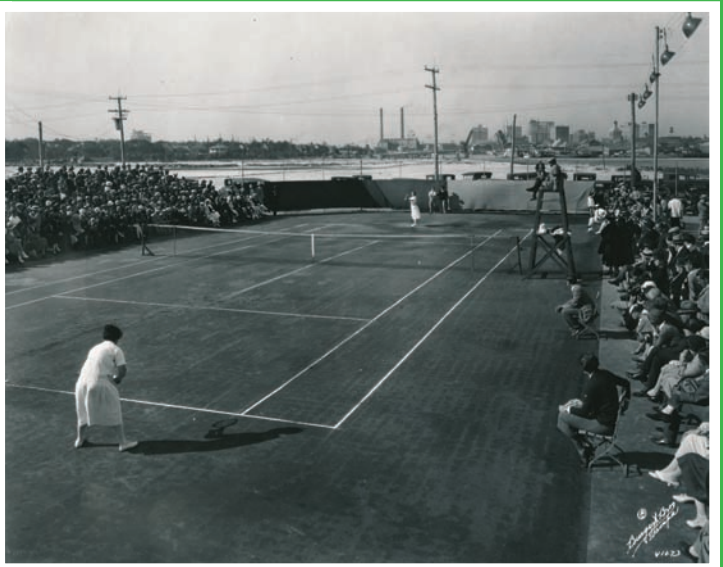


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ABOUT THE COVER

We are continuing this year's theme of highlighting noteworthy local athletes and events on the cover of the magazine. As the weather warms, we turn our attention to tennis, which has a long history in Hillsborough County and the region. Our area has hosted numerous famous tournaments and tennis legends, drawn to our fabulous weather and outdoor sporting complexes. Many of us know about Saddlebrook Resort and its connection to tennis, but we are highlighting a lesser-known men's and women's international tournament, the Dixie International Tennis Tournament, which was held at the Davis Island Tennis Club, starting in the 1920's until the late 1960's, and hosted many of the great tennis players of the time.

On the cover, we are featuring three photos from the Tournament from 1926, 1940, and 1964. The photo from 1964 features two well-known Wimbledon tennis champions, Karen Susman and Judy Alvarez. Judy Alvarez is a Tampa native, who was born in Ybor City in 1943 and attended Jefferson High School and the University of Tampa. She went on to participate in Wimbledon and the U.S. and French Tennis Championships during her career, eventually ranking sixth nationally. Photos courtesy of the Tampa-Hillsborough County Public Library System and the City of Tampa Photo Archives: <https://digitalcollections.hcplc.org/>.

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Stay “In the Know” with the *Lawyer Magazine*

The lawyers and Sections of the HCBA are hard at work and provide us with some interesting perspectives, updates, and insights (in this issue).

As the calendar turns to springtime, and our thoughts turn to summer adventures, the lawyers and Sections of the Hillsborough County Bar Association are hard at work and provide us with some interesting perspectives, updates, and insights.

In case law updates, the Appellate Section apprises us of an important evolution in the Florida Supreme Court’s statutory construction doctrine. When the meaning of statutory text is disputed, judges should now exhaust the textual and structural clues that bear on the meaning of the text, under the principles articulated in *Conage v. United States*.

The Labor and Employment Law Section analyzes a similarly impactful decision by the United States Supreme Court in *Helix Energy Solutions Group, Inc. v. Hewitt*. In that case, the high court held that day-rate employees are not paid on a “salary basis” and are therefore entitled to overtime pay under the Fair Labor Standards Act. The Workers’ Compensation Law Section provides an update on the law surrounding one-time changes.

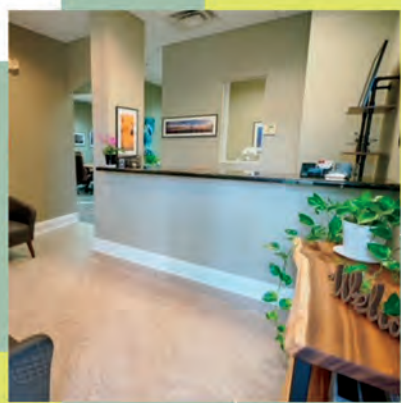
Continuing in the area of labor and employment law, Shane Muñoz of the Mediation & Arbitration Section delineates why mediations in that area of law are unique



and have different considerations than your run-of-the-mill civil mediation.

The Government Lawyers Section provides us with an in-depth look at the role of a Court Counsel, while the Clerk of the Court informs us of the much-needed funding changes passed by the Legislature in recent years and requests support for the structural reforms that are still badly needed. In other legislative changes, the Trial

Continued on page 5

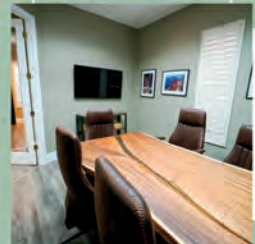


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Continued from page 4

& Litigation Section updates us on revisions to the statutes governing service of process — a topic near and dear to every litigator.

Judy Hoffman of the Diversity Committee has written an excellent article educating us all on hidden disabilities and their treatment under the Americans with Disabilities Act and the American with Disabilities Amendments Act. In a related vein, the Military and Veteran's Affairs Committee updates us on the results of an Inspector General's investigation into improper denials of veterans' benefits in complex cases involving traumatic brain injuries, sexual trauma and ALS.

The Real Property, Probate & Trust Law Section highlights some of the changes to the retirement system implemented in SECURE 2.0's expansion of the SECURE Act. Mandi Clay of the Solo & Small Firm Section provides an excellent survey of mental health and wellness resources provided by The Florida Bar. Every member of the HCBA should be aware of these resources, take advantage of them, and help raise awareness of them, as Ms. Clay does in her excellent article.

The Bar Leadership Institute regales us with a narrative of their visit to the Buccaneers training facility and presentation by their legal counsel, while noted Buc's fan Cory Brandfon sets out the important role HCBA members play on the committees that shape our rules of procedure. Finally, the Young Lawyers Division continues their theme of joy and recaps all the fun and inspiring activities they have been up to.

Overall, I hope you enjoy this issue and learn as much as I did in reading the articles. ■



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HCBA's Spirit Shines Again at Annual 5K Pro Bono River Run and Judicial Food Festival

Since the beginning of the 5K Pro Bono River Run, there have been almost 20,000 hours of pro bono performed by you, our members!

Hello HCBA! This is a fun edition of the magazine because you get to see the pictures and hear stories about the 19th Annual Hillsborough County Bar Association Judicial Food Festival and 14th Annual 5K Pro Bono River Run! This event is one of the biggest and best each year, taking place on the downtown campus of Stetson Law School. It supports pro bono legal services in Hillsborough County and, since the beginning of the Run, there have been almost 20,000 hours of pro bono performed by you, our members!

I know we had a huge turnout of runners this year, with a field of nearly 300. These runners pledged more than 3,100 pro bono hours! Did you see me in the sea of runners? Probably not, because I must confess that I am NOT a runner. And if I'm being honest, I was way too busy sampling all of the food and drink booths!

We also had a record number of booths this year with 34 participants! There was BBQ, Big Storm beer



(from best libation station winner Directed Benefits Foundation), pizza, sweet treats and of course the award-winning cuisine we have come to expect every

Continued on page 7



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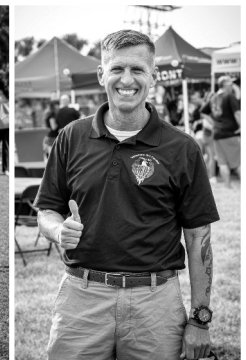
year from the Asian Pacific American Bar Association of Tampa Bay! Pretty sure I made three trips back to their table (sorry, not sorry!). The Tampa Bay Hispanic Bar Association also wowed everyone with their cuisine, coming in second for best grub. Our local non-profits also showed up big, with The Spring of Tampa Bay satisfying our sweet tooth and winning best sweets and treats, and Bay Area Legal Services with their Batman theme and delicious Venezuelan food.

All of the participants showed so much spirit for their companies and firms, and the HCBA is appreciative of such great participation this year. Until next year!

And finally, please make sure you take a look at the Pro Bono Service Award Winners that will be featured in the upcoming summer issue. There are so many individuals and firms whose commitment to pro bono service is unwavering. I hope they inspire everyone to participate in or support pro bono efforts in our legal community.

