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THE HILLSBOROUGH COUNTY BAR ASSOCIATION
TAMPA, FLORIDA | MAR - APR 2021 | VOL. 31, NO. 4





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ABOUT THE COVER

Continuing with our theme of celebrating the history of the local legal community, we are highlighting a unique photo from the Burgert Brothers historical photo collection. The photo is from 1920 and shows Judge John C. White presiding over a swearing-in of a jury at the Hillsborough County Courthouse of that time. The Burgert Brothers Photographic Collection of about 19,000 images presents a pictorial record of the growth of Tampa Bay and Florida's West coast from the late 1800's to the early 1960's. The collection is available online at <https://hcplc.org/research/burgert>.

This photo is courtesy of the Tampa-Hillsborough County Public Library System.

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THE HILLSBOROUGH COUNTY BAR ASSOCIATION

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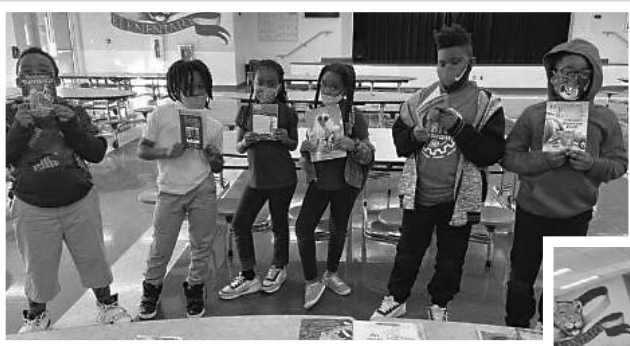
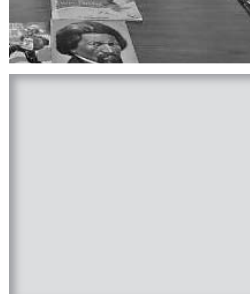
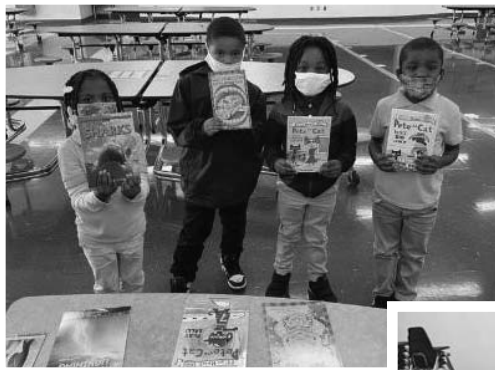
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(ISSN 1553-4456) THE HILLSBOROUGH COUNTY BAR ASSOCIATION Lawyer is published six times per year by the Hillsborough County Bar Association. Editorial, advertising, subscription, and circulation offices: 1610 N. Tampa St., Tampa, FL 33602. Changes of address must reach the Lawyer office six weeks in advance of the next issue date. Give both old and new address. POSTMASTER: Send change of address notices to Hillsborough County Bar Association, 1610 N. Tampa St., Tampa, FL 33602. One copy of each Lawyer is sent free to members of the Hillsborough County Bar Association. Additional subscriptions to members or firm libraries are \$50. Annual subscriptions to others, \$100. Single copy price, \$15.00. (All plus tax.) The Lawyer is published as part of the HCBA's commitment to provide membership with information relating to issues and concerns of the legal community. Opinions and positions expressed in the articles are those of the authors and may not necessarily reflect those of the HCBA. Submissions of feature articles, reviews, and opinion pieces on topics of general interest to the readership of the Lawyer are encouraged and will be considered for publication.

YLD Donates Books to Local Schools

The YLD was proud to donate books in November to several local elementary schools, as part of the John F. Germany Read to Dream program. Thank you to the Florida Bar YLD for the grant that assisted the YLD in purchasing these books and making a lot of kids happy!





Happy Pandemici-versary: What Have We Learned?

I hope you, too, will take a moment to take stock of where you were “when the world shut down,” if only to see how far we have come.

It was my husband's 50th birthday. But our high school junior had a FIRST Robotics tournament scheduled in Orlando the weekend of March 13, 2020, so we planned a Friday off of work, a low key dinner for two in Orlando, and a night in a hotel so we could be there bright and early Saturday to root on the Stealth Tigers as they competed against teams from all over the world. As the news filtered out about more and more cases of COVID-19 in the U.S. over the course of that week, we discussed whether to let our teen attend the tournament, but we ultimately decided that if the tournament was on, he could not let his teammates down. So we shipped him off to school at 4 a.m. to finalize loading the truck for the drive to Orlando, and I tamped down my overprotective urges. They arrived safely and started to unpack and set up for the pre-competition inspection.

But by 10 a.m., organizers walked into the venue and announced that the event was cancelled, and everyone had to pack up and leave immediately. The team was back by 1 p.m. and sent home from school. Mike and I cancelled our hotel and dinner reservations in Orlando, and I quickly threw together a dinner with our parents here (shown above) in Tampa instead. I look at the picture from that night and think: We had no idea this was going to be our last dinner out for a very long time, and had no clue about all of the challenges the next year would bring.

All of us have a “where we were when the world shut down” story, and with the benefit of hindsight I urge you to consider writing down your early pandemic experience for posterity. As we move forward into 2021 a full year later, take stock of the positives and negatives from this experience.

This episode of *Lawyer* magazine does just that. Several articles in this issue explore the structural changes our courts have made to rise to the challenges presented by COVID-19. President Paige Greenlee takes a



The author's “last normal photo before the lockdown” was a birthday dinner for her husband.

compelling look at the benefits our profession has pulled out of the past year, including innovations in conducting remote court both in our Circuit and statewide (page 8). Clerk Cindy Stuart shares with us the changes made within the Clerk's office to make the stressful process of obtaining a domestic violence injunction smoother for victims during COVID times, eliminating the need for in-person visits to the courthouse in order to obtain certified copies of restraining orders (page 16).

Former Second District Court of Appeal Judge and current Federal District Court Judge John L. Badalamenti, confirmed in the thick of the pandemic in June, 2020, shares the challenges of becoming a trial court judge in the middle of a global health crisis and more “off the record” of his journey to the bench in a fantastic interview with Michael S. Hooker (page 18).

This issue also shares wonderful stories of rising to the occasion through service, both to the profession and to our community. Our Executive Director highlights Bay Area Legal Services' pandemic response, while also spotlighting the recent winners of the Bar's Justice &

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Diversity Lifetime Achievement Awards, Judge E.J. Salcines and Delano Stewart (page 12, with additional pictures from the ceremony on page 35). The Community Service Committee shares the heartwarming story of how it pivoted its Elves for Elders annual event to virtual, and ended up assisting more elderly wards of the state than ever (page 32).

A year out, we've learned many important lessons about working and communicating remotely. The Young Lawyers Division reviews the advantages and drawbacks of working remotely, and offers tips for better managing some of the challenges (page 10), while the Solo and Small Firm Section provides additional helpful perspective on the topic (page 53). The Diversity and Inclusion Committee gives important pointers on handling the increased volume of email that has followed the decline of in-person meetings (page 34).

Pandemic or not, the law and our approach to enforcing it has continued to develop. Changes to Florida state court appellate jurisdiction has been in the works for a while, and went into effect January 1st (page 26). The rise in scam trademark registrations, not the pandemic, moved Congress to enact the Trademark Modernization Act (page 38). And this issue is filled with articles that give important tips on a variety of topics, from financial affidavits in family law cases (page 28) to advising employers on their employees' social media use (page 41) to using deposition transcripts at trial (page 58). A year out, more and more of our articles have nary a mention of COVID or Zoom. And that, too, is a sign of progress.

To become lawyers, we had to demonstrate perseverance, and that important trait has been on full display in the past year. Even when it has been enormously hard, we have gotten through with professionalism and grace. As Maya Angelou said, "You can't really know where you are going until you know where you have been." I hope you, too, will take a moment to take stock of where you were "when the world shut down," if only to see how far we have come. ■

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Seeing the Light at the End of the Tunnel

**“For there is always light, if only we’re brave enough to see it.
If only we’re brave enough to be it.” — Amanda Gorman**

2020 was a difficult year for our world, and 2021 is not starting off much differently. By the time you read this, we will have been struggling through a global pandemic for one year. We are still wearing masks, social distancing, and attending our work and social events through teleconferencing. Most of us are still waiting for the vaccine, although, as I write this article, people 65 and older in our state are getting the vaccine. There is some light.

While the majority of us have struggled in one way or another, it is important to appreciate that some positive things have happened as a result of changes we have had to make to keep ourselves and others safe. We have been advised not to travel, so most of us have stayed home, explored our local parks, and enjoyed time in our own backyards. Doctors and scientists suggest that we stay away from people outside of our “bubbles” as much as possible; so, we spend time with the people who mean the most to us, but whom we sometimes take for granted.



Those of us with dogs have walked them more than ever, to break up the days and to get some fresh air — and all of our pets are hoping that “work from home” never ends. The end of the year holidays came, and instead of racing from one event to the next, barely spending enough time with anyone to do much more than wish them

the best in the new year, we enjoyed our families and our friends who are like family. I missed seeing you all in person at all of those functions, but I also appreciated the intentional, quality time I was able to spend with a small group of people. We have slowed down; we have focused more on living in the moment. We are focused on taking care of ourselves and each other. I have heard the phrase “self-care” more in the past year than I have in my lifetime. Like everyone, I cannot wait for the pandemic to be behind us — but I hope we do not lose

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Get Involved with HCBA this Spring!

**HCBA has many great events and webinars planned
in the coming months. Check out the calendar at hillsbar.com.**

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sight of some of these lessons, changes and the positive effects experiencing this has had on our lives. As Dave Hollis so poignantly said, “In the rush to return to normal, use this time to consider which parts of normal are worth rushing back to.”

In terms of our professional lives, I think I can safely say that, for so many reasons, the pandemic has had the most significant impact on the way we practice law that any of us will experience in our lifetimes. Lawyers are not known for being receptive to change and innovation, or for embracing technology. As a young lawyer, I remember getting into debates with senior attorneys about my need to learn to dictate; I was confident that because I had done my own typing throughout college and law school, it was more efficient for me to type my motions and briefs instead of dictating them. However, the lawyers who were training me disagreed; they had learned to dictate and, well, that was just how you began getting your thoughts on paper. People are slow to embrace change, particularly in our profession.

However, in March last year, refusing to accept change was no longer an option. Our profession, including our court system, had two choices — to cease operating, which was not a viable option, or to operate using the technology that has been available to us for quite some time, but which most people were hesitant to use. Suddenly, that technology was the only way we could conduct business.

The Thirteenth Judicial Circuit quickly embraced the use of technology and, as any of our judges will tell you, the courts have never been “closed.” To the contrary, our judges are working just as hard, if not harder, than ever. Our circuit, under the strong leadership of Chief Judge Ficarrotta, and with the dedication of all of our judges and court staff, has been able to keep the wheels of justice turning safely in these unprecedented times. The statistics from proceedings that have occurred during the pandemic in the Thirteenth Circuit are truly remarkable. From October 20, 2020 through January 12, 2021, when jury proceedings had to be temporarily suspended again, due to rising COVID positivity rates, 50 circuit and county criminal trials were held through verdict and two (2) ended in mistrials. In addition, 5 juries were selected, but the defendant subsequently pled.

As we have adjusted to remote everything, our court system has done the same. Again, the number of proceedings in addition to trials that the Thirteenth Circuit has conducted during the pandemic is truly amazing.

From July of 2020 through December of 2020, 46,256 hearings took place in our circuit criminal courts; 40,235 of those hearings were remote, while the remainder were either in-person or hybrid. During that same time period, 16,467 hearings took place in our county criminal courts; 10,761 were remote and the remainder were either in person or hybrid. An additional 39,543 civil and criminal traffic court hearings were conducted. At the time of this article, information on dependency and other civil proceedings was not yet available.¹

Chief Justice Canady recently told the House Judiciary Committee that since March of 2020, Florida courts have installed 1,700 Zoom licenses and have conducted more than 400,000 videoconference hearings and other proceedings. The Chief Justice also stated that the Courts’ “response to the pandemic will forever change the way Florida’s courts operate” and noted that “[r]emote proceedings are here to stay.”² While we can all agree that certain proceedings must only take place in person and that others are far more preferable in person, undoubtedly, many proceedings work well when conducted remotely, and handing them remotely provides a great deal of efficiency, which results in time saving for attorneys and both time and money savings for our clients. Individuals who would otherwise have to take a day off from work to attend a brief legal proceeding in person may now participate virtually during a short work break. Being forced to embrace technology has yielded many positives for our profession.

All of the above demonstrates the persistence and resilience we have all exhibited over the past year. Thank you to our judges, court staff, and colleagues in the profession who have all worked so hard to embrace technology to allow our justice system to continue to operate. We have taken the most imperfect of times, determined how to continue moving forward, and, instead of just surviving, we have made changes that have improved our profession, our justice system, and access to justice. We have shown there is light. I hope you all remain safe and healthy; please take care of yourselves and each other. ■

¹ The author thanks Chief Judge Ficarrotta and Gina Justice, Court Administrator, for compiling these statistics for use in this article.

