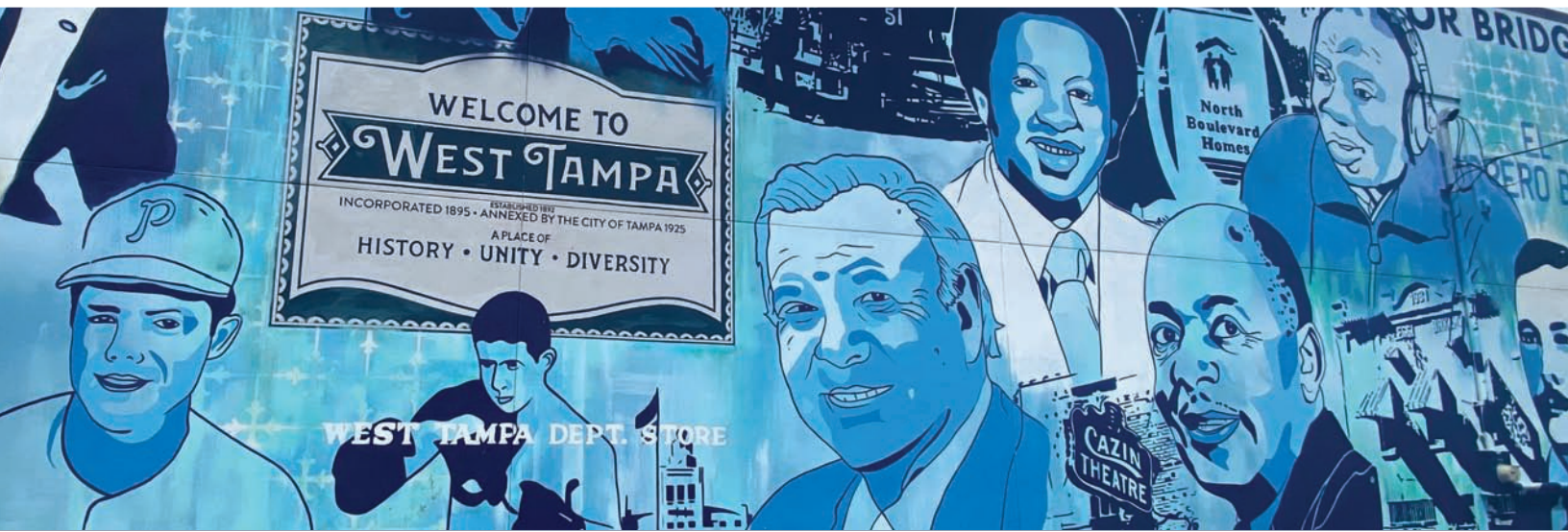


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## DIVISIONS


**4 READY FOR 2022?  
YEAH, ME NEITHER!**

Editor's Message  
by Joseline Jean-Louis Hardrick

**6 OVERCOME WITH GRATITUDE**

HCBA President's Message  
by Cory Person

**8 WHAT ARE YOU GRATEFUL FOR?**

YLD President's Message  
by Alexandra Palermo

**10 HCBA'S SUCCESSFUL  
24TH ANNUAL BENCH BAR  
CONFERENCE BRINGS  
HILLSBOROUGH'S LEGAL  
COMMUNITY TOGETHER (AGAIN)**

Executive Director's Message  
by John F. Kynes

**14 CLEARING THE CASE  
BACKLOG AND GETTING  
BACK TO BUSINESS**

From the State Attorney  
Andrew Warren

**18 HELPING THOSE WHO  
SACRIFICED FOR OUR COUNTRY**

From the Clerk of Court &  
Comptroller Cindy Stuart

## FEATURES &amp; EVENTS

**12 HCBA & YLD PLAN  
FOR THE YEAR AHEAD**
**23 CONSTRUCTION LAW SECTION  
LUNCHEON/CLE**
**25 BLI OPENING RECEPTION**
**31 GOVERNMENT LAWYERS SECTION  
HAPPY HOUR**
**31 INTELLECTUAL PROPERTY SECTION CLE**
**32 WELCOME BACK MEMBERSHIP  
RECEPTION**
**36 JUDGE MICHAEL BAGGÉ-HERNÁNDEZ  
RECOGNIZED AT FLORIDA  
JURIST EVENT**
**42 MEDIATION & ARBITRATION AND TRIAL  
& LITIGATION JOINT LUNCHEON/CLE**
**55 SOLO & SMALL FIRM LUNCHEON/CLE**
**62 YLD JOINT HAPPY HOUR**


## ABOUT THE COVER

On the cover of this issue, we are highlighting another of the area's beautiful murals. "Faces of West Tampa" is a City of Tampa Public Art program-commissioned mural located in Salcines Park in West Tampa. Painted by Tampa-based Michelle Sawyer and Tony Krol of Illsol, this mural pays homage to the diverse history of West Tampa by showcasing many of the area's historic figures, elements, and places of historic significance that represent the West Tampa area. The artists spoke with members of the community and the West Tampa CRA, the agency that funded the repair of the wall, to inform the content of the mural. Other West Tampa landmarks, imagery and memories are ghosted in the design. The Individuals depicted in the mural (from l-r) are: Ray Caceres, football player; Clara C. Frye, African American nurse who opened a hospital out of her home circa 1900s to treat African Americans; George Edgecomb, first African American judge in Hillsborough County; Robert W. Saunders, Sr., United States civil rights activist; Lou Piniella, baseball player and manager; Mr. Emiliano Jose & Mrs. Juanita Salcines, owners of West Tampa Department Store, park namesake; Antonio Lopez "Half Pint," boxer; E.J. Salcines, son of Mr. and Mrs. Salcines, prosecutor, appellate judge and Tampa historian; Alton White, civil rights activist, executive director of Tampa Housing Authority; Leon Claxton, producer of African American and Latin entertainment during Jim Crow era; Jetie B. Wilds, Jr., West Tampa neighborhood activist and radio personality; and Blas O'Halloran, co-owner of O'Halloran cigar factory, a place of significance for the start of the Cuban War of Independence. Image used with permission from the City of Tampa Public Art Program. For more information, visit: <https://www.tampa.gov/art-programs/murals>.