The next month is busy with several events before we take a little bit of a summer break. Mark your calendars for the June 15th swearing-in of new HCBA officers and directors and the June 16th State Court Trial Seminar and Happy Hour put on by our Young Lawyers Division.

Thank you for your continued support of the HCBA! ■



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Joy-Inducing YLD Fun

“Therefore, the best criterion for choosing what to keep and what to discard is whether keeping it will make you happy, whether it will bring you joy.” — Marie Kondo

As we continue this year's focus on “Marie Kondo-ing” our closet of activities and programs to ensure that all we do sparks joy (or connection or fun or learning) for our members, YLD leaders continue to plan and execute joy-inducing programming. Like Disney's magic makers, the joy behind the YLD would be impossible without our amazing YLD leaders. As the smallest token of my deep appreciation for their dedication of time and talent, I highlight herein the incredible work of our committee chairs. And behind them are even more young lawyers serving on our committees. Thank you to each of



YLD won “Best Booth” at this year's Judicial Food Festival.

you! Here's a recap of all the joy-inducing YLD fun in the past few months.

The Member Services Committee, chaired by Sloan Coates and Kayli Smendec, co-hosted our annual Coffee at the Courthouse and Judicial Shadowing Day with the YLDs of HAWL, GEBA, and THBA. With nearly 100 attendees, young lawyers, law students, and judges enjoyed an engaging

morning. Member Services also brought the fun to this year's Judicial Food Festival with an “Out of This

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World"-themed tent serving cosmic brownies, rock candy, and a stellar drink (see photos on pages 32-38). The Law-Related Education Committee, chaired by Tyler Almon, Alexa Cline, and Sarah Waters, led the YLD's involvement in Law Week. Despite some external challenges, this team ensured mock trials, classroom speakers, and courthouse tours were staffed by local lawyers. YLD member John Gerding served as our representative at The Florida Bar YLD's Affiliate Outreach Conference where he and ex-officio member Brittany Dix presented a grant presentation seeking funding for another year of Buddy Brew's coffee truck — they were successful, so you can joyfully anticipate that cup o' joe next Bar year!

For our quarterly luncheon, YLD hosted its annual "Pizza and CLE" program with Board member Alexis Deveaux presenting on "Getting Published: Digital & Periodical Publications" (see the photos on page 57). Given crowd engagement, there's no doubt many publications will result! Another productive moment was obtaining the necessary approval to implement YLD Bylaw amendments; the Board worked hard since



YLD members learned how to get published at the annual "Pizza and a CLE" luncheon.

& Ethics Committee, chaired by Kevin Riley and David Walsh, is actively planning our State Court Trial Seminar scheduled for mid-June. The Community Outreach and Pro Bono Committees were previously highlighted in the November/December magazine issue after successfully hosting a giving drive and our annual Pro Bono Luncheon. And working hard behind the scenes is the ever-important Grants, Awards, and Bylaws Committee, led by Quinn Cockrell, Joleen Nelson, and Jeanneth Miranda — they write all our grant and award submissions; a tall task!

Stay tuned for a writeup in my final YLD column about the "Before the Law was Equal" sequel documentary premiere, the Judicial Appreciation Luncheon, the State Court Trial Seminar, a community service activity, and other end-of-year fun! ■

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HCBA's 2023 Liberty Bell Award Goes to Prominent Tampa Banker, Community Leader Jerry Divers At Annual Law Day Luncheon

HCBA Also Presents Margaret D. Mathews Mentoring Award to Rosemary Armstrong.

In his celebrated banking career that spanned more than half a century, Jerry Divers worked to help countless Tampa Bay area businesses and organizations succeed and thrive.

They include the Hillsborough County Bar Association and its sister organization, the Hillsborough County Bar Foundation, as well as other local legal-related nonprofit groups.

For his extraordinary leadership and support over the years, this past May, the HCBA named Divers the **2023 Liberty Bell Award winner**.

The award was presented at the HCBA's annual Law Day Membership Luncheon held at the downtown Hilton.

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

Past winners include Gen. Norman Schwarzkopf; USF President Betty Castor; Rev. Leon Lowry; Mayor Jane Castor; and coach Tony Dungy.

"Jerry is a truly exceptional individual, and as a prominent banker and community leader, he has played a significant role in supporting the local legal community," HCBA President Jacqueline Simms-Petredis said in presenting the award.

Divers was nominated by retired Judge E.J. Salcines.

After serving in the Navy and Navy Reserves, Divers began his 50-plus year career in banking in 1961 when he joined the old Exchange National Bank in downtown Tampa.

Later, after rising in the ranks and serving in various leadership positions at other banks, in 1984, he founded the Bank of Tampa.

Under Divers' strong leadership, the Bank of Tampa has grown into one of the largest and most successful community banks in Florida.

Divers continued to serve as president of the Bank of Tampa until 2015.



2023 Liberty Bell Award winner Jerry Divers and HCBA President Jacqueline A. Simms-Petredis

During his long career, Divers served on the boards of many community organizations, including the Hillsborough County Bar Foundation, the Greater Tampa Chamber of Commerce, Tampa General Hospital Foundation, and United Way.

As a member of the Bar Foundation's Board of Trustees from 2011-2015, Divers was responsible for the Bank of Tampa becoming a significant financial sponsor of the Foundation's Law & Liberty Dinner, which continues to this day.

And, over the years, the Bank of Tampa also has been a major financial supporter of the HCBA, which has been instrumental in helping the HCBA successfully carry out its mission to serve the legal profession and the community.

Continued on page 11



Left: Rosemary Armstrong, winner of the HCBA's 2023 Margaret D. Mathews Mentoring Award, Katherine Yanes and Jacqueline A. Simms-Petredis.
Right: The Annual Law Day Luncheon was held on May 9, 2023 at the Downtown Hilton Tampa.

Continued from page 10

"Jerry has been a strong advocate for the rule of law and has demonstrated a deep commitment to ensuring that justice is accessible to all," Simms-Petredis told the 400 or so luncheon attendees.

Undoubtably, Divers' many personal and professional contributions have helped to build a stronger, more vibrant legal community in Hillsborough County.

* * *

Also at the luncheon, attorney Katherine Yanes introduced Rosemary Armstrong as the winner of the **HCBA's 2023 Margaret D. Mathews Mentoring Award**.

Yanes said Armstrong "truly exemplifies" the criteria of the prestigious award.

The award recognizes an individual who has achieved excellence in his or her own legal career; has served as a mentor; has demonstrated a commitment to the advancement of young lawyers; and who encourages meaningful involvement in the Tampa Bay community.

It was established in 2021 by the HCBA and is named for beloved former HCBA and Bar Foundation President Margaret Mathews.

Armstrong was nominated for the mentoring award by the Hillsborough Association for Women Lawyers (HAWL) and others.

In her remarks, Yanes highlighted Armstrong's work to recruit and train numerous volunteer attorneys to help with Crossroads for Florida Kids, the nonprofit organization Armstrong created in 2012 that provides pro bono legal services and guidance for teens in the foster care system.

"Rosemary has devoted her career to advocating on behalf of the most vulnerable of our citizens, and particularly on behalf of children," Yanes said.

Yanes said Armstrong has made it possible for many other attorneys, over the years, to advocate on behalf of children, and, in doing so, providing them with mentoring and other professional opportunities to help them develop and advance as lawyers.

"Through Crossroads, over 100 attorneys have had the opportunity to represent more than 1,000 children over the course of the past decade," Yanes said.

"Collectively, Crossroads attorneys have donated over 45,000 hours of pro bono services," Yanes added. "Rosemary's vision and efforts have made this tremendous service to the community possible."

Congratulations to both these deserving HCBA award winners. ■

Law Day Luncheon photos on pages 12-13.

Law Day Luncheon

HCBA held its annual Law Day Luncheon on May 9 at the Hilton Downtown Tampa. We were honored to host Florida Bar President Gary Lesser and Florida Bar YLD President Iris Elijah as our featured speakers, who provided updates on activities at the statewide level. Also, we were proud to recognize two community leaders, when we awarded our annual Liberty Bell Award to Jerry Divers with The Bank of Tampa and our Margaret D. Mathews Mentoring Award to Rosemary Armstrong of Crossroads For Florida Kids, Inc.