² Ash, Jim. “Canady Tells Lawmakers the Courts Are Preparing for the Pandemic’s Aftermath.” The Florida Bar News, January 28, 2021, <https://www.floridabar.org/the-florida-bar-news/canady-tells-lawmakers-the-courts-are-preparing-for-the-pandemics-aftermath/>.



The Good, the Bad, and the Takeaways of Working Remotely

While there are obstacles, working remotely is a valuable option that should be permanently offered to lawyers, even on a part-time basis.

Lawyers, especially young lawyers, are wondering if the legal field will permanently adopt remote work options. Many lawyers have established new work-from-home routines, created “home offices,” improved technology skills, and generally excelled in new remote work environments, arguably being more productive than ever. Now we are left to speculate whether this option will be gone as quick as it arrived. While there are obstacles, working remotely is a valuable option that should be permanently offered to lawyers, even on a part-time basis.

Elimination of Commutes

Long, stressful commutes can lead to exhaustion before starting the workday. Elimination of travel time allows lawyers to start the day with a clear, focused mind. The hours previously spent in the car can instead be better used towards client matters, business development, or health and wellness practices, which are more beneficial to employers and employees.

Increased Productivity; Better Focus

While working from a traditional office space generally provides for a collaborative environment, which is positive for many reasons, it often results in interruptions, distractions and, at times, a decrease in productivity. Home offices can be created to inspire and are generally quieter workplaces that allow lawyers to better focus on the task at hand, producing higher-quality work, and giving young lawyers a greater sense of control over their day-to-day tasks.

Greater Accessibility

Before COVID-19, the legal field had a remote work stigma. The shift to remote work now allows lawyers to be more accessible and accomplish more without being in the same physical location as clients or colleagues. This accessibility benefits employers, clients, and lawyers alike. Lawyers who need work accommodations or flexible hours are now able to accept jobs that used to require face-to-face office time without placing them at a disadvantage. With many employers having the tools in place, legal teams can further expand their geographic reach for both employees and clients.



Less Stressful Work Environment

It is no secret that the legal field is stressful. Lawyers not only carry around their own personal stress, but they also carry the stress of their clients. When working in a traditional office, lawyers may also carry the stress of their colleagues (and their colleagues’ clients). Remote work allows lawyers to shed those added layers of stress, resulting in mentally healthier lawyers.

With Change, Comes Obstacles

While many young lawyers can and do excel remotely, newly barred lawyers, new hires, and lawyers who live alone may not. Working in an office setting can help create a more collaborative environment, form working relationships, and organically foster mentorships, which can be difficult to do virtually. Remote work has the

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potential for negative mental health issues, particularly for lawyers who live alone or in less than ideal home environments. Likewise, working remotely can further worsen the 24/7 work mentality. These work-from-home obstacles can be addressed by intentional efforts to socialize, taking “coffee breaks” with colleagues, setting work hours, or only remote working part-time. As a practical matter, a “home office” is not an option for some lawyers because of cost or limited space. Accordingly, flexible work arrangements may be the better option allowing lawyers to choose the right work environment based on their circumstances.

Takeaways

Remote lawyers are demonstrating success beyond their years. With lawyers spending less time commuting, being less distracted in the office, and feeling less consistent stress, more hours and energy are gained to dedicate to family, friends, community, and personal health and wellness. While not all young lawyers agree that working remotely is for them, young lawyers can agree that this remote work *option* is a positive change.■



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YLD Board Volunteers at Metropolitan Ministries

The YLD Board got into the spirit of the season by packing boxes of food for families in our community at Metropolitan Ministries on December 10.





Bay Area Legal Launches New “Justice Works!” Campaign in the Wake of COVID-19

“We hope the funds raised from the campaign will provide Bay Area Legal with the program support and flexibility we need to best serve the community in uncertain times.”

— Dick Woltman, CEO of Bay Area Legal Services

“The COVID-19 recession is the most unequal in modern U.S. history.”¹

That’s the headline from an analysis conducted by the *Washington Post* this past fall about the economic impact of the pandemic and how it has overwhelmingly affected low-wage and minority workers.

And while the U.S. jobless rate has rebounded somewhat from a high of 14.7% in April to about 6.3% now, several demographic groups have recovered more slowly.

“The sectors most deeply affected by [COVID-19] disproportionately employ women, minorities and lower-income workers,” former Federal Reserve chairman Ben Bernanke told the *Post*.

Enter Bay Area Legal Services (BALS).

BALS is the nonprofit law firm created in 1967 to provide free civil legal services to low-income residents. It now serves a five-county region in the Tampa Bay area.

In response to the pandemic and growing need in the community, BALS in January launched its new three-year “Justice Works!” capital campaign.



“The idea behind the campaign is that ‘Justice Works’ to root out the inequities that keep people in poverty,” said BALS longtime CEO Dick Woltman when the program was launched.

“We hope the funds raised from the campaign will provide Bay Area Legal with the program support and flexibility we need to best serve the community in uncertain times,” Woltman added.

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In 2019, BALS assisted more than 16,000 individuals and families on a wide range of complex legal matters.

Organizers say the goal of the three-year capital campaign is to raise funds to sustain and grow current BALS programs and to fund other special programs like its Veterans Medical-Legal Partnership Initiative.

If the campaign kickoff event in January is any indication, the Justice Works! campaign is off to a fast start.

Hosted by Tampa's own Thaddeus Bullard (aka WWE Superstar Titus O'Neil) and incoming BALS Board Chair, Yohance Pettis, the virtual event raised \$140,000 toward the overall goal of \$1.5 million.

During the virtual event, the former college roommates shared powerful client stories and drove home the overriding theme of the night: When justice works, our community wins.

To learn more or join the Justice Works! campaign, visit: bals.org/justiceworks.

* * * * *

Huge congratulations are in order for two Tampa legal legends.

The HCBA's Diversity & Inclusion Committee recently presented **Judge E.J. Salcines** and **Delano Stewart** with Justice & Diversity Lifetime Achievement Awards for their significant contributions to diversity and equal justice in Tampa's legal community.

The awards were presented at the HCBA's Diversity Membership Luncheon in January, which was held virtually this year (photos on page 35).

Judge Salcines, born in West Tampa in 1938 to immigrants from Spain, is widely admired for his steadfast professionalism and inspiring leadership during his legal career that spanned almost 55 years.

Among his many achievements, Salcines served as an elected prosecuting attorney for 16 years, first as Hillsborough County Solicitor and then as State Attorney. During that time, he hired the first African American, first disabled, and first female assistant state attorneys.

Later, he was appointed judge of the Second District Court of Appeal, serving 10 years until age-mandated retirement.

Tampa native Del Stewart was born in 1935, and he earned his bachelor's degree from Morehouse College in Atlanta, and later his law degree from Howard University in Washington, D.C.

Upon graduation in 1964, Stewart returned to Tampa and entered private law practice. Stewart had a stellar

career as a criminal and civil trial attorney, and after 50 years of practice, he retired in 2015.

Among his many accomplishments, Stewart was the first African American Assistant Public Defender for the Thirteenth Judicial Circuit; he was the first attorney to head an integrated law firm; and he played a critical role in helping to quell the 1967 riots in Tampa that ensued after the shooting of Martin Chambers, an African American teenager, by a white police officer.

Additionally, Stewart was the first African American elected to the HCBA Board of Directors.

Judge Salcines and Stewart both personify the high ideals and deep struggles associated with advancing diversity and inclusion in Tampa's legal community and the community as a whole, and this noteworthy recognition by the HCBA is certainly well deserved. ■

¹ Heather Long, Andrew Van Dam, Alyssa Fowers and Leslie Shapiro, "The covid-19 recession is the most unequal in modern U.S. history," *Washington Post* (Sept. 30, 2020), available at <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/> (last visited March 1, 2021).

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

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SAO Takes New Approach to DETRR Drug Possession Cases

A problem-solving approach to drug abuse prevents crime, saves money, and gives people suffering from addiction the help they need.

Research shows more than 80% of all crimes are tied to drugs or alcohol. With that in mind, we are taking a bold step at the Hillsborough State Attorney's Office.

Our aim is to make treatment — not jail — the first stop for drug addicts arrested for drug possession through our new DETRR program.

We are using a clinical approach to address addiction, designed to create an overall increase in our community's safety by dealing with the underlying issues that lead to much of our area's criminal behavior.

DETRR, which stands for Drug Education & Treatment Reducing Recidivism, gives low-risk drug offenders who are accused of no other serious crimes an off-ramp out of the downward spiral of drug use, arrests, and incarceration. DETRR is limited to drug possession cases for low-risk, non-violent offenders; it is not allowed for drug dealers, violent offenders, or anyone deemed high-risk.



DETRR embraces the well-established medical principle that, for offenders who suffer from substance abuse, treatment and rehabilitation are more successful at reducing repeat offenses and increasing public safety compared to a punishment-centered approach.

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Treatment and rehabilitation are more effective and less expensive than jail or prison. Additionally, this approach benefits the community beyond the criminal justice system by improving health outcomes and employment opportunities, both of which reduce the burden on taxpayers.

Under DETRR, if offenders successfully follow the prescribed drug treatment or drug education program and stay arrest-free for six months, the drug possession charge will be dismissed.

DETRR has three different levels: Level 1 is for marijuana possession; Level 2 is for first-time possession of other drugs; and Level 3 is for low-risk repeat offenders — essentially anyone who doesn't qualify for Levels 1 or 2. In each level, defendants must remain arrest-free for six months and participate in treatment based on their individual needs. Treatment ranges from drug education to substance abuse or mental health treatment, to cognitive behavioral therapy. The key is that clinicians — not lawyers — prescribe the treatment.

Blindly locking up people who suffer from addiction undermines public safety — we can make our neighborhoods safer by attacking the root cause of the problem.

More than half the inmates in the U.S. meet the criteria for drug abuse or dependence. Research shows that treatment for substance abuse makes people less likely to re-offend. People who go through a drug diversion program are also less likely to re-offend than people who serve normal probation or jail time.

Think of DETRR as a new “younger sibling” of Hillsborough County’s highly effective Drug Court, which is most effective for people classified as “high-risk” to become repeat offenders. DETRR offers new paths for low-risk defendants, whereas Drug Court remains an option for the highest risk, highest needs offenders.

Both research and common sense tell us there is a major link between drug abuse and crime. Taking a problem-solving approach to drug abuse prevents crime, saves money, and gives people suffering from addiction the help they need. ■

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Improving Protective Injunction Process through Technology

Soon, anyone seeking a restraining order will be able to do so remotely.

When I was sworn in on Jan. 5, I committed myself to spending specific days working side by side the Clerk of Court office employees. I am committed to working in every division across our organization. I will be calling those days ClerkWork. My first official ClerkWork experience was in the Domestic Violence division.

Nearly 7,000 people rely on the Clerk's Office each year seeking protective injunctions. Most injunctions requested are related to domestic violence. The demand is high and our office is open and available to help every single day.

Knowing that the many domestic violence incidences lead to fatalities, it is important to remember that the majority of domestic violence homicides are first preceded by physical and emotional abuse. Protective injunctions and restraining orders clearly reduce, and often prevent, further violence.

Our judges, courtroom staff and legal teams work diligently to ensure proper procedures and safeguards of protection are paramount. It is important for me to stress that one of my goals is to continue the work in this area by adding improvements to the victim's experience wherever possible.

Making use of technology, so that community members no longer have to personally come to our offices in order to do business with us, is a priority of mine. This will greatly benefit so many residents but will especially benefit victims of domestic abuse. Soon, anyone seeking a restraining order will be able to do so remotely. Using technology in this fashion has been a long time coming but it is important to point out that it required changes to state law and an addition of a federal grant to cover the cost for needed additional technology.



I am happy to announce that it is expected that once a judge issues a restraining order, the applicant no longer has to come to the courthouse to get a certified copy. Last year, many opportunities became available online. Just recently, we created a new expansion of services in which an applicant, who was granted a restraining order, can now receive a certified copy sent to them through a text message.

Finally, it is noteworthy to mention that the number of applications for restraining orders was expected to increase in 2020, due to the pandemic. On the contrary, the number of restraining order applications for domestic violence, sexual violence, dating violence, repeat violence and stalking actually decreased by nearly 10 percent. It is my prayer that our community is safe, and I want to be absolutely certain that victims have every way possible to safely reach out for help. My office will continue to work to find ways to make things easier on all who need our assistance. ■

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Meet the Judge: Judge Badalamenti Goes “Off the Record”

Judge John L. Badalamenti was commissioned as a Federal District Court Judge for the Middle District of Florida on June 4, 2020. In a wide-ranging interview, Judge Badalamenti shared with *Lawyer* readers his path to the bench, the challenges of becoming a District Court Judge in the middle of a global pandemic, and the joys of being a band dad. This interview has been edited for length and clarity.