## SECTIONS



### 20 CERTIORARI REVIEW OF ORDERS DENYING DISCOVERY

Appellate Practice Section  
by Brandon K. Breslow & Kristin A. Norse

### 22 SURFSIDE: LAWMAKERS POISED TO AMEND CONDO LAWS

Construction Law Section  
by Alex M. Sarsfield

### 28 THE MANY DISCIPLINES IMPLICATED BY EMINENT DOMAIN LAW

Eminent Domain Law Section  
by Ryan C. Reese

### 30 A DAY IN THE LIFE OF ... A CIRCUIT COURT JUDGE

Government Lawyers Section  
by Judge Christopher C. Sabella

### 38 REVISITING THE FLSA JOINT EMPLOYER TUG OF WAR

Labor & Employment Law Section  
by Timothy Tack

### 40 WHEN ONE MONTH MAKES ALL THE DIFFERENCE

Marital & Family Law Section  
by Lara G. Davis



### 42 LESSONS FROM LASSO ON MEDIATION STRATEGY

Mediation & Arbitration Section  
by Harold Oehler

### 50 FLORIDA STATUTE CHANGE, COMPENSATION OF ATTORNEY FOR PERSONAL REPRESENTATIVE

Real Property, Probate & Trust Law Section  
by Elaine N. McGinnis

### 52 CIGAR CITY TAMPA

Senior Counsel Section  
by Thomas Newcomb Hyde

### 54 BEST PRACTICES FOR SOLOS AND SMALL FIRMS WHO ARE WORKING REMOTELY

Solo & Small Firm Section  
by Rick Duarte & W. Austin Engelbrecht

### 56 VOIR DIRE IN COVID-19 TIMES AND BEYOND

Trial & Litigation Section  
by Charles T. Moore

### 60 IMPACT OF PERSONAL MEDICAL CONDITIONS ON WORK CLAIMS

Workers' Compensation Section  
by Ya'Sheaka C. Williams



## COMMITTEES

### 26 ADDING EQUITY: THE RENAMED AND NOW STANDING DIVERSITY, EQUITY, AND INCLUSION COMMITTEE

Diversity, Equity & Inclusion Committee by Alexis Dion Deveau

### 46 BURN PITS: PRESUMPTIONS AT LAST

Military & Veterans Affairs Committee  
by Morgan MacIsaac

### 48 HAPPY HOLIDAYS, LAWYER STYLE

Professionalism & Ethics Committee  
by Shelton Bridges

## IN EVERY ISSUE

### 3 NEW MEMBERS

### 34 HCBA BENEFIT PROVIDERS

### 46 SAVE THE DATE

### 58 100 CLUB

### 63 AROUND THE ASSOCIATION

### 63 ADVERTISING INDEX

### 64 JURY TRIALS

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## WELCOME NEW HCBA MEMBERS AUGUST-SEPTEMBER 2021

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Kourey Hendryx-Bell	Kloa Nuria	Taylor Zuberer
Bryan Hoerbelt	Jessica O'Connor	

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## Ready for 2022? Yeah, Me Neither!

**Whatever 2022 may bring, let's embrace it with grace and optimism.**

**I**t's hard to believe but 2022 is almost here. November and December are well known for the holiday season, including shopping, family vacations, and an overall break from work and school. But many of us are still processing 2020 while we work to figure out the new normal for 2021.


If you're like me, you may have had a lot of trouble placing recent events on a timeline; did that happen last year or the year before? Has it really been that long since I've visited the dentist? And what exactly happened in 2021? Without the usual celebrations and rituals that mark the passage of time, we can get lost in our daily activities and lose track of time.

Here's some good news. Despite some surges in the Delta variant, COVID-19 is better controlled now more than ever, millions of people are vaccinated, in-person activities are returning safely, and life is still moving forward.

This time period is historic, no doubt. When we reflect on 2021, history books will record it as a time of dramatic changes, shifts in how we run our businesses, govern our nation, states, and cities, and of course, the expected, and sometimes surprising, impact of COVID-19 on the economy.

Here are some trends as discussed in several articles in this issue: courts are moving forward with trials and ruling on outstanding motions; *see* the Appellate Section article on "Certiorari Review of Orders Denying Discovery," at page 20; the Department of Labor is grappling with the new reality of the gig economy, and what that means for the definition of "joint employer;" *see* the Labor & Employment Section article "Revisiting the FLSA Joint Employer Tug of War" at page 38; criminal prosecutions of high profile cases have gone forward so that justice

**Continued on page 5**



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**Continued from page 4**

would not be further delayed for those victims; *see* the State Attorney's Office "Clearing the Case Backlog and Getting Back to Business" at page 14; and veterans are getting much-needed relief in medical care and regarding minor offenses; *see* the Clerk of Court and the Military and Veterans Affairs Committee's articles at page 18 and page 46, respectively.

More importantly, it's a time for you to reflect on areas of growth, improvement, gratitude, and lessons learned. And of course, we must remember to celebrate, even in difficult times. The HCBA Professionalism and Ethics Committee article, "Happy Holidays, Lawyer Style," gives a great reminder by using Happy Holidays as an acronym at page 48.

I've heard it said many times over the last two years that we are all in the same storm, but we're in different boats. It means that we are all experiencing these dramatic changes in different ways depending on our individual circumstances. If you just survived these last two years, that's fine. We are all going through this collective challenge together, but we don't all have the same access to resources to deal with it. There's no shame if you struggled. If you were able to thrive, that's great. If you faltered and fell down, you have a chance to get back up and start over. Like other major global disruptions, the Great Depression, World War II, and national tragedies like 9/11 and the Great Recession, we have bounced back stronger and hopefully wiser.

Whatever 2022 may bring, let's embrace it with grace and optimism. See you in the new year. ■



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## Overcome with Gratitude

**“As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them.”**

**— John F. Kennedy**

**T**he holiday season has always been my favorite time of the year. This is not unique — as I suspect that many of you reading this article also consider this “the most wonderful time of the year.” The gathering of family and friends, the opportunity to give (and receive) gifts, the music, the (ugly) sweaters, and, of course, the food, are all things that make this time of year so special. But, the holiday season also comes with high expectations — expectations of feeling happy, of being festive — despite whatever challenges or difficulties are happening all around us. Research indicates that for many this time of year is tinged with sadness, anxiety or depression. This may be particularly so given the unique challenges we have all experienced over the past 20 months.