In addition, we recognized the wonderful student winners of our annual Law Week Art Contest in partnership with the Hillsborough County Public Schools, and honored Chief Judge Ronald Ficarrotta, as he attended his last HCBA luncheon as Chief Judge of the Thirteenth Circuit Court.



Congratulations to the Law Week Art Contest Winners:

HIGH SCHOOL DIVISION

1st Place – Muyao Guan, Newsome High School

2nd Place – Isabell Carpenter, Bloomingdale High School

MIDDLE SCHOOL DIVISION

1st Place – Zaina Dubey, Martinez Middle School

2nd Place – Saisharat Yenka, Benito Middle School

3rd Place – Sophia Cui, Liberty Middle School

Photography is courtesy of Thompson Brand Images. Thank you also to TCS for providing A/V assistance and signage at the luncheon. Additional photos from the event are available at www.facebook.com/HCBATampabay.

Thank you also our Law Day Luncheon sponsor,
The Bank of Tampa, for their generous support.







Support the Florida Clerks of Court 2023 Legislative Priorities

**Clerks statewide seek more stable revenue sources
for court-related responsibilities.**

First, I greatly appreciate the commitment legislators have shown to help and support the Clerk of Courts funding structure. We are very grateful the legislature worked with us on significant structural changes enacted over the past few years through the passage of SB 838 by Senator Boyd (2021) and HB 397 by Representative Clemons (2022). The incremental changes captured in those bills have no doubt brought more stability to the system that funds Clerk services.

These bills provided assistance to the Clerk's statewide budgeting process, established a new statutory process to improve the cost and workload for mental health and substance abuse case types, enhanced payment options, and improved efficiency and customer service for certain driver's license reinstatements.

However, Clerk budgets are still largely dependent on funding from fines, fees, and court costs — especially civil traffic citations. Even with all the help and the backfill

appropriations, Clerks across the state essentially have the same statewide budget as we had about a decade ago.

Florida's Clerks of Court rallied behind the 2023 Clerk Legislative Priorities this session to create a more sustainable, long-term solution. The Florida Clerks of Court Operations Corporation (CCOC) found that the Clerks of Court are operating with a \$36.5 million funding gap between their needs-based budget and their current revenue-limited budget. To close this year's funding gap and begin addressing some longstanding issues, SB 1130 and HB 977 contain three main priorities:

- **Diversify Clerk Revenues** by redirecting the statutory distribution of certain revenues for court-related services, enabling Clerks of Court to retain more revenue for the services they provide (ex. Foreclosure filing fees, Issuance of Summons, Dissolution of Marriage)

Continued on page 15

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Clerk Stuart and several of her Clerk counterparts from around the state taken at a conference in 2022.

Continued from page 14

- **Support Staffing Needs** by providing new mechanisms to handle increases in the Florida Retirement System (FRS) for Court-related employees; and
- **Account for Additional No-Fee Services** by providing a state reimbursement process for certain public services and approved civil indigency cases where fees are currently waived.

I am pleased we have been able to work together with legislators to make progress in recent years. I am thankful this year's proposed legislation builds on the framework set in the 2022 legislative session to further stabilize funding sources for Florida Court Clerks and Comptrollers.

Thank you for continuing to support the 2023 Clerk legislative priorities. To learn more, please go to www.FLCClerks.com/Page/2023LegislativePriorities. ■



WELCOME NEW HCBA MEMBERS FEBRUARY-MARCH 2023

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HCBA Night at the Tampa Bay Lightning

The Hillsborough County Bar Association was pleased to host their annual Night at the Tampa Bay Lightning on March 18. HCBA members had a great opportunity to enjoy refreshments while spending time with other members, family, and friends. It was an exciting evening watching the Lightning win against the Montreal Canadiens.



INTERPRETATION POST – *CONAGE*: WE'RE ALL EXHAUSTIONISTS NOW

Appellate Practice Section

Chairs: Brandon K. Breslow — Kynes, Markman & Felman, P.A. & David M. Costello — Florida Solicitor General's Office



After *Conage*, practitioners ignore context, structure, and canons at their own risk, no matter how clear the dispute text seems.



To declare oneself a textualist today is almost cliché. As Justice Kagan said years ago of Justice Scalia's statutory interpretation legacy, "[W]e're all textualists now."¹ But, just as there can be ambiguity in the texts all of us now hold supreme, there can be ambiguity in what it means to be a textualist. If the disputed text is clear in the eye of the beholder, does he stop the analysis there? Does he consider context? Structure? Canons? Only what's necessary to defeat ambiguity? Or exhaust them all? In post-*Conage* Florida, we're all exhaustionists now.

Florida courts developed a text-focused approach to answering statutory questions, an approach that long predated Scalia's Supreme Court days. The approach is best captured by the Florida Supreme Court in *Holly v. Auld*: "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction."² Who knows how many briefs and courts relied on this approach over time?

Then came *Conage v. United States*. There, the Federal Eleventh

Circuit certified a question of Florida statutory interpretation to the Florida Supreme Court.³ The question was whether the defendant, *Conage*, had been properly sentenced under the Armed Career Criminal Act (ACCA).⁴ Even for a criminal case, the "stakes" were "enormous" — whether no Florida drug trafficking conviction under "Florida's most serious criminal drug statute . . . can ever qualify as an ACCA predicate offense."⁵ (They can.)⁶ The answer to this question would have serious implications for Florida substantive criminal law.⁷

Yet, in a sense, the opening act outshone the headliner. Addressing "a threshold issue about Florida's law of statutory interpretation," the Court abrogated the "misleading and outdated" *Holly* principle.⁸ Instead, it elevated an exhaustion principle: "[J]udges must exhaust all the textual and structural clues that bear on the meaning of a disputed text."⁹ In other words, one can't cry ambiguity until one has referred to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."¹⁰ "Viewed properly" — flexibly — "the traditional canons of statutory interpretation can aid the interpretive process from beginning

to end."¹¹ Except, that is, the canons that place themselves at the back of the line and play tiebreaker, such as the rule of lenity.¹²

So, call yourself what you will — just be analytically thorough. After *Conage*, practitioners ignore context, structure, and canons at their own risk, no matter how clear the disputed text seems. In Florida statutory interpretation, the best practice is now undoubtedly exhaustion. ■

¹ Harvard Law School, *The 2015 Scalia Lecture*, YouTube (Nov. 25, 2015), <https://www.youtube.com/watch?v=dpEtszFT0Tg>.

² 450 So. 2d 217, 219 (Fla. 1984) (citation omitted).

³ 346 So. 3d 594, 596 (Fla. 2022).

⁴ *Id.* at 596–97.

⁵ *Id.* at 597 (citation omitted).

⁶ *Id.* at 597, 599–600.

⁷ *See id.* at 599–600, 603.

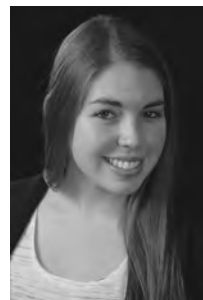
⁸ *Id.* at 598.

⁹ *Id.* (cleaned up).

¹⁰ *Id.* (citation omitted).

¹¹ *Id.*

¹² *Id.*



Author:
Alison E. Preston
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YLD Spring Happy Hour

The YLD hosted a great Happy Hour on March 29 at 511 Franklin in downtown Tampa. A huge thank you to the sponsors, Matthew Fogg & Luke Gardner with Northwestern Mutual Wealth Management Company, who helped make this event possible. Attendees enjoyed craft cocktails and networking with other members of the Young Lawyer Division.