Q Judge, I understand you were born in Brooklyn, New York. Can you tell us a little about growing up there?

A I was born in Brooklyn and lived in a relatively small, predominantly Italian-American community called Gravesend. For history buffs, it was settled by the first woman to settle a town in Kings County under the Crown — Lady Deborah Moody. When I was a kid, my mom got a job as a bookkeeper for the court reporter’s office in the federal courthouse in Manhattan. During my summers between fifth and sixth grades, I would ride a train by myself from Brooklyn into Manhattan to watch trials in the federal courthouse. Summers were blistering hot and the courthouse had air conditioning — believe it or not,

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that was a big deal then. It was then, before I was 10, maybe 11, I knew I wanted to be a federal judge.

Q I understand that times were rather tough for you and your family back then.

A Yes, they were hard. There was no one I knew who had gone to college in my neighborhood. It was a blue-collar neighborhood, and we were, due to my dad's circumstances, on some form of government assistance through my teen years. My father was completely blind in both eyes. Back then there were very few opportunities for individuals with visual disabilities. The church helped us with food each week, and the Catholic school I attended had a scholarship for me and my sisters to go there. In exchange, we each had chores to do. I would have to clean chalkboards and bang out the erasers. There were ways in which the community helped each other, and that got instilled in me at a young age — that "it's not about you, it's about others." In the summer between my seventh and eighth grade year, we moved in with my grandfather in Broward County. Then I attended public high school in



Sketch of Judge Badalamenti's argument in front of the Supreme Court of the United States.

Broward County, went right from there to UF and got my bachelor's, master's, and law degrees there, mostly on academic scholarships and graduate school teaching and research assistantships.

Q You certainly have had a varied career since then, starting out with the Department of Justice working with the Federal Bureau of Prisons, followed by two

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Continued from page 19

stints as a law clerk with the Eleventh Circuit, with a couple years of private practice sandwiched in between. You also worked with the Federal Public Defender's office before being appointed to the Second DCA in 2015. Which pre-judicial position did you enjoy the most?

A I enjoyed being an Assistant Federal Public Defender more than anything. The opportunity to make an impact on an individual level and know that you were there for a Constitutional purpose gave me drive every morning. Being a public defender made me a better person, in addition to a better lawyer. I liked the opportunity to work with people from different walks of life. Although I looked different than many of my clients, I had some of the same struggles they did growing up.

Q You had the opportunity to try a number of cases working with the Public Defender's office. How do you think that extensive trial experience has helped you now as a federal trial judge?

A I can tell you that understanding how quickly things happen in the federal trial court, the strains of time when you are managing a jury, the client control issues that you have during a trial — you probably don't want to do that for the first time on the bench. There are a lot of practical things that you learn just by trying a case with another lawyer that you just never forget as a judge. I find myself to be much more understanding of the pressures that are on trial lawyers.

Q You've also had the opportunity to do something that relatively few lawyers get to do — argue a case before the United States Supreme Court. Can you tell us a little about that case and what it was like presenting oral argument to the Supreme Court?

A The case involved a fisherman named John Yates who went out for a fishing trip on a rather small, rented fishing vessel. The boat was boarded by law enforcement, and the fish that were on board were what the officer believed to be noncompliant with the regulations because they were below a certain length. When he came back into port, the officer looked at the bucket containing the undersized fish and said, "Well those don't look like the same fish; you must have thrown them overboard and replaced them with larger fish." So, they determined that Mr. Yates had replaced the 72 fish with 69 slightly larger but still undersized

fish. The case would have been a typical five-year statutory maximum for preventing the seizure of evidence. Instead, the prosecutor used a provision of the Sarbanes Oxley Act that says you can't destroy a record or document or a tangible object that relates to a federal investigation. I said this doesn't seem like it's supposed to cover fish! It seemed to me it's supposed to cover documents or accounting-type things. After I presented oral argument in the Eleventh Circuit, the panel determined that a fish is, in a literal sense, a "tangible object" and fits under the statute. I then wrote a petition for writ of certiorari, and the SCOTUS granted cert. Then it became very high-profile and a behemoth to manage.

I would characterize a SCOTUS argument as an "intense but pleasant experience." At that point, many have offered their two cents on the way it should be argued, but when you get there, it's just you, and you have to own it. It was a surreal experience to have an exchange with legal giants like the late Justices Scalia and Ginsburg, [and t]o have questions delivered by Justice Ginsburg, another person with a Brooklyn accent. And was surreal to have exchanges with Justices Alito and Sotomayor — to have my wife, daughter, mom, late stepfather, and my mentor, Judge Frank Hull of the Eleventh Circuit, there in the courtroom while I was at the podium — I felt like that kid again in Manhattan — enjoying just being in a federal courtroom. It just felt complete, like everything that happened up to that point in my life was for a reason. That's probably a bit schmaltzy, but it really felt that way.

Q It sounds like a wonderful experience. You've been on the federal bench now for several months. How has the COVID-19 pandemic impacted your handling of hearings and trials?

A I transitioned in June, right in the middle of this. I wouldn't recommend becoming a federal judge in the middle of a pandemic — that's my first piece of advice. That said, I received tremendous support from my MDFL [Middle District of Florida] colleagues. We need to do everything in our power to provide resolution for

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as many of these cases as we possibly can. The Branch can't just stop. We have a Constitutional duty. I was required to sentence individuals, with their consent, by Zoom to keep up with the criminal docket. But the civil work is roughly 90% of your day as a federal trial judge. I have been accommodative in extending deadlines, and conducting Zoom and telephonic conferences, recognizing that the attorneys themselves are trying to adjust their practices to COVID. But I need to provide, perhaps more so now, more prompting to keep the civil docket moving. I am not going to compel folks to go into the courthouse for a civil case where they may not be comfortable due to COVID. My view is that I am there to serve them; they're not there to serve me.

Q You previously stated that “Less is more” when it comes to legal writing. What advice do you have for lawyers making written submissions to you?

A In the first paragraph, tell me what you are asking for and how I can give it to you under the law. A lot of times lawyers will open up a version of the last thing that they did, and they just start doing Mad-Libs — filling in the parts of speech in blanks of a template. Don't do that. Spend a good amount of time on the motion and tell me: “Here's what I'm asking for. It's not or is opposed? You can grant me relief under this statute/rule/case” It takes great genius to make things that are complicated sound simple. Say it like you would to someone you are talking while riding the elevator. If you can't get out what you are asking for by the time the elevator doors open, you haven't crystalized things yet.

Q That may be a segue into my next question — what is your biggest pet-peeve as a Judge?

A Lawyers being disagreeable and smug to each other. I am as patient as they come. But when lawyers start pointing fingers and interrupting each other or feel the need to drop a footnote calling the other lawyer a liar or something, that is the number one thing that I will not tolerate. Civility is essential.

Q I noticed on your bio that you've been involved over the years with the Inns of Court. Do you still participate in the Inns?

A I have been involved in three different Inns of Court over the years. Inns are structured through

the master-barrister-pupil model; it really gives a chance to have at least some mentoring for lawyers. You don't stop needing to be mentored because you are forty or fifty, etc. The mentoring and fostering professionalism aspects are why I believe so strongly in the Inns.

Q Judge, researching about your background, I learned that you have dealt with some challenges to your eyesight over the years. If you don't mind, can you tell us a little about how that's impacted your career and maybe what advice you would have for others dealing with significant obstacles, health-related or otherwise?

A I think this part is important because, until very recently, I've been hesitant to discuss it publicly. As an undergraduate, I noticed glare with driving at night. I thought I just needed new glasses. It turned out that I had a disease in my corneas called keratoconus. The only viable treatment in the early '90's was a cornea transplant from a donor. I was focused on becoming a lawyer and receiving this news was devastating. I had one law school's Admissions Dean tell me that although I had the requisite LSAT scores and grades, I may want to think about a different career. I think that was the hardest point in my life because you work so hard to get great grades, do well on the LSAT, and work undesirable jobs to make ends meet. But I just used it as motivation. I was legally blind during my first two years as a law and graduate school student. So, I prepared for class and studied by using machines that enlarged the pages of my casebooks onto a monitor and by listening to my readings on cassettes read by volunteers through a program called “Vocal Eyes.” I learned how to be a better listener and faster reader. I made an incredible recovery after two cornea transplant surgeries, and my vision was not something that impeded my ability to practice law or meet the high reading demands of a judge. This Fall, I caught an eye infection in both eyes and am now blind in one eye — it wasn't caused by the eye disease — the blindness [was] caused by an infection that could have happened to anyone.

Now is my opportunity to share my experiences with others and let folks know that you don't need perfect vision to do the job of a lawyer or the

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demanding duties of an appellate or trial judge. You just need to work differently and make adjustments. It took a lot of soul-searching to share this with others because I am a private person and simply want to blend in. I have been more open now than ever about the challenges I have had since college. One thing hasn't changed for me: I will continue to set high goals — the more the odds say I can't achieve something, the more motivation I will garner to achieve it. And one goal I have set for 2021 and the years to come is to share my experiences as person with eyesight challenges to help others navigate their unique challenges.

- Q** Judge, I also saw in your bio that you were an Eagle Scout and have since served as a volunteer with the Boy Scouts and Girl Scouts. How is giving back to those programs impacted you personally and professionally?
- A** Both organizations are incredible because they provide examples of goal setting, and you have certain specified steps you need to achieve a certain thing. In the Boy Scouts, you have various ranks, and you have to do certain requirements to get through the ranks, and eventually you'll target and get to Eagle Scout. I volunteered at an inner-city school that had a Boy Scout program in Ybor, Academy Prep. Like the Boy Scouts there, I also didn't have a Dad who participated in Scouting. I felt I was giving back and would say "Listen, I know that we look different — some of us do anyway — but I didn't grow up in a situation all that different from yours. I gave a commencement speech years ago, where I said, "If you aim at nothing, you'll hit it every time." The Scouting organizations teach the importance of goal setting, working together, leadership, and learning that you must learn how to follow before you can lead.
- Q** Judge, I also have it on good authority that you are an avid reader. What are you reading these days?
- A** Right now, I am a big fan of Audible. I am reading biographies, mostly about American historical figures. I just finished books on George Mason, J.P. Morgan, and the Wright Brothers. When I read, I like to read to learn. My daughter loves fiction; it's not for me. I read books I feel help me understand why things are the way they are. David



Judge Badalamenti in front of the federal courthouse where he watched trials as a youth.

McCullough is one of my favorites. Chernow is another — he wrote a good one on Grant and, of course, he has done Hamilton. That's the kind of reading that invigorates me.

- Q** You also reportedly like to travel and take family trips. Can you tell us about your favorite trip or destination?
- A** Sure, the trip I enjoyed the most was when we went on a Disney Cruise that started from Cliffs of Dover through the northern parts of Portugal and then we hit a couple of different ports in Spain and eventually ended up in Barcelona. The opportunity to see those countries with my daughter... I never had any opportunity to go overseas at her age. That was probably my favorite to go through and see history there. When you go to places like that, you realize how incredibly young our country is. We're in an embryonic stage of our government compared to those countries.

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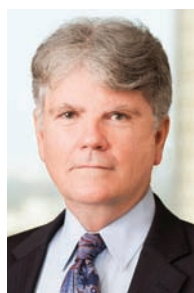
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Q What else do you like to do to relax and decompress when you are away from the courthouse?

A I take long walks and listen to podcasts or books — I've got to be learning something. And about twice a week, my daughter will come with me, and we will walk together and just talk about whatever. To me, the time with my wife and my daughter, that is my escape time. I am also a very, very committed Florida Gator football fan. And the one thing I enjoy the most right now from a parental standpoint is I am a "band dad" for my daughter's marching band. I'll have a tough day at work, get home, put on my sneakers and a band shirt that says "Road Crew" on it, and the next thing I know I am moving heavy percussion equipment to a football field. To me, that is fun. I blend in, and I don't have to make any decisions!

Q Judge, last question, what do you find most rewarding about serving on the bench?

