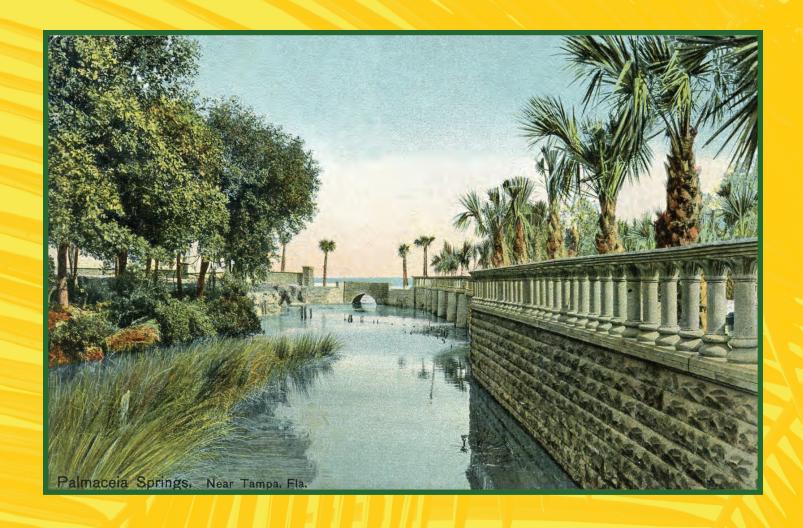
# IAWYER

THE HILLSBOROUGH COUNTY BAR ASSOCIATION TAMPA, FLORIDA | SUMMER 2021 | VOL. 31, NO. 6



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# LAWYER

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#### **ABOUT THE COVER**

Finishing our theme this Bar year of highlighting local historical photos/places, we are featuring on this issue's cover a lovely postcard from the 1920's of Palma Ceia Springs, looking towards Bayshore Boulevard. The spring was known in the mid-1800s for its healing powers and was a popular swimming spot. The Spring is now located in Fred Ball Park, and the structure surrounding the spring shown in the photo, which was built in 1906, is still in the park today. We thank HCBA member Tom Elligett for providing this postcard and the history of the springs!

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# Law Day Luncheon



Thirteenth Judicial Circuit Professionalism Award Winner



**Stann Givens (Private Practice)** 

**HCBA Liberty Bell Award Winner** 



Pat Frank

Thirteenth Judicial Circuit Professionalism Award Winner



**Ada Carmona (Government Practice)** 

#### **Law Day Luncheon**

HCBA held its annual Law Day virtual luncheon on May 11 in a virtual format, with special guest speaker former Florida Supreme Court Justice Peggy Quince. During the ceremony, we were pleased to honor trailblazer and dedicated public servant Pat Frank with our annual Liberty Bell Award, recognizing an outstanding non-lawyer citizen whose community service strengthens the effectiveness of the American system under the law (read more on page 10).

In addition, the Hillsborough County Bar Foundation announced grants to seven local legal charities, and the Thirteenth Judicial Circuit Professionalism Committee presented their annual awards to an outstanding government and private practice lawyer (see their article on page 19). We thank everyone that attended and also appreciate The Bank of Tampa for sponsoring this event!

# The Hillsborough County Bar Foundation is pleased to present checks to these charities:

- ✓ Are You Safe, Inc.
- Crossroads for Florida Kids, Inc.
- ✓ Gift of Adoption Fund Florida Chapter
- L. David Shear Children's Law Center of Bay Area Legal Services
- **✓** The Spring of Tampa Bay
- Voices for Children of Hillsborough County, Inc.
- WFCTA Justice Restoration Center



Featured Speaker Justice Peggy Quince

Joe Marshburn



Judge Cynthia Oster

















## Goodnight, *Lawyer*

I hope I've managed to provide helpful information on attorney health and wellness, as well as shine a light on our Bar's history so that we may learn from it.

In the publishing world, finalizing a magazine or newspaper for its press run is often referred to as "putting it to bed." After two years, I am pleased to tuck in and put to bed my last issue of *Lawyer* magazine as its editor. It is an honor and a privilege to get the first peek at the articles and photo spreads. I've loved seeing the patterns in the articles that have emerged over the last two years, particularly as our Bar and our profession worked tirelessly to tackle the major changes in the law, in work environments, and in practice management brought to us courtesy of the COVID pandemic.

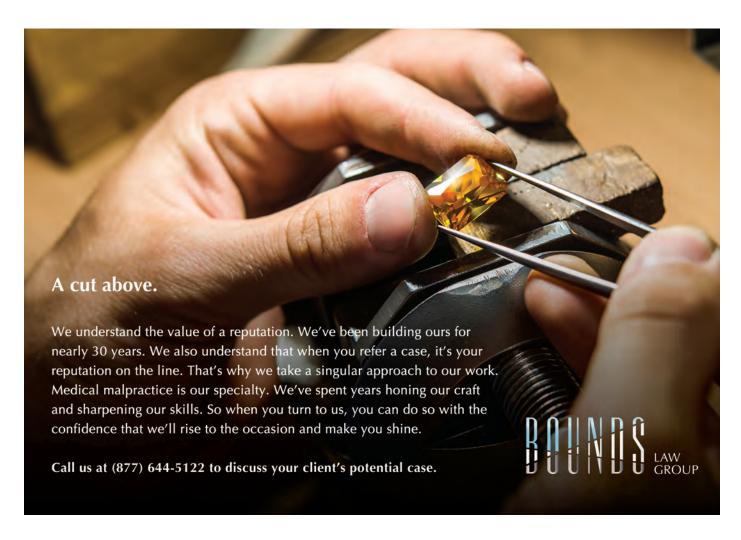
This issue is no exception. We have two articles addressing different aspects of the momentous change in Florida's Summary Judgment standard (pages 46 and 58). We have touching tributes to two beloved members, taken from us too soon



(pages 6 and 30). Don't miss the profiles of this year's professionalism and pro bono awards winners (pages 19 and 52). We have several insightful articles discussing various technology issues affecting our profession (pages 36, 40, and 56). And we have some fantastic summaries of the great work done by several of our Sections in the past year (pages 22 and 26). This issue also features an essay written by Trial and Litigation Student Scholarship Essay award winner Bryan Harsar, a student at WMU Cooley Law School (page 60). And this short summary only scratches the surface of great content in this issue.

The most challenging part of being editor, however, is writing the editor's column. While I have written dozens of substantive articles for the Appellate Practice and Intellectual Property Sections over the years, the blank slate of the editor's column is both exciting and daunting. I hope I've managed to provide helpful information on attorney health and wellness, as well as shine a light on our Bar's history so that we may learn from it.

I would like to give many thanks to HCBA's super professional staff, especially Stacy Williams (who had to not only pivot to working from home during COVID, but also to working from another continent!) and executive director John Kynes. Thanks, too, to Grace Yang and Paige Greenlee, two amazing HCBA presidents who put their trust in me as Editor. Thanks to the individuals who reached out with criticism and concerns — I took all such feedback very seriously and did my best to right any wrongs (but to the extent I did not succeed, I take full responsibility). Thanks to those who reached out with compliments as well, because your kind words were bright spots for me in a difficult year. And finally, many thanks to all of the section chairs and authors who made the effort to fill these pages every issue with timely and interesting stories about legal developments, law practice, Bar activities, and profiles of interesting members of our HCBA community. I look forward to re-joining your ranks as an author. Until then, Goodnight, Lawyer.





# HCBA Honors a True Mentor and Friend — Gone Too Soon

"There is a time for departure even when there is no place to go."

— Tennessee Williams

ell, we made it. There were times this year when I doubted all our desires to continue to meet on the Zoom screens for Bar functions, after attending hearings, mediations, and other meetings that way all day, but the HCBA demonstrated its members are nothing if not perseverant. I am so very proud of us. We pushed through a global pandemic, and, in many ways, thrived in doing so. Over the past Bar year, the HCBA, through our dedicated sections and committees, and with the help of our judiciary, presented more than 80 CLEs, most of which were done virtually. Instead of enjoying four nice lunches at the Hilton in each other's company, with the hard work of our Programs Chair, Valeria Obi, we held eight virtual all-membership lunches, most of which provided our members with free CLE credits and four of which included a lunch voucher, so we could eat together virtually.



Margaret Mathews, Paige Greenlee and David Prather from Palm Beach at the Florida Bar Board of Governors meeting in Charleston in October 2011.



In December, as numbers were ticking upwards, we moved our long-standing tradition of the Past President's luncheon to an outside cocktail party format, to allow for fresh air and social distancing. We held our first ever virtual mentor matching event, under the leadership of Judge Frances Perrone, and it was a tremendous success.

When it became apparent that it was unlikely that we would be able to meet in person during this Bar year, HCBA Board members and other Bar leadership stepped up to plan fantastic virtual events, including a beer tasting and brewery tour with Big Storm and a Mermosa wine tasting with a delicious charcuterie box. We learned how to roll sushi (some of us better than others), and HCBA member Jennifer Murphy taught us how to make a delicious caccio y pepe. And you all continued to attend, socialize, and support our events. I want to again thank the HCBA Board, the HCBA YLD Board, our section and committee chairs, Bar staff, and all of our members for your hard work, dedication, and fortitude this year.

For those who sent me notes of encouragement throughout the year, they meant the world to me and always will. It was not the year any of us saw coming, in any respect. Thank you for putting your trust and confidence in me and for giving me the privilege of serving as your President. It was truly an honor.

We all also lost a lot this year, in both our personal and professional lives. We missed out on traditional Bar events, from the in-person Installation of Officers, to our quarterly membership lunches, to our holiday party. However, to me personally, and to many others in the legal community, one of the most significant losses was the untimely death of Margaret D. Mathews. While her accomplishments are simply too many to list in the space I have in this column, including serving as a Past President of both the HCBA and the Hillsborough County Bar Foundation, and as a Thirteenth Circuit representative to The Florida Bar Board of Governors, one of her true passions was mentoring. We started this Bar year talking about how significant mentoring would be, particularly for new and young lawyers, who were suddenly working from home, in a pandemic, without anyone from whom to seek advice down the hall.

I was fortunate enough to have had Margaret down the hall at two different points in my career; the first time, I was a brand-new lawyer, with all of the naïve questions young lawyers have. Margaret never made me feel like I was asking a dumb question; to the contrary, she would invite me into her office, answer my questions, and, inevitably end up giving me useful advice on a completely different topic. And I was not unique; Margaret mentored anyone and everyone who crossed her path. Whether in an office setting, at an Inn of Court, or at an HCBA event, it was almost impossible to walk away from a conversation with Margaret without having gained some words of wisdom for your professional or personal life. She was actively involved in everything, and she did it all well. Even if you never spoke a word to her, you knew who she was, and as someone else recently, and very eloquently said, she was a "secret" mentor for many lawyers; they watched what she did and tried to emulate her. Margaret truly helped to shape my career and the lawyer and Bar leader I am today, and I know I am far from the only member of our legal community who would say that about her. I am grateful to have been mentored by her, even though she was never my "formal" mentor. She was truly special in every way, and she was always willing to reach back and help those behind her. We have lost a remarkable lawyer, human being, and friend.

In light of the foregoing, I am so very pleased to announce that the HCBA Board voted to create the Margaret D. Mathews Mentoring Award, in honor and memory of someone who was constantly helping others. The award will be given annually "to an individual who has achieved excellence in his or her own career, who demonstrates a commitment to the advancement of young lawyers, serves as a mentor to lawyers, creates opportunities for them to excel personally and professionally, and who encourages meaningful involvement in the Tampa Bay community." The HCBA does not often add awards to those it gives out, but Margaret was truly unique and exemplified so many qualities for which awards simply are not given that the majority of the HCBA Board felt very strongly about creating this. I hope it challenges all of us to be better people, to mentor those, formally or informally, who cross our paths, and that the stories of the person Margaret was get shared with generations to come.

Not only am I not a fan of saying "goodbye," it is also inappropriate here. While it is time for me to pass the gavel to my friend Cory Person, and to look forward to all that his year brings, I will always be involved in the HCBA. As those reading this know, Bar service becomes a part of you; we have a very unique and impressive Bar association, and I am excited to continue to be involved in whatever capacity I can assist in next. Again, thank you all for the opportunity; it will always be a highlight of my professional career.



## A Year of Rebound and Recovery

#### Our members rose above the challenge and continued to shine!

hile my term as president of the Young Lawyers Division was nothing short of unconventional, we came together (socially-distanced style) to face the challenges head on and pivot our agenda to meet the ever-changing needs of our members. Through these unprecedented times, our membership continued to shine! When our community struggled through the pandemic — socially and

economically — our membership rose to the occasion and met the challenge. We provided webinars to our members to address the unique challenges of working from home. We donated over 12,000 diapers for the Junior League of Tampa's diaper bank. Our YLD Board of Directors volunteered our time to help Feeding Tampa Bay. We socialized — in a socially-distanced way.



The YLD Board was glad to finally meet in-person for its year-end social in May.

And, we continued to emphasize mental and physical health for our members. Even though we did not see each other much in person, the HCBA YLD certainly turned lemons into lemonade.

I am honored to have served as president during these challenging times. With nearly 1,000 members, the HCBA YLD is one of the Florida Bar's largest and strongest young lawyers divisions. We constantly strive to meet 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 and our active committees. I encourage all of our members to find a way next Bar year to get more involved and continue to shape the future of our YLD.