Studies conducted at the University of California, Davis and the University of Miami suggest that one aspect of the holiday season can do more to lift spirits than even ... a Burl Ives song — *being grateful*. Gratitude is derived from the Latin word *gratia*, which means grace, graciousness, or gratefulness, depending on the context. In many ways, gratitude encompasses each of these meanings. Gratitude has been described as a thankful appreciation for what we receive, whether tangible or intangible. It is also an acknowledgement of

the good in our lives, and recognition that the source of that goodness lies, in part, outside of ourselves.

Showing gratitude has consistently been associated with greater happiness. In general, gratitude helps people feel more positive emotions, relish good experiences, improve physical and mental health, and build stronger relationships. So, I'd like to share a few things that I am grateful for. I am grateful for our members, so many of whom support our Bar association with their time, energy and resources. I am grateful to our Bar staff, officers and directors, who work so hard

to ensure that our Bar is strong, vibrant, relevant, and meeting the needs of our members. I am grateful for the wonderful community partners that help sustain our Bar, which enables us to put on so many great programs throughout the year (like our recent awesome Bench Bar Conference)! I am grateful for our military veterans who have given of themselves for the



cause of our great country.

This year, if you are feeling overwhelmed or anxious, take some time to think about (and perhaps even write down) some of the things that you are grateful for. Then, come join us at the HCBA Holiday get together on December 2nd (where there is a strong chance you hear a Burl Ives tune)! ■





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## What Are You Grateful For?

**“Gratitude turns what we have into enough.” — Aesop**

**M**y four-year-old daughter loves running around the house singing, “What are you grateful for?” I wish I could take credit, but this is all her incredible school that encourages respect, kindness, and giving to others. These are such simple concepts for kids. But as adults with jobs, pets, kids, bills, and more, we get busy, and then making time to give to others falls lower on our priority lists.

But this is the perfect time of year to reflect on all of the things we are grateful for. It is also a time we as attorneys can come together to give back to our community through *pro bono* services. According to Rule 6.1 of the American Bar Association’s Model Rules of Professional Conduct, “a lawyer should aspire to render at least fifty (50) hours of *pro bono* public legal services per year.” Thankfully, thousands of lawyers meet this challenge every year. But the need for *pro bono* legal services still far outweighs the amount of hours

contributed. Study after study shows that low-income Americans struggle to obtain quality representation in the costly legal system. Invaluable not-for-profit agencies and legal services providers work tirelessly to assist as many as possible, but the need is still greater.

As a young lawyer, I saw first-hand how gaining courtroom experience is becoming increasingly more and more difficult. Litigation is expensive, so clients often settle or seek alternative forms of dispute resolution. By taking on *pro bono* matters, young lawyers can provide a lifeline to low-income clients while also gaining valuable experience. If you want to depose someone, handle a mediation for a client, argue dispositive motions, or even argue at trial, one of the best ways to secure the experiences is through *pro bono* work.

There are many ways to volunteer your time — whether it is assisting *pro se* family law litigants with

Continued on page 9

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Continued from page 8

completing court-approved family law forms at Bay Area Legal Services' (BALS) Family Forms Clinic, or assisting firefighters, law enforcement, and emergency medical technicians with completing their wills and durable powers of attorney at Wills for Heroes. You can join the Collective — a networking group of young leaders in the legal community who support the mission of BALS and work to improve access to justice. You can become an attorney *ad litem* with the Crossroads for Kids program and act as a legal advocate for children in the foster care system in Hillsborough County. The



opportunities to give back with the skills we possess are truly endless.

YLD Board members Linda Anderson Stanley, Sara Peacock, and Traci Koster will work closely with YLD Pro Bono Committee Chairs Calli Burnett and Paige Tucker to coordinate and implement *pro bono* initiatives for our young lawyers all year long. On November 9, the YLD Luncheon was dedicated to championing *pro bono* opportunities for young lawyers. We hope the event helped our members learn about new initiatives to get involved in to give back.

So what are you grateful for? The YLD Board is grateful for all of you, our members, and we wish you all the happiest of holidays. ■



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## HCBA's Successful 24th Annual Bench Bar Conference Brings Hillsborough's Legal Community Together (Again)

The theme of this year's Bench Bar Conference was "Carrying the Torch For 125 Years," in reference to the HCBA's 125th Anniversary since its founding in 1896.

American icon and musical troubadour Bob Dylan released a song in 2000 titled "Things Have Changed."

In his luncheon remarks at the HCBA's Bench Bar Conference in October, Thirteenth Judicial Circuit Chief Judge Ronald Ficarrotta referenced Dylan's song to make a point about the pandemic.

Ficarrotta highlighted the fact that a lot has changed in the world since HCBA members last gathered in person two years ago at the Bench Bar Conference in 2019.



And after a year hiatus because of health concerns surrounding COVID-19, hundreds of HCBA members gathered at the JW Marriott Tampa Water Street at the HCBA's 24th Annual Bench Bar Conference, Membership Luncheon, and Judicial Reception on October 12.

Bench Bar Conference Committee Co-Chairs, Thirteenth Circuit Judges Samantha Ward and Thomas Palermo, collaborated with committee members for months planning the conference.

Continued on page 11



HCBA Programs Chair Zarra Elias, Bench Bar Conference Co-Chair Judge Thomas Palermo, HCBA President Cory Person, Florida Supreme Court Chief Justice Charles Canady, and Thirteenth Judicial Circuit Chief Judge Ronald Ficarrotta at the Bench Bar Conference luncheon.



Continued from page 10

"I was stunned and appreciative with the great attendance at the Bench Bar Conference this year," Ward told me. "I have heard from so many people that told me they were happy to be back together again in person."

Ward said a record number of judges participated in the conference, which featured numerous CLE breakout and plenary sessions held throughout the day.

Florida Supreme Court Chief Justice Charles Canady, Second District Court of Appeal (DCA) Chief Judge Robert Morris, and Chief Judge Ficarrotta were the featured speakers at the membership luncheon.

In his luncheon remarks, Canady expressed his gratitude to all the lawyers, judges, and court staff around the state for "keeping the wheels of justice moving forward" during the pandemic.

"It's been a difficult time to be a lawyer," Canady said. "Some lawyers have done well; for others, it's been a great challenge; and, for many, it's been an isolating experience."

Chief Justice Canady praised the efforts of the HCBA and other voluntary bar associations for helping to keep lawyers "connected" during the pandemic.

He highlighted the emergence of new technologies, such as Zoom, during the pandemic to help make the justice system work.