A The most rewarding thing is knowing that I have the opportunity every day to ensure that Constitutional rights are protected. Once the judiciary stops doing its job of protecting rights, our Republic falls apart. The reward comes from knowing you are there to afford someone an opportunity to be heard and ensure that their rights are being protected. I don't want to be feared or catered to. I am here to serve the people. You don't become a judge to make money. You become a judge because you recognize it's not about you. You become a judge because you want to be an instrument in ensuring others' rights are protected. At bottom, it's not about the judges; it's about the people, the Constitution, and our country. ■



Author: Michael S. Hooker – Phelps Dunbar LLP

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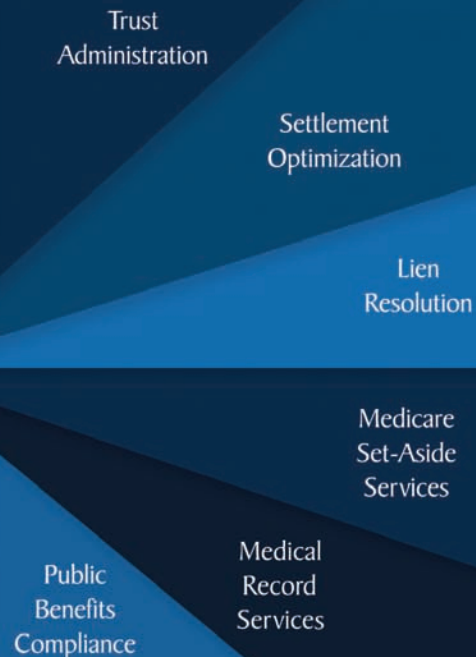
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FLORIDA OVERHAULS COURTS' APPELLATE JURISDICTION

Appellate Practice Section

Chairs: Joe Eagleton – Brannock Humphries & Berman and Chance Lyman – Buchanan Ingersoll & Rooney



With most circuit court appeals heading to district courts of appeal, Florida practitioners must ensure they are seeking review in the correct court.



Historically, circuit courts reviewed orders of county courts and some administrative agencies. But as of January 1, 2021, most appellate proceedings have been transferred directly to the district courts of appeal. Florida practitioners should know and understand these changes to ensure they are seeking review in the correct court.

The Florida Constitution says that district courts have jurisdiction to hear appeals that are “not directly appealable to the supreme court or a circuit court.”¹ It also states that circuit courts have “jurisdiction of appeals when provided by general law,” meaning

by statute.² Effective January 1, the legislature significantly changed the scope of circuit court appellate jurisdiction. Section 26.012, Florida Statutes, used to say that, with a few exceptions, circuit courts had jurisdiction over appeals of orders and judgments from county courts and local code enforcement boards. That provision of the statute has been eliminated. Now, the statute limits circuit courts’ appellate jurisdiction to code enforcement and limited appeals expressly provided by general law. The legislature also eliminated circuit court review of orders in county criminal matters

by repealing section 924.08, Florida Statutes. With these amendments, appeals of most county court orders and judgments will go to the district courts.

Additionally, because jurisdiction to review interlocutory orders follows appellate jurisdiction over final orders, new and existing petitions to review county courts’ interlocutory orders will also go to the district courts.³ Interestingly, district courts will have to convert some of those existing certiorari proceedings to nonfinal appeals because, unlike circuit courts,

Continued on page 27



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events**

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DATE**

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at www.hillsbar.com.



March 25

Special HCBA Virtual Awards Luncheon

March 27

Diversity & Inclusion Committee
Virtual Networking Social

May 11

HCBA Law Day Virtual Membership Luncheon

Continued from page 26

district courts are bound by Florida Rule of Appellate Procedure 9.130.⁴

With most county court appeals and certiorari petitions going to district courts, what remains of circuit courts' appellate jurisdiction? Regarding appeals, only those cases that other statutes afford circuit court review, such as code enforcement proceedings under §§ 162.11, 489.127(5)(j), and 489.531(4)(d), Florida Statutes; civil infractions under §§ 316.0083 (5)(f) and 318.16(1) (traffic); 327.73(7) (vessels); 376.071(2)(g) and 376.07(3)(f) (discharge of pollutants); 379.412(2)(a)4, 379.4015(1)(j), and 379.401(1)(h) (relating to wildlife); 556.107(1)(h) (underground utilities); 569.005(6)

(tobacco sales/permitting); and 767.12(4) (dangerous dogs), Florida Statutes; and voluntary arbitration awards under § 44.104(10), Florida Statutes. Circuit courts also retain certiorari jurisdiction over final agency actions for which appellate review is not provided, like land use decisions of local governments and administrative driver's license suspensions. The legislative changes do not alter the circuit courts' jurisdiction in other extraordinary writs.

Fortunately, there is no need to worry if you file in the wrong court. The appellate rules require courts receiving cases incorrectly filed to be transferred to the correct forum.⁵ Existing circuit court appeals will be automatically transferred to the district courts; however, practitioners may need

to file motions to transfer pending petitions if your court does not do so on its own. ■

¹ Art. V, § 5(b), Fla. Const.

² *Id.*

³ Art. IV, § 4(b)(1), Fla. Const.

⁴ The new legislation significantly blunts the impact of *Blore v. Fierro*, 636 So. 2d 1329 (Fla. 1994), which holds that appellate review of nonfinal county court orders by circuit courts cannot be conveyed by court rule.

⁵ Fla. R. App. P. 9.040(b).



*Author:
Ari Fitzgerald -
Thirteenth
Judicial Circuit*

Appellate Section Webinar

On December 16, the Appellate Section hosted a special CLE to allow its members to meet the new judges of the Second District Court of Appeal. During this seminar, attendees were able to hear Judge Suzanne Labrit of Tampa and Judge John Stargel of Lakeland introduce themselves and their careers.

The topics discussed included legal careers, general judicial philosophies, paths to becoming an appellate judge, practice preferences, and experiences since joining the Second District. We thank Judges Labrit and Stargel for taking the time to speak to our members!



Suzanne Labrit



John Stargel



Chance Lyman



Joe Eagleton

COMMON MISTAKES TO AVOID WHEN PREPARING A FINANCIAL AFFIDAVIT

Collaborative Law Section

Chairs: Cory Brandfon – Harris Hunt & Derr, PA & Shannon Green – Westbay CPAs



The financial affidavit is an important document and care should be given in its preparation. With that in mind, be cautious in its preparation and avoid these typical errors and mistakes.

A financial affidavit prepared by each party is necessary in both litigated family law cases and collaborative family law cases. In litigation, it is used to report income, assets, liabilities, and expenses of each party. In collaborative family law cases, it is also used for both sharing of information and, eventually, for filing with the collaborative settlement agreement. The financial affidavit is an important document and care should be given in its preparation. With that in mind, be cautious in its preparation and avoid these typical errors and mistakes.

Double Dipping

People often list the total monthly amount paid on their credit cards under the “monthly payment to creditors” section. If there is a previous balance on the credit card statement, then some of the current balance may relate to prior spending and some might relate to current spending. It is important to understand how credit cards are being used to be able to accurately reflect them on the financial affidavit.

If the balance paid on the credit card is for expenses in the current period, then it should not be listed under the section “monthly payments to creditors.” Itemizing

the payment here is “double dipping,” as the expense is already reported elsewhere on the affidavit.

However, if the credit card balance relates to spending for previous periods, then it is appropriate to show the minimum payment due and this would not be a double dip. If you are using family law software to prepare financial affidavits, the software helps to clarify the intent of “monthly payment to creditors” by including in the description of the category “only when payments

are currently made by you on outstanding balances.”

Please see the screen shot below that shows the note, for reference.

Understating Income

Another common error made in financial affidavit preparation is failing to reflect all sources of income. In addition to the wages/salary earned from working a job, you and your client must consider other sources. For

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example, if the client earns interest or dividends from a brokerage account, then list that income. Bonuses should be reported, as well. Even if bonus amounts and the timing of their receipt vary, they should be disclosed. If the amounts vary by year, and you are not sure how to determine an average, then footnote the annual amounts received for the last three to five years and indicate “TBD” in the column for the specific amount. By fully disclosing the amounts paid over the recent years, you have clearly attempted to be as transparent as possible.

In-Kind Income

Another error that we frequently encounter is inaccurately reporting expenses that are paid by someone other than the affiant, so-called “in-kind income.” If another person is paying for electricity, for example, then the affiant should include the amount paid as an expense, but also report it as income. This is an example of an “in-kind” benefit/income. Any type of payment that reduces personal living expenses should be treated as income.

There are many common mistakes that are made in preparing financial affidavits. If you are not sure how something financial should be represented on the affidavit, research how best to present it. The financial affidavit is a critical aspect in every family law matter, and extreme care must be taken to ensure that the data on it is presented accurately. ■

Author: Shannon Green – Westbay CPAs



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THE STATUTE OF REPOSE: INITIAL C.O. OR FINAL C.O.?

Construction Law Section

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



**The Statute of Repose
must be calculated on
a unit-by-unit basis
for this project.**



An Orange County trial court, in *Spring Isle Cmty. Ass'n, Inc. v. Pulte Home Corp., et al.*, Orange County Case No. 2017-CA-1953-O (Circuit Judge Chad K. Alvaro) (June 10, 2020), recently provided guidance regarding the commencement of Florida's Statute of Repose, Section 95.11(3)(c), Florida Statutes, for projects consisting of distinct units. The case relates to a 390-unit townhome project Pulte built over a several-year period. On March 2, 2017, the townhome Association sued Pulte for construction defects. On March 10, 2017, Pulte issued a Chapter 558 notice to its subcontractors. On March 24, 2017, Pulte filed third-party claims against its subcontractors. Although the Association filed its claims within the Statute of Repose, the trial court determined that the Statute of Repose barred the majority of Pulte's downstream claims against two subcontractors.

Pulte had broad "Master Agreements" with its subcontractors, and it would issue a document referred to as a "Schedule A" to award work on a unit to a subcontractor. Upon completion of each unit, a certificate of occupancy would be issued. Certificates of occupancy were issued on 329 of the 390 townhomes before March 24, 2007.

Two stucco subcontractors sought partial summary judgment on the basis that the Statute of Repose barred all claims for townhomes that received certificates of occupancy more than 10 years before Pulte filed its third-party claims. The Statute of Repose, in pertinent part, provides that an action founded on the construction of an improvement to real property must be commenced within 10 years after:

- (1) The date of actual possession by the owner;
 - (2) The date of completion of the contract; or
 - (3) The date of the issuance of a certificate of occupancy,
- whichever date is latest.**¹

The court held that the Statute of Repose must be calculated on a unit-by-unit basis for this project. Since Pulte developed and constructed the project, the court determined that Pulte was an "owner" for purposes of the Statute of Repose, and that each Schedule A together with terms from the Master Agreement was a separate "contract." Because Pulte acknowledged that the subcontractors would complete a unit before a certificate of occupancy was issued, the court determined that the issuance of a certificate of occupancy for a unit was the trigger for the commencement of the Statute of Repose for such unit.

Accordingly, the court granted partial summary judgment in favor of the subcontractors with respect to Pulte's claims relating to units with certificates of occupancy issued more than 10 years before Pulte filed its third-party claims. This case illustrates the intended application of the Statute of Repose, which is to provide a firm bar date for claims. The 2018 revision to Section 95.11² provides an additional year to commence third-party claims, but it may still be advisable for contractors to consider the risks of "Master Agreements" and to conduct due diligence regarding potential claims on past projects, on a unit-by-unit basis, before the Statute of Repose expires. As of this writing, the ruling is pending on appeal.³ ■



¹ § 95.11(3)(c), Fla. Stat. (2017).

² The amendment did not apply in this case.

³ *Spring Isle Community Association, Inc. Vs. Herme Enterprises, Inc et al*, Case No. 5D20-1420 (appeal filed June 26, 2020).

Authors:
Adam C. King and
Alex M. Sarsfield
— Mills Paskert
Divers, P.A.

Construction Law: “Coronavirus and the Courts” Webinar

On November 19, the Construction Law Section hosted a CLE webinar, titled “Coronavirus and the Courts – A Judicial Perspective.” Special guest speaker Judge Darren Farfante of the Thirteenth Judicial Circuit provided attendees insight into how the judiciary feels COVID-19 has affected courtroom life. HCBA would like to thank Judge Farfante for speaking with us.



Darren Farfante



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Briana A. Texter
Lisl A. Unterholzner
David Walsh
Tracey Willis
John David Zarate, Jr.



An Abundance of Holiday Cheer for Elves for Elders

The CSC, HCBA members, and our community made a difference in the most difficult year since the inception of Elves for Elders.

While the Elves for Elders drive is always a marquis event for the Community Service Committee, this year was like no other, because of the pandemic. Thankfully, our members, under the leadership of Head Elf Lisa Esposito, rose to the challenge in every possible way.

The Elves for Elders Drive benefits the non-profit Aging Solutions, Inc, which is the Office of Public Guardian for Hillsborough, Pinellas, Brevard, Manatee, and Pasco counties. The elders we support are wards of the state, many of whom live on approximately \$35 a month. This monthly income from Medicaid is their only monetary resource to purchase basic essentials such as toiletries, clothing, and a luxury item like Cheetos or a stuffed animal. These elders are unable to care for themselves and have no family. Without the generosity of elves like you and elves from all over Florida and the U.S. (elves spread the word very well), these elders would have no presents for the holidays. While we normally organize a visit to Whispering Oaks (one of the nursing homes served by Aging Solutions, Inc.) where we hand out small gifts and candies and go caroling down the hallways,

COVID-19 prohibited us from doing so this year. While this was disappointing, it did not stop our members from finding novel ways to go above and beyond for those in need during this unique holiday season.