There are simply too many people to name who made this Bar year such a success. I specifically want to thank the Board, which is the true backbone of the YLD: Jeff Wilcox, Alex Palermo, Lyndsey Siara, Linda Stanley, Hannah Becker, Sara Peacock, Rick Duarte, Zachary Bayne, Harold Holder, Sean Bevil, Jason Imler, Nicole Gehringer, Natasha Khoyi, Amanda Keller, 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 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, and the rest of the HCBA staff. Their continued support and guidance, especially in difficult times, were vital to the YLD.

As this Bar year comes to a close, I know the YLD will continue to thrive under the amazing leadership of President Alex Palermo and President-elect Lyndsey Siara. These ladies' dedication to the YLD is second to none, and I cannot wait to see all they accomplish.

Thank you for this opportunity to serve as president over the past year. It has been an honor, privilege, and an experience I will treasure forever.

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## HCBA's 2021 Liberty Bell Award Goes to Trailblazing Public Servant Pat Frank Virtual Law Day Luncheon Celebration Marks End to Unprecedented Bar Year During Pandemic

"We cannot just be only spectators, we must be players. We must choose leaders who are fair, and who fight for change." — Pat Frank

fter devoting more than 50 years of her life to public service, Pat Frank retired in January as Hillsborough Clerk of the Circuit Court and Comptroller at the age of 91.

In 2004, Frank was elected as Hillsborough clerk, taking care of the needs of the court — serving judges, summoning juries, and handling all court records and documents — until she stepped down after 16 years.



Pat Frank

During her remarkable career, Frank held numerous other elected positions, beginning in 1972 as a Hillsborough school board member, then as a state representative, a state senator, and later as a Hillsborough County commissioner.

For her extraordinary service over the years, the HCBA named Frank the **2021 Liberty Bell Award winner**, which was presented at the HCBA's annual

Continued on page 11

#### **Law Week High School Art Contest Winners**

Congratulations to this year's Law Week High School Art Contest Winners. The theme this year was "Advancing the Rule of Law Now."

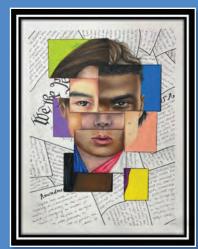
#### Left:

Evan Simmers, Bloomingdale High School 11th Grade Student Title: The Law and COVID-19 Art Medium: Acrylic

#### Right:

Elena Hangen, Walter Sickles High School 11th Grade Student Title: Unified Differences Art Medium: Colored Pencil and Pen





Law Day Luncheon in May, held virtually this year because of the pandemic.

The Liberty Bell Award has been presented annually by the HCBA since 1964 and is intended to honor a nonlawyer citizen who has worked tirelessly to preserve and strengthen our system of justice.

Past winners of the Liberty Bell Award include Gen. Norman Schwarzkopf; Betty Castor; Rev. Leon Lowry; Jane Castor; Tony Dungy; and George Steinbrenner.

As Hillsborough clerk, Frank is credited with modernizing the clerk's office and converting millions of court documents to a digital format, enabling greater public access to the court system.

This past February, Hillsborough commissioners honored Frank by voting to rename the downtown courthouse building at 419 N. Pierce St. in her name.

Recognized as trailblazer throughout her life and distinguished career, Frank was the first woman admitted to Georgetown law school, and she was among the first women admitted to the University of Florida, where she received her undergraduate degree.

In her remarks accepting the award, Frank said she was especially honored and humbled to receive an award focused on the American system of justice.

Frank reflected on her public career, and she spoke passionately about the need for elected officials to pursue justice for all.

"We cannot just be only spectators, we must be players," Frank said. "We must choose leaders who are fair, and who fight for change."

Concluding her remarks, Frank shared a quote from James Bryce, the British statesman and historian, saying, "Perhaps no form of government needs leaders so much as democracy. Great leaders must be familiar with the status quo, yet courageous enough to leave their comfort and change the familiar."

\* \* \*

During the luncheon, HCBA President Paige Greenlee also highlighted the outstanding work of HCBA's Law Week Committee, co-chaired by Brittany Dix and Tiffany McElheran. The American Bar Association's 2021 Law Day Theme is: "Advancing the Rule of Law Now."

Greenlee said that this past March more than 60 HCBA members volunteered to lead virtual mock trials, conduct courthouse tours, and participate in virtual classroom discussions about the law. In all, nearly 3,000 local students participated in Law Week activities this year, she said.

In addition, former Florida Supreme Court Justice Peggy Quince gave keynote remarks during the luncheon. Justice Quince spoke eloquently about the importance of educating young people about respect for the rule of law, and how the law should be equally applied to all.

Quince also talked about the Florida Supreme Court's role in the 2000 presidential election recount dispute involving George W. Bush and Al Gore. Though the majority of U.S. Supreme Court justices ultimately went against the Florida Supreme Court decision in the case, she said, "There were no tanks in the streets, there was no mob violence. And, like it or not, we all lived with the results."

\* \* \*

Meantime, the Law Day luncheon also marked the unofficial end to the 2020-21 Bar year, which has been like no other.

The once-in-a-century pandemic created unprecedented personal and professional challenges for us all.

But, thankfully, there seems to be light at the end of the tunnel as more people get vaccinated and the nation reopens for business.

Under the leadership of President Paige Greenlee and the HCBA Board, the HCBA pivoted and helped HCBA members navigate through the crisis by providing an abundance of relevant and timely virtual programming.

Looking ahead, I'm confident we will take all the lessons we learned this year, and that incoming President Cory Person will lead us in continuing the good work that has helped make the HCBA the wonderful organization it is today.

Here's hoping everyone has a great rest of the summer, and we look forward to seeing you in person at an HCBA event sometime soon.

Interested in writing an article for the *Lawyer* magazine?

Contact Stacy Williams at stacy@hillsbar.com for more information.



# **Shutting Down the Suspended License Poverty Trap**

This poverty trap fuels a vicious cycle, putting otherwise law-abiding citizens into the criminal system due to financial trouble.

hen I took office in 2017, I made it my mission to build a safer community while promoting justice and fairness for everyone. For too long, outdated criminal justice policies have steered people into the system for reasons unrelated to public safety — in ways that disproportionately impact minorities and the poor. One common example is cases of Driving While License Suspended, or DWLS, that do not result from a traffic violation or crime. The State Attorney's Office has worked to identify these poverty traps and make strides toward a more equitable justice system.

Each year, the State Attorney's Office handles thousands of criminal charges for DWLS, but many license suspensions have nothing to do with traffic safety and are often a consequence of a person's inability to pay civil fines and fees. This poverty trap fuels a vicious cycle, putting otherwise



law-abiding citizens into the criminal justice system due to financial trouble. This is counterproductive and wasteful, and it undermines public safety. Prosecuting these individuals only worsens the problem for them and for society at large — imposing additional fines on them and threatening their job security because they can't drive to work to earn the money needed to pay off the fines to reinstate their licenses.

The State Attorney's Office has continued to prioritize traffic safety by actively prosecuting DWLS cases that stem from driving violations like DUI. But in 2017, we changed our approach to prosecuting defendants whose licenses were suspended only for financial issues. This new effort incentivizes them to go through all the proper steps to restore their licenses and become properly insured. Once the driver has successfully regained their license, our office promptly dismisses the criminal charge. Since that time, my office has dismissed more than 8,000 cases because the defendants regained their licenses, giving them the dignity of keeping their jobs and

feeding their families — without the government getting in the way. We recently expanded this policy to further minimize the waste of resources associated with prosecuting financial-based suspensions.

To further shut down this DWLS poverty trap, the State Attorney's Office works with the Clerk of Courts and Public Defender's Office to host Driver License Reinstatement events that reduce the burden of overdue fines and fees and help people get back on the road. Defendants who participate can have their cases dismissed once they are properly licensed. This collaboration with local stakeholders on *Operation Green Light* has achieved safer roads, taxpayer savings, and compassion toward our neighbors struggling to make ends meet.

My office continues to identify poverty traps in the system and will keep working to address them in a way that prioritizes public safety while helping people get back on a path to success. Criminalizing poverty takes our community in the wrong direction. It holds our neighbors down when what they need most is a path up and out. We are committed to breaking that cycle.





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## **Working to Return to Normal**

We continue to find ways to make improvements and seek new options, so you can do business with my office — without leaving your office.

hen I ran for Clerk of Court & Comptroller last year, we were in the throes of the COVID-19 pandemic. Nearly everything had to change quickly, as we pivoted right into a virtual world we had never seen.

There is no handbook for running a vital government agency in the midst of a once-in-a-century crisis, but thanks to my hard-working team of employees and the great partnerships we have with our judicial partners, we navigated through the worst of times and supported one another the whole way.

Things are unpredictable with this pandemic but at the time of writing this article, those of you entering the courthouse no longer undergo health screenings and temperature checks, and are no longer required to wear a mask — unless you go into a courtroom or are summoned for jury duty. Our jury staff continues to wear masks when jurors are present. For all others, wearing a protective face covering is optional. We can't predict how long these measures will last but we will continue to take all necessary steps to enhance the safety of my employees, each of you, and our community.

While it is true that some of our work was virtual before the pandemic — I am happy to report that electronic court records have really transformed our operations and have increased efficiency for everyone, including attorneys and their staff members. We continue to find ways to make improvements and seek new options so you can do business with my office — without leaving your office.



I would like to share a few court-related technology projects that are on ongoing:

- We are setting up a process where individuals can request documents, which are currently in paper format, to be converted to digital images and then electronically certified.
- We will expand our current text messaging service to include new activity in court cases and also for court hearing reminders.

**Continued on page 15** 

Are you looking for a new job or advertising an opening at your firm?

Check out our Career Center at hillsbar.com.

- We expanded online court payments to now provide the ability to use online payment for most caserelated assessments. This can be done through the Clerk's HOVER court case system.
- Approximately 3,000 E-Certified on-line court documents have now been processed with our new service. I encourage you to take advantage of this on-line service.

We recognize that some things cannot be accomplished virtually. Because some of our neighbors do not have credit cards or bank accounts, they could not make child support payments or take care of traffic tickets online. The courthouses in downtown Tampa and Plant City remained open, and I am very grateful to my staff who came into the office every day in order to serve our community. I am also grateful to the many employees whose jobs did not involve face-to-face interactions with the public, but they set up a makeshift work location at their house and worked from home around the clock.

As a new affiliate member of the Hillsborough County Bar Association, I want you to know that I am very interested in hearing your ideas on how we can improve our services. Please don't hesitate to email your ideas because your opinion matters to me: clerkcindy@hillsclerk.com.

# Thirteenth Judicial Circuit Civil New Differentiated Case Management Webinar

The HCBA was proud to host the Thirteenth Judicial Circuit Webinar on the new Differentiated Case Management system on April 26. Entitled "What You Don't Know Could Hurt You: A Crash Course on How the Thirteenth Circuit's Civil New Differentiated Case Management Will Impact Your Practice," the webinar's distinguished panel included Chief Judge Ronald Ficarrotta, Judge Frances Perrone, Judge Anne-Leigh Gaylord Moe, and Judge Paul Huey. Thank you to our panelists as well as the members who attended this wonderful event.

### **Overview**

- Beginning April 30th, the Chief Justice of the Florida Supreme Court has mandated that all circuits establish a differentiated case management system for new cases
- Beginning April 30th, Differentiated Case Management Orders will be entered in all new civil cases filed in the Thirteenth Circuit
- Cases pending before April 30th will not be impacted yet, but a DCM Order process will be implemented in the coming months for those cases as well
- Differentiated Case Management Orders:
  - Set precise deadlines
  - Project a trial date consistent with the Rules of Judicial Administration
  - In most cases, serve as a Notice of Hearing for a Court-Ordered Case Management Conference 60 days before the close of fact discovery
- Trials set at the Court-Ordered Case Management Conference, if not done sooner
- There is a new trial order
  - Use it in conjunction with all cases in which a DCM Order has been entered
  - For your existing cases, continue to use "old" trial order until you see a DCM Order directing you to use the new trial order









# BUELL& ELLIGETT, P.A.

## Celebrating Thirty Years



In 1931 the TECO streetcar barn was busy and would be until 1946 when the cars were discontinued. The site became the Tampa Armature Works in 1960 (Burgert Brothers photo from the HCPL collection).



Buell & Elligett's board certified trial and appellate lawyers are available for referrals or co-counseling in:

## Plaintiffs' Personal Injury, Eminent Domain, Insurance Coverage and Appeals



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# Mermosa Wine Tasting and Charcuterie Board Social

The HCBA hosted a virtual wine and charcuterie board tasting on April 1. This virtual happy hour featured wine from former Tampa attorney turned vintner Desiree Noisette and her brand Mermosa and charcuterie boxes from Tampa-based Brown Sugar Event Co. The HCBA would like to extend a huge thank you to both of these providers for sharing these delicious food and wine options with our members, as well as St. Petersburg-based wine educator Stephanie Love for leading the tasting.













# THANK YOU!

The Hillsborough County Bar Association appreciates those attorneys who participate in our Lawyer Referral & Information Service.

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The HCBA's Lawyer Referral & Information Service is accredited by the American Bar Association.

To join this program, call (813) 221-7780.

# The Thirteenth Judicial Circuit 2021 Pro Bono Service Award Winners

Special Feature by Tori Simmons - Hill Ward Henderson & Antina Mobley - Public Defender's Office, Thirteenth Judicial Circuit

he Fourteenth Annual Circuit Pro Bono Services Awards Ceremony was held virtually on May 27. At the ceremony, the award winners listed below, as well as all attorneys who performed 20 or more hours of pro bono service, were honored for their outstanding contributions of pro bono legal services. The award nominations were submitted to the Thirteenth Judicial Circuit Pro Bono Committee, chaired by the Honorable Barbara Twine Thomas and vice-chaired by the Honorable Darren Farfante. The ceremony was hosted by the Committee and the Bay Area Legal Services' Volunteer Lawyers Program. The ceremony was sponsored by Shook Hardy & Bacon, Foley & Lardner, and Crossroads for Florida Kids.