BLI VISITS THE TAMPA BAY BUCS

Bar Leadership Institute

Chairs: Alexa Cline — State Attorney's Office, 13th Judicial Circuit, Jason Imler — Imler Law & Daniela Mendez — Tampa General Hospital



On March 8, 2023, the BLI Class met at the Tampa Bay Buccaneers AdventHealth Training Center (formerly known as One Buc Place), for a tour of the 100,000-square-foot practice and training facility. Dan Malasky, Chief Legal Counsel, and Emily Lekahal, Assistant General Counsel, gave a presentation to the BLI Class on the busy business, legal, and day-to-day operations of the Tampa Bay Buccaneers. Both Malasky and Lekahal impressed on the Class that the daily legal challenges for the Buccaneers involve a myriad of subjects and practice areas — intellectual property, construction law, corporate law, employment

law, and First Amendment — and more. Lekahal and Malasky also manage the contracts for almost every aspect of the game, including sponsorships, concessions, and merchandise. The exception is player agreements. Both Malasky and Lekahal are also active in community events throughout the greater Tampa Bay area. Malasky also described his role as Chief Legal Officer, as “quarterbacking” the legal, human resources, and facility security for the Buccaneers.

After the presentation from Malasky and Lekahal, the Class was incredibly lucky to receive a personal tour of One Buccaneer Place, even visiting the players’ locker room and training area. Counsel advised us about the many

physical changes One Buccaneer Place made to keep players and staff safe while conforming to the quickly changing COVID regulations set by the NFL throughout the 2020-2021 season. The Bucs added additional locker room areas and created an outdoor shower set-up in an area previously occupied by specialty spectator seating. The training center, now open to all members of the Buccaneer family, was also altered to ensure each guest had enough adequate space to use the many machines and tools the area offers. We also visited the news center, which features docking stations for visiting members of the media. Many members of the BLI

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BLI VISITS THE TAMPA BAY BUCS

Bar Leadership Institute



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were even able to have their photo taken at the famed podium where our favorite players have completed post-game interviews. The players' dining area understandably took up significant real estate in the facility. Notably, the dishware in the cafeteria boasts dinner plates measuring fourteen inches in diameter. Photographs throughout

the facility capture the team's greatest moments — including Tom Brady's infamous Lombardi Trophy toss from the boat parade following the 2021 Super Bowl, as well as the 2021 Super Bowl ring design. We concluded our tour with a group photograph in front of the country's largest football, the symbol of teamwork and Buccaneer spirit that greets each guest of One Buccaneer Place. Go Bucs! ■



Author: David Chee – U.S. Attorney's Office & Paige Tucker – Public Defender's Office

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OUTSIDE LOOKING IN: WHAT YOU DON'T SEE WHEN LOOKING AT ME MAY BE A HIDDEN DISABILITY!

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Chairs: Alexis Dion Deveau — Gunster & Antina Mobley — Public Defender's Office, 13th Circuit



According to the CDC, there are an estimated “61 million adults across the U.S. identified as having a disability of some kind, and about 10% of those are invisible disabilities.



When you see a person in a wheelchair, it is relatively easy to assume that person is disabled with a mobility issue. How can you tell at first glance if someone has a cardiac condition, autism, hearing impairment, bipolar disorder, or multiple chemical sensitivity? The answer is you cannot. These disabling conditions are what is known as *hidden disabilities* or invisible disabilities.¹ According to the CDC,² there are an estimated “61 million adults across the U.S. identified as having a disability of some kind, and about 10% of those are invisible disabilities.”³

In July 1990, President George H. W. Bush signed into law the Americans with Disabilities Act (“ADA”).⁴ Although a long time in coming, following the civil rights movement (circa 1954-1968), this

was a minimal starting point to empower persons with disabilities. Historically, disabled persons, whether with physical limitations or psychiatric disorders, were segregated and discriminated against. They were a stigma to society. They were denied equal protection under the law. Some suffered heinous atrocities.⁵ After implementation of the ADA, treatment of disabled persons started to change for the better. Integration and equal protection became the path to equal rights, but the process was not flawless or without limitations. Enforcement became the greater obstacle. The question became what constitutes a disability, especially for those with hidden disabilities.

Following enactment of ADA in 1990, certain individuals with disabilities were able to mitigate

their condition to empower them to have equal participation, especially with employment, but also with government programs and public accommodations. For many, mitigating measures were used subsequently to de-classify persons with disabilities as “not” disabled. This presented a conundrum, especially for persons with hidden disabilities that already did not “look the part.” This conundrum resulted in the Americans with Disabilities Amendments Act (ADAAA) of 2008. This provided a significant change to the ADA in how a disability is defined. In 1990, 42 U.S.C. §12101 defined a disability as: (1) a physical or mental impairment that substantially limits one or more of the major

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life activities of the individual, (2) a record of such impairment, or (3) being regarded as having such an impairment. In the 2008 ADA, 42 U.S.C. §12102 expounded on the definition of what constitutes a disability. (Please see link⁶ for the current definition.) Living with an overt disability can be challenging. Living with a hidden disability is like being invisible to someone on the outside looking in. ■

¹ Invisible Disabilities® Association, (last visited Mar. 14, 2023), <https://invisibledisabilities.org/what-is-an-invisible-disability/>.

² CDC, *Disability Impacts All of US*, Disability and Health Promotion, (last

visited Mar. 14, 2023), <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html#:~:text=61%2520million%2520adults%2520in%2520the,is%2520highest%2520in%2520the%2520South.>

³ A. Eisenmenger, Sept. 2020, *Five Things You Didn't Know About Invisible Disabilities*, Access Living (last visited, Mar. 14, 2023), <https://www.accessliving.org/newsroom/blog/five-things-you-didnt-know-about-invisible-disabilities/#:~:text=According%20to%20the%20CDC%2C%2061,of%20those%20are%20invisible%20disabilities.>

⁴ 42 U.S.C. Title 42 Chapter 126 §§12101-12213, (last visited Mar. 14, 2023) <https://www.govinfo.gov/content/pkg/USCODE-2021-title42/html/USCODE-2021-title42-chap126.htm>.

⁵ NeuroscientificallyChallenged.com, *The Disturbing Story of the First Use of Electroconvulsive Therapy*, (last visited Mar. 14, 2023), <https://neuroscientificallychallenged.com/posts/first-use-electroconvulsive-therapy>.

⁶ 42 U.S.C. §121002 Definition of disability, (last visited Mar. 14, 2023), <https://www.govinfo.gov/content/pkg/USCODE-2021-title42/html/USCODE-2021-title42-chap126-sec12102.htm>.



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A DAY IN THE LIFE OF.... A COURT COUNSEL

Government Lawyers Section

Chairs: Alexa Cline – State Attorney's Office, Christian Katchuk – 13th Judicial Circuit Court & Judge Marc Makholt – 13th Judicial Circuit Court



**It takes many people to
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operate the courts;
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play my small part in the
administration of justice.**



Court Counsel — what's that you ask? A general counsel for the court system. In my world, the titles are synonymous, and I use them interchangeably. The titles explain the role. Like a general counsel for a business, court counsel is the general counsel of the assigned court. And like general counsels, court counsels are multi-focused and multi-purposed; a "jack of all trades, master of none," if you will. A necessity for the court system, particularly for larger circuits like those in the Tampa Bay region, you may be surprised to learn that less than half of Florida's twenty circuits have general counsels. The general

job description of counsel for the court is the same for all, but the job duties may vary — a reminder of the unique demographics, geography, and needs of each circuit. I oversee the Office of Court Counsel (also known as a legal department), which houses three support staff and twenty staff attorneys, who provide legal research, legal writing, and legal advice to our sixty-nine judges. Court Counsel's Office manages the many contracts of the court — think experts, mediators, language interpreters, and court-appointed attorneys — and directs the civil traffic hearing officer program, among other things. As Court

Counsel, I provide counsel to the Chief Judge and the Trial Court Administrator (TCA).

For me, as Court Counsel for the Sixth Judicial Circuit, the variety of my days reflects the array of my responsibilities. So rather than one single day, I'll share a mashup. Most days begin early by choice. On the tenth floor of our office building next to the St. Pete Judicial Building, I work in the morning quiet, gazing at the breathtaking sunrise over Tampa Bay. By the time this article is published, our office will have relocated to a brand-new Annex facility next to the Criminal Justice

Continued on page 31

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Continued from page 30

Complex in Clearwater. The water views, with downtown Tampa in the background, will be missed, but the sights and smells of a new building are alluring. Like many, my day starts with checking email and the calendar as a reminder of the day's meetings. Whether it is a meeting with supervisors in my office, with the larger executive team, or with the Chief and TCA, most weeks include all three. In between the meetings of the day, I work on any

number of things — fielding phone calls; answering judges' questions; conducting legal review of public records under Fla. R. Gen. Prac. & Jud. Admin. 2.420; addressing employment issues; reviewing proposed legislation that might impact the court; responding to emails and letters received by citizens and lawyers; reviewing program agreements; and more. Each day's focus is different than the last. Fairly fast-paced, as attention must be redirected from one task to the next pressing one,

the days are usually over before I'm ready, offering a place to pick up tomorrow morning. It takes many people to efficiently and effectively operate the courts; I'm grateful

and proud to play my small part in the administration of justice. ■



Author:

Lyndsey E.