In addition to adopting every ward (all 400 of them, more than any other year of the past seventeen years Head Elf Lisa has been working with this charity), we learned shortly before Christmas that 200 needy elders at Whispering Oaks required shampoo, soap, razors, toothbrushes, and other basic essentials. Under a time crunch, and with many of you already having generously donated to the drive, President Paige A. Greenlee sprung into action and emailed our members for any additional support they could provide. The response was nothing short of amazing.

Not only did our members contribute the needed items, but many of you helped spread the word and the community came together — including lawyers, paralegals, legal assistants, engineers, teachers, nurses, clients, retirees, and people from all professions — all of whom donated much-needed funds that enabled our

Continued on page 19

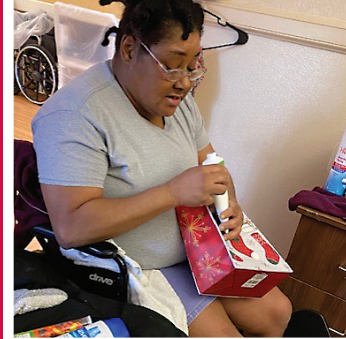


committee to go on a shopping spree. We spent an entire afternoon clearing out the shelves and holding up the lines of Dollar Tree stores throughout our community, but when the employees of these stores learned about the drive, they did everything possible to find what we needed to make this drive a success. Thanks to everyone's generosity, we were able to exceed our goal, and the most vulnerable members of our community have you to thank for a special holiday season. In fact, we were able to donate more than the basic necessities, with gifts such as fuzzy socks, stuffed animals, hand-written holiday cards, body wash, candy and delicious boxes of baked cookies. We proudly can say "we did it." We were able to find elves for 600 elders, and therefore every needy elder had an elf. The Community Services Committee, HCBA members, and our community made a difference in the most difficult year since the inception of Elves for Elders, despite the needs being greatly increased and the time for action limited. Thank you!

Lastly, Head Elf Lisa deserves special praise for all her hard work and selfless dedication to this drive. This was Lisa's 17th year chairing the Elves for Elders drive, and this achievement should be recognized by all. Lisa worked tirelessly for months coordinating the Elves for Elders event, not because she seeks recognition, but because she truly cares for those in need in our community. Lisa never fails to ensure the drive's success, no matter what obstacles are in her path. ■



*Authors: Jordan L. Behlman –
Greenburg Traurig, P.A. & Lara
LaVoie - LaVoie & Kaizer, P.A.
(see p.32) & Lisa Esposito – Law
Offices of Lisa A. Esposito, P.A.*



EXTINGUISH RAPID-FIRE EMAILS: STOP, DROP & ROLE

Diversity & Inclusion Committee

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



Rapid-fire emails burn bridges of communication.



The all-telling *swoosh* or *ding* of an outgoing or incoming email can be a source of dread or delight. Since the advent of the pandemic, email correspondence has become an increasingly more integral part of legal practice. Simultaneously, legal professionals worldwide have reported an uptick in the occurrence of workplace friction stemming from email correspondence — frequently unrelated to the actual nature of the work at hand. Why is this the case?

The answer is two-fold. Firstly, recent and continuing events have understandably caused emotions to run high and patience to run low. Secondly, as the Florida Bar's *Best Practices for Professional Electronic Communication*¹ explained, “[E]mail has made it easier for people to communicate very quickly, it also has made it easier for people to forget about civility.” So how can we as professionals foster and maintain a diverse and inclusive working environment via email correspondence? Answer: extinguish rapid-fire emails — emails written in haste that are poorly worded, inadvertently offend, and/or cause unnecessary friction going forward.

Rapid-fire emails burn bridges of communication. At one time or another, we have all been on the receiving end of a rapid-fire email. And, whether we want to admit it

or not, we may have played the quarterback who sent a rapid-fire email hurtling into another's inbox. The common refrain for dealing with a fire that breaks out on our person is *Stop, Drop, and Roll*. So, too, in dealing with a rapid-fire email that breaks out in our personal email inbox, we need to *Stop, Drop, and Role*.

1. STOP the Email Train

The pandemic has necessitated the use of emails as opposed to in-person meetings and created a preference for emails over telephone calls. Consequently, email trains are commonplace. Email trains are long trails of messages formed when emails are sent back and forth under the same subject line and accordingly grouped together. Email trains are useful in tracking the progression of a conversation. However, as an email train grows, there is an inadvertent tendency to become more casual in speech and skip the formalities of a greeting, closing, or punctuation. This is when a rapidly sent email may catch flame and become a rapid-fire email causing unnecessary discord.

To prevent a rapidly sent email from becoming a rapid-fire email, stop the email train. Best practices advise stopping the train when: a new subject is being discussed, a new recipient is added, or an overly casual tone has developed. Moreover, in any email train, avoid

using the almighty “Reply All” button. While replying, “Reply All” should be used sparingly and only when necessary. As the Florida Bar's *Electronic Communication* reminds us, email messages can all too easily be misconstrued as lacking “courtesy and respect — two hallmarks of professionalism.” This in turn can lead to remarks “that could be perceived as unethical, unprofessional, defamatory or prejudicial.” Therefore, stop the email train to prevent a rapid-fire email from breaking out.

2. DROP a Line

Social-distancing holds hostage our most effective means of communication — in-person meetings. According to former FBI hostage negotiator and author Chris Voss, seven percent of meaning is communicated through spoken word, 38% through tone of voice, and a whopping 55% through body language. Thus, delivery or receipt of thought via email may lack up to 100% of its intended meaning. It comes as no surprise, therefore, why the Florida Bar's *Electronic Communication* states emails are “not a good substitute for face-to-face contact.” While we can't always conduct in-person meetings, we can drop a digital line of communication when a rapid-fire email breaks out. With a telephone call, we gain 45% of a communication's intended

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meaning. Better yet, with a virtual face-to-face videoconference call, we can regain up to 100% of a communication's intended meaning.

3. Understand Your ROLE

Applying the first two steps, of (1) stopping the email train and (2) dropping a line, will help extinguish the outbreak of a rapid-fire email. However, when a rapid-fire email breaks out, it is all too easy to become incensed at yourself or others. Hence, with what mindset should we approach extinguishment? In such situations one scholar counseled, "Lead not by example of your power, but by the power of your example." In other words, understand your role in any rapid-fire email and temper your response accordingly. As the Florida Bar advises, "Give your message thoughtful consideration before sending it" and "if you feel angry, put your message in the "drafts" folder and review it again later."

Unfortunately, recent and continuing events serve only as kindling to create raging rapid-fire emails. May we be determined, therefore, to extinguish rapid-fire emails — however they arise — when we *Stop*, *Drop*, and *Role*. ■

¹ The Florida Bar, *Best Practices for Professional Electronic Communication* (May 2020), available at https://www-media.floridabar.org/uploads/2020/06/ADA-E-communication-FINAL_May-2020.pdf (last visited March 1, 2021).



Author: Alexis Deveaux — Gunster, Yoakley & Stewart

HCBA Holds Virtual Diversity Membership Luncheon

Thank you to the more than 200 members who participated in our annual Diversity Membership Luncheon on January 19. We were pleased to recognize local legends Hon. E.J. Salcines and Delano Stewart with Justice & Diversity Lifetime Achievement Awards, welcome representatives from our fellow voluntary bar associations, and hear an outstanding presentation from Professor Theodore Shaw, the Director of the Center for Civil Rights at UNC School of Law at Chapel Hill.



Theodore Shaw



Judge E.J. Salcines



Delano Stewart



Paige Greenlee



Christina Potter Bayern



Michelle Gilbert



Antina Mobley



Valeria Obi



Aaron Wallace Esq. (FLMIC)

Thank you also to our luncheon sponsor, Florida Lawyers Mutual Insurance Company.



A DAY IN THE LIFE OF AN ASSISTANT CITY ATTORNEY

Government Lawyers Section

Chairs: Christian Katchuk - 13th Judicial Circuit Court & Lyndsey Siara - 13th Judicial Circuit Court



**As a litigator, the work
I perform for the City
can be impacted by
any number of City
departments and divisions.**



I make my way to Old City Hall, mentally annotating my to-do list for the day.

I greet the guard and a City Council member as I head to the City Attorney's Office's Litigation division.

The City Attorney is appointed by the Mayor. The Tampa City Attorney's Office is comprised of approximately 20 attorneys that represent dozens of City departments and divisions. Our attorneys specialize in everything from real estate, land use, code enforcement, governmental procurement, environmental law, personal injury law, employment law, to constitutional law and more. Our litigation attorneys represent the City of Tampa in each of these practice areas before administrative bodies, and state or federal court, at both trial and appellate levels. In everything we do, the City Attorney's Office strives for quality legal service, professionalism, and a strong work ethic that will benefit Tampa's citizens.

It's 8:05 a.m. and I quickly check my email. The Chief of

Litigation pops into my office for an update on any matters that should be raised "For the Good of the Order" at our morning meeting. I respond, "The usual... several Zoom depositions, a WebEx hearing to resolve a discovery dispute, and I'm still working on that appellate brief."

I squeeze in some email responses and a call to counsel for a co-Defendant in one of my many lawsuits. I sigh with relief as I leave a voice mail: "Tag, you're it."

As a litigator, the work I perform for the City can be impacted by any number of City departments and divisions. Therefore, I scan the local news for any relevant headlines that may indicate a lawsuit on the horizon. For the same reason, I scan City Council's agenda and make a note to touch bases with various attorneys in the office.

At 9:30 a.m., the "All Attorneys" meeting begins. As we prepare for the week, I see my muted office phone light up. A quick look at the caller ID and I realize: "Tag, I'm it."

At 10:03 a.m., my Zoom depositions begin. I am defending

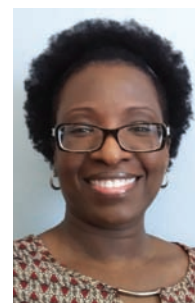
the City in a personal injury case; my exhibits spread out on my desk, just out of the camera's view. As the depositions conclude, I annotate the file and draft instructions to my paralegal for additional discovery. It's now 12:30 p.m.

Before heading out for lunch, I ask a colleague about the colleague's non-binding arbitration, and make a mental note to finalize my own presentation for an end-of-month non-binding arbitration.

By 2:55 p.m., I am in the "zone" and my legal research leads me to "The Case." I incorporate it into my brief and leave it alone for the day, needing time and distance to ensure the argument is persuasive.

It's now 4:10 p.m. I begin pulling the files for my non-binding

arbitration and tell myself, "No time like the present." ■



*Author:
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Hargrett –
City of Tampa
Attorney's Office*

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The Trademark Modernization Act of 2020 (the TM Act)¹ was signed into law on December 27, 2020, as part of the 2021 Consolidated Appropriations Act.² The TM Act amends the Trademark Act of 1946, or the Lanham Act,³ providing the United States Patent & Trademark Office (USPTO) with more tools to combat the false and inaccurate trademark applications and registrations filed by foreign entities.⁴

Third Party Submission of Evidence

Section 1 of the Lanham Act now will permit a third party to submit evidence in support of a refusal of a trademark application. Once the evidence is submitted, the Examining Attorney must determine whether the evidence will be included on the record of the trademark application. This amendment becomes effective on December 27, 2021.

Office Action Response Deadlines

Current deadlines to respond to refusals of registrations, called

Office Actions, are six months from the date the Office Action is issued. Section 12(b) of the Lanham Act is amended to permit the Examining Attorney to shorten the response deadline to at least sixty days from the date the Office Action is issued. However, the TM Act allows an applicant to request extensions to a deadline that is under six months.

Expungement and Reexamination Proceedings

Two new proceedings are added in an effort to challenge false registrations. The first, an *ex parte* expungement proceeding, allows a petitioner to expunge a registration on the grounds that the mark has never been used in commerce. The procedure for expungement proceedings will be the same as the resolution of Office Actions. If the elements of non-use are found, the registration will be cancelled. A petition for expungement may be filed between three to ten years after registration.



The Act provides the USPTO with more tools to combat the false and inaccurate trademark applications and registrations filed by foreign entities.

In the second new proceeding, an *ex parte* reexamination, a petitioner must allege that the mark was never used in commerce “on or before the relevant date.” The relevant date for an “in use” or 1(a) application is the date the application was filed. The relevant date for an “intent to use” or 1(b) application is the date an amendment to allege use was filed, or once the deadline to

file a statement of use has passed. Reexamination proceedings can only be initiated five years after registration.