#### The Hillsborough County Bar Association's Jimmy Kynes Pro Bono Service Award: Katherine Earle Yanes

Katherine Earle Yanes was admitted to the Florida Bar in 1999 and is a partner at Kynes, Markman & Felman, where she practices criminal law. Over the course of her career, Ms. Yanes has distinguished herself as an

extraordinary advocate for her clients and a dedicated contributor of pro bono legal services. Ms. Yanes contributes at least 100 pro bono hours per year.

In 2012, Ms. Yanes was one of the first attorneys to sign up as a volunteer for Crossroads for Florida Kids representing children in dependency and delinquency proceedings. Among others, she assisted a teen girl who was a victim of human trafficking and was being held as a runaway in another state. Ms. Yanes took the case and was able to obtain the young girl's release.

Ms. Yanes has also spent hundreds of hours over the years advocating for a group that is largely ignored — individuals convicted of a crime. Ms. Yanes spent years

supervising Stetson Law School students in their Innocence Initiative Clinic, including supervising a case that resulted in exoneration for a client who was wrongfully convicted. Ms. Yanes was also heavily involved in the Clemency Project 2014 where she worked to identify and assist federal prisoners who might qualify for clemency. Ms. Yanes, with the assistance of her law firm, reviewed over 200 potential clemency applications and filed petitions for approximately 120 prisoners. Of those, 43 were granted clemency, forever changing their lives. Ms. Yanes then worked on the Compassionate Release Project and was able to obtain grants of compassionate release for two clients.

Ms. Yanes has also been an active member and leader of numerous bar organizations and has encouraged others to engage in pro bono services. In total, Ms. Yanes estimates that she has donated over 3,000 hours of pro bono time over the course of her career, but this estimate is too low and does not reflect the hours donated by others as a result of Ms. Yanes's encouragement and example. According to Ms. Yanes, she gives back to help those who "have the most at stake . . . have their voices heard."



#### Outstanding Pro Bono Service by a Lawyer: Ella Shenhav

Ella Shenhav is a partner in the Tampa office of Shutts & Bowen, where she practices commercial litigation. Ms. Shenhav has consistently dedicated her time and talents serving those in the community who lack access to legal representation. During her career, she has represented teens

through Crossroads for Florida Kids, served as Executive Director of Project HELP, a legal clinic for the homeless and indigent, and taken on a variety of other pro bono cases involving all areas of the law. She has also served

for many years as the co-chair of the Thirteenth Judicial Circuit Pro Bono Committee's Law Firm Subcommittee and is the Pro Bono Partner at her firm.

In 2020, Ms. Shenhav contributed 120 hours of probono legal services. During the pandemic, Ms. Shenhav personally handled over 30 telephone consultations with clients of Project HELP. She also co-counseled on two domestic violence restraining order cases for Are You Safe. In addition, she represented a cancer-stricken woman whose ancestral home was sold in a tax sale even though the taxes were paid before the sale. As a result of Ms. Shenhav's representation, the client regained title to her home. Also in 2020, Ms. Shenhav helped a single mother with young children with special needs avoid foreclosure on her home. Ms. Shenhav also spent a significant amount of time training and mentoring other pro bono lawyers at her firm and within the larger community. Ms. Shenhav is an extraordinary advocate for pro bono.



#### Outstanding Pro Bono Service by a Young Lawyer: Linda Stanley

Linda Stanley has been practicing public interest law for nine years. She started her career at Bay Area Legal Services and currently works for Equal Justice Works, where she specializes in housing and disaster law. Ms. Stanley also volunteers her own time to provide pro bono legal

services, primarily in the area of disaster relief. Ms. Stanley volunteers through the ABA YLD Disaster Legal Services program, which sets up hotlines in disaster areas to provide legal advice and services to disaster survivors. In 2020, Ms. Stanley responded to 20 natural disasters around the country, including in Florida after Hurricane Sally.

Ms. Stanley also spearheaded the implementation of a new data collection method that allowed volunteers to respond to the legal needs of over 900 disaster survivors. Ms. Stanley also set up the nationwide ABA Disaster Pro Bono Portal, which connects volunteer attorneys with disaster-related pro bono opportunities. Overall, Ms. Stanley provided over 200 hours of pro bono legal services in 2020. Ms. Stanley's dedication has had a significant impact on disaster survivors in Florida and the rest of the country.



#### Outstanding Pro Bono Service by a Paralegal: Christy Rowell

Christy Rowell obtained her paralegal certificate from Kennesaw University in Georgia in 1965. She moved to Tampa in 2012 and began working at Foley & Lardner in 2014. While at Foley, Ms. Rowell has assisted

attorney Mark Wolfson on numerous pro bono matters for Bay Area Legal Services. Ms. Rowell typically works on guardian advocacy cases, which involve a parent seeking to become guardian advocate for their disabled child who has now become an adult. Ms. Rowell assists with all aspects of the case, including working closely with clients to prepare and file the required annual plans. In 2020, Ms. Rowell worked on 13 guardian advocacy cases. Mr. Wolfson commended Ms. Rowell for utilizing her paralegal skills and her excellent communication skills to help clients in tough situations as she "appreciates the importance of helping out others in our community that are less fortunate."



## Outstanding Pro Bono Service by a Law Firm: Shook Hardy & Bacon, LLP

Shook Hardy & Bacon is a national law firm with 20 attorneys practicing in Tampa. The firm has been a significant contributor of pro bono legal services, with a focus on representing disadvantaged children. Shook Hardy & Bacon attorneys represent children in foster care as Attorneys ad Litem through Crossroads for Florida Kids and serve as Guardians ad Litem. In 2020, despite the pandemic, the Tampa office of Shook Hardy & Bacon contributed 484 pro bono hours representing kids in foster care and serving as Guardians ad Litem.

In one case, attorneys represented two brothers under the age of 5 who had been living in a foster home since birth. When there was a push to move the brothers out of state to live with an uncle, the attorneys helped the boys stay in the home they knew and loved. Another Shook Hardy & Bacon attorney represented a 17-year-old sex trafficking survivor. The attorney was able to help the client get the medical attention,

emotional counseling, and funds to replace her personal belongings that she needed to become a productive adult. Shook Hardy & Bacon attorneys also regularly volunteer to serve as on-call attorneys to represent children in delinquency hearings who show up without a parent or guardian. Through these efforts, Shook Hardy & Bacon plays an important role improving the lives of underserved children in the community.



#### Outstanding Pro Bono Service by an Organization: Crossroads for Florida Kids

Crossroads for Florida Kids was created in 2012 by attorneys Rosemary Armstrong, Allison Singer, and Sandy Weinberg. Crossroads is a nonprofit with a mission to train and mentor pro bono attorneys to represent underserved children in Hillsborough County. Since its inception, Crossroads has represented 309 children and young adults in their dependency, delinquency, and criminal proceedings. Since 2013, Crossroads attorneys have contributed over 38,000 pro bono hours to our community's youth.

In 2020 alone, 76 Crossroads attorneys contributed 3,828 pro bono hours despite the transition to virtual proceedings. These attorneys represented children who were trafficking victims, children with mental health issues, and a large number of children with delinquency charges. The common thread running through all of these children's cases is trauma. Crossroads attorneys help young clients navigate the legal system and help them obtain services, clothing, and better placements. They also serve as mentors and role models for their



clients. Crossroads volunteers include attorneys from big firms, sole practitioners, retired attorney, and new lawyers. All of them are dedicated to improving the lives of underprivileged children.



The Thirteenth Judicial Circuit Pro Bono Committee commends the extraordinary service of the 2021 award recipients.

Authors:
Tori Simmons — Hill Ward Henderson

Antina Mobley — Public Defender's
Office, Thirteenth Judicial Circuit

#### **HCBA Installs New Board President and Board of Directors**

The HCBA is pleased to announce its new president, Cory Person of Hill Ward Henderson, and its newly installed 2021-22 board of directors. The new bar year began July 1, 2021. The Installation of Officers & Directors took place on Wednesday, June 3.

HCBA officers for the new bar year are: President-elect Jacqueline Simms-Petredis, Burr & Forman LLP; Immediate Past President Paige Greenlee, Greenlee Law; Secretary Andrew Sesler, Hinshaw & Culbertson, LLC; and Treasurer Valeria Obi, Midland Credit Management, Inc.

HCBA directors are Alex Caballero, Sessums Black Caballero Ficarrotta PA; Christine Derr, Harris, Hunt & Derr, PA; Anthony Garcia, Garcia Mediation; Matthew F. Hall, Hill Ward Henderson; Vivian C. Hodz, Cortes Hodz Family Law and Mediation, P.A.; Anthony D. Martino, Clark & Martino, P.A.; Alex Palermo, Syniverse Technologies; Morgan Streetman, Streetman Law; Amanda M. Uliano, The Law Office of Amanda M. Uliano, P.A.; and Jason Whittemore, Wagner McLaughlin. The board also includes ex-officio members: Chief Judge Ronald Ficarrotta, Thirteenth Judicial Circuit; Judge Jessica Costello, Thirteenth Judicial Circuit; and Caroline Black Sikorske,

Sessums Black Caballero Ficarrotta, president of the Hillsborough County Bar Foundation (HCBF).

The HCBA YLD also installed its new president, Alex Palermo, Syniverse Technologies, and its 2021-22 board of directors.

The YLD officers are President-elect Lyndsey Siara, Thirteenth Judicial Circuit; Immediate Past President Traci Koster, Nelson Koster; Secretary Amanda Keller, Freeborn & Peters LLP; Treasurer Jason Imler, Printy Law Firm; Parliamentarian Alexis Dion Deveaux, Gunster; Liaison to the HCBF Zachary Bayne, Allen Dell, P.A.; and Historian Sean Bevil, State Attorney's Office.

YLD directors are Hannah Becker, GrayRobinson, P.A.; Nicole Gehringer, Harris, Hunt & Derr, P.A.; Harold Holder, Bush Ross, P.A.; Natasha Khoyi, GrayRobinson, P.A.; Sara Peacock, Allstate Insurance Legal Team; Marisol Ruiz, McIntyre Thanasides; and Linda Stanley, Equal Justice Works. The YLD board also includes ex-officio members: Judge Samantha Ward, Thirteenth Judicial Circuit; Jessica Kramer, Holland & Knight, LLP; Anisha Patel, Hill Ward Henderson; and Ciara Willis, Bush Ross, P.A.





From panels to pro bono, writing articles to meeting opposing counsel, the Appellate Practice Section offers something for everyone.

ike King George III in *Hamilton*, we interrupt the Appellate Practice Section's regularly scheduled substantive articles to bring you a moment of comic relief. A message from the Chairs!

A message from the Chairs!

On second thought, it turns out we aren't actually that funny. So instead of a lighthearted musical number, we'll take this opportunity to update you on the work our Section has been doing and to encourage you to get involved. Over the past Bar year, the Appellate Practice Section has presented several continuing legal education

programs of wide interest to anyone who practices before our local state or federal appellate courts, continued to foster professionalism and pro bono work among our members, and contributed timely articles about rule updates and case law developments to this very publication.

In the early days of the pandemic, we spearheaded a town hall discussion with the judges and staff of the Second District Court of Appeal to learn how they were adjusting to remote work. Then, in late February, we caught back up with the Chief Judge, the Clerk, and a panel of staff attorneys to see what's changed, what's stayed the same, and what pet peeves they all have with our briefs (no footnotes,

please!). And shortly after their appointment, we met the Court's two newest members, Judge Suzanne Labrit and Judge John Stargel, who graciously shared information about their paths to the bench and their judicial philosophies. The Appellate Practice Section is grateful for the collegial relationship we enjoy with the Second DCA, and we look forward to welcoming everyone back to our signature Breakfast with the DCA event in 2022.

But that's not all. Due to the hard work and well-researched commentary of Duane Daiker, Sarah Lahlou-Amine, Austin Roe,



Appellate Practice Section

#### **Continued from page 22**

and Dineen Wasylik, we were able to offer an elusive technology CLE credit for an event we held on remote oral arguments and practice pointers for improving your appellate advocacy with technology. Our most recent event, in early May, featured a diverse panel of regular federal appellate practitioners, moderated by Judge Susan Rothstein-Youakim, who highlighted preservation of error pitfalls and potential issues.

Thanks to Thomas Burns, Hala Sandridge, and Germaine Seider for sharing their insights, and to David Costello and Ryan Hedstrom with the Federal Bar Association's Young Lawyers Division for co-sponsoring the presentation. Thanks also to Monique Lawson and the HCBA staff for all their assistance with these events.

In addition to programming, our Section continues to support the pro bono efforts of the Florida Bar's Appellate Practice Section, and to provide opportunities for our members to take on a pro bono appeal. From panels to pro bono, writing articles to meeting opposing counsel, the Appellate Practice Section offers something for everyone. We encourage all HCBA members to get involved, and we are excited to continue the Appellate Practice Section's work in the next Bar year.