Siara — 6th

Judicial Circuit

Government Lawyer Section Co-Hosts “Brunch with the Bosses”

The HCBA Government Lawyers Section and HAWL Government Attorney's Committee were proud to host “Brunch with the Bosses” on February 24. Attendees enjoyed a free brunch with local government bosses and connected with them about their respective roles, how they got there, and other career advice. This event was a success, thanks to a grant from The Florida Bar Diversity & Inclusion Committee, and to all of the “bosses” that participated and gave of their time.



19TH ANNUAL JUDICIAL FOOD FESTIVAL & 14TH ANNUAL 5K PRO BONO RIVER RUN

Thanks to all the sponsors, attendees and participants that helped make the 19th Annual Judicial Food Festival & 14th Annual 5K Race on March 25 such a success! Also, thank you to our 5K Committee and all our volunteers, especially Committee co-chairs Judge Darren Farfante and Judge Alissa Ellison. Close to 500 HCBA members and their friends and family gathered for the event on the grounds of Stetson's Tampa Campus, where participants competed for best food, drinks and décor. We had 34 food and drink booths this year. Approximately 300 runners participated in the 5K this year, and more than 3,100 pro bono hours were pledged as a result. What a great event for a great cause!

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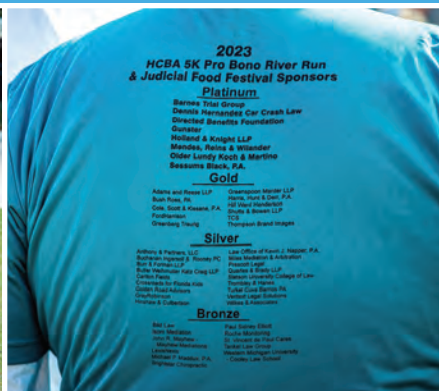
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Construction Law Section Hosts CLE

The Construction Law Section hosted an interesting Luncheon/CLE on March 16 at the Chester H. Ferguson Law Center. Attendees had the opportunity to learn from speaker Greg Burke of Gregory John Burke Architect, P.A., as he provided an analysis of how the Florida Building Code requirements have worked to mitigate property losses caused by recent hurricanes. Thank you to those who attended and the speaker for a great event.



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Labor & Employment Law Section

Chairs: Amanda Biondolino – Sass Law Firm & LaKisha Kinsey-Sallis – Fisher & Phillips LLP



In a 6-3 ruling, the Supreme Court held that day-rate employees are not paid on a salary basis under the FLSA's regulations.



The Supreme Court recently ruled that a highly compensated oil rig supervisor was not exempt from the Fair Labor Standards Act's (FLSA) overtime requirements because he was paid a daily rate, rather than a guaranteed salary.¹ The "critical question" in *Helix Energy Solutions Group, Inc. v. Hewitt*, 214 L. Ed. 2d 409 (2023),

was whether day-rate employees are paid on a "salary basis" as defined in 29 C.F.R. § 541.602(a). Answering this question in the negative, the Court's analysis in this decision provides important guidance for labor and employment practitioners.

The respondent, Michael Hewitt, worked as a supervisor on an

offshore oil rig for the petitioner, Helix Energy Solutions Group. He was paid a daily rate ranging from \$963 to \$1,342 per day, and earned over \$200,000 annually.

Hewitt sued Helix under the FLSA to recover overtime pay.

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Continued from page 40

Helix denied that Hewitt was entitled to overtime compensation, asserting that he qualified for the FLSA's executive exemption. To qualify for that exemption, an employee must, among other things, be paid on a salary basis and earn at least \$455 per week (now, \$684). Here, the parties disputed only whether Hewitt was paid on a "salary basis."

Department of Labor (DOL) regulations provide two methods for compensating employees on a salary basis. First, under § 541.602(a), an employee is paid on a "salary basis" if the employee regularly receives a predetermined amount each pay period on a *weekly, or less frequent, basis* that is not subject to reductions.² Alternatively, § 541.604(b) provides that an employee who is paid an hourly, daily, or shift rate may

satisfy the salary basis requirement if: (1) the employee is guaranteed at least \$455 each week (now, \$684) "regardless of the number of hours, days or shifts worked;" and (2) the guaranteed weekly amount bears a "reasonable relationship" to the "amount actually earned."³

Helix conceded that Hewitt's compensation did not meet § 604(b)'s requirements, as it did not guarantee Hewitt a weekly amount above \$455 that bore a "reasonable relationship" to his usual weekly earnings. Therefore, the case hinged on whether the salary basis provision of § 602(a) was satisfied.

In a 6-3 ruling, the Supreme Court held that day-rate employees are not paid on a salary basis under § 602(a). It rejected Helix's argument that the salary basis test was met because Hewitt was paid every two weeks and his pay always exceeded the minimum salary level

for any week in which he worked. The Court reasoned that § 602(a) "applies solely to employees paid by the week (or longer)" and "excludes daily-rate workers."⁴ Instead, such employees "are paid on a salary basis only through the test set out in § 604(b) (which, again, Helix's payment scheme did not satisfy)."⁵ ■

¹ https://www.supremecourt.gov/opinions/22pdf/21-984_j426.pdf.

² See 29 C.F.R. § 541.602(a)(1) (emphasis added).

³ See 29 C.F.R. § 541.604(b).

⁴ *Helix Energy Solutions Group, Inc. v. Hewitt*, 214 L. Ed. 2d 409, 421–22 (2023).
⁵ *Id.* at 421.

Author: Chase H. Hale - Jackson Lewis P.C.



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THE MARITAL FAMILY LAW RULES COMMITTEE – AN INTRODUCTION

Marital & Family Law Section

Chair: Susan Miles Whitaker – Bay Area Legal Services, Inc.



For the past almost six years, I have had the privilege of serving on The Florida Bar's Family Law Rules Committee, including as its Chair in 2020-2021. My experience as a Committee member has spurred my growth as an attorney, led to new friendships and colleagues, and helped to foster in me a sense of communal purpose — in this case, the improvement of our profession.

The HCBA has had strong representation on the Committee

during my term, and several of its members have served as the Chair in recent years. As I approach my retirement from the Committee, I want to share a message of encouragement with the family law practitioners and judges of the HCBA: *Please continue to utilize and engage with the Committee.*

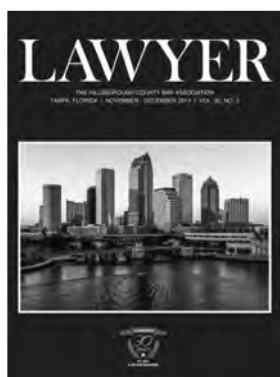
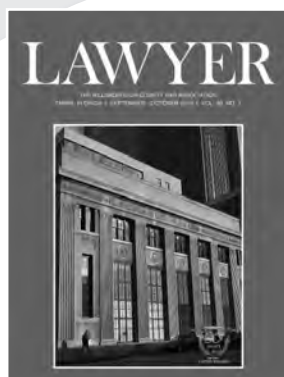
By way of brief background, in 1995, the Florida



Every trip into the courtrooms reminds me that creating and modifying rules and forms is important.

Supreme Court initially adopted Florida Family Law Rules of Procedure in *In re: Family Law Rules of Procedure*, 663 So. 1047 (Fla. 1995). The Florida Supreme Court further distinguished the Family Law Rules of Procedure (from the Rules of Civil Procedure) in *In re: Family Law Rules of Procedure*, 214 So.3d 400 (Mem) (Fla. 2017), when it permitted the creation of a stand-alone set of rules to govern family law proceedings.