Presumption of Irreparable Harm

Lastly, to obtain injunctive relief in federal trademark litigation, a plaintiff must prove that the plaintiff would suffer irreparable harm, and that there is no adequate remedy at law. The TM Act resolves a circuit split created by the U.S. Supreme Court in *eBay Inc. v. MercExchange, LLC*,⁵ which

Continued on page 39

**Interested in writing an article for the *Lawyer* magazine?
Contact Stacy Williams at stacy@hillsbar.com for more information.**

Florida Bar President Speaks at Monthly Membership Speaker Series

As part of its monthly virtual membership series on December 15, HCBA members had the privilege of hearing Dori Foster-Morales, the president of The Florida Bar, discuss the state of the Florida Bar and its programs. We appreciate Foster-Morales for joining us at this special event, and providing us an update.

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effectively eliminated the presumption of irreparable harm even after a finding of trademark infringement. The TM Act entitles a plaintiff seeking a permanent injunction to a rebuttable presumption of irreparable harm if the court finds violations of the Lanham Act. If a plaintiff is seeking a preliminary injunction or temporary restraining order, and the court finds a likelihood of success on the merits, a plaintiff is entitled to the same rebuttable presumption of irreparable harm. ■

¹ Trademark Modernization Act of 2020, H.R. 6196, 116th Cong. (2020), available at <https://www.congress.gov/bill/116th-congress/house-bill/6196/text> (last visited Jan. 29, 2021).

² Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020), available at <https://www.congress.gov/bill/116th-congress/house-bill/133?q=%7B%22search%22%3A%5B%22hr133%22%5D%7D&r=2&s=1> (last visited Jan. 29, 2021).

³ 15 U.S.C. §§ 1051 *et. seq.*

⁴ *Counterfeits and Cluttering: Emerging Threats to the Integrity of the Trademark System and the Impact on American Consumers and Businesses*, Hearing on H.R. 6196 Before the Subcomm. on Courts, Intellectual Property, and Internet Comm. on the Judiciary, 116th Cong. (2019) (statement of Mary Denison, Commissioner for Trademarks) available at <https://www.uspto.gov/about-us/news-updates/statement-commissioner-trademarks-mary-boney-denison-united-states-house> (last visited Jan. 29, 2021).

⁵ *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006).

Author: Elana Greenway Faniel –
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THE FIRST AMENDMENT AND EMPLOYEE SOCIAL MEDIA USE

Labor & Employment Law Section

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



Often, employees believe their social media posts are protected First Amendment speech.



People increasingly flock to their social media accounts to make their opinions on a variety of political issues known. For employers, this increased activism by employees sometimes results in workplace conflict — especially where employees’ social media posts were impassioned, or arguably over the line. But can employers restrict social media posts employees make on their own time?

Often, employees believe their social media posts are protected First Amendment speech. Whereas employees of private employers are not protected by the First Amendment, employees of public employers do have protection. In certain circumstances, however, even government employers may limit the speech their employees make outside the workplace.

For an employee’s speech to be protected, he must speak as a private citizen on a matter of public concern. If this threshold is met, courts then employ a balancing test to determine if the employer’s interest in promoting efficiency of its public service outweighs the employee’s interest in speaking. Courts generally give the government a high degree of deference when an employee’s

speech interferes with working relationships that are essential to the fulfillment of public responsibilities. However, the tone of the employee’s speech is not a determinative. “[D]ebate on public issues should be uninhibited, robust, and wide-open, and ... may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”¹

In *Rankin v. McPherson*, a deputy constable made threatening statements about President Ronald Reagan shortly after he was shot. Although her speech was inflammatory, the Court held that it was protected. In employing the balancing test, the Court considered the employee’s role. Although her title was “deputy constable,” her activities were clerical in nature, with little public interaction. Because her comment did not interfere with the operation of the employer, her speech was protected.

While the *Rankin* decision did not involve social media, it is often cited and instructive. Recently, the Sixth Circuit considered a case wherein an emergency dispatcher used racially charged language while posting about the 2016 presidential election. Citing *Rankin*, the Court held that her speech was

protected, even though it was crude. However, because it impaired the harmony necessary for co-workers to perform their duties, her termination did not violate the First Amendment.²

Several claims where social media use is the central question are currently in the early stages of litigation. For example, this past summer, a Massachusetts detective was fired after posting in favor of Black Lives Matter, purportedly because the employer perceived it disruptive to the proper functioning of the police department. A Michigan teacher has alleged that he was suspended because he tweeted pro-Trump messages. The school denies the claim. Given the prevalence of social media in today’s culture, and the current political landscape, more cases will likely follow.

These and other similar social-media First Amendment cases will be interesting to watch. ■

¹ *Rankin v. McPherson*, 483 U.S. 378 (1987).

² *Bennett v. Metro. Gov’t of Nashville & Davidson Cty., Tennessee*, 977 F.3d 530 (6th Cir. 2020).

Author: Amanda L. Biondolino — Sass Law Firm

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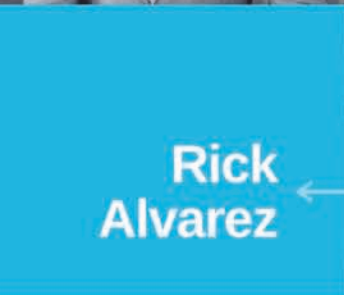
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Past Presidents' Cocktail Reception

On December 14, the HCBA held a special outdoor cocktail reception for its past presidents, in the place of its usual indoor annual luncheon. HCBA's past presidents enjoyed an evening reception with current HCBA and YLD board members. We were pleased to have a chance to safely meet in-person and catch up with one another during the holiday season.



Thank you also to The Bank of Tampa and Big Storm Brewery for sponsoring this festive event!



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INTERACTING WITH YOUR GAL – PRACTICING TIPS

Marital & Family Law Section

Chair: Rachael L. Rudin – Family First Law Group, PLC



Florida Statute §61.403 outlines, “A guardian ad litem when appointed shall act as next friend of the child, investigator or evaluator, not as attorney or advocate but shall act in the child’s best interest.” What does this really mean? Navigating how we interact with our Guardian Ad Litem (GAL) can be confusing and often parents and children feel intimidated.

Family disputes create turmoil for the entire family, but for children it can be scary, perplexing and frustrating. The mistrust between parents can harm children and create additional fears with long-lasting impacts.

Often in contested cases involving children, the courts and counsel turn to a GAL to assist them in understanding the family and its dynamics. GALs are there to investigate and provide recommendations. Often counsel, parties, and children have improper expectations and a lack of understanding of the GAL’s role.

While the governing statute provides some guidance, it lacks the specificity necessary to guide the process. Here are five practical guiding principles to follow when interacting with your GAL:

1. Craft the Order Appointing the GAL – Oftentimes counsel and

the court will turn to a form order for the appointment. The order appointing the GAL can be a very useful tool. It can narrow the issues and can set limits for the investigation. It can also be used to waive hearsay to allow the GAL to report more effectively and allow the investigation to be conducted more efficiently. Once the GAL is chosen, involve the GAL in crafting the order. The GAL can provide language and problem-solve foreseen pitfalls while also being empowered in the process.

2. Information Gathering – Remember that your GAL is stepping into your case with little to no knowledge of your family. Provide your GAL with a binder containing all the pertinent information to familiarize the GAL with the case. Timelines are very helpful.

3. What Do We Tell the Kids? – When I act as a GAL, I tell parents it is important to provide the kids with a brief explanation of why they are coming to speak with me. It is always helpful if parents reassure their children that the GAL is a safe person to talk to and, in order to help their parents make some



Family disputes create turmoil for the entire family, but for children it can be scary, perplexing, and frustrating.

decisions, the GAL wanted to meet them. I always tell parents if there are toys or activities the kids like to let them bring those items to share with me.

4. Be Patient with your GAL – Educate your clients that the GAL may not always be forthcoming during their investigation because the GAL must maintain neutrality through the process.

5. The GAL is not the Judge – Your GAL does not have the authority to make the other side do anything. Only the Judge has the authority to make decisions. The GAL is there to make recommendations.

Remember, the GAL’s job is to keep the children central in their view of the case, and GALs are not there to give the parents advice or counsel. In summary, GALs are used as one of the many tools a court has in its toolbox in cases

involving children. ■



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– Shirin
Rustomji, P.A.*

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THREE TIPS FOR IMPROVING YOUR MEDIATION AND NEGOTIATION SKILLS

Mediation & Arbitration Section

Chair: Harold Oehler – Oehler Mediation



The negotiator plays the part of bully, conciliator, enforcer, savior, confessor, instigator and peacemaker, and that's just a few of the parts.

**— Chris Voss,
*Never Split the Difference***



1. Read Books and Articles to Improve Your Negotiation Skills

Great negotiators study, practice and hone their skills. While there is a plethora of articles and books on the art of negotiation, I recommend these four sources:

- The Harvard Program on Negotiation (PON) offers a wide array of resources including daily blog posts, articles, and newsletters. Most of this information is free and can be obtained from their website at www.pon.harvard.edu. PON also presents a number of courses throughout the year on negotiation and leadership skills, including classes on mediation.
- *Getting to Yes*, authored by Roger Fisher and William Ury, is the

primer for negotiation basics and terms, and they were two of the founders of the Harvard Program on Negotiation (PON).

- Another book that I highly recommend is *Never Split the Difference*, by Chris Voss and Tahl Raz. Voss was the FBI's lead international kidnapping negotiator. You can't "split the difference" with lives at stake. Voss' book is full of invaluable tips that you will use in every negotiation.
- The fourth, one of my favorite books, is *The Politics of Diplomacy* by James A. Baker III. Baker tells the story of his three-plus years as

the U.S. Secretary of State. It covers the end of the Cold War, the reunification of Germany, and the first Iraq War. The book is about 700 pages. It is full of details from virtually every negotiation he conducted during this period. More importantly, he writes about the preparation that went into each and every negotiation. Great negotiators prepare to negotiate.

2. Use Mediation Openings

Some attorneys I work with elect not to give an opening or make it

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SEXUAL HARASSMENT AND EMPLOYMENT RETALIATION LAW

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very superficial. I recommend detailed openings with these tips and caveats:

Speak with the other side, and not to the other side. Slow your opening, make eye contact, and smile. Make it more of a conversation, rather than a speech. To that end, prepare a list of calibrated questions to use either in opening or throughout the caucus process. These are open-ended questions usually of the “what” and “how” variety. Using open-ended questions like these can help remove aggression from the conversation. It allows you to introduce ideas and requests without sounding pushy, or as Voss writes, it allows you to nudge.

3. Use Active Listening and Tactical Empathy

Active listening is the single greatest negotiation skill. It consists of complete focus on, and curiosity of, what your counterpart is saying. Your goal should be to extract and observe as much information as possible. Listening intensely also creates tactical empathy. The other party will feel that you are, at a minimum, trying to understand and appreciate their position. Likewise, they too will go to

greater lengths to understand your position.



Author: Gerald T. Albrecht – Albrecht Mediation Services



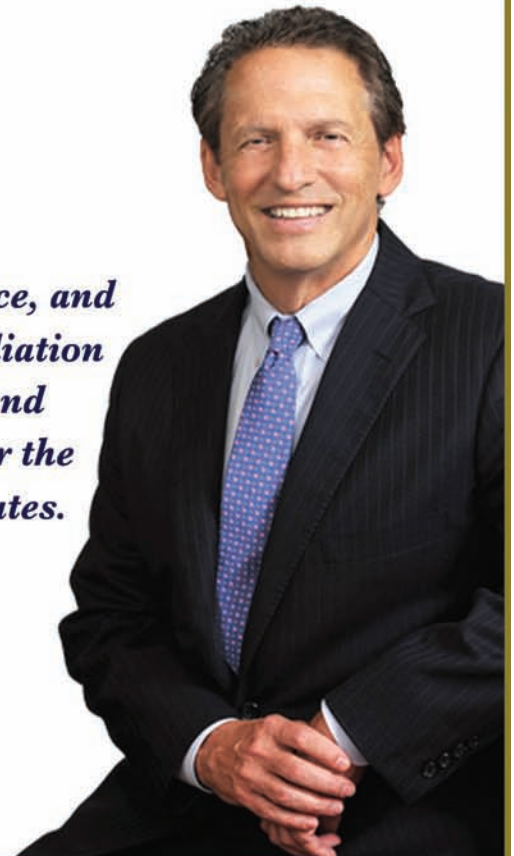
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DISCHARGE UPGRADES: AN OPPORTUNITY FOR TREMENDOUS IMPACT

Military & Veterans Affairs Committee

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



For attorneys seeking a truly meaningful pro bono experience, filing a discharge upgrade application for a veteran may fit the bill.



Photo Credit: Thompson Brand Images.

Who is a veteran? That may seem like a simple question, but the answer depends on who one is talking about. Perhaps more importantly, the answer will determine what services and resources an individual who served in the military may receive. The Department of Veterans Affairs (VA) defines a veteran as: “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”¹ While “other than dishonorable” seems to suggest that veterans with any discharge that is not dishonorable would meet this definition, that is not the case.