Canady also talked about the significant challenges facing Florida's court system, including the huge backlog of cases that have developed since the pandemic began.

And Canady shared details about the court's case management system to help expedite outstanding civil cases.

Canady gave a special shout-out to the court's technology staff members, saying, "technology has made it possible for us to do things I think we could have never imagined that we could accomplish."

Second DCA Chief Judge Robert Morris told the luncheon attendees that the pandemic has been "transformative" for the appellate court.

He said the Second DCA has "thrived" as it has adapted to a virtual environment and that the appeals



Cory Person, HCBA president, speaking during the Membership Luncheon.

court will likely continue to allow attorneys to appear virtually for arguments in the future, even after the pandemic.

Morris also talked about the anticipated increase in cases the Second DCA will see as the trial courts continue to work through the substantial backlog of cases.

"We're ready for that," Morris said, referring to the caseload issue.

In his remarks, Chief Judge Ficarrotta said it has been a "team effort" to keep

the courthouse operating during the pandemic.

"During the pandemic, the Thirteenth Circuit has successfully conducted more jury trials than any other circuit in the state," Ficarrotta said.

Ficarrotta also talked about how the court has embraced technology and how it manages the backlog of cases.

"Together, we have overcome a great number of challenges," Ficarrotta said.

Also, at the luncheon, the winners of the Thirteenth Judicial Circuit's 2021 Professionalism Awards were announced.

This year's private sector professionalism award went to Kristin Norse with the law firm Kynes, Markman & Felman. The government sector award went to Jane Rose with the Hillsborough County Attorney's Office.

The theme of this year's Bench Bar Conference was "*Carrying the Torch For 125 Years*," in reference to the HCBA's 125th Anniversary since its founding in 1896.

HCBA President Cory Person told the luncheon attendees that the conference continues to be one of Tampa's premier legal events because of the strong support of the judiciary and all the generous event sponsors, especially Diamond Sponsor Steve Yerrid and The Yerrid Law Firm.

"Throughout its long history, the HCBA has worked hard to bring local attorneys together and to serve the legal profession and the community," Person said.

\* \* \*

*Note: Additional photos and sponsor recognition for the Conference will be included in the next issue of the magazine, the January/February issue.*





## HCBA & YLD Plan for the Year Ahead

The Hillsborough County Bar Association Board of Directors and the Young Lawyers Division Board of Directors joined forces for a retreat on August 20 at the Epicurean Hotel in Tampa. Both boards discussed its plans and programs for the upcoming Bar year, and how to increase member involvement and engagement.

The board members would like to thank the retreat Major Sponsors:





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## Clearing the Case Backlog and Getting Back to Business

**Enhanced safety measures have allowed us to conduct more than 200 jury trials since the courthouse reopened.**

**T**hough the pandemic *tried* to press pause on the work we do each day, the State Attorney's Office and our court partners found creative solutions to remain open for business. From virtual dockets to enhanced cleaning and safety measures in the courthouse, we have kept cases moving and conducted more than 200 trials—including several large-scale, high-profile cases—since the courts reopened.

Our prosecutors worked diligently to negotiate appropriate conclusions to many cases while trials were halted, which helped reduce the growing case backlog and keep people from being unnecessarily held in custody.

As we prepared to resume in-person court activities in October 2020, we worked with the Public Defender's Office, the Chief Judge, and the Court Administrator to ensure a safe environment. This included mandatory temperature checks and mask-wearing, social distancing by jurors, limiting the number of people in courtrooms, and providing plexiglass shields at lecterns. These enhanced safety measures have allowed us to conduct more than 200 jury trials since the courthouse reopened—tackling the case backlog, and prioritizing the homicides and violent crime cases that pose the biggest threat to public safety.

Once trials resumed, several prominent cases were finally brought before a jury, including those of defendants Erin Robinson, Ronnie Oneal III, and Dontae Johnson.

Robinson made headlines as one of the first defendants to stand trial in a homicide case since the

pandemic shut down courts across the country. Robinson viciously beat Raul Ortiz to death in a fit of jealousy. He was found guilty of first-degree murder and sentenced to life in prison.

In March 2018, Ronnie Oneal III brutally attacked and murdered his daughter and the mother of his children and then stabbed and set fire to his young son. His son managed to escape the house of horrors but was critically injured. In June 2021, after several days of emotional testimony, the jury found Oneal guilty on seven separate counts. He will serve the rest of his life in prison.

Weeks later, following 90 minutes of deliberation, a jury found Dontae Johnson guilty of first-degree murder and robbery with a firearm in the death of James Beck. Johnson and his co-defendant, Ramontrae Williams, responded to a Craigslist ad placed by Beck, offering a dirt bike for sale. Johnson and Williams gave Beck the cash for the bike, but it was far less than the \$1,200 sale price. When Beck questioned the cash, Johnson pulled out a gun and shot Beck several times in front of his 15-year-old son. Williams jumped on the bike and took off, while Johnson ran from the crime

scene. Beck did not survive, and his son was forever traumatized by what he witnessed. A judge ultimately sentenced Johnson to 40 years in prison.

The COVID-19 pandemic created countless obstacles to the pursuit of justice. I am proud that even through challenges, uncertainty, and ever-changing working conditions, our office's commitment to seek justice, prioritize public safety, and protect victims never wavered. ■





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On June 29, 2021, Shutts & Bowen lost a beloved member of its family, **C. Mark Stevenson**, a longtime Tampa partner in our Tax & International Law Practice.

Mark first joined the firm in 2008 and was a valued member of the firm and highly respected member of Tampa Bay's legal community. A zealous and brilliant practitioner of transactional and taxation law, he worked tirelessly with a wide range of clients on complex business matters. He had a deft touch and an innate ability to put his clients at ease in the midst of contentious legal struggles with his oft-uttered catch phrase, “**Don't worry.**”



Mark grew up outside of Titusville in Mims, Florida. He received a bachelor's degree in business administration from the University of Central Florida, a Juris Doctor of Law from the University of Miami, a Master of Business Administration from the University of Miami, a Master of Law in Taxation from the University of Florida, and he also studied at Oxford University in London, England.

In addition to being highly-educated, he was also a kind, generous, genuine and tremendously giving person who freely contributed his time to his colleagues, many of whom were proud to call him a mentor. Within the profession, Mark leaves behind a legacy as a trusted colleague, loyal friend, and for practicing law with unyielding integrity.