Authors: Joe Eagleton -Brannock Humphries & Berman & Chance Lyman - Buchanan Ingersoll & Rooney

#### **Annual Civil Bench Update**

On April 7, the HCBA hosted its Annual Civil Bench Update with the Thirteenth Circuit. The judges which graciously attended this webinar included Chief Judge Ronald Ficarrotta, Judge Rex Barbas, Judge E. Lamar Battles, Judge Darren Farfante, Judge Robin Fuson, Judge Paul L. Huey, Judge Anne-Leigh Gaylord Moe, and Judge Mark Wolfe. The HCBA would like to thank our panelists for joining us, as well as all of our members who attended.









The co-chairs are immensely proud of the 2019-2021 Class' ability to roll with the punches as they finished what they started.

ue to the onset of the pandemic, the 2019-2020 BLI Class voted to continue their year to 2020-2021 so they could "finish what they started." When Fall 2020 arrived, the program had a rocky start. A number of promising modules fell through; and due to all of the restrictions in place, it was difficult for the Class to connect on the same level as they did the previous year. But despite what the co-chairs perceived to be setbacks, we were

happy to hear about the initiatives the 2019-2021 Class members were taking on their own.

Jounice Neely-Brown reported her continued work with the Federal Bar Association while taking on the additional task of mentoring younger attorneys. Valentina Villabobos teamed up with a former judge to advance the law of sibling rights. Zachary Foster was promoted to co-chair of his firm's Class Action subgroup. Zack was charged with overhauling the group's marketing and pitch materials and prepared the subgroup's 2020-21 budget and strategic initiative. Ashley Gallagher helped transform an annual in-person CLE program into a webinar series. Sean Bevil focused on his team-building skills in the era of Zoom. Jordan Behlman participated in the completion and submission of a global grant application on behalf of the Rotary Club of Tampa to create an eye clinic in the Bonao region of the Dominican Republic.



BLI Class at the BLI Closing Reception held in May



BLI Chairs at BLI Closing Reception held in May

Finally, Alejandro Deiguez, Capt. USAF, mastered what we all now realize is an important leadership skill: finding innovative ways to ensure mission success all the while **keeping the kids quiet** in the background!!

Although the 2020-2021 year did not start as we had hoped, the Class finished strong. The Class attended two virtual modules. The first module was presented by Bay Area Legal Services and focused on the importance of giving back through

pro bono legal work. The second module focused on leadership within the government sector and was presented by the Southwest Florida Water District Management Services. The Class also completed the volunteer component by donating time to Feeding Tampa Bay. Although the Class was not

able to have any in-person social networking opportunities with one another this past year, the Class did celebrate their graduation in person with the HCBA Board and YLD Board at the JW Marriot at the end of May. The co-chairs are immensely proud of the 2019-2021 Class.

Good luck to the 2021-2022 Class, it has been an immense pleasure to serve as a co-chair of this wonderful program!!

For those interested in becoming a member of the 2021-2022 class, applications will be available in the summer. For more information about the program, feel free to reach out to any of the current co-chairs or call (813) 221-7777.

Author: Alicia R. Whiting-Bozich -Sivyer, Barlow & Watson

## **Now's the Time to Renew Your Membership!**

# RENEW & RECONNECT



The HCBA team remains focused on providing you the programs, resources, and services you need to be successful and further your legal career. The new Bar year began on July 1, so renew today and reconnect with your colleagues at HCBA!

Go to hillsbar.com to learn more.

#### **COLLABORATIVE LAW SECTION: YEAR IN REVIEW**

Collaborative Law Section

Chairs: Cory Brandfon - Harris, Hunt & Derr, P.A. & Shannon Green - Westbay CPAs





hen Shannon and I agreed to serve as co-chairs of the Collaborative Section for the 2020–2021 year, we did not realize that the COVID-19 pandemic would fully eliminate the Section's ability to host in-person events.

Like most of the legal profession, we pivoted. With a bit of creativity (and a lot of technical assistance), we turned a challenge into an opportunity. As it turned out, the ability to connect remotely with collaborative practitioners enabled

# With a bit of creativity (and a lot of technical assistance), we turned a challenge into an opportunity.

the Section to drastically increase its geographic reach. "Zoom fatigue" notwithstanding, the Section presented three unique remote CLEs featuring local industry leaders and other panelists from across the state and even the country. Similarly, we were able to attract CLE attendees from numerous states and many counties across Florida.

On November 18, the Section presented "Collaborating with Collaterals," which featured Jeremy S. Gaies, Psy.D., Anita Roederer, GSI, PSA, Tina Tenret, CFP, CDPA, and Ellen Ware, B.C.S., who engaged in spirited discussions and Q & A about the valuable role

of collateral team members in the collaborative process.

On February 17, the Section presented "Learning with Leaders: Exploring Collaborative Law Today and its Transformative Possibilities Across Practice Areas," which featured presentations from Anne Lucas, MA, LMHC, Robert J. Merlin, B.C.S., and John Sarratt, Esq., who are leaders from three of the largest collaborative organizations in the world. The event was attended by leaders from The Florida Bar Board of Governors and the American Inns of Court, as well as non-family



#### COLLABORATIVE LAW SECTION: YEAR IN REVIEW

Collaborative Law Section

#### **Continued from page 26**

law practitioners, many of whom were educated about the collaborative process for the first time and how it may be applied to other practice areas.

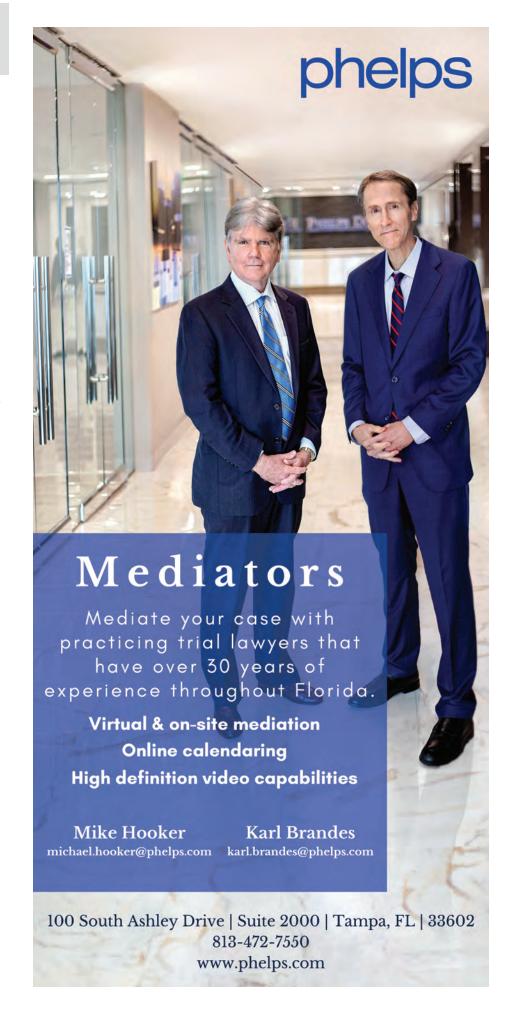
Lastly, on April 28, the Section presented "Confronting Challenging Conflicts in the Collaborative Context," which featured Alice Boullosa, MHPF, David Harper, CPA, ABV, PFS, CFF, CBA, CVA, Marian McCulloch, B.C.S., George Melendez, Esq., Shirin Rustomji, Esq., and Katherine Scott, B.C.S., who dazzled the audience with their acting skills as they "roleplayed" and discussed both common and unique challenges that arise during the collaborative process.

Shannon and I are grateful to the HCBA staff and leadership for all they do to provide high-quality content and support to the Section, and to the many professionals who graciously volunteered their time to help educate the Section and non-member attendees in this challenging year. Finally, we appreciate the Section's members for sticking with us and helping to make the most out of these difficult circumstances.

Like the many Section members who have dedicated much of their careers to this everevolving and improving process, we eagerly look forward to what lies ahead for collaborative law in Hillsborough County and the State of Florida.

Until next year... ■

Authors: Cory Brandfon - Harris, Hunt & Derr, P.A. & Shannon Green - Westbay CPAs



### **HCBA BENEFIT PROVIDERS**

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



#### **BENEFIT PROVIDER PROGRAM**

The Hillsborough County Bar Association offers a Benefit Provider Program for vendors interested in presenting our approximately 3,600 members with discounts or special services, in exchange for valuable marketing and networking opportunities.

#### **BENEFIT PROVIDERS RECEIVE:**

- Vendor table outside three (3) quarterly membership luncheons (October, January and May) or three (3) e-newsletter monthly sidebar advertisements \$1,500 value
- Three (3) quarter-page color display ads in Lawyer magazine \$1,035 value
- One (1) affiliate membership with complimentary access to all full-membership events \$295 value
- Sponsorship at either the Young Lawyers Division Golf Tournament in the fall, the Judicial Pig Roast/Food Festival and 5k River Run in the spring or other Bar Association event to be negotiated \$500 value
- Special recognition in each issue of Lawyer magazine and on the HCBA website

Annual cost to become a Benefit Provider: \$2,000 — Value received: \$3,330



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#### **BUILD YOUR BUSINESS WITH THE HCBA**

The Hillsborough County Bar Association is always looking to establish new relationships that benefit both our membership and our generous supporters. There are numerous opportunities to make connections during the more than 200 events held at the Chester H. Ferguson Law Center, other venues, and online each year. The following are opportunities provided for sponsorship and advertising:

LAWYER MAGAZINE • SIGNATURE EVENTS • MEMBERSHIP LUNCHEONS
YOUNG LAWYERS DIVISION (YLD) • SPECIAL EVENTS
CONTINUING LEGAL EDUCATION (CLE) AND SECTION LUNCHEONS
WEBSITE AND E-NEWSLETTERS

For additional information about sponsorship and advertising opportunities, contact Stacy Williams at stacy@hillsbar.com.

#### A SHINING STAR WHOSE LIGHT CONTINUES TO BURN BRIGHTLY — THANK YOU LISA ESPOSITO

Community Services Committee

Chairs: Jordan Behlman - Greenberg Traurig, P.A. & Lara LaVoie - LaVoie & Kaizer, P.A.





No project was too big or too small when it came to Lisa! She threw herself into all projects with great passion, commitment, dedication, and heart.

s a member of the Community Service Committee, I had the great privilege and honor of knowing and working with the great Lisa Esposito. I will never forget the first time I met Lisa. It was at a noon meeting of the Community Service Committee at the Chester Ferguson Law Center. She was full of excitement speaking about the upcoming Pirate Party at A Kids Place. Lisa was speaking fast, and her face glowed with joy! Lisa wanted ideas for pre-teen girls' and boys' prizes that the committee could purchase. Being a former Cub Scout and Girl Scout Leader, and having children in that age range, I had all kinds of

ideas. Lisa looked at me and said: "I like you! We are going to be friends!" And that's all it took for us to be friends, committed to working to give back to our local community. I share this story so that you can see what a

wonderful person Lisa is and always will be.

Lisa Esposito lived and breathed to give back to her community. She loved helping the elderly, children and the disabled. She was a proud member of Ye Mystic Krewe of Peg Leg Pirates, and proud leader of spearheading volunteer opportunities for Trinity Café,



A Kid's Place and Elves for Elders. No project was too big or too small when it came to Lisa! She threw herself into all projects with great passion, commitment, dedication and heart.

Lisa Esposito's other great love was her love for

her family. She adored her mother, Scott Strange and her nieces and nephews and loved to brag about their accomplishments and school activities. So naturally, Lisa took both her great love of family and volunteerism and combined them! It was very common to see Mr.

**Continued on page 31** 

### SEXUAL HARASSMENT AND EMPLOYMENT RETALIATION LAW

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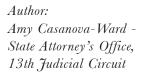
The Fraley Law Firm, P.A. | 813-229-8300 | Visit Our Website: www.FraleyLawFirm.com

Strange, Mama Esposito, and all the gang at all events at which Lisa was leading and volunteering. I met Mr. Strange at Elves for Elders. He was the one in the Santa suit! And Mama Esposito always made an appearance at A Kids' Place Pirate Party.

When COVID-19 struck and Lisa could not visit her mother who lives in a nursing home, she had her family and friends create a drive-by parade! She would also sit outside behind a closed window while her mother sat on the other side so they could visit. Lisa's final great project was a family cookbook. I loved hearing her updates about the progress of the Esposito Family Cookbook.

The most amazing thing about Lisa was that she was battling cancer and had been for the past five years. And even with her failing health, she never stopped giving. She never stopped trying to make her community a better place to live. She never stopped smiling. And even though she is no longer with us, her shining star still burns

just as bright in the legacy she has left behind — with her zest for life and her big heart. We love you Lisa! ■









#### ADMINISTRATIVE ORDER S-2021-023 — CIRCUIT CIVIL DIFFERENTIATED CASE MANAGEMENT PLAN

Construction Law Section

Chairs: Debbie Crockett - Cheffy Passidomo, P.A. & Katherine Heckert - Carlton Fields





Construction defect cases will initially be automatically designated as extended cases.



n April 13, 2021, the Florida Supreme Court issued Administrative Order AOSC20-23, Amendment 12 (In re: COVID-19 Emergency Measures for Florida Trial Courts), directing chief judges throughout the state to issue administrative orders requiring presiding judges "to actively manage civil cases"

by issuing case management orders that specify pretrial deadlines and projected trial dates, and that establish maximum periods within which such deadlines shall be set consistent with the standards specified in Florida Rule of General Practice and Judicial Administration 2.250(a)(1)(B) for the completion of civil cases.

Therefore on April 26, the Chief Judge for Hillsborough County issued Administrative Order S-2021-023 (Circuit Civil Differentiated Case Management Plan), which can be accessed here: https://www.fljud13.org/Portals/0/AO/DOCS/S-2021-023.pdf.