Military discharge can be administrative or punitive. The four administrative discharge types are Honorable, General (under honorable conditions), Other Than Honorable (OTH), or Entry-level Separation. The three punitive discharge types are Bad Conduct, Dismissal, and Dishonorable. All discharge types aside from Honorable and General are considered “bad paper.” Many veterans who were discharged with bad paper are not eligible for VA healthcare, home loans or service-connected disability compensation. These veterans are at great risk for homelessness,

unemployment, and untreated mental and physical health issues.

Many veterans and civilians think it is easy enough to get an Honorable discharge. However, veterans who experience post-traumatic stress or other mental health issues may be discharged with an OTH because of behavior that is related to or caused by the mental health issue. LGBT veterans may have been discharged with bad paper as a result of the “Don’t Ask, Don’t Tell” policy, which was repealed ten years ago. Many other circumstances exist which warrant a second look at whether the discharge was justified.

What options exist for veterans who served their country, but received an OTH, dishonorable or bad conduct discharge? They can apply for a discharge upgrade. A successful discharge upgrade results in a change to the character of the discharge on the veteran’s DD-214 (the discharge form) to a more favorable discharge (e.g. honorable or general other than honorable).

How Does a Veteran Apply?

First, the veteran should request their military personnel and medical records. Next, the veteran must decide where to file their discharge upgrade application, depending on which branch they served in and when separation from

service occurred. The veteran will need to submit a VA form to the appropriate Discharge Review Board (DRB) or Board for Correction of Military Records (BCMR). Time deadlines apply to each Board, which the veteran must consider when applying.

How Can Attorneys Assist?

While the DRB or BCMR application form is only one page, if the veteran does not submit any supporting documentation or statements, the chances of receiving an upgrade are very slim. A successful discharge upgrade application will likely include a personal statement by the veteran, letters of support from commanding officers, battle buddies, and family as well as other evidence supporting the veteran’s request. Attorneys can submit a brief in addition to the veteran’s personal statement or represent the veteran at a personal appearance hearing. When attorneys represent a veteran before either board, the veteran’s chances for receiving a life-changing discharge upgrade improve dramatically.

For attorneys seeking a truly meaningful pro bono experience, filing a discharge upgrade application for a veteran may fit the bill. While it can be a labor-intensive

Continued on page 49

DISCHARGE UPGRADES: AN OPPORTUNITY FOR TREMENDOUS IMPACT

Military & Veterans Affairs Committee

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

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process, there are generally not strict deadlines unless they are nearing the end of the time period to apply. Thus, review of the veteran's records and filing of the application can be done during downtimes in the attorney's practice.

If you are interested in helping a veteran with a discharge upgrade, consider contacting the Veteran's Consortium (www.vetsprobono.org), the Modern Military Association of America (<https://modernmilitary.org>), or Bay Area Legal Services (bals.org/volunteer) for pro bono opportunities and training. ■



¹ 38 U.S.C.
§ 101(2).

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Real Property, Probate & Trust Law Webinar

On January 14, the Real Property, Probate & Trust Law Section hosted a CLE webinar regarding Probate Litigation and Mediation via Zoom. Speaking at this event was J. Richard Caskey of J. Richard Caskey, P.A. and Andrew Eckhoff of Andrew C. Eckhoff, P.A. The speakers gave advice on best practices and tips for mediating contested cases virtually.



Rich Caskey



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- Policy sold for \$626,400.
- Reason for sale: Insurance was not needed anymore. Insured did not like relationship with advisor or trust administrator.
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HCBA would like to thank both speakers for their time and Boyd Settlements for sponsoring the event.

HCBA Members Recognized with Florida Bar Pro Bono Service Awards

Two HCBA members were recognized for their pro bono work in The Florida Bar's Pro Bono Service award ceremony held online on January 28.

Judge Barbara Twine Thomas of the Thirteenth Judicial Circuit was presented the Distinguished Judicial Service Award, in recognition of her excellence and long-term service to the community.

Judge Twine Thomas' pro bono work does not limit itself to Hillsborough County, but stretches across Florida and into Georgia and the U.S. Virgin Islands, spanning nearly 45 years. Over that time, Judge Twine Thomas often had several pro bono cases active at the same time and donated at least 100 hours of pro bono service every year.

From 2001 to 2003, while in private practice, Judge Twine Thomas provided pro bono services to the individuals who sought help through the Hillsborough County offices of the NAACP, for which she received the "Foot Solider in the Sands" Award at the NAACP National Convention in 2003. As a judge in the juvenile division of the Circuit Court, Judge Twine Thomas also established the Girls Court, as well as the "Building Optimal Youth Success" or BOYS program. Both BOYS and Girls programs provide a safe and encouraging space for young people involved in the delinquency system.

Her position as the current chair of the 13th Circuit's Pro Bono Committee additionally allows her to monitor the pro bono services being offered in our district and provide guidance to others in order to better our legal system.



The Hon. Barbara Twine Thomas



Sarah E. Kay

Sarah E. Kay of Kay Family Law, PLLC additionally was awarded The Florida Bar President's Pro Bono Service Award for the Thirteenth Circuit. Beginning in 2010, Kay has donated over 1,150 hours to pro bono cases, and generally is always involved in one active pro bono case, highlighting her dedication to the community.

Kay has provided pro bono legal services through Bay Area Legal Services Volunteer Lawyer Program and has offered pro bono legal services for referrals from the Council on American Islamic Relations Tampa Chapter.

She also is involved in the U.S. State Department's Hague Convention Attorney Network for International Child Abductions, which takes on cases of children who are abducted by one parent and taken to a foreign country without the other parent's consent.

Having won many service awards including HAWL's Pro Bono Award in 2019, HAWL President's Award in 2015, and Mentor of the Year by HAWL in 2012, Kay continues her commitment to her volunteer work in Hillsborough County.

Congratulations to Judge Barbara Twine Thomas and Sarah Kay on these prestigious awards!

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**The legal
profession stands
to benefit from
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interactions.**



Let's talk about volunteering: Not pro bono legal service, but community service.

We're all well-aware of the aspirational goal for attorneys to provide 20 annual hours of pro bono legal service to the poor or a financial contribution to a legal aid organization unless the attorney is exempted. However, there is not a corresponding *community service* requirement. And there shouldn't be. But, based on my personal experiences, I would encourage all of us to consider the value — personally, professionally, and to the community — of lawyers becoming involved in community volunteer service.

Community volunteer service — particularly that unrelated to the legal field — is a life-enriching experience that pays dividends. One's reasons for engaging in volunteer service may be varied, but a consistent consequence of positive community volunteering experiences is a favorable view of lawyers and the legal profession. Lawyers can promote professionalism through their community service. Indeed, when lawyers volunteer in the community, they disrupt lingering negative perceptions and contribute to a positive reflection of the legal profession. When the community members you serve learn that you

are a lawyer, their positive experience with you helps frame the legal profession in a positive light. Community trust is built on each positive interaction, contributing to the betterment of the profession and its value in the community.

Lawyers are well-suited for service. Our educational backgrounds and unique skills add incredible value to the community service we provide. As pillars in our community, we have an obligation to contribute to its betterment. Personally, I have found my community volunteer service to be particularly rewarding, and a mental break from my daily work. Volunteering my time with non-profit organizations contributes to my healthy work/life balance. It also genuinely makes us feel good. While altruistic motives are typically at the core of meaningful community service, weaving ourselves into the fabric of our community can be professionally fruitful as well. These experiences can often help in your practice as you gain perspective on the community and the people in it. Volunteering also provides an opportunity to develop critical soft skills. I find myself more humble, empathetic, and understanding as

a result of my volunteering. These qualities make me a better lawyer, a better mother, and a better person. Volunteer work often presents opportunities for networking and potentially increased business. Those added benefits are the result of the positive impact you are making — most people want to do business with good people doing good things in their community.

Consider issues, areas, or groups that interest you. Whether it's child welfare, basic needs, homelessness, intramural sports, the environment, or something else — a quick self-assessment and subsequent online search will surely show you an organization that addresses your interest area. Whether it is one or 100 hours you have to give, non-profit and other community organizations and groups are so grateful for any time invested in their cause. And the legal profession stands to benefit from your positive

interactions
with and
investment in
the community.



Author:
Lyndsey E. Siara
– 13th Judicial
Circuit Court



USE THE LESSONS FROM THE PANDEMIC TO IMPROVE YOUR PRACTICE

Solo & Small Firm Section

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



Can we take the adversity of this experience, take what we learned, and use it to improve our practices?



The COVID-19 pandemic changed everything. For months, we didn't get together with our colleagues at Bar functions, we didn't travel, we didn't take our kids to school, we didn't watch live sports, and we didn't see our loved ones. Hopefully, what we all went through will soon be behind us as vaccines get more widely distributed.

I can't help but be optimistic though. Can we take the adversity of this experience, take what we learned, and use it to improve our practices? I think so.

Ask yourself, what are you doing differently in your practice because of the pandemic? Have those things improved how your firm operates? If so — keep doing it. Let's focus on working remotely and videoconferencing technology.

Working Remotely

For many, the pandemic stopped us and our staff from going to the office every day and forced us to implement a remote working environment and invest in the technology to do it right. Are there benefits to working from

home? Did you learn anything by having your staff work remotely? Calculate your own and your staff's productivity and performance while working remotely and inventory any intangible benefits. If you are comfortable with it and your employees want to work from home, give them that option, even if only a few days per week. Providing your employees with more flexibility and allowing them to avoid the daily commute will make them happier and more excited about their jobs. If you decide to work remotely or have your staff do it, be sure to consult with an information technology company to make sure your set-up is safe and secure. Also, you will want to set up a system to track employee performance to maintain accountability.

Videoconferencing Technology

The pandemic introduced a lot of us to Zoom and similar technology. While nothing can replace in-person contact, these platforms will be around for much longer than the pandemic. Litigators should expect that remote depositions, hearings, and

mediations will be the norm. Because videoconferencing is not going anywhere, learn more about it and take full advantage of what these platforms can offer. Instead of a telephone call or sending your client an email, schedule a Zoom meeting. It will likely be more productive for you and more enjoyable for your client. You should consider investing in the best tools to improve your video presentations like a quality camera, an external microphone, and lighting to reduce glare and shadows.

When working remotely and videoconferencing are done right, they can give you maximum flexibility while keeping your firm profitable. If you've ever dreamed of spending the summer in an exotic location but can't take tear yourself away from the office, now you can!

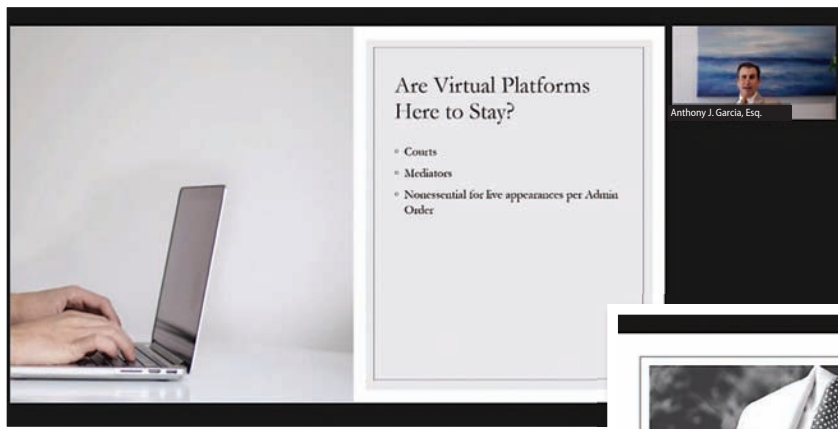
2020 was rough on all of us. But hopefully we can take the things we did out of necessity and use them to improve our lives and our firms. ■

*Author: Matthew Crist –
Crist Legal | PA*

Join us at upcoming Solo & Small Firm Section meetings!
Learn more at www.hillsbar.com.

Solo & Small Firm Section: “Who’s Zooming Who?”

On November 18, the Solo & Small Firm Section hosted a virtual CLE regarding preparing for virtual court and mediation appearances. Speaking at this webinar was Judge Thomas Palermo of the Thirteenth Judicial Circuit, as well as Anthony Garcia of Garcia Mediation. These guest speakers discussed the current state of administrative orders, virtual platforms, expectations from the bench, and the future of virtual mediations.