He will be missed by all of his colleagues and friends at Shutts, and his passing is an immense loss to the Tampa office, the Tax practice and the firm as a whole. Our heartfelt condolences and prayers go out to Mark's family during this difficult time.

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## Helping Those Who Sacrificed for Our Country

**The Veterans Outreach Court is a labor of love  
for Judge Manning and for our clerks.**

**F**or the last several years, my court staff has looked forward to a special event designed to help military veterans who have hit hard times.

The Veterans Outreach Court was the brainchild of County Court Judge Daryl Manning. He is an Army veteran who served several tours of duty in Iraq, Afghanistan, Saudi Arabia, and Kuwait before retiring in 2015 as a Lieutenant Colonel.

It is a labor of love for the judge and for our clerks. It requires a tremendous amount of work, planning and preparation, as well as coordination with our judicial partners in the 13th Judicial Circuit Court, Public Defender's Office, and State Attorney's Office.

The event is held around Veterans Day at the James A. Haley Veterans Hospital Primary Care Annex at 13515 Lake Terrace Lane in Tampa. Last year's event was canceled due to the COVID-19 pandemic, and this year's court will be held outdoors under tents as a safety precaution on November 19 at 9 a.m.

The cases mainly involve driver's license suspensions and some misdemeanors, but no felonies. To participate, a veteran must register in advance. A veteran's case is screened by the State Attorney's Office to make sure it is eligible. Public defenders also review the cases to see if their attorneys can assist the veterans in pleading their cases. My office mails court notices to every qualified veteran in advance. Dozens of veterans' cases are handled on this one day. The Department of Highway Safety and Motor Vehicles is on site so veterans who get their driving



Staff involved in 2019 Veterans Outreach Court at the James A. Haley Veterans Hospital in Tampa.

privileges restored can leave with a license in hand, which is a key part of getting their lives back on track.

Handling so many cases in one day requires a team of 12-15 court clerks, many of whom are veterans themselves. "They look forward to it because they're able to go out and assist other veterans," says Brandi Williams, senior director of criminal courts, who helps coordinate the event for my office. "It's just a joy to see. So many of them want to hug you and thank you for helping them so they can start their life again.

Most of us take a driver's license for granted. This seemingly insignificant item can make a difference in helping someone find a job and a place to live. Hillsborough County is home to nearly 100,000 military veterans. I am so pleased that my office can help those who have served their country at its time of need. ■





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## CERTIORARI REVIEW OF ORDERS DENYING DISCOVERY

Appellate Practice Section

Chairs: Joe Eagleton – Brannock & Humphries & Chance Lyman – Buchanan Ingersoll & Rooney, PC



**Immediate appellate review may be crucial to protecting the party's interests.**



Civil discovery is not usually a zero-sum game. Discovery disputes in the throes of litigation are often resolved through compromise or limitation. But in some circumstances, a trial court's order prohibiting certain discovery — either by granting a protective order or denying a motion to compel — deals a crippling blow to claims or

defenses. When the stakes are that high, and a nonfinal appeal is not an option,<sup>1</sup> a party will not want to go through the motions (and expense) necessary to obtain a flawed final judgment for appeal. Immediate appellate review may be crucial to protecting the party's interests.

The aggrieved party may file a petition for writ of certiorari in the appellate court. Certiorari relief

is an “extraordinary remedy,” so the petitioner must establish that the trial court (1) departed from the essential requirements of the law, (2) which resulted in a material injury throughout the remainder of the proceedings, (3) that cannot be corrected on postjudgment appeal.<sup>2</sup> The second two requirements are

**Continued on page 21**

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Continued from page 20

jurisdictional and often referred to collectively as “irreparable harm.”<sup>3</sup>

The general rule is that orders denying discovery are not reviewable by certiorari because they do not typically result in irreparable harm.<sup>4</sup> But this rule is not absolute. There is an “exceedingly narrow exception” when a petitioner can show the discovery sought is “reasonably calculated to lead to the discovery of admissible evidence and the order denying that discovery effectively eviscerates a party’s claim, defense or counterclaim.”<sup>5</sup> In particular, appellate courts have found irreparable harm when the petitioner is precluded from deposing a party or material witness.<sup>6</sup>

Even if the petitioner can show irreparable harm, he or she must also show the trial court’s order departs from the essential requirements of the law. Because the trial court has broad discretion over the administration and limits of discovery, a successful petition for writ of certiorari will have to demonstrate that the trial court has made a serious legal error or abused its broad discretion.<sup>7</sup>

In sum, orders denying discovery are not insulated from immediate appellate review. But to warrant a writ of certiorari, the harm must be critical and the error clear. ■

<sup>1</sup> Fla. R. App. P. 9.130(a)(3).

<sup>2</sup> *Hepco Data, LLC v. Hepco Med., LLC*, 301 So. 3d 406, 409-10 (Fla. 2d DCA 2020).

<sup>3</sup> *Sch. Bd. of Hillsborough Cnty. v. Woodford*, 270 So. 3d 481, 483 (Fla. 2d DCA 2019).

<sup>4</sup> *Giacalone v. Hellen Ellis Mem’l Hosp. Found., Inc.*, 8 So. 3d 1232, 1234 (Fla. 2d DCA 2009).

<sup>5</sup> *Am. Prime Title Servs., LLC v. Wang*, 317 So. 3d 1183, 1185-86 (Fla. 3d DCA 2021) (quoting *Westerbeke Corp. v. Atherton*, 224 So. 3d 816, 821 (Fla. 2d DCA 2017)) (emphasis added).

<sup>6</sup> *Hepco Data*, 301 So. 3d at 412-13; *Nucci v. Simmons*, 20 So. 3d 388, 390 (Fla. 2d DCA 2009); *Beekie v. Morgan*, 751 So. 2d 694, 698 (Fla. 5th DCA 2000).

<sup>7</sup> *Baker ex rel. Baker v. Eckerd Corp.*, 697 So. 2d 970, 971 (Fla. 2d DCA 1997).

Authors: Brandon K. Breslow & Kristin A. Norse - Kynes, Markman & Felman, P.A.



