if only to preserve evidence and testimony for closer review when normal business operations resume.

Generally speaking, there are numerous benefits for a company to conduct an internal investigation that is protected by the attorney-client privilege, whether by in-house counsel, outside counsel, or compliance personnel under the direction of counsel. That does not change in times of crisis, although it might need to be modified. For example, some investigative work may need to be put on hold during the crisis while other work moves forward, even if on a truncated basis. Issuing document holds, preserving evidence, collecting electronic documents remotely, conducting telephonic scoping interviews and other steps should still be undertaken even while the business is under COVID-19 protocols.

Even these relatively modest steps can send a strong message that the company’s compliance function is still operating and will root out and terminate the offensive conduct. Any investigative work which is put on hold should be carefully documented, tracked, and monitored, so the work can continue when normal business operations resume.

Once the decision has been made to proceed with an internal investigation, the next decision is deciding who should conduct it. With “shelter in place” orders in effect, companies must conduct investigations remotely. This requires careful planning from the outset, and affects the decision of who should conduct the investigation. As a general rule, the benefits of having counsel (either in-house or outside) lead the investigation remain. Having counsel lead or direct the investigation protects the attorney-client and work-product privileges.

Once the decision is made as to who will conduct the investigation the next step is to create an investigative work plan. The work plan provides direction to ensure that all investigators are working in unison. The plan should be detailed and broken down in phases, but should be a “living” document that can be readjusted as facts are uncovered during the investigation. The work plan should always include a list of key custodians whose documents will be collected and reviewed, as well as witnesses to interview.
Document review during the pandemic can generally proceed as per usual on review platforms like Relativity, which can be accessed from anywhere, including the reviewer’s home office. But, working remotely requires greater organization and instruction from the person leading the investigation. A clear and detailed document review memo is critical.

Witness interviews are essential in an internal investigation, but the format in which they will be conducted will likely be different during the pandemic. Counsel will need to determine initially if they should move forward and conduct the interviews remotely via telephone or some other platform (such as Zoom, etc.) or if the interviews of non-critical witnesses should be deferred until they can be held in person. When conducting interviews “remotely,” counsel should be mindful of additional considerations such as maintaining attorney-client privilege and confidentiality if the interviewee is at home with a spouse, children or other third parties in the room.

There are other considerations for conducting an internal investigation during these trying times which counsel should be aware of, but space does not allow, and this primer is by no means exhaustive. Counsel should simply be mindful that the investigation may need to be adjusted in real time as it progresses and as circumstances presented by the pandemic change.
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Trial & Litigation Section Luncheon & CLE

On March 11, the Trial & Litigation Section held its popular annual State of the Courts Luncheon. The Section thanks its speakers; Chief Judge Ronald N. Ficarrotta, 13th Judicial Circuit Court; Judge Morris Silberman, 2nd District Court of Appeal; Andrew H. Warren, State Attorney, 13th Judicial Circuit; and Julianne M. Holt, Public Defender, 13th Judicial Circuit.

Following the luncheon, the Section also held a 2-hour CLE on the topic “Daubert from the Practitioners’ Perspective.” The speakers, Judge Julie Sneed, United States Magistrate Judge for the United States District Court, Middle District of Florida; Keith M. Carter of Morgan & Morgan; and A. Brian Albritton of Phelps Dunbar, provided judicial, civil and criminal perspectives to the panel.

Thank you to our luncheon sponsor:

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FINANCIAL ADVISOR
This article will briefly cover two rulings in a state workers’ compensation case, as well as an important recent case on Longshore jurisdiction.

The first case of *Krysiak v. City of Kissimmee*, 289 So. 3d 948 (Fla. 1st DCA 2020), is a lesson in language. Utilizing the one-time change of physician rule, Krysiak’s counsel wrote to opposing counsel to request authorization of an alternate orthopedist; no response was provided within five days. After a petition was filed, and Krysiak named an alternate doctor as one-time change, the adjuster gave notice and authorized a different doctor for an evaluation. Krysiak’s counsel responded by email stating that because a response was not provided within five days of the initial request, he would not accept the carrier’s alternate choice, but instead would go to his choice under self-help provisions of the Act. Krysiak then went to the alternate doctor that the adjuster scheduled and did not use self-help provisions to go to the alternate that he identified. At a hearing where he requested authorization of his preferred physician, the Judge held that Krysiak acquiesced in the alternate doctor and the First District affirmed, holding that if Krysiak wanted to maintain an objection, the carrier should have been given notice in advance that

“[I]f a rig or structure is temporarily affixed in place, the water is still navigable and the Longshore Act is applicable.”