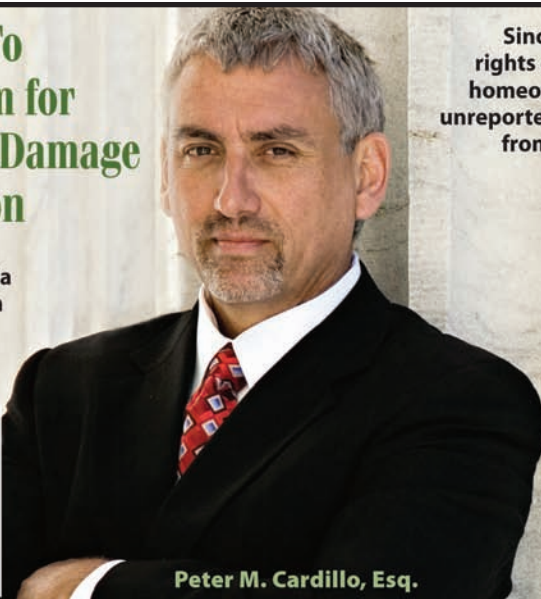


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“THOSE WHO LIVE IN GLASS HOUSES...” SOLARWINDS DATA BREACH

Technology Section

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



**Can the
government point
fingers when it
may have failed to
meet its own
standards?**



The Federal Trade Commission (FTC) enforces consumer protection laws to prevent fraud, deception, and unfair business practices. When companies fail to protect consumer personal information, the FTC can take law enforcement action to punish and deter such failure under the FTC Act. A key part of FTC enforcement actions is the FTC’s long-standing “reasonableness” standard, which requires entities to implement reasonable security measures. Similarly, in recent years, the FTC has asserted claims based on “unfair” cybersecurity practices. But what happens when the government’s own cybersecurity has been compromised? Can the government point fingers when it may have failed to meet its own standards? The most recent SolarWinds cybersecurity attack raises these very questions.

On January 6, 2021, the Department of Justice confirmed that it had learned of a cybersecurity attack on government

and private contractors’ servers. The attack involved the introduction of malicious codes into SolarWinds’ software system, Orion, which spread to its clients and went undetected for several months. Although details are sparse and the widespread effect of the hacking is unknown, it is suspected that many SolarWinds users, including government agencies as well as private entities, have been affected. As such, the attack’s impact on government agencies and private contractors alike may influence the FTC’s desire to bring enforcement actions against the private entities.

The most famous invocation of the FTC’s enforcement authority in the cybersecurity context occurred back in 2013, when the FTC launched an action against the Wyndham global hotel chain. In *FTC v. Wyndham Worldwide Corp.*,¹ the FTC claimed that the hotelier had exposed payment card information belonging to several

hundred thousand consumers. Wyndham vigorously defended, arguing that the FTC neither had provided private entities with advance guidance on appropriate security practices nor had articulated which of Wyndham’s conduct constituted a breach of the FTC’s “unfair practices” standard. In what is now considered a landmark ruling in favor of the FTC’s enforcement authority in the cybersecurity arena, the Third Circuit held that the FTC could use the prohibition on “unfair practices” set forth in section 5 of the FTC Act to challenge private entities’ alleged data security lapses.

The question now arises as to whether the FTC might rethink the advisability of pursuing cybersecurity breach enforcement actions against private entities caught up in the massive SolarWinds breach in light of the near simultaneous hacking

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Continued from page 56

of related governmental agencies. One of the risks for the FTC in initiating such enforcement actions is that these entities might assert the FTC is effectively estopped because the government’s own cybersecurity practices were equally unfair. Alternatively, defending entities might argue the SolarWinds breach demonstrates that all victims of the attack — both governmental and private — followed “industry standards” and thus engaged in cybersecurity practices that are reasonable and fair.

In the years following *Wyndham Worldwide*, courts have appeared more amenable to holding

governmental entities accountable for their own security lapses. In *In re: U.S. Office of Personnel Management Data Security Breach Litigation (OPM)*, the D.C. Circuit Court allowed a suit to proceed against the government for leaving “the door to its records unlocked” by using an outdated software that allowed hackers to access as many as 22 million government employee records.² Until SolarWinds, the *OPM* attack was the largest breach of government data in U.S. history.

It will be interesting to see whether, and if so, how the FTC responds to the latest SolarWinds attack. While the government’s own vulnerability to the SolarWinds intrusion could make the FTC reluctant to pursue enforcement

actions against impacted private companies for “unfair” security practices, the FTC’s failure to initiate enforcement actions could itself appear “unfair.” Stay tuned for further developments. ■

¹ 799 F.3d 236, 240 (3d Cir. 2015).

² 928 F.3d 42, 63 (D.C. Cir. 2019).



Authors: Masiel Pelegrino Sarduy and Jeffrey Newsome - Phelps Dunbar LLP

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CONSIDERATIONS ON THE USE OF DEPOSITIONS AT TRIAL

Trial & Litigation Section

Chair: Chad Moore, Morgan & Morgan, PA



Check your judge's standing pretrial orders or inquire about the judge's particular preferences with regard to deposition.



Designating deposition testimony for presentation as trial evidence is an important part of trial preparation and should be treated with the same attention to detail as any other testimony to be presented to the finder of fact. Preparation is key. As you assess your trial themes throughout litigation, you should consider how particular witnesses fit into your planned presentation of those themes. That assessment should be done both before and after a witness's deposition — before so you know the points you want to make in your examination (or know the points your opponent will want to make so you can better prepare the witness), and after so that you can assess whether the testimony requires any modification of your themes. A good habit is to highlight and summarize the deposition transcripts while the testimony is still fresh in your mind and to organize the issues in a way that will make the use of deposition testimony at trial, including designations and counter-designations, easier and more efficient.

To understand whether you can use deposition testimony at trial, you need to look to the applicable rules of civil procedure and evidence, and understand the implications of those rules. You

should also check the court's local rules, your judge's individual practice rules, and any stipulations between the parties, to see if any affect your designations, counter-designations, and objections.

Federal Rule of Civil Procedure 32 and the Federal Rules of Evidence govern the use of deposition testimony at hearings and trial in federal court. Whether you will be able to use deposition testimony at trial will depend on the particular facts and circumstances of your case, including the deponent's identity, the manner in which you intend to use the testimony, and the nature of the testimony you are proffering. Rule 32(a)(1) provides the following:

- (1) In General. At a hearing or trial, all or part of a deposition may be used against a party on these conditions:
 - (A) The party was present or represented at the taking of the deposition or had reasonable notice of it;
 - (B) It is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and
 - (C) The use is allowed by Rule 32(a)(2) through (8).
- Rule 32(a)(1)(B) makes clear that regardless of what the rest of the rule provides, you have to be prepared to demonstrate that the deposition or the part you intend to use at trial “would be admissible under the Federal Rules of Evidence if the deponent were present and testifying.” You should therefore look to the Rules of Evidence not only in considering what deposition designations to make but also in reviewing your adversary's designations and assessing possible objections, such as hearsay or other evidentiary deficiencies.
 - Rule 32(a)(2) through (4) provides that a deposition transcript can be used in the following ways:
 - to impeach the deponent or other use allowed under the Rules of Evidence (Rule 32(a)(2);
 - for any purpose if the deponent was a party or “was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4); and
 - for any purpose if the witness is “unavailable” within the meaning of one of the categories expressly set forth in the rule (Rule 31(a)(4).

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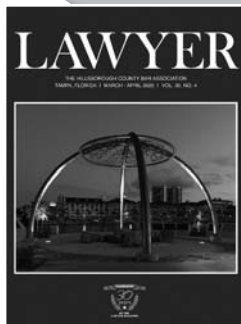
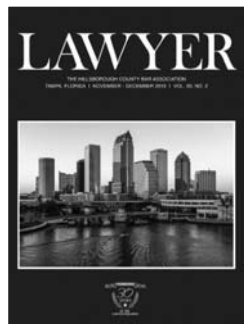
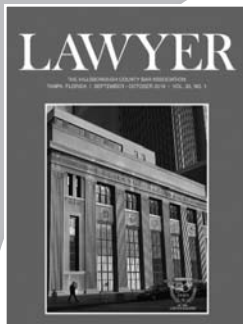
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Deposition designations require advance preparation whether in print or video form. To use transcripts at trial, you must consider whether the case will be heard by a judge or a jury. Most federal and state court judges do not want the parties to read testimony into the record. Judges normally will specify a preference for lawyers to designate testimony by highlighting designations to reflect testimony being offered by the parties or jointly. Some judges overseeing a bench trial express different preferences for presenting objections to deposition designations. For example, some judges require a pleading designating the line and page numbers of the testimony objected to, while others require different formats (such as highlighting the

testimony objected to with a different color and annotating the parties' objections in the margins). Check your judge's standing pretrial orders or inquire about the judge's particular preferences with regard to deposition designations at a pretrial conference or other occasion that will allow sufficient time to prepare the designations properly. ■



Author: Kevin J. Napper – Kevin Napper Law



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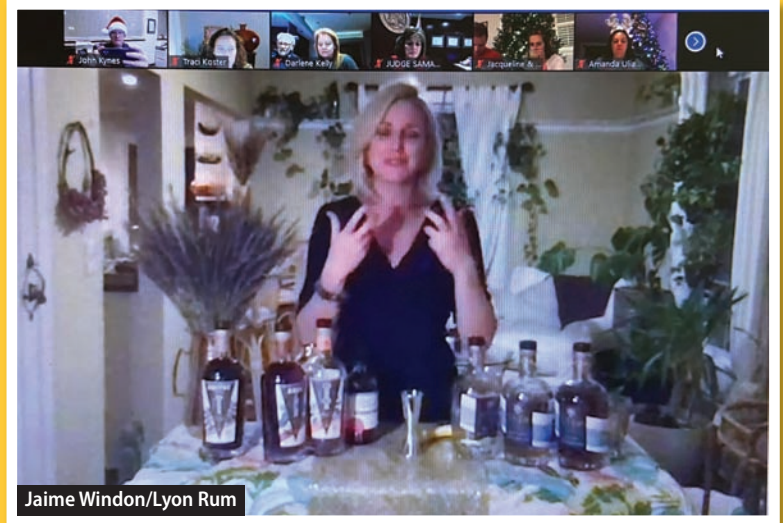
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HCBA Section & Committee Chair Virtual Holiday Social

The HCBA Board thanked the committee and section chairs and YLD board members for the countless hours they have put in keeping events and programming for our members going strong this year with a special virtual holiday happy hour and tasting event on December 17. The attendees were provided a complimentary holiday treat box and cocktail supplies, and invited to join a virtual happy hour to socialize and try their hand at making the custom cocktails. Attendees were also encouraged to dress up in their favorite ugly holiday sweater for a chance to win a prize.



Jaime Windon/Lyon Rum



Thank you also to Anthem Reporting for sponsoring this special event and helping us thank our Association leadership.

Congratulations to **Alexander Caballero** of **Sessums Black Caballero Ficarrotta**, who was appointed to continue serving on The Florida Bar Professional Ethics Committee.

Congratulations to **Patrick Duffey** and **Anthony Palermo**, who were elevated to partnership at **Holland & Knight**, effective January 1, 2021.

Joe Eagleton of **Brannock Humphries & Berman** moderated “Winning Your Appeal at Trial,” co-sponsored by The Florida Bar Appellate Practice Section’s Pro Bono Committee and The Guardian ad Litem Program.

Yvette Everhart of **Sass Law Firm** co-presented virtually, “Everything Employers and Employees (and their Counsel) Need to Know About Electronic Communication Policies and Social Media” at the Labor and Employment Law Section of the American Bar Association’s 14th Annual Conference. Additionally,

she virtually presented on “EEO — Procedural” at the Florida Bar’s Labor and Employment Law Section’s 21st Labor and Employment Law Annual Update and Certification Review.

The law firm of **Guerra King** is pleased to announce that **Kim Koves** has been named a shareholder of the firm.

Sterling Lovelady of **Sessums Black Caballero Ficarrotta** made a virtual presentation to the Tampa Bay Paralegal Association, Inc. titled “COVID-19: A Sword and Shield in Family Law Proceedings.”

Johnson Jackson PLLC welcomes the addition of associate attorney **Meaghan Maus** to its team.

Phelps congratulates **Erin Malone** in its Tampa office, who was elevated to partnership with the firm.

Shutts & Bowen LLP announced that six attorneys at the

firm, including **Raciel Perez**, have been elevated to partner, effective January 1, 2021.

Andrew D. Reder of **Sessums Black Caballero Ficarrotta** has been elevated to partnership in the firm. He also recently served as the moderator for “Accountant’s Perspective on Financial Affidavits and Use of Financial Experts,” a HCBA continuing legal education seminar.

Congratulations to **Cynthia Sass** of the **Sass Law Firm**, who was elected a member of the Board of Governors of the College of Labor and Employment Lawyers. Additionally, Sass was honored to virtually present “First Amendment in Public Employment” to the attorneys of the Florida Department of Health.

Congratulations to **William Schifino** of **Gunster**, who is one of this year’s recipients of the Florida Region of the Anti-Defamation League’s Jurisprudence Award. The award recognizes leaders in the legal community who have fought for civil rights across our state. The award will be presented virtually on March 10.

John V. Tucker of **Tucker Law Group, P.A.** presented “ERISA Essentials - 2021” at The Florida Bar’s 21st Annual Labor & Employment Law Update and Certification Review in January 2021.

Hill Ward Henderson is proud to announce that shareholder **Jeffrey J. Wilcox** has been selected to participate in Leadership Tampa’s Class of 2021.

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