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## SURFSIDE: LAWMAKERS POISED TO AMEND CONDO LAWS

Construction Law Section

Chairs: Adam Bild – Bild Law & Debbie Crockett – Cheffy Passidomo, PA



laypersons with little to no technical knowledge regarding the construction or management of large multi-family properties.<sup>2</sup>

Chapter 718 does not provide a manner or timeframe by which a condominium association must inspect its building for structural integrity or make structural repairs. Florida's 67 counties may adopt their own maintenance or recertification requirements for condominiums. However, only two counties in Florida — Miami-Dade and Broward — require that condominium buildings be recertified for structural and electrical systems. Further, those two counties require recertification only after 40 years, and then every 10 years thereafter.



**Only two counties in Florida require that condominium buildings be recertified for structural and electrical systems.**

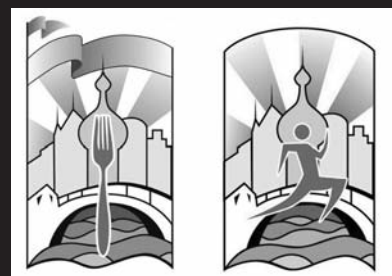
In practice, the maintenance of condominium buildings may also depend on a condominium association's ability to garner funds from their residents. Naturally, residents do not want to pay for costly maintenance that may only be necessary every decade — especially if they plan to sell their units. This could result in deferred or delayed maintenance, which ultimately could jeopardize the safety of the residents.

Following the Surfside Condo Collapse, Florida lawmakers searched for solutions. The Florida Bar assembled a task force of experts to evaluate the current condominium laws, and recommend amendments to the state legislature and the governor. The Task Force focused its efforts on maintenance, inspections, and

**Continued on page 23**

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*the*  
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**Judicial Food Festival (Pig Roast) & 5K  
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Continued from page 22

funding. It has also collected data and testimony from experts, state agencies, and local officials.

I spoke with the chair of the Task Force, William Sklar, about the scope and substance of the Task Force's recommendations. Mr. Sklar recognizes that more stringent legal requirements are necessary, and that recertification inspection requirements should be uniform statewide. The Task Force also will recommend new methods by which condominiums shall operate and manage financial reserves for maintenance and repair costs. The Task Force hopes the state legislature will adopt its recommendations in the upcoming legislative session. But the Task Force understands that enforcement of stricter requirements will be a key element in protecting condominium residents.

There is no legal remedy to bring back the 98 lives lost in the Surfside Condo Collapse. But with sensible revisions to Chapter 718, the State of Florida can help guard against future tragedies. ■

<sup>1</sup> See Vanessa Romo, *The Search for Victims Comes To An End At The Florida Condo Collapse Site*, NPR, (July 23, 2021), <https://www.npr.org/2021/07/23/1018164946/search-ends-victims-florida-condo-collapse-site>.

<sup>2</sup> See § 718.113, Fla. Stat.

("Maintenance of the common elements is the responsibility of the association.").



*Author: Alex M. Sarsfield – Mills Paskert Divers, P.A.*



## Construction Law Section Luncheon/CLE

On September 16, the Construction Law Section held a CLE on the timely topic of "Responding to High-Stakes Construction Disasters." Speakers David Fusco, a professional engineer with Thornton Tomasetti, and Phillip B. Russell, Esq., a labor and employment lawyer who specializes in high-stakes OSHA cases with Ogletree Deakins Nash Smoak & Stewart, discussed OSHA inspections, forensic engineering, what contractors should anticipate, and how to be better prepared if disaster strikes.



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## BLI Opening Reception

The HCBA was pleased to welcome its 2021-22 Bar Leadership Institute class at the opening reception on September 16 at the Chester Ferguson Law Center. We look forward to a great year of learning about the community, developing leadership skills, and strengthening relationships among the BLI members. Thank you to this year's BLI chairs — Ashley Gallagher, Jounice Nealy-Brown, and Kendra Lyman.

*Thank you also to The Bank of Tampa for sponsoring the Bar Leadership Institute's programs.*





## ADDING EQUITY: THE RENAMED AND NOW STANDING DIVERSITY, EQUITY, AND INCLUSION COMMITTEE

Diversity, Equity & Inclusion Committee

Chairs: Antina Mobley – Public Defender's Office & Christina Potter Bayern – Potter Bayern Law



**“Equity” to the DEI Committee’s title cuts a clear path towards continually facilitating impartial fairness to all whom the HCBA welcomes through its doors for the next century and beyond.**



**T**his year’s celebration of the Hillsborough County Bar Association’s 125th Anniversary accompanies two excitingly important changes:

First, the previously titled Diversity and Inclusion Committee is now titled the **Diversity, Equity, and Inclusion Committee** — adding “Equity” to our title directive.

Second, the Diversity, Equity, and Inclusion Committee is now a *standing* committee of the HCBA.

While thrilling, these two changes raise two questions: (1) What does “Equity” add to “Diversity and Inclusion?” and (2) Why is designation as a “standing committee” pivotal

to the Committee’s continued mission? This article answers each question in turn.

### 1. What does “Equity” add to “Diversity and Inclusion”?

“Diversity and Inclusion” is a

**Continued on page 27**

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

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



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

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

**POLICY SOLD – for \$290,000.**

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

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Continued from page 26

well-coined phrase that serves to indicate the goal of an organization to both seek and welcome differences.

The HCBA has historically opened its arms to a bevy of nationalities, ethnicities, languages, cultures, and other community classifiers that make up the Tampa Bay community.

Adding “Equity” to the Diversity, Equity, and Inclusion (DEI) Committee’s titled mission further encapsulates the threefold mission of the Committee’s work:

- (1) **Diversity** positively recognizes individual and social differences that contribute to identity by asking: Who is part of the HCBA family?
- (2) **Equity** safeguards impartial fairness in an organization by asking: Who is trying to get involved in the HCBA, but needs assistance to do so?
- (3) **Inclusion** ensures all majorities and minorities are welcomed, respected, and valued, by asking: Have all HCBA members been heard who desire to be heard?

Adding “Equity” to the DEI Committee’s title cuts a clear path towards continually facilitating impartial fairness to all whom the HCBA welcomes through its doors for the next century and beyond.

## **2. Why is designation as a “standing committee” pivotal to the DEI Committee’s continued mission?**

Article IV of the Hillsborough County Bar Association Bylaws provides that the Board of Directors may create “standing committees” as “necessary and proper to aid in carrying out the affairs of the Association, and to meet the mission and goals of the Association.”