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Rule of General Practice and Judicial Administration 2.140 governs the process of amending rules of court and The Florida Bar's standing rules committees, generally. Per that rule, the Committee may originate proposals and shall regularly review and reevaluate the rules to advance orderly and inexpensive procedures for the administration of justice. The Committee is comprised of attorneys and judges from across the state who serve three-year terms, up a combined maximum of six consecutive years.

Every trip to the courtroom reminds me that creating and modifying rules and forms is important. Those processes are

strengthened when practitioners and judges share their experiences and insights with the Committee. I am grateful to the many HCBA members who have volunteered time to the Committee, including on an *ad hoc* basis. If you have an interest in the rulemaking or form-making process, I highly recommend you either apply to serve on the Committee or you contact the Chair or the Committee's staff attorney and request to participate on a subcommittee on an *ad hoc* basis. The Committee always welcomes *ad hoc* help, and volunteering *ad hoc* can be stepping stone to becoming a Committee member.

Serving on the Committee has been one of the most impactful extracurricular activities of my legal career, and I hope in some

small part I have helped the HCBA's lawyers remain informed and involved with the family law rulemaking and form-making processes.

Even if you don't serve on the Committee in any capacity, you have the power to cause the Committee to address important issues by making a referral. You can make a referral by sending an email to the Chair and the

staff contact listed under the Committees tab of The Florida Bar website. ■



Author:
Cory Brandfon –
Harris, Hunt &
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EMPLOYMENT MEDIATIONS ARE DIFFERENT

Mediation & Arbitration Section

Chairs: Gerald T. Albrecht – Albrecht Mediation & Amber Boles – Boles Law Office



The parties in an employment dispute will likely cross paths in the future. Mediation often minimizes lingering animosity.

~~CONFLICT~~
MEDIATION



This article suggests opportunities to capitalize on important idiosyncrasies of employment mediation. Key among those are the high emotions we often find on both sides. Plaintiffs *feel* disrespected and mistreated. Defendants *feel* wrongfully accused of unfair, unethical, or immoral conduct. Emotions may predominate over the facts and the law. The parties want, and sometimes need, for the other side to understand their perspective.

In this context, it is critical that mediation afford a forum for respectful and open-minded communication. The employer should show a genuine interest in

understanding the employee's position *and* in fairly considering that, perhaps, it is not without fault. The employee should be open to taking some responsibility for the situation *and* to the possibility that s/he unfairly attributed bad intentions to the employer.

The contrast with litigation is evident. In discovery, much time and money are spent, and animosity developed, fighting for insights into the other side's perspective. New information is often met with resistance, rationalization, and efforts to diminish its significance. Information is used to prepare for battle. Conversely, at a collaborative

mediation, information may be freely given, can be accepted at its face value, and used to build consensus for resolution.

Another important factor is that employment litigation exposes information about the dispute to public scrutiny, which can cause substantial harm to the reputations and business prospects of *all* participants to employment litigation, parties and witnesses as well. Employers often prefer that certain information not be shared with customers, competitors, and current or prospective employees.

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Individual participants typically prefer that derogatory details of the dispute not be shared with friends, family, and prospective employers. Mediation confidentiality allows for resolution outside the public domain.

Furthermore, employment litigation forces sometimes devastating confrontation. Perhaps the best example is the victim forced to confront an unapologetic harasser. These confrontations can be avoided with a mediated resolution.

Interests in employment disputes often go beyond money damages. Examples include recasting an involuntary termination as a resignation, extending benefits, outplacement services, policy

modification, sensitivity training, restrictive covenants, general releases, confidentiality, and non-disparagement. Mediation provides a forum for meeting non-monetary interests in a manner not possible in litigation.

Lastly, the parties to an employment dispute will often cross paths in the future. Mediation often minimizes lingering animosity and therefore paves the way toward smoother future interactions, whereas litigation tends to build long-term resentment.

A collaborative mediation with a skillful mediator and counsel who are in tune with their clients' interests can help the parties to reach a principled resolution satisfactory to all. Select a mediator

with the expertise and demeanor to bring the parties together. Tailor your presentation toward fostering mutual understanding and finding common ground, not demeaning the adversary. Remember, you don't have to win or to convince the other side that you are right, but rather to find a solution that is better than litigating. Show respect and provide an opportunity for the

opposing party to move on with dignity. Work together to get it done. ■



Author:
Shane Muñoz —
Shane Muñoz
Mediations



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VA OFFICE OF INSPECTOR GENERAL INVESTIGATES ANONYMOUS TIP

Military & Veterans Affairs Committee

Chairs: Robert Barton – Rumberger Kirk & Janae Thomas – Quinteros, Prieto, Wood and Boyer, P.A.



OIG estimates that 400 complex appeals were assigned to raters who were not qualified to handle those types of claims.



One year ago, in March 2022, the Veterans' Administration Office of Inspector General (OIG) received an anonymous tip that a Decision Review Operations Center (DROC), the section of the Veterans Benefits Administration responsible for appeals processing, was improperly handling complex appeals.

Importantly, appeals of denials for veterans' benefits claims, such as amyotrophic lateral sclerosis (ALS), military sexual trauma (MST), and traumatic brain injury (TBI), are considered "complex" and should only be processed by decision review officers with specialized training. Additionally, decisions regarding claims for MST and TBI require the signature of two decision review officers. The OIG investigated the anonymous tip and released its findings on March 9, 2023.

The VA DROCs are located in Seattle, Washington; St. Petersburg, Florida; and Washington, D.C. These offices often transfer cases amongst themselves due to the Veterans' Benefits Administration's national work queue, which redistributes appeals based on the workloads of the individual raters. Due to this redistribution, the OIG estimates that 400 complex appeals were assigned to raters who were not qualified to handle those types of claims.

In addition to reviewing the work routing system, the OIG review team looked at three samples of complex appeals, consisting of ALS, MST, and TBI decisions made between October 1, 2021, and February 28, 2022. The OIG estimated that 93 percent of those appeals were decided by DROC raters who were not designated to process them, not

appropriately trained, or did not receive the required second signatures.

When OIG approached the DROCs about their findings, some managers and supervisors stated, "they assumed [decision review officers] met requirements and could issue decisions on any type of appeal" or that they "did not know which raters were designated to issue decisions on complex appeals."¹

VBA's Office of Administrative Review (OAR), which is tasked with managing the DROCs, ensuring quality control, and implementing the appropriate training programs, was also contacted about OIG's findings. OAR reported that it did conduct a site visit during the timeframe investigated but did not review completed appeals to

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determine whether the appropriate raters decided them. OAR explained it did not monitor these appeals because it was not aware that complex appeals were being decided by raters without the appropriate training or designation before the investigation.

According to the OIG report, the Veterans' Benefits Administration has begun to take steps in the right direction following this report. Nevertheless, veterans' representatives remain wary. Change in the VA system is slow moving, and quality control measures will take time to implement. I hope to see more

informed decisions on these complex appeals following these changes. ■

¹ VA OIG, VBA Did Not Ensure Complex Appeals Were Decided by Appropriate Staff, Report No. 22-01814-36, May 9, 2023 (Located at: VBA Did Not Ensure Complex Appeals Were Decided by Appropriate Staff (va.gov)).



*Author:
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John C. Bales Receives 2023 Abraham Lincoln Award

The Tampa Bay American Inn of Court named attorney John C. Bales the winner of the 2023 Abraham Lincoln Award, given annually to the member who best exemplifies the goals of the organization in promoting legal excellence, civility,

professionalism and ethics in the practice of law. John Bales joined the Tampa Bay Inn of Court in 1993 as one of its original founding members. He has previously served as the Inn's Executive Director, Treasurer and Secretary.

John Bales' name will be placed on the Lincoln Award plaque on the fifth floor of the Hillsborough County Courthouse.



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“Courtroom Do’s & Don’ts” Discussed at Judicial Luncheon

The Hillsborough County Bar Associated had the pleasure of hosting a special Judicial Luncheon/CLE on March 1, with a panel of judges and moderators who tackled the popular topic of Courtroom Do’s and Don’ts. Thank you to the participating judges: Judge Thomas Barber, United States District Court, Middle District of Florida; Judge Nelly Khouzam, Second District Court of Appeal; Judge James Yancey, 10th Circuit; Judge Jennifer Gabbard, 13th Circuit, Civil; and Judge Joe Tompkins, County Civil, Hillsborough County. Also thank you to our moderators: Judge Thomas Palermo, 13th Circuit, Unified Family Court and E. Lamar Battles, Retired 13th Circuit Judge, Civil, for helping organize this insightful CLE.