Continued on page 33

# Attorneys – Your client can sell all or part of their life insurance policy.

A Life Settlement Transaction is the sale of an existing life insurance policy that gives the owner a cash settlement in excess of the cash surrender value.



Example: Mr. Smith (age 78) owns a \$1,000,000 universal life policy on his life which he no longer wants, needs or can afford. Premiums are \$30,000 per year. Cash surrender value is \$20,000 (the amount the

insurance carrier would give Mr. Smith if he was to surrender the policy). Rather than surrendering the policy, Mr. Smith choose the Life Settlement Transaction option.

POLICY SOLD - for \$290,000.

Example is for illustration only and is meant to educate about a life settlement option.

"I contacted Boyd for a policy sale and he was professional and helped my client beyond expectations."

– Charlie Robinson Elder Attorney Clearwater





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## ADMINISTRATIVE ORDER S-2021-023 — CIRCUIT CIVIL DIFFERENTIATED CASE MANAGEMENT PLAN

Construction Law Section

#### **Continued from page 32**

Pursuant to Administrative Order S-2021-023, immediately upon filing, and based on the case type listed on the civil cover sheet, the Clerk of Court will designate certain civil cases as either (a) streamlined, (b) general, or (c) extended, and will then automatically generate a corresponding uniform Differentiated Case Management Order (DCM Order), electronically signed by the presiding judge, based on that designation.

DCM Order deadlines for *streamlined* cases will be consistent with the time standards set forth in Florida Rule of General Practice and Judicial Administration 2.250(a)(1)(B) that establish *12 months* from filing to final disposition as a presumptively reasonable time for completion of *non-jury* civil cases.

DCM Order deadlines for *general* cases will be consistent with the time standards set forth in Florida Rule of General Practice and Judicial Administration 2.250(a)(1)(B) that establish 18 months from filing to final disposition as a presumptively reasonable time for completion of *jury* civil cases.

Extended cases are those that, because of their complexity, including the volume or nature of discovery and use of expert witnesses, present problems that cause reasonable delays. DCM Order deadlines for such cases may be extended.

Administrative Order S-2021-023 includes the list of case types from which plaintiffs select when preparing civil cover sheets and filing new cases, along with the corresponding *initial* automatic designation for each case. For example, construction defect cases will initially be automatically designated as *extended* cases, while breach of contract cases, mass tort cases, and product liability cases will initially be automatically designated as *general* cases.

However, the Clerk's initial designation will not prevent a case from being separately classified as complex in accordance with Florida Rule of Civil Procedure 1.201. Similarly, if a plaintiff selects that a case is appropriate for assignment to the Complex Business Litigation Division, then the Clerk will not designate the case as streamlined, general, or

extended, but will instead file the case in the Complex Business Litigation Division.

Plaintiffs must serve the DCM Orders in the same manner and at the same time they serve complaints. Thereafter, parties may seek to modify DCM Orders by submitting stipulated Amended DCM Orders or, absent agreement after first conferring with the other parties, filing a motion, and setting it for hearing.

Author: Jaret J. Fuente – Carlton Fields



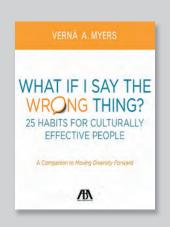
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#### **Diversity Fair**

HCBA's Diversity & Inclusion Committee was proud to co-host its Diversity Fair on May 6 with the George Edgecomb Bar Association and Hillsborough Association for Women Lawyers. Our distinguished panel of speakers was moderated by Judge Barbara Twine Thomas and included Stetson University College of Law Dean Michéle Alexandre and local attorneys and diversity advocates Alicia Whiting Bozich, Kelly Charles-Collins, Travis Coy, Judy Hoffman, Cecil Howard, Jamila Little, and Abraham Shakfeh. Thank you to our wonderful speakers for their insightful remarks and the approximately 100 attendees for their participation in the virtual roundtable discussion and implicit bias testing and discussion, moderated by Committee member Alexis Dion Deveaux.

Thank you also to the Florida Bar Diversity & Inclusion Committee for its sponsorship of this event, which allowed the Committee to provide a free copy of the book "What If I Say The Wrong Thing?" and a goody bag to the attendees.















**Alexis Deveaux** 

**Cecil Howard** 

Dean Michéle Alexandre

**Abraham Shakfeh** 









**Alicia Whiting Bozich** 

**Antina Mobley** 

**Judge Barbara Twine Thomas** 

Jamila Little









**Christina Potter** 

**Travis Coy** 

**Kelly Charles-Collins** 

**Judy Hoffman** 

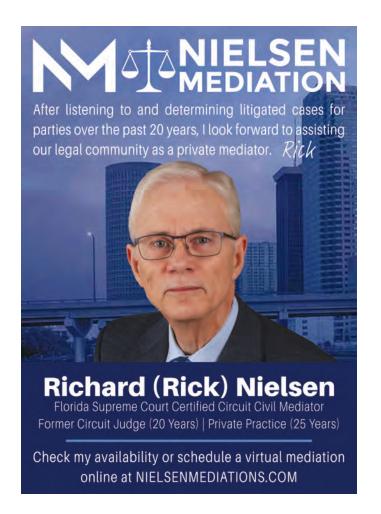


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#### ACCESSIBLE ELECTRONIC DOCUMENT: ENSURING EQUAL ACCESS FOR ALL

Diversity & Inclusion Committee

Chairs: Christina Potter Bayern - Kubiak Law Group & Antina Mobley - Public Defender's Office, 13th Judicial Circuit





In order for assistive technology to be functional, electronic documents must be properly created.



n July 26, 1990, President George H. W. Bush signed into law the Americans with Disabilities Act ("ADA").1 This was a starting point to ensure that persons with disabilities would receive accommodations and reasonable modification for protection and equal access to the benefit of services and programs provided throughout the nation under ADA Title I,2 II,3 and III.4 Physical barriers and impediments, to include electronic and information technology, were a primary concern for the vast variety of disabling conditions. Among other efforts to eliminate physical barriers and impediments, substantive guidelines, and criteria for the establishment of accessible electronic documents began after August 7, 1998, when President Bill Clinton signed into law the Workforce Investment Act which included the Rehabilitation Act Amendments of 19985 under section 508.6

Under the requirements of Section 508(a)(2)(A), the Architectural and Transportation Barriers Compliance Board, known as the "Access Board," established accessibility standards. Part of these accessibility standards included assistive technology which was

created to assist disabled persons to have the ability to access electronic documents. However, in order for assistive technology to be functional, electronic documents must be properly created.

The fundamental information for creating accessible electronic documents has been established through the U.S. Department of Education Accessible Electronic Document Community of Practice ("AED COP").8 The document guideline information provided includes how to create, test and remediate certain documents such as Word and PDFs for Section 508 conformance using Adobe Acrobat DC Pro. Testing (analyzing) for compliance can be achieved through resources provided under Section 508.9 The significant aspect is to ensure that "Key Concepts for Creating Accessible Documents"10 is followed.

In the wake of exponential electronic and information technology use and demand, the need for electronic document accessibility has become imperative. To ensure that everyone has equal access, it is vital that anyone who is involved with creating electronic documents become familiar with the Section 508 laws and policies.<sup>11</sup>

This can be achieved by accessing the plethora of information provided through AED COP.<sup>12</sup>

Florida follows the guidelines established under Section 508. For more information about accessible electronic documents and resources delineated by and for the Florida Courts, see Florida Courts, Accessibility Statement. 13

- <sup>1</sup> Americans with Disabilities Act of 1990, https://www.ada.gov/cguide.htm; Americans with Disabilities Amendments Act of 2008, https://www.eeoc.gov/statutes/ada-amendments-act-2008; "A Brief History of Civil Rights in the United States/ADA Amendments Act of 2008, Georgetown Law, https://guides.ll.georgetown.edu/c.php?g=592919&p=4230126.
- <sup>2</sup> Title I, Employment regulations, https://www.ada.gov/ada\_title\_I.htm.
- <sup>3</sup> Title II, Government agencies, https://www.ada.gov/ada\_title\_II.htm.
- <sup>4</sup> Title III, Public accommodations and commercial businesses, https://www.ada.gov/ada\_title\_III.htm.
- <sup>5</sup> United States Department of Justice, Accessibility Standards Electronic and Information Technology Accessibility Standards, Background

**Continued on page 37** 

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#### **Continued from page 36**

https://www.justice.gov/crt/vi-accessibility-standards-electronic-and-information-technology-accessibility-standards#:~:text=Section%20508%20 requires%20that%20when,to%20the% 20access%20to%20and.

<sup>6</sup> Section 508 of the Rehabilitation Act Amendments, https://www.section508.gov/.

<sup>7</sup> United States Department of Justice, Accessibility Standards Electronic and Information Technology Accessibility Standards, Summary https://www.justice.gov/crt/viaccessibility-standards-electronic-andinformation-technology-accessibility-standards#:~:text=Section%20508%20 requires%20that%20when,to%20the% 20access%20to%20and.

<sup>8</sup> ED.gov, Accessibility Requirements for Electronic Documents, https:// www2.ed.gov/web-guidance/ accessibility-requirements.html.

<sup>9</sup> Section 508, Accessibility Testing for Electronic Documents, https://section508.gov/test/documents.

<sup>10</sup> ED Accessibility Requirements for Electronic Documents, see "Key Concepts for Creating Accessible Documents," https://www2.ed.gov/web-guidance/accessibility-requirements.html.

<sup>11</sup> Section 508, IT Accessibility Laws and Policies, https://www.section508.gov/manage/laws-and-policies.

<sup>12</sup> Section 508, Create Accessible Digital Products, https://www.section508.gov/create.

<sup>13</sup> Florida Courts, Accessibility Statement, https://www.flcourts.org/



Administration-Funding/Court-Administration-About-Us/ Accessibility-Statement.

Author: Judy Hoffman, Esq.

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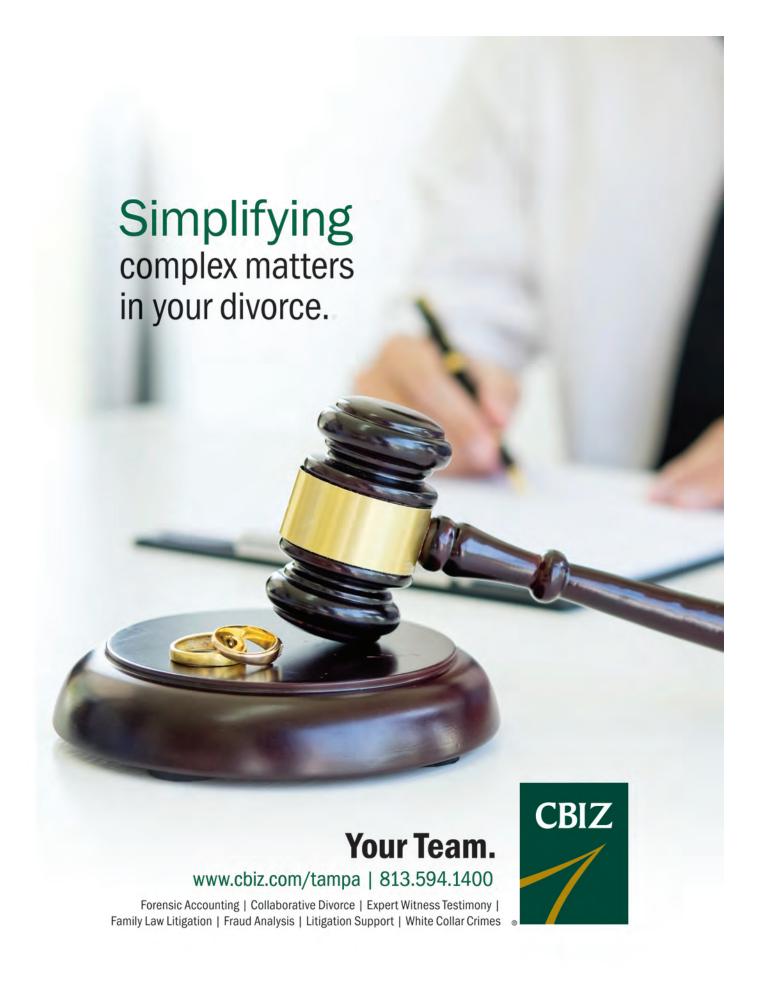


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#### TO ZOOM OR NOT TO ZOOM

**Eminent Domain** 

Chair: Ryan Reese - Moore Bowman & Reese, P.A.



year ago, the nation collectively experienced somewhat of an unexpected power outage. We did not know what to do or how to fill the time until someone fixed it. Early on, somewhere around the murder hornet mark of the pandemic, many of us believed the return to our offices and courtrooms

was imminent. This, we know

now, was naïve.

Zoom became one of those ingredients we claimed not to like without ever having tasted, but soon found ourselves using daily. At first, we fumbled, but look at us now! A year later, we can customize backgrounds and share screens effortlessly. I was still gloating about my progress when I recently received a notice for mediation... in person. So, is it actually time to retire the suit jacket and pajama pants ensemble?

To date, there has not been a uniform approach in the way courts and lawyers are returning to regularly scheduled programing. Arkansas allowed in-court trials to resume May 1st, with social distancing and mask mandates. Georgia also lifted its prohibition against in-court trials, with applicable local requirements. It has implemented safety protocols like health screening and courtroom reconfiguration.

Even with courts slowly reopening, there is still room for Zoom as we move ahead.