For years, the Committee has been at the forefront of DEI efforts in the Tampa Bay legal community, and made admirable strides in this regard, although not a standing committee. Just last year, the Committee secured a grant from the Florida Bar’s Diversity & Inclusion Committee and partnered with the George Edgecomb Bar Association and Hillsborough Association for Women Lawyers to present the very first Diversity Fair — a dynamic three-fold event that promoted diversity, equity, and inclusion within our local legal community and Hillsborough County as a whole.

Under the leadership of President Cory Person, the Board of Director’s approved the DEI Committee’s inspiring title change and designated the DEI committee a *standing* committee. Designation of the DEI Committee as a standing committee of the HCBA signals the continued and deliberate path of the HCBA towards increased diversity, inclusivity, and equity.

As historically done, the DEI Committee will continue to serve at the forefront of progress made within the Tampa Bay legal community toward increased community collaboration and cohesivity.

Thus, let us celebrate this momentous 125th year in HCBA history. In so celebrating, we celebrate the diverse attorneys, stakeholders, and community partners who comprise our awesome bar association. ■



*Author: Alexis Dion Deveau – Gunster, Yoakley & Stewart, P.A.*



## **Help Us Celebrate Our 125th Anniversary!**

**Submit historical or  
fun photos from past  
HCBA events to be  
included in an  
125th Anniversary  
online photo album.**

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if possible.**



## THE MANY DISCIPLINES IMPLICATED BY EMINENT DOMAIN LAW

Eminent Domain Law Section

Chairs: Ryan Reese – Moore Bowman & Rix, P.A., Jennifer Mott – FDOT, & Aloyma Sanchez – FDOT



**Every case is unique and can implicate a handful of property and non-property related disciplines, legal or otherwise.**



I suspect most laypeople, and perhaps even some attorneys, aren't quite certain what the practice of "eminent domain law" entails. Sure, most understand the concept as the government's ability to procure private property for public uses. But few likely understand the precise nature of the practice and the multitude of non-legal disciplines implicated.

This article provides a bird's eye view into those disciplines and applies to both sides' attorneys, i.e. whether you're condemning property for a governmental entity, or defending impacted landowners.

In any eminent domain case, the first, and most fundamental discipline triggered, is ownership. Attorneys for both sides must have a sound understanding of the types

of estates and interests in real property, and how conveyancing/encumbering via deeds, leases, mortgages, easements, and the like, impacts one's title. Attorneys apply these principles to determine those parties interested in a particular property who may be indispensable to the eminent domain proceeding.

**Continued on page 29**

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### Continued from page 28

As it relates to the actual infrastructure project, all attorneys involved must have a rudimentary understanding of surveying and civil engineering. This knowledge will allow them to decipher the condemnor's right-of-way maps and analyze its design plans. A basic knowledge of roadway, pipeline, and stormwater management facility construction is also critical to apprehend the improvements being constructed in the area of taking, and how they might impact the owner's remainder property.

Impacts to a property's footprint may also trigger land-use/planning and engineering issues. For instance, does the owner have development plans or entitlements

that will be adversely impacted by the taking? Is the property being used for its "highest and best use?" Or, is there a probability the owner might receive a rezoning for a different use? If the site is developed, will the taking render it non-conforming to local codes, thereby requiring an administrative adjustment or variance? Are access, parking, or signage being disturbed, and if so, is a "cure" necessary to restore functionality, or otherwise bring the site into regulatory compliance? If yes, what future permitting will be required? These issues, and many others, require familiarity with land-use and development fundamentals, as well as knowledge of state and local planning and permitting processes.

Of course, the taking itself implicates a number of diverse fields. Depending on the location of the property, and the type of infrastructure planned, issues related to geography (elevations and topography), hydrology (stormwater management/drainage), and ecology (wetlands and protected species) may exist. Attorneys for both sides must be versed in, and thus prepared for, various issues related to these fields.

Then comes the valuation. Both sides' attorneys must be proficient with appraisal theory and the approaches used to value property. Demographics, statistics, and economics can all play a role in deriving market value. When improvements are impacted, cost estimating comes into play. When a "cure" is necessary to restore site functionality, the same land-planning and engineering issues discussed above are implicated. If a business is present on site, expected losses may need to be calculated, triggering accounting and finance principles. And when proceeds are paid, tax consequences come into play.

The above fields are far from an exhaustive list. Every case is unique and can implicate a handful of property and non-property related disciplines, legal or otherwise. For example, issues of constitutional law, boundary and easement law, water and riparian rights, state and local permitting, regulatory and environmental compliance, title issues, tax consequences, business practice/valuation, and even estates and probate/intestacy rules can come into play. For this reason, I find the practice especially gratifying; rarely is there a day I don't have an opportunity to learn something new. ■

*Author: Ryan C. Reese – Moore  
Bowman & Reese, P.A.*

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## A DAY IN THE LIFE OF . . . A CIRCUIT COURT JUDGE

Government Lawyers Section

Chairs: Christian Katchuk – 13th Judicial Circuit & Lyndsey Siara – 13th Judicial Circuit



**N**ow that school is back in session, I usually start my day at the courthouse around 8:30 a.m. after dropping off my son at school. Once I'm in my office, my judicial assistant will update me on any motions or requests from attorneys that I need to review before court begins. Depending on the issue, I ask my staff attorney to brief me on any updated case law or matters I need to evaluate before taking the bench. I am currently assigned to a trial division, so I almost exclusively preside over trials. While most substantive issues are resolved before the case is transferred to my division, issues often arise during trial that I must address. With jurors waiting, I endeavor to be on the bench by 9:00 a.m. The trials that are transferred to my division are usually first-degree felonies. On average, they take four to five days to try, so it is crucial to stay on schedule.

While I've been a judge since 2006, I still consider myself to be a proud government lawyer. I began my career as a legal advisor to the Hillsborough County Sheriff's Office. I then became an Assistant

United States Attorney, and later returned to the Sheriff's Office as deputy chief legal advisor. My time at these government agencies undoubtedly prepared me for my judicial role.

In addition to my personal experience as a government lawyer, the majority of the attorneys that now practice in front of me are either Assistant State Attorneys or Assistant Public Defenders. They truly are the backbone of the criminal justice system. On a daily basis, I rely on them to ensure the fair and expeditious administration of justice.