Continued on page 57
Continued from page 56

the appointment with their alternate doctor would be attended under protest.

The Krysiak court also found that the claimant had not waived a hearsay objection. The hearsay ruling concerned evidence of a positive blood test for alcohol, which was not properly authenticated but was admitted through a supervisor’s testimony solely to establish the claimant’s knowledge of the employer’s position. The judge properly ruled initially that the supervisor’s testimony that the blood test was positive was hearsay and could only be used to show the state of mind of the parties. The judge then held in the Final Order that there was evidence of misconduct because the test was positive for alcohol, even though it had not been authenticated. The First District held that the hearsay evidence was inadequate to support a finding of misconduct and reversed.

In the second case, MMR Constructors v. Director, 954 F. 3d 259 (5th Cir. 2020), Longshore jurisdiction was extended to an electrician injured while working on the superstructure of an oil rig. Instead of being built on land, this particular oil rig was being built on water, but was affixed to land by steel cables and utility lines. The employer/carrier argued that the rig was not traveling in maritime commerce, and the electrician was not a maritime employee. The Fifth Circuit held that if a rig or other structure is permanently affixed in place, the water beneath it is no longer navigable, but if a rig or structure is temporarily affixed in place, the water is still navigable and the Longshore Act is applicable. The Fifth Circuit also cited in support and with favor in Parker v. Motorboat Sales, 314 US 244, 246 (1941), where a janitor fell off a boat and drowned. The employer in Parker objected that the janitor’s job was not maritime employment. The Supreme Court held that it was reasonably foreseeable that the janitor could be on navigable water, and therefore, the claim was covered by the Longshore Act.

Author: Anthony V. Cortese – Anthony V. Cortese, At Law
Ceci Berman – Ceci Berman of Brannock Humphries & Berman was recently featured on the “Issues on Appeal” podcast discussing “Lessons from the Pandemic,” with host Duane Daiker.

Sharon Carlstedt Britton – Stearns Weaver Miller announced that Sharon Carlstedt Britton has joined the firm’s Tampa office as a shareholder. Britton has nearly three decades of experience litigating a variety of complex commercial matters, including contracts, healthcare, insurance, white collar and intellectual property.

Christine Derr – Harris, Hunt, & Derr, P.A. would like to congratulate Christine Derr on her appointment as HAWL’s director & chairman of the Past President’s Advisory Committee.

Rick Dragotto – The Guardian ad Litem program of the 13th Circuit, which serves Hillsborough County, has named Rick Dragotto as its new managing attorney.

Sarah A. Gottlieb – Freeborn & Peters LLP is pleased to announce that Sarah A. Gottlieb has joined the firm as an associate in the Litigation Practice Group and a member of the Insurance Brokerage team.
Thank you to Our 2019-2020 Committee & Section Chairs

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Lawyer Magazine 30-Year Anniversary: Favorite Covers from 2016-2020

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 have voted 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 2016 to this year, the sixth and final interval of five years that the magazine has been published. Thank you to everyone who participated in voting for their favorite covers this year, we have enjoyed revisiting our beautiful covers from the last 30 years.

September-October 2016 issue: To Kill A Mockingbird novel cover, Grand Central Publishing.

March-April 2018 issue: photo of The Narrows in Zion National Park, Utah, taken by HCBA member Brian Sparks, 2011.

September-October 2018 issue: History’s First Scheduled Airline Passenger Arrives in Tampa - Tony Jannus’ First Flight triptych mural, hanging in Tampa International Airport, George Snow Hill, 1939.

November-December 2019 issue: Tampa Skyline at Sunset from TGH, by Tampa photographer laureate MK Foltz, 2013.

May-June 2020 issue: Photo of hanger at MacDill Air Force Base, courtesy of MacDill AFB.
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