Even with courts slowly reopening, there is still room for Zoom as we move ahead. In a world where backlogs have grown exponentially, and social distancing means less people in court, virtual platforms offer an additional way to move cases along. But are they here for good?

While virtual proceedings have proven to be simpler than we once thought, there have been some problematic aspects. One article posted earlier this year noted several limitations, including the inability to get a full sense for the jury's body language.<sup>3</sup> There was also an alleged impact on diversity when potential jurors were excluded due to lack of access to Wi-Fi, computers, or tablets. Other noted risks included technical interruptions, inability to see full surroundings, and other glitches such as the infamous "I'm not a cat" filter debacle.4

These concerns make an argument for an in-court preference. Or do they? In an article about in-court trials specifically, one attorney explained why that would *not* be in her client's best interest at this time.<sup>5</sup> She posed valid questions, such as: How do you get a good read on a juror who is wearing a mask? Or, what happens if one juror gets COVID-19 *during* the trial?

These new platforms certainly have a place in a post-pandemic world in terms of case management. They are not without fault. However, the same is true of in-court proceedings. While health and safety guidelines remain in place, courts will have a very different feel than they did before March 2020. It is incumbent upon us to become well-versed with these options and to weigh the risks or benefits to those we represent. We must proactively learn about others' experiences in these odd times, because it may be a while before a final verdict is rendered on the future of post-pandemic litigation.

- <sup>1</sup> Bill Bowden, *Plans for return to jury trials in works*, Arkansas Democrat Gazette (April 11, 2021) *available at* https://www.arkansasonline.com/news/2021/apr/11/plans-for-return-to-jury-trials-in-works/ (last visited May 28, 2021).
- <sup>2</sup> Dave Miller, Georgia court trials to resume, WTOC News (March 9, 2021), available at https://www.wtoc.com/2021/03/09/georgia-court-trials-resume/ (last visited May 28, 2021).
- <sup>3</sup> Connor Perrett, Jury trials conducted by Zoom can lead to biased juries, distractions, and other dangers, lawyers say, Insider, available at https://www.insider.com/virtual-trials-

**Continued on page 41** 

#### TO ZOOM OR NOT TO ZOOM

**Eminent Domain** 

#### **Continued from page 40**

can-lead-to-biased-juries-distractionslawyers-say-2021-3 (last visited May 28, 2021).

<sup>4</sup> Daniel Victor, 'I'm Not a Cat,' Says Lawyer Having Zoom Difficulties, New York Times, (Feb. 9, 2021), available at https://www.nytimes.com/ 2021/02/09/style/cat-lawyer-zoom.html (last visited May 28, 2021).

<sup>5</sup> Robin Frazer Clark, Whoever Wants to Serve on a Civil Jury Trial During a Pandemic Raise Your Hand, Atlanta Injury Law Blog, available at https://www.atlantainjurylawyerblog. com/whoever-wants-to-serve-on-a-civil-



jury-trial-duringa-pandemicraise-your-hand/ (last visited May 28, 2021).

Author: Jennifer Mott - Florida Department of Transportation

### Monthly Membership Speaker Series CLE Webinar

HCBA's Monthly Membership Speaker Series on April 20 covered the important topic of "What to Know About Florida's Lawyer Discipline System and How to Avoid It." Thank you to our featured speaker Scott Westheimer, managing partner of Syprett Meshad, P.A. and current Florida Bar Board of Governors representative for the 12th Circuit.

Additionally, thank you to Tucker/Hall for sponsoring the event.







#### **DID YOU KNOW...**

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There is no "typical day" day. Each day brings new challenges, but there are also many rewards.

am usually at my desk around 7:30 in the morning. This gives me a chance to settle in. I will look at the file one last time before a hearing. I call my client, make sure there are no last-minute questions and go over her testimony again. Testifying will not be easy. She will have to relive her abuse, and it likely won't be the last time she does so. I let her know

that she knows best what happened to her; I am just there for support. I try to empower her. After speaking with my client, I log into the Zoom hearing and wait for the judge to start. She testifies as to her abuse. I introduce photos of injuries. If ever there was a place where "a picture is worth a thousand words" is true, it is in a domestic violence courtroom. Thankfully, she is

awarded a final injunction against her abuser. However, this usually does not mean she can cut off from him completely. If they have children together or if they are married, they will have to meet again. The worry of something happening to her does not fully go away.

Continued on page 45

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#### **Continued from page 44**

The Spring of Tampa Bay is funded for eight Injunction for Protection (IFP) Project Attorneys. We represent survivors of domestic violence, dating violence, sexual violence, and stalking in court. We help survivors from the initial stages of the case with filing the Petition for Injunction for Protection, to discovery, and all the way to the final hearing. We are federally funded<sup>1</sup>; our representation comes at no cost to the survivors and it is regardless of income. Cases get referred from numerous agencies in the Tampa Bay area, including law enforcement and the State Attorney's Office. Calls come in through our supervisor and get

funneled out to the different attorneys. Survivors will typically be able to speak with an attorney within 24 hours of calling to discuss their case. We have three attorneys who are fluent Spanish speakers. Our firm will typically help over 100 survivors of domestic violence each month.

There is no "typical day" day. Each day brings new challenges, but there are also many rewards. It just takes one text message from a client thanking you for your help, to wipe away stress or the fact that you can't just snap your fingers and make everything better. There is an email from a former client that I keep on my desk. In this email, my client lets me know that she is in a much better place now than

she was when we first met. She tells me that I played a role in her new life and thanks me for it. That email serves as my reminder of why I do what I do, and why it matters.

<sup>1</sup> This project is supported by VOCA-2016-Florida Coalition Against-00842, awarded by the Office for Victims of Crime, Office of Justice Programs, and is sponsored by the

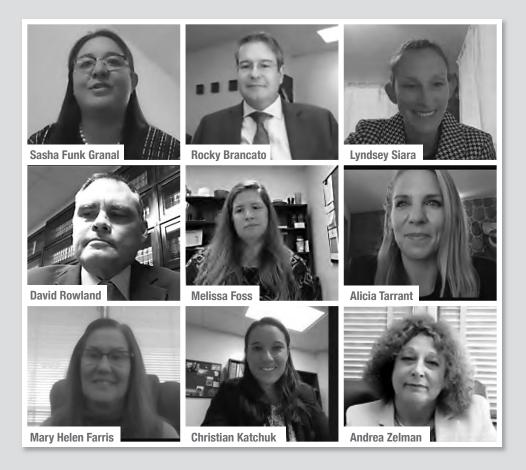
State of Florida.



Author: Megan Montagno -The Spring of Tampa Bay's Injunction for Protection Project Attorneys

### Government Lawyers Section Webinar

On May 7, the HCBA Government Lawyers
Section and the HAWL Government Attorney
Committee held an informative webinar entitled
"#GovernmentGoals: How Supervisors Made It
To The Top." The event allowed attendees to hear
from agency supervisors about their journeys to
top positions at their respective offices. The panel
for this event included Rocky Brancato, Public
Defender's Office; Mary Helen Farris, Hillsborough
County Attorney's Office; Sasha Funk Granai,
Attorney General's Office; Dave Rowland, 13th
Judicial Circuit; Alicia Tarrant, Guardian ad Litem;
and Andrea Zelman, City of Tampa Attorney's
Office. The HCBA would like to thank all the
panelists and attendees for their time.



#### COMPARING FLORIDA'S NEW SUMMARY JUDGMENT STANDARD TO THE OLD RULE

Labor & Employment Law Section

Chairs: Amanda Biondolino - Sass Law Firm & Jason Pill - Phelps Dunbar LLP





The change in the [Summary Judgment] standard now aligns Florida with the federal standard and 38 other states.



n May 1, 2021, Florida officially adopted the federal rule for summary judgments. The state's highest court first announced the switch on December 31, 2020, when it issued its own opinion, *In re: Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490. The change in the standard now aligns Florida with the federal standard and 38 other states.

Although the language of Florida's prior rule was strikingly similar to the federal rule, the Florida Supreme Court noted Florida court's application of Rule 1.510 failed to promote summary judgment's purpose of securing "the just, speedy, and inexpensive determination of every action." In addressing these concerns, the Court identified three major amendments to Florida's rule on analyzing summary judgment arguments.

First, since 1966, Florida courts required the moving party in a summary judgment motion to conclusively *negate or disprove* the nonmovant's theory of the case to eliminate any issue of fact.<sup>1</sup> By contrast, the federal standard does not require the moving party to support its motion with affidavits or other evidence to negate the nonmovant's theory of the case.<sup>2</sup> As a result, under the new Florida

standard, which mirrors the federal standard, the moving party now need only "point [] out ... there is an absence of evidence to support the nonmoving party's case." The burden then shifts to the non-moving party to present supporting evidence.

Next, the Florida Supreme Court noted that Florida's courts created an "expansive understanding of what constitutes a genuine (i.e., triable) issue of material fact" resulting in an understanding that the existence of any competent evidence, however credible, incredible, substantial, or trivial, halts the inquiry and prevents summary judgment "so long as the slightest doubt is raised." Conversely, the federal rule is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."3 Consequently, Florida's new standard requires the court to review the opposing parties' two versions of the events of the case. If one version is so "blatantly contradicted by the record" and no reasonable jury could believe such a story, that version should not be adopted or considered during summary judgment analysis.

Lastly, the Court recognized that Florida's courts "repeatedly declined to recognize the fundamental similarity between a motion for directed verdict and a motion for summary judgment." Conversely, the United States Supreme Court held the standard for summary judgment mirrors that of the standard for directed verdict.<sup>4</sup> In short, the inquiry at both stages is the now same: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law."<sup>5</sup>

Modification to Florida's rule is intended to renew the purpose of swift and inexpensive resolution of cases through summary judgment. Yet, only time will tell as to how the courts interpret this newly adopted rule moving forward in employment cases and beyond.

- <sup>1</sup> *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966).
- <sup>2</sup> Celotex Corp. v. Catrett, 477 U.S. 317 (1986).
- <sup>3</sup> Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

<sup>4</sup> *Id*.

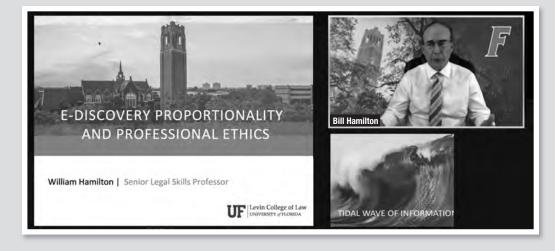
<sup>5</sup> *Id*.



Author:
Stephanie C.
Generotti –
Ogletree,
Deakins, Nash,
Smoak &
Stewart, P.C.

# Labor and Employment Law Section and Technology Section Joint CLE

The Labor & Employment Law Section and Technology Section hosted a joint CLE on April 22 on the important and timely subject of "The Ethics of E-Discovery Proportionality." The CLE's featured speaker, Professor Bill Hamilton, who is



the executive director of the University of Florida Levin College of Law E-Discovery Project, spoke on the utilization of new metric frameworks designed to facilitate negotiation and provide litigators and courts with the tools to achieve proportionality and meet their professional responsibilities.

#### YLD Wellness Virtual Event – Nutrition Tips for Lawyers

On April 22, 2021, the HCBA's YLD, HAWL YLD, and FBA YLD hosted a virtual wellness event titled "Nutrition Tips for Lawyers." Speaking at this event was Lauren Hubert M.S., R.D., the founder of The Sorority Nutritionist. This event was part of the HCBA YLD health and wellness member initiative. The HCBA would like to thank everyone who attended, as well as the event sponsor, The Florida Bay Young Lawyers Division.





#### **Calories**

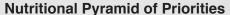
- Calories are ENERGY aka fuel for your body to survive
  - o What type of fuel are you using?
- What you eat provides calories
- Calories determine your weight and energy levels
  - o Resting Metabolic Rate
  - o Maintenance Calories
  - o Weight loss vs weight gain





- Overview of nutrition
  - o Calories
  - Macronutrients
- Quick tips for lawyers to stay on track
  - o Office eating
  - o Ordering out









It is crucial that the parents are represented by an attorney with extensive experience in dependency law.



t's 11 p.m. on a Saturday evening and you receive a frantic call from your divorce client, "DCF took my child!" What do you do?

If the Department of Children and Families (DCF) has removed your client's child, three things have already occurred:

First, the Department received an **abuse report** alleging that your client, their spouse, or a household member has abused, abandoned, or neglected the child.

Second, the Department assigned the abuse report to a Child Protective Investigator (CPI) to **investigate** the allegations. During the investigation, the CPI has interviewed the parents, household members, related collaterals (including the reporter), and the children. The CPI has also requested and reviewed related medical and school records. If abuse was alleged, the CPI likely referred the child to the Child Protection Team for a medical evaluation and an interview.

Third, the Investigator has determined the child is in immediate danger of abuse, abandonment, or neglect necessitating immediate **removal** from the parents' and placement with a relative, non-relative or in licensed foster care. This act of removal is called shelter.

So, what comes next?

When DCF shelters a child, there must be a shelter hearing within 24 hours of the removal. DCF must provide the parents notice of the shelter hearing as well as a copy of the probable cause affidavit and petition prior to the shelter hearing. The shelter hearing is your client's first opportunity to present evidence to the Court to refute the allegations in the petition and to regain custody of their child. The parents may retain an attorney to represent them at this hearing. If they do not, the Court will appoint an attorney to represent them if they qualify as indigent.