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THE SECURE ACT 2.0: PROVISIONS TO CONSIDER

Real Property, Probate & Trust Law Section

Chairs: Kasey Feltner – Shutts & Bowen & Lauren Taylor – Fogarty Mueller Harris, PLLC



SECURE 2.0 expands the SECURE Act and includes 92 provisions that focus on increasing retirement savings, preserving income, and clarifying applicable retirement plan rules.



On December 20, 2019, President Trump signed the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) into law.¹ The SECURE Act is the most significant piece of retirement legislation since 2006. The SECURE Act has altered estate and tax planning by requiring all IRAs inherited by non-spouses to be paid out within 10 years of the original IRA plan holder's death, rather than allowing distributions over the course of the beneficiary's lifetime.²

Just three years later, on December 29, 2022, President Biden signed "SECURE 2.0," into law, which went into effect on January 1, 2023.³ SECURE 2.0 expands the SECURE Act and includes 92 provisions that focus on increasing retirement savings, preserving income, and clarifying applicable retirement plan rules.⁴

SECURE 2.0 increases the required minimum distribution (RMD) starting age for IRAs and workplace retirement plans from 72 to 73 effective January 1, 2023.⁵ The RMD age increases again to age 75 on January 1, 2033.⁶ Further, the excise tax for failure to take a RMD was decreased from 50% of the required withdrawal

amount to 25%, and down to 10% if corrected within two years.⁷

The age increase allows for deferral of income taxes from RMDs. However, delayed distributions will result in higher tax liability later.⁸ Clients may also leave their RMDs to a beneficiary and direct distributions of the RMDs upon "the required age" or other boilerplate language. Therefore, clients may need to clarify the timing of RMD distributions to beneficiaries in accordance with the age increase.

Individuals turning 73 in 2023 must take their first distribution by April 1, 2024.⁹ Subsequent RMDs are due annually on December 31 thereafter.¹⁰ To avoid including the first two RMDs as income in a single tax year, the first RMD should be taken by December 31 of the year the individual turns 73.¹¹

Some additional SECURE 2.0 provisions worth noting: First, Section 126 eliminates concerns of overfunding 529 plans by allowing the rollover of unused 529 funds to Roth IRAs tax free and without penalty, under certain conditions. A maximum of \$35,000 can be rolled over during the beneficiary's lifetime; these rollovers

are subject to the Roth IRA annual contribution limits of \$6,000, and the 529 account must have been open for more than 15 years.¹²

Next, Section 202 increases the amount that can be moved to a qualified longevity annuity contract (QLAC). QLACs are deferred annuities that limit an individual's risk of outliving their savings. While more funds can be allocated, upfront costs may increase because the prior cap on QLAC premiums was eliminated.

Finally, Section 303 creates a national searchable online database that allows individuals to "look up" their retirement plans, improving accessibility nationwide.¹³

SECURE 2.0 increases access to retirement planning and offers new and different options for clients. Clients should be encouraged to review their retirement planning to ensure that their plans reflect their wishes and are structured in both a tax and administratively efficient manner. ■

¹ Pub. L. No. 116-94 (Dec. 20, 2019).

² Luis A. Silva, LL.M., *SECURE Act and Estate Planning: Ensuring Your*

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THE SECURE ACT 2.0: PROVISIONS TO CONSIDER

Real Property, Probate & Trust Law Section

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Client's Plan is Still Up to Date, HCBA LAWYER, May/June 2020, at 52.

³ Pub. L. No. 117-328 (Dec. 22, 2022).

⁴ The Senate Committee on Finance, *SECURE 2.0 Act of 2022* (Dec. 19, 2022).

⁵ *Checkpoint's Quick Guide: SECURE 2.0 Provisions Your Clients Need to Know About Now* (Feb. 2023).

⁶ *Id.*

⁷ *Id.*

⁸ *SECURE Act 2.0: How new legislation could change the way you save for retirement*, U.S. BANK.

⁹ David E. Bowers, LL.M., *SECURE Act 1.0 and 2.0*, Past Chairs CLE, Florida Bar Tax Section (Jan. 20, 2023).

¹⁰ *See id.*

¹¹ *Id.*

¹² *See id.*

¹³ *See id.*



Authors: Alison Bowlby – Johnson, Cassidy, Newlon & DeCort, P.A. and Lauren Taylor – Fogarty Mueller Harris, PLLC

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Community Services Committee Participates in "Paint Your Heart Out Tampa"

The HCBA Community Services Committee proudly coordinated a team of HCBA members, who participated in "Paint Your Heart Out Tampa" on April 22. The team members donated supplies and helped paint an elderly resident's home, who was delighted with the paint job and her home's fresh new look.

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Attorneys are known to sacrifice their own well-being for their careers. Bar associations and law schools across the country are finally recognizing these issues and taking some action.



As a group, attorneys suffer from substance abuse, depression, and anxiety at higher levels than the population in general.¹ Anecdotally, it seems the stress lawyers experience comes from a variety of sources, including unreasonable expectations by courts and clients; secondary trauma from helping clients through difficult times in their lives; and a pressure to perform perfectly or risk detrimental consequences. Attorneys are known to sacrifice their own well-being for their careers. Bar associations and law schools across the country are finally recognizing these issues and taking some action.

Here in Florida, The Florida Bar has established the Florida Standing Committee on the Mental Health and Wellness of Florida Lawyers which, among other things, hosts the Mental Health and Wellness Center on the Bar's website.² The Center offers a variety of benefits for Bar members that can help attorneys improve and maintain a healthier life style. We encourage you to explore these benefits and take advantage of them.

• **The Florida Lawyers**

Helpline: This is a free resource that not only provides immediate access to professional counselors for lawyers in crisis, but also provides five free

therapy sessions per year to each bar member. Similar to an Employee Assistance Program, the helpline is managed by a third party and all information is HIPAA protected, so the Bar has no access to information regarding who uses the resource. The helpline also provides a free, 30-minute financial consultation, and referrals for work-life specialists and services. It is available 24/7 all year round at 833-351-9355.

• **Mental Wellness Benefits:**

As Florida Bar members, we also receive discounts to services outside of the helpline. For example, the Bar provides members and their families 20% off sessions through eVideo Counselor, an online face-to-face video counseling service with licensed mental health therapists. There are also significant discounts for both the Calm app and Waking Up with Sam Harris — apps that assist with meditation and mindfulness.

• **Physical Wellness Benefits:**

Taking care of ourselves is not just about our minds, but also our bodies. That is why the Committee has also secured benefits for Bar members related to physical health. First, there is a 15% discount on Fresh Meal

Plan, a service that delivers healthy, fresh meals right to your home. Second, Florida Bar members are eligible for YMCA Corporate Membership at no cost to join and 10% off the monthly membership at 124 participating YMCA locations in 37 countries. The YMCA offers access to a wide variety of exercise programs and resources.

All of these benefits are available through the Wellness Center website, along with additional resources to educate you on wellness amongst lawyers. These resources include CLE programs, a fantastic podcast run by Christine Bilbrey, and toolkits to assist lawyers and law firms in improving lawyer well-being. We hope you will take advantage of these resources and take care of yourselves! ■

¹ P. R. Krill, R. Johnson, & L. Albert, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, 10 J. ADDICTION MED. 46 (2016).

² <https://www.floridabar.org/member/healthandwellnesscenter/#1581949692560-b497ea13-dbd2>.

Author: Mandi Clay – Three Thirteen Law, PLLC

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YLD Holds CLE on “Getting Published”

The HCBA YLD had a great turnout at their annual Pizza and a CLE Luncheon on March 2 at the Chester H. Ferguson Law Center. Attendees enjoyed lunch and a captivating presentation by YLD board member, Alexis Deveau of Gunster, who provided advice on the all-important topic of “Getting Published: Digital & Periodical Publications.” Thank you also to our generous luncheon sponsors, Legal Ease Professional Solutions and Milestone Reporting.