My typical trial day ends around 5:00 p.m., but when a jury is deliberating or there is a particularly difficult charge conference to preside over, I may still be in the courtroom or my office well into the evening.

In addition to being a judge, I am also a professor at WMU Cooley Law School and am currently teaching a trial skills class. Many of my students will begin their legal careers in the government sector at either the State Attorney's or Public



**It is the honor of a lifetime to serve the lawyers and citizens of our community as a Thirteenth Judicial Circuit Court judge.**

Defender's offices; I take great pride in that. I am often talking to them about the importance of professionalism and ethics — especially when it comes to these positions.

As my day comes to a close, I check my emails one final time to verify no issues arose after I adjourned court for the day. I review and sign all the orders pending in my Judicial Automated

Workflow System (JAWS) queue and email my staff attorney about matters to discuss the next day. While I try to prepare as much as I can the night before, I will inevitably wake up to emails on an urgent matter. But I wouldn't change it for anything! It is the honor of a lifetime to serve the lawyers and citizens of our

community as a Thirteenth Judicial Circuit Court judge. ■



*Author: Judge Christopher C. Sabella – Thirteenth Judicial Circuit*

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## Government Lawyers Section Happy Hour

Members of the HCBA Government Lawyers Section got together for a fun happy hour on August 12 at the Chester Ferguson Law Center. Members kicked off the new Bar year, enjoying refreshments and great company with their colleagues. Thank you to everyone that joined us!

## Intellectual Property Section CLE

On September 22, the Intellectual Property Section held its first CLE of the Bar year, discussing recent developments in the application of Section 101 of the Patent Act. Speaker Ryan Corbett, Esq. of Burr & Forman LLP reviewed recent caselaw and explained trends and their effects on patent practitioners. Thank you to Mr. Corbett for speaking to the group!







## Welcome Back Membership Reception

Approximately 250 members enjoyed an evening of networking and catching up after a long time apart at the Welcome Back Membership Reception on September 22 at The Vault in downtown Tampa. This annual event kicked off HCBA's celebration of its 125th Anniversary this year, and was a memorable start to the new Bar year.

*Photos provided courtesy of Thompson Brand Images, [www.thompsonbrandimages.com](http://www.thompsonbrandimages.com).*

The HCBA also would like to thank The Bank of Tampa for sponsoring this event.



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## Judge Michael Baggé-Hernández Recognized at Florida Jurist Event

The Hillsborough County Bar Association was proud to co-sponsor the virtual event “The Florida Jurist: Recognizing Hispanic Excellence,” held on September 23 as part of Hispanic Heritage Month. The Honorable Michael Baggé-Hernández of the 13th Circuit Court of Florida was recognized, along with five other deserving judges from across the state. Other award winners included: Judge Roberto Arias, Judge Gisela Laurent, Judge Gina Beovides, Judge Maria Ruhl, and Judge Carlos Rebollo. The event was coordinated by the Broward County Bar Association, and co-sponsored by other bar associations and legal industry leaders across the state.



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## REVISITING THE FLSA JOINT EMPLOYER TUG OF WAR

Labor & Employment Law Section

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



**Will it be déjà vu all over again or will the Department of Labor move in a different direction because of COVID-19?**



**T**he pattern is all too familiar. In September, the Biden Administration rescinded the Joint Employer Rule promulgated by the U.S. Department of Labor (DOL) during the last year of the Trump Administration (largely mooted by a federal judge in September 2020, but promptly appealed). This promulgation in turn came after the Trump Administration dumped an interpretation of the term “joint employer” issued by the DOL’s Wage & Hour Administrator during the Obama Administration. Coming full circle, that Administrator — David Weil — appears destined as of this writing to resume his old post. Will it be déjà vu all over again, or will the DOL move in a different direction because of COVID-19?

Much is at stake in this tug of war. Worker advocates want to strengthen wage protection for employees and desire assurances that companies that benefit in some way from the labor will not avoid responsibility for paying the workers who provided it. Business advocates are wary of the uncertainty and continuous litigation that comes from an ever-shifting standard,

stifling innovation and increasing the cost of doing business. Is there a middle ground that respects and accommodates these competing interests? We need one because business as usual has failed to produce a longstanding workable solution. The pandemic provides a convenient opportunity for reevaluating the joint employer issue.

There already has been a lot of discussion about how the pandemic is changing the way people work. Remote work, job sharing, and other non-traditional employment strategies are pushing the boundaries, which is likely to lead to further fissuring of the workplace as new business models emerge to help employers use technology and innovation to keep up. What should it mean to “employ” a worker when the worker may never set foot in the office of an entity which benefits from the labor and has a connection to employment, but which does not tell the worker what to do or how or when to do it?

This already has been playing out to a lesser degree for decades as temporary staffing, payroll and HR companies, employee leasing companies, and professional

employer organizations steadily increased their impact on the non-government employee market. Since these companies assist other employers in remaining compliant and competitive, they perform a valuable service that bolsters the national economy. But should the DOL consider them, and other similar entities, “employers” under the FLSA? Do these companies really suffer or permit people to work in the wage and hour sense?

Business innovation should be encouraged as it can assist workers and their employers. Employers and employees need a workable standard from the DOL that protects workers and leaves room for new employment-related arrangements as the economy changes. History shows it inevitably will change and clear guidance would go a long way toward resolving the tug of war

that continues to frustrate counsel on both sides of the joint employer equation. ■



*Author: Timothy Tack – Fisher & Phillips, LLP*

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## WHEN ONE MONTH MAKES ALL THE DIFFERENCE

Marital & Family Law Section

Chair: Shirin Rustomji – Shirin Rustomji, P.A.



**Trial courts have discretion regarding the term of a marriage, and practitioners should not rely solely on the number of years.**



A potential client contacts you seeking a dissolution of marriage. “I’ve been married 16 and a half years,” he says. What should you do?

The short answer is: find out if he is the pecunious spouse, and if he is, consider filing fast to protect him from a potential permanent alimony claim. Two recent 2020 cases shed light on why this urgency is important and how waiting to file could potentially cost your client many years of alimony payments.

Seventeen years has always been a “magic” number in family law because it can completely transform the length of time a payor pays alimony. Florida Statutes Section

61.08(4) defines a long-term marriage as a “marriage having a duration of 17 years or greater.” If the court finds that the marriage is long-term, there is a rebuttable presumption that permanent alimony is appropriate.<sup>1</sup> Family law attorneys have