If the Court grants DCF's shelter petition, then DCF will file a petition within 21 days, thereby initiating a dependency case. While the dependency case is pending, the Dependency Court will have exclusive jurisdiction over all issues related to child custody, including, but not limited to decision-making, timesharing, support, and services

for the parents and the child. Therefore, all child custody-related matters in your divorce case will be abated until the dependency case has concluded.

It is crucial that the parents are represented by an attorney with extensive experience in dependency law. Dependency law is a niche area of practice with elements of civil, criminal, and domestic relations law designed to provide the Court with the necessary tools and authority to protect a child. A divorce attorney will quickly and easily find themselves grappling with rules and procedures that are wholly foreign to them.

For an attorney unfamiliar with dependency law, attempting to litigate these cases will likely result in significant delays for the client in achieving reunification with their child, or worse, the client

> could face termination of their parental rights. ■



Author:
Jennifer F.
Meister - Older
Lundy Alvarez

Koch

Join the Marital & Family Law Section in your Member Profile at hillsbar.com.

#### Marital & Family Law Section Year-End Judicial Roundtable

On May 6, the Marital & Family Law Section hosted its Year-End Meeting and Judicial Roundtable. We thank the judicial panelists for their time and insight: Chief Judge Ron Ficarrotta, Judge Lindsay Alvarez, Judge Kelly Ayers, Judge Helene Daniel, Judge Wendy DePaul, Judge Greg Green, General Magistrate Jon Johnson, General Magistrate Joan Montagno, General Magistrate Jennifer Sarmiento, Judge Jared Smith, and Judge Wesley Tibbals.



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#### **ADVERSARIAL RULES IN A NON-ADVERSARIAL SYSTEM**

Military & Veterans Affairs Committee

Chairs: Matthew F. Hall - Hill Ward Henderson PA & Alexandra Srsic - Bay Area Legal Services





roceedings before the Department of Veterans Affairs (VA) are intended to be non-adversarial in nature. This means that the Secretary of the VA does not have a representative arguing against claims for benefits, and in some instances, instead of defending the claims of veterans, the VA must assist those veterans in substantiating their claims.1 Disability claims only become adversarial when veterans appeal decisions of the Board of Veterans' Appeals (Board) to the Court of Appeals for Veterans Claims (CAVC), and the Secretary of the VA becomes an opposing party.

Partly due to this non-adversarial, ex parte system at the agency level, the Federal Circuit has avoided creating an absolute rule regarding issue exhaustion.2 While the CAVC may use discretion in determining whether it has jurisdiction over arguments not raised at the agency level, creating an absolute rule about such would be improper.3 Many veterans are not represented by attorneys at the agency level and it would be unrealistic to expect pro se veterans to know every legal issue that exists and should be raised in their case. This same outlook was reflected in the U.S. Supreme Court's decision in Sims v. Apfel, which stated that "the reasons for a court to require issue

exhaustion are much weaker" when "an administrative proceeding is not adversarial." <sup>4</sup>

Since the Federal Circuit's decision in Maggit, the CAVC has refined its position on the issue, providing that it may refuse to hear arguments first made to the CAVC when the issues existed in the record before the Board and could have been raised there. 5

The Social Security Administration (SSA) operates with non-adversarial systems similar in some ways to those used by the VA. These similarities are primarily present in the appellate processes within the agencies. When claims are appealed to the Board within the VA, veterans may have their case reviewed by Veterans Law Judges (VLJs).6 Proceedings before VLJs are nonadversarial and the Secretary of the VA has no representative to oppose the veteran's claim. <sup>7</sup> Appeals within the SSA are reviewed by Administrative Law Judges (ALJs).8 Proceedings before ALJs are nonadversarial and the Commissioner does not have a representative opposing the claims for benefits.9

The U.S. Supreme Court recently decided a case where issue exhaustion requirements were at issue regarding the SSA. <sup>10</sup> The Court in *Carr* looked at whether ALI proceedings are adversarial



Many veterans are not represented by attorneys at the agency level, and it would be unrealistic to expect pro se veterans to know every legal issue that exists and should be raised in their case.

enough to be considered iudicial proceedings, thereby being subject to issue-exhaustion requirements. While the holding in this case turned on the fact that the issue not raised was purely constitutional in nature, the case may lead to a further restraint on the application of issue exhaustion requirements within the VA. ■

- <sup>1</sup> See 38 C.F.R. § 3.103(a) (2020); 38 C.F.R. § 19.29(b) (2020); see also Manio v. Derwinski, 1 Vet. App. 140, 144 (1991).
- <sup>2</sup> Maggit v West, 202 F.3d at 1377 (2000).
  - $^3$  Id.
  - <sup>4</sup> 530 U.S. 103, 110 (2000).
- <sup>5</sup> *Massie v. Shinseki*, 25 Vet. App. 123 (2011).
  - <sup>6</sup> 38 C.F.R. § 3.103(a) (2020).
  - <sup>7</sup> *Id*.
- <sup>8</sup> Sims v. Apfel, 530 U.S. 103, 110 (2000).
  - <sup>9</sup> *Id*.
  - <sup>10</sup> Carr v. Saul, 141 S. Ct. 1352 (2021).



Author: Morgan MacIsaac-Bykowski -Stetson University Veterans Law Institute



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#### 2020-2021 THIRTEENTH JUDICIAL CIRCUIT PROFESSIONALISM AWARDS

Professionalism & Ethics Committee

Chairs: Joan Boles - Bay Area Legal Services & Shelton Bridges - Bridges Law Group, PLLC





ach year, the Thirteenth Judicial Circuit presents two Professionalism Awards to qualified attorneys, one who currently is in private practice and the other who is currently in government practice. These attorneys must consistently demonstrate honesty, integrity, fairness, courtesy, and an abiding sense of responsibility to comply with the standards and rules of professionalism in the practice of law. The Thirteenth Judicial Circuit was honored to present the two awards at this year's HCBA Law Day Luncheon on May 12, 2021.

Ada Carmona received this year's Professionalism Award

Special thanks to
Ms. Carmona and
Mr. Givens for
serving as role
models that motivate
and inspire us.

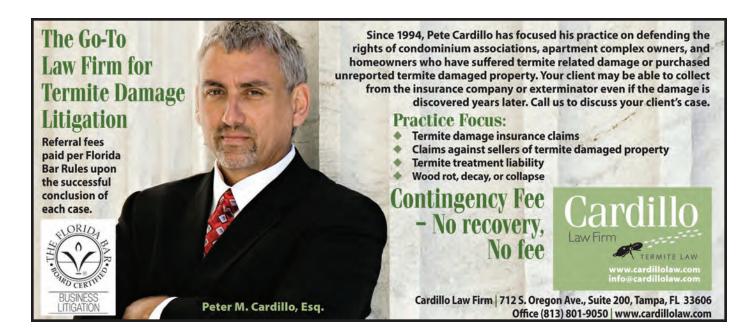




for Government Service. Ms. Carmona's over 37 years of passionate, yet fair and respectful advocacy as a prosecutor made her the obvious choice for this award. Ms. Carmona has served under five State Attorneys during her career, holding numerous titles, including Division Chief and Deputy Bureau Chief, essentially working in every part of the office. Ms. Carmona has successfully prosecuted many complex and high-profile cases, including death penalty cases. However, notwithstanding these impressive accomplishments, Ms. Carmona

has really shined as a "mentor, a teacher and a role model" and one who has laid the foundation for many of the fine trial lawyers in our community. Offering her own lunch to a young lawyer, who, in the midst of trial didn't have time to eat, is just one example of her kindness to others. She has been additionally described as demonstrating the principles of "your word is your bond," "that you can say no with a smile" and you can "disagree without being disagreeable."

**Continued on page 53** 



#### **Continued from page 52**

Stann Givens received this year's Professionalism Award for Private Practice. Mr. Givens' over 47 years of distinguished practice in the area of family law, along with his impeccable reputation for integrity and strength of character, made him the obvious choice of this award. Mr. Givens is the Founding Partner of the Givens Law Group. He is Board Certified by the Florida Supreme Court as a Marital and Family Lawyer and a Certified Family Law Mediator. Mr. Givens is also a founding member of what is formerly known as "The Family Law Inn of Tampa," serving as the Inn's Director for 19 years. In deference to his reputation for

professionalism, the Inn was recently renamed after Mr. Givens himself, as "The Stann Givens Family Law Inn of Tampa." In addition to his many professional accolades, Mr. Givens is active in his community. He received the Outstanding Community Service Award by the Boys and Girls Club of Tampa and was founder and race director of the Gasparilla Distance Classic road race. In all aspects of his life, Mr. Givens' everyday demeanor is described as "extraordinary and notable."

What a privilege to be able to write about two such amazing professionals, one who has "given her heart and soul to the citizens of Hillsborough County" and the other, who can "be trusted in both his words and deeds as a

practitioner." Congratulations to Ms. Carmona and Mr. Givens and a special thanks for serving as role models that motivate and inspire us to strive for excellence in life and in the profession. 1

<sup>1</sup> Permission was received for use of the various quotes noted above, which were provided by various members of the Judiciary and legal community in support of these Awards' recipients.



Author:
Judge
Cynthia Oster Thirteenth
Judicial Circuit

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#### NEED TO HIRE SOMEONE? HOW TO HIRE THE RIGHT PEOPLE

Solo & Small Firm Section

Chairs: Matthew Crist - Crist Legal | PA & Gian-Franco Melendez - Law Office of Gian-Franco Melendez, LLC





Te all know one of the best ways to grow your practice is to hire.

We also know hiring quality employees is a huge challenge.

How do you find the right person?

Like anything, to get the best results, have a plan and be willing to invest the time and money needed. Doing these things will help you hire a top candidate.

If done right, your hiring efforts will pay dividends. If you find the right person to handle the day-to-day tasks of running your firm, you can spend your time developing your practice and focusing on growth. To be a successful law firm entrepreneur, you should be spending your time working on your business, not in your business. Hiring great help gives you the opportunity to do this.

#### Job Description

Before you start the hiring process, put some thought into specifically describing the position you need filled and the qualities needed to fill it. It is critical that you write out a job description for the position that describes the role, specifically identifies the responsibilities, and provides the key performance indicators that show whether the person is succeeding in the position. When hiring a candidate, provide them



To be a successful law firm entrepreneur, you should be spending your time working on your business, not in your business.

with the job description to set everyone's expectations.

#### **Competitive Compensation**

You will also need to think about how much your employee will be paid. To do that, you need to know how much you are willing to pay, but you also need to know what the competitive pay rates are in the marketplace. Ask your colleagues at other firms what they pay their staff and adjust accordingly. Want a top candidate? Increase the amount you are willing to pay. In life and in hiring, you get what you pay for.

#### **Online Resources**

There are plenty of online resources to find employees. Among the best places with a lot of site traffic that allow you to post positions for a reasonable price are Indeed (www.indeed.com) and LinkedIn (www.linkedin.com). You may also consider sites that are specific the legal industry like Law Crossing (www.lawcrossing.com) and LawJobs.com. Even Facebook (www.facebook.com) has a job search function. The best online resource is the one that fits your

needs. Different platforms provide different advantages. For example, the best site to post one job might not be the best site when you need to post 10 jobs.

#### Personality Tests and Behavior Style Evaluations

One thing you should consider is having your candidates undergo a personality or skills test. These are great tools to learn more about your candidate's personality type and communication styles than you would learn in a job interview. You should also consider an evaluation of your own personality to determine who you are most compatible with and hire based on that. Most of the standard personality tests are available online. Some of the more popular tests used by employers are DiSC (www.discprofile.com), Myers-Briggs (www.myersbriggs.org), and the Gallup StrengthsFinder (www.gallup.com).

Need more help? Ask one of our Section members. We are always happy to share tools and tips. ■

Author: Matthew Crist - Crist Legal | PA



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  - LUIS A. "TONY" CABASSA, ESQ.
    WENZEL FENTON CABASSA, P.A.

A SUSTAINING LAW FIRM FOR THE PAST 10 YEARS

#### **MOORE'S LAW 2021: TECHNOLOGY & JUSTICE GROW TOGETHER**

**Technology Section** 

Chairs: Mike Hooker - Phelps Dunbar, LLP & Ryan McGee - Morgan & Morgan, PA



It may be cliché, but it is true: our smart phones are smarter than the computers used to land a man on the Moon.



ne of the most consequential laws for the operation of Florida's judicial system during the pandemic was passed by no legislature nor part of any constitution. The year was 1965. Gordon Moore, a co-founder of Intel, observed the exponential growth of computing power every two years. We call this Moore's Law and, as a result of what he observed, we've been "Zooming" our way through the COVID pandemic.

Lawyers have smart phones. It may be cliché, but it is true: our smart phones are smarter than the computers used to land a man on the Moon. In July 1969, the Apollo 11 command and lunar modules were each equipped with an Apollo Guidance Computer (AGC). An iPhone 12 Max has about 187 times the RAM and about 140,000 times the processing speed of that AGC. Judges can use smart phones to sign e-warrants, review court files, conduct a hearing, or check their email.

In 1971, email — then a novelty — took on a recognizable form. Now civil litigation spends fortunes on e-discovery protocols to wade through torrents of it. Lawyers are alerted by email to the latest filings in their cases. Unfortunately, human contact, comity, and kindness can die in blistering emails that are frequently then attached to subsequent pleadings. Despite that, the ubiquity of email makes counsel ever more accessible.