Senior Counsel Section Hosts Luncheon

The Senior Counsel Section held an insightful luncheon on March 17. Attendees had the pleasure of hearing from Suzy Lopez, the State Attorney for the 13th Judicial Circuit. We appreciate Ms. Lopez taking time from her busy schedule to speak with the group.





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NEW SERVICE OF PROCESS STATUTES

Trial & Litigation Section

Chair: Kristin A. Norse – Kynes, Markman & Felman, PA



Important and needed changes provide clear requirements to address the problem of phantom registered agents.



As we eagerly await the sweeping, but more refined, proposed amendments to the civil rules that the rules committees are required¹ to file with the Clerk of the Florida Supreme Court by July 3, 2023, our readers may want to familiarize themselves with recent changes to the Florida

service of process statutes that were effective as of January 2, 2023.

Service of process is not an especially exciting topic. It can sometimes be an afterthought, and many a busy practitioner hopes to let the professional process server handle the details. But, as many

of us will recognize, service can be tough to perfect in some cases becoming a jurisdictional hurdle that is difficult to clear.

Perfecting service on individuals who cannot be identified or

Continued on page 61

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distinguished, with many similar names and no confirmed photographs, can be tricky. It can be downright frustrating when seeking an individual who does not appear to have a paper trail. There are also business entities with phantom registered agents, which the practitioner discovers when the process server reports that the “suite” in the registered agent’s address is actually a box at a mail drop, or perhaps a vacant office. There are many variations on these themes, but the issue remains important. Perfection of service is “[i]ndispensable to the jurisdiction of the Court”² and can be raised any time, even after entry of judgment, if the defense of insufficient service of process has not been waived by a general appearance.

Our own Representative Mike Beltran³ of South Hillsborough sponsored HB 545 last year with the goal of simplifying, harmonizing, and modernizing the service of process rules to increase efficiency in civil litigation. The full catalogue of adjustments is beyond the scope of this commentary, but important and needed changes provide clear

requirements to address the problem of phantom registered agents and allow flexibility to a trial court to fashion an alternative process when conventional service is unfeasible.

The changes also streamline service in foreign countries, allowing any method of service acceptable in the foreign country. Anyone who has tried to serve process in a country that is not a signatory of the Hague Convention has learned about the expensive, time-consuming, and ultimately uncertain Letters Rogatory⁴ process that takes many months and costs thousands of dollars (U.S. State Department charges alone exceed \$2,275).⁵ Letters Rogatory have, in many cases, not proved to be viable solutions to accomplish foreign service of process. The new statutes remedy that deficiency and allow foreign service without treaty.

Practitioners may wish to read the enrolled bill⁶ to see the line-by-line changes or review the Judiciary Committee’s bill summary⁷ for a broad overview. If that is not enough, the Business Law Section of the Florida Bar created a five-page flowchart⁸ to help us navigate the new requirements and to

provide us with some useful practice to prepare for our future. ■

¹ <https://www-media.floridabar.org/uploads/2023/01/164654769-Supreme-Court-Order.pdf>.

² *Opella v. Bayview Loan Servicing, LLC*, 48 So. 3d 185, 187-88 (Fla. 3d DCA 2010) (quoting *Bussey v. Legislative Auditing Committee of Legislature*, 298 So. 2d 219, 221 (Fla. 1st DCA 1974)).

³ <https://www.myfloridahouse.gov/Sections/Representatives/details.aspx?MemberId=4747>.

⁴ https://www.justice.gov/sites/default/files/civil/legacy/2014/08/08/28_USCA_s_1781.pdf.

⁵ <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-C/part-22/section-22.1>.

⁶ <https://www.flsenate.gov/Session/Bill/2022/1062/BillText/er/PDF>.

⁷ <https://www.flsenate.gov/Committees/BillSummaries/2022/html/2714>.

⁸ <https://flabizlaw.org/wp-content/uploads/2022/11/Service-of-Processall.pdf>.



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ONE-TIME CHANGE AND CHOICE OF PHYSICIAN

Workers' Compensation Section

Chairs: Anthony Cortese – Anthony V. Cortese-Attorney at Law, Irene M. Rodriguez – Irene M. Rodriguez, P.A., Ya'Sheaka Williams – Eraclides, Gelman, Hall, Indek, Goodman



The Workers' Compensation Law Section scheduled a lunch seminar in March on *Daubert* objections, and is in the process of putting some of the materials from that seminar onto the Hillsborough County Bar Association website in the worker's compensation section. These resources will likely be available by the time this article is published. In the meantime, there was an important decision reaffirming the rule that an employer/carrier (EC) forfeits the right to choose the physician when a one-time change is requested in writing by a claimant, unless the EC responds in a timely manner and provides the authorized alternate physician without unreasonable delay in acquisition of an appointment date. *City of Bartow v. Flores*, 301 So. 3d 1091 (Fla. 1st DCA 2020).

The Order in *Andrews v. McKim & Creed*, No. 1D21-427 (February 1, 2023), "respectfully," but expressly refused, to follow the *Flores* precedent, arguing that the precedent misconstrued the statute, before also attempting to distinguish *Flores*. The First District reversed, pointing out that a disagreement that a Judge of Compensation Claims may have with a decision from the First District does not relieve the Judge from the duty to follow the decision.

The primary question was whether the failure of the EC to authorize a one-time change within 5 days of the written request by the claimant gave the claimant the right of choice over the one-time change doctor. The claimant sent a written request, which was received by the EC on June 20, 2019, but the EC never responded. On July 2, 2019, the claimant filed a Petition for Benefits (PFB) asserting entitlement to a one-time change to a doctor of his choice. Twenty-seven days later, the EC filed a response, agreed to the change, named Dr. Feiertag, and set an appointment for the claimant. The claimant did not attend the appointment and voluntarily dismissed the PFB, but later filed another PFB for authorization and payment of an appointment for evaluation and treatment with the doctor of claimant's choice, Dr. Rouch. The order by the JCC denied the request for authorization of Dr. Rouch, and "[r]espectfully" declined to follow the *Flores* decision. The First District reversed the entire order as well as expressly and firmly reversing the refusal to follow *Flores*.

Three arguments that the EC also raised in *Andrews* were disposed

There was an important decision reaffirming the rule that an employer/carrier forfeits the right

to choose the physician when a one-time change is requested in writing by a claimant, unless the EC responds in a timely manner.



of quickly by the First District. One was that the claimant waived the right to choose their doctor by their delay. The second was that by withdrawing the first PFB, the claimant also withdrew the request for a one-time change. The third was that because the claimant saw Dr. Rouch once before the hearing, the claimant had an additional duty to prove that evaluation and treatment by Dr. Rouch was reasonable and necessary and causally related to the workplace injury before Dr. Rouch could be authorized as the one-time change doctor. Because the claimant had not asked for the one visit to be paid for by the EC, the First District held the third defense was inapplicable, and the failure to properly respond and authorize an appointment in response to the letter of June 20, 2019, caused the waiver of the EC's right to choose the one-time change doctor. As such, the specific delay and withdraw of the PFB did not affect the EC's waiver of the right to choose. ■

Author: Anthony V. Cortese – Anthony V. Cortese, Attorney at Law



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Daniel Etlinger with **Jennis Morse Etlinger** recently presented at the 2023 Alexander L. Paskay Memorial Bankruptcy Seminar on the topic of Exemptions. He was joined by Judge Tiffany Geyer, Jake Blanchard, Lara Roeske Fernandez, Soneet Kapila and Angelina Lim.

Congratulations to **Phelps** Counsel **Catriana Messina**, who was nominated and selected as delegate for the Property Insurance Claims Group (PICG) Claims Academy. She is one of only 24 insurance professionals designated to attend this year's Academy.

Shea Moxon of **Brannock Humphries & Berman** presented "The Workers' Comp Surprise Attack Statutory Letter Trap (Where the Defense Opts to Try to Represent the Injured Plaintiff)!" at the Florida Justice Association's John Romano Workhorse Seminar.

Florida Trend's Florida Legal Elite inducted **Phelps** Partner **John Mullen** into its Hall of Fame. Mullen guides employers in a wide range of industries through complex commercial litigation and

arbitration and currently serves as the chair of the Ethics Committee for the firm.

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