Court itself has never been more accessible through platforms like Zoom. While the courthouse doors were shut by COVID, the courtroom itself was flung open in

**Continued on page 57** 



#### **September 22, 2021**

Welcome Back Reception
The Vault, Downtown Tampa

#### **October 12, 2021**

Bench Bar Conference
JW Marriott, Downtown Tampa

#### **March 26, 2022**

5K Pro Bono River Run & Judicial Food Festival Stetson University College of Law Tampa Campus & Water Works Park

#### MOORE'S LAW 2021: TECHNOLOGY & JUSTICE GROW TOGETHER

**Technology Section** 

#### **Continued from page 56**

a new way and to the entire world. For example, in delinquency, we have never had so many parents and victims at detention hearings as we do through Zoom. This is a revolution.

In the 13th Circuit, judges access the dockets and court files through a digital dashboard called JAWS. In divisions assigned digital court reporters, the audio recordings of hearings are attached to the electronic court file. On my laptop, I can open the docket, read motions, and listen to hearings. Smart information management helps the judiciary improve its efficiency, which is critical to addressing the COVID backlog.

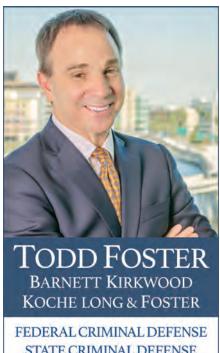
We are also managing information in other ways. Through legal research programs, the court can take a motion filed by counsel, drop it into the platform, and it will automatically report whether the case law cited has negative history. You will still find books on the bench—like my trusty "Ehrhardt on Evidence" — but smart use of available technology is helping us work better and faster.

Why do we need a Technology Section? Technology continues to revolutionize the practice of law. As a consequence of Moore's Law, the legal system and practice is more productive and more accessible. But there are and will be technology-driven challenges and opportunities.

Together, we can manage technology to help us achieve a promise penned by Francis Bellamy, a man who lived in Tampa at Wallcraft Avenue and Bayshore Boulevard but before modern computers. That promise is one we have all made: "with liberty and justice for all."

Author: Judge Thomas N. Palermo, Circuit Judge -Thirteenth Judicial Circuit





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- Listed in Best Lawyers in America Over 15 years – White Collar Criminal Defense
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- Qui Tam, Plaintiff and Defendant



#### FLORIDA SUPREME COURT ADOPTS FEDERAL SUMMARY JUDGEMENT STANDARD

Trial & Litigation Section

Chair: Chad Moore - Morgan & Morgan, PA



ffective May 1, 2021, the Florida Supreme Court has adopted the federal summary judgment standard.

The Court initially amended Florida Rule of Civil Procedure 1.510 by simply adding that the summary judgment standard "shall be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Go. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)." Those cases are commonly referred to as the *Celotex* trilogy.

After receiving comments and hearing oral argument, however, the

Amended Rule 1.510
governs the adjudication
of summary judgment
motions decided on or
after May 1, 2021,
including in pending cases.



Court determined the best way to adopt the federal summary judgment standard is to adopt the text of Federal Rule of Civil Procedure 56, and it largely replaced the text of Rule 1.510 with that of Federal Rule 56.2 The Court reasoned that doing so makes it more likely that Florida's adoption of the federal summary judgment standard will take root, that textual overlap will provide greater certainty and eliminate unproductive speculation, and that litigants and judges will get the full benefit of the large body of case law interpreting and applying Federal Rule 56.

The Court noted that embracing the *Celotex* trilogy means abandoning certain features of

Florida jurisprudence that have unduly hindered the use of summary judgment. The Court explained that those applying amended Rule 1.510 must recognize (a) the similarity between the summary judgment and directed verdict standards, (b) that a moving party that does not bear the burden of persuasion at trial can obtain summary judgment without disproving a nonmoving party's case, and (c) that the correct test for the existence of a genuine factual dispute is whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party.

Continued on page 59

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#### **Continued from page 58**

There are differences between Federal Rule 56 and amended Rule 1.510, however. For example, Federal Rule 56 provides that a court should state on the record its reasons for granting or denying a summary judgment motion, and amended Rule 1.510 provides that a court *shall* do so. In addition, unlike Federal Rule 56, amended Rule 1.510 provides that summary judgment motions must be filed at least 40 days before the hearing and that responses with supporting factual positions must be filed at least 20 days before the hearing.

Amended Rule 1.510 governs the adjudication of summary judgment motions decided on or after May 1, 2021, including in pending cases. However, the Court stated that in cases where summary judgment was denied under the pre-amendment rule, courts should give parties reasonable opportunities to file renewed summary judgment motions under amended Rule 1.510, and that in cases where summary judgment has been briefed but not decided, courts should allow parties reasonable opportunities to amend to comply

with amended Rule 1.510. ■



<sup>1</sup> In re Amendments to Fla. R. Civ. Pro. 1.510, 309 So. 3d 192, (Fla. 2020).

<sup>2</sup> In re Amendments to Fla. R. Civ. Pro. 1.510, No. SC20-1490, 2021 WL 1684095 (Fla. Apr. 29, 2021).



Authors:
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#### TRIAL AND LITIGATION STUDENT SCHOLARSHIP ESSAY

Trial & Litigation Section — Special Feature Chair: Chad Moore – Morgan & Morgan, PA



A right to trial by a jury of one's peers is a guarantee that the basis for judgment rests with the people, not the government alone.



The following is the winning essay from the HCBA Trial & Litigation Section's annual student jury essay contest. Congratulations to Bryan Harsar for the winning submission.

believe that jury trials are important to American Jurisprudence because they represent the heart of self-governance that is the bedrock of

our democratic society. As the reach and scope of law increases at all levels, often in an effort to keep pace with increasingly rapid advancements in technology and communications, one can be forgiven for losing sight that the Constitution is a social compact. The laws and regulations that flow from it have legitimacy only

by the People's implicit agreement to cede individual sovereignty for the greater good. Amidst the blur and distraction of modern life, jury trials serve several key functions in making sure that fundamental knowledge is not forgotten.

**Continued on page 61** 







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#### TRIAL AND LITIGATION STUDENT SCHOLARSHIP ESSAY

Trial & Litigation Section - Special Feature

#### **Continued from page 60**

First, jury trials are a check against government encroachment. A right to trial by a jury of one's peers is a guarantee that the basis for judgment rests with the people, not the government alone. Within this framework, citizens are engaged in the judicial process, making their voices heard, and preventing government overreach into a sphere of power that rightly belongs to the people. Decisions are not based solely on the opinion of a judge or an attorney; nor should they be.

Second, jury trials educate the general public about the judicial process and the protections our system of government affords. Jurors participate firsthand in the adjudicative process: they weigh the facts within the rules prescribed while considering community standards in light of everyday pragmatism. Jury trials

are not a fundamental right in other systems of government. Jurors are vested with an appreciation of the substantive and procedural safeguards in place that protect individual liberty in our democratic system.

Third, jury trials support the peaceful resolution of disputes. Whether in a civil or criminal action, the injured party can seek relief through legal channels. Vigilantism and the rule of tooth and claw are spurned in favor of a system that allows all parties, regardless of physical, political, or economic strength, to make their case in an impartial setting. The fact that there is a safe and objective venue for resolving disputes, free from persecution and accessible to all, further serves to dissuade those who would prey on the weak and powerless.

Fourth, jury trials ensure the vitality of the civil and criminal

justice systems by placing the judicial process within the present context. Jurors apply a perspective of this historical moment on the legal proceedings. Through this process, the body of common law evolves in line with societal change and space is created for issues of unique societal concern to be heard.

While jury trials serve many key functions in ensuring that the true seat of sovereignty is not forgotten in an increasingly interconnected world, there is one additional reason they are important that transcends American Jurisprudence. As we strive to be that shining city on a hill, there are few stronger examples of that commitment than a jury trial executing the rule of law by one's peers. It represents our capacity to overcome adversity and self-govern without succumbing to violence or abuse.

Author: Bryan Harsar - WMU Cooley Law School, Contest Winner



#### **Trial & Litigation Section CLE Webinar**

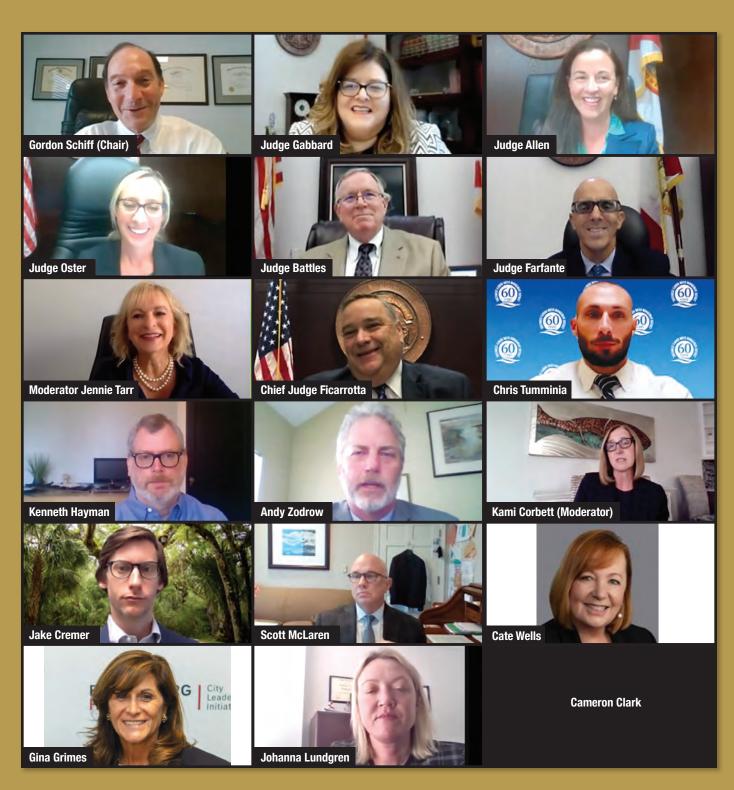
On April 27, the Trial & Litigation Section hosted a CLE webinar on "Demystifying Non-Binding Arbitration." The speakers, Len Milcowitz of Milcowitz & Lyons, PA and Anthony T. Martino, of Clark Martino, discussed various aspects of non-binding arbitration including judgements, effective tactics during arbitration, and the perspective of the arbitrator.



Thank you to our webinar's speakers for their insight and also to Garcia Mediation for sponsoring this event.

#### Third Annual Environmental and Land Use Law Conference

On April 29, the HCBA hosted its Third Annual Environmental and Land Use Law Conference, in an online format this year. Our distinguished speakers included Chief Judge Ron Ficarrotta, Judge Darren Farfante, Judge E. Lamar Battles, Judge Jennifer X. Gabbard, Judge Lisa A. Allen, Judge Cynthia S. Oster, and Judge Wendy J. DePaul of the 13th Judicial Circuit Court; Chris Tumminia, Deputy General Counsel, Southwest Florida Water Management District; Andrew Zodrow, Senior Assistant Counsel, Hillsborough County Environmental Protection Commission; Kenny Hayman, Office of General Counsel, Florida Department of Environmental Protection; Cameron Clark, Senior Assistant Hillsborough County Attorney; Johanna Lundgren, Senior Assistant Hillsborough County Attorney; Gina Grimes, City of Tampa Attorney; Cate Wells, Chief Assistant City of Tampa Attorney; Scott McClaren, Hill Ward Henderson; and Jake Cremer, Stearns Weaver. Thank you to all of our speakers and attendees for their insight and participation.



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#### **YLD Judicial Appreciation Cookie Delivery**

Because the YLD was unable to have an in-person Judicial Appreciation Luncheon this year, they decided to take their appreciation directly to the local judges instead. On May 6, several members of the YLD coordinated and delivered cookies to every 13th Circuit, Middle District, and Second DCA judge and their respective judicial assistants. Thank you to the YLD volunteers that helped make this effort possible!





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Congratulations to **Benjamin Gibson** of **Shutts & Bowen LLP**for being reappointed to the State
Board of Education by Governor
Ron DeSantis.

**Carlton Fields** is pleased to announce that Shareholder **Jason J. Quintero** was named the Tampa office managing shareholder.

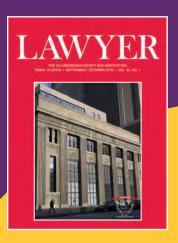
Congratulations to **Masiel Pelegrino Sarduy** of **Phelps** who has been selected to join the faculty of the nation's largest trial advocacy program at Emory University

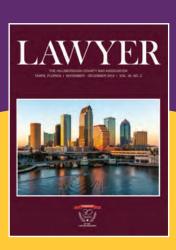
School of Law, the Kessler-Edison Program for Trial Techniques.

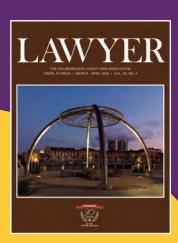
The Tampa Lawyer Chapter of the American Constitution Society (ACS) hosted its third annual Eleventh Circuit Year in Review in March. The Honorable Monte C. Richardson of the Middle District of Florida, the Honorable Shaniek Maynard of the Southern District of Florida, Rossana Arteaga-Gomez of AXS Law, and Assistant Federal Public Defender Sowmya Bharathi presented on the Eleventh Circuit's major decisions

from 2020. They discussed, among other cases, *Pitch v. United States*, where the court denied a historian's request to access grand-jury records related to the lynching of a World War II veteran, and *Jones v. Governor of Florida*, where the court upheld the legislation implementing Amendment 4.

Correction: Jennis Morse Etlinger is pleased to announce that Sacha Ross has joined the firm's team, primarily handling bankruptcy and litigation, and will manage the firm's Sarasota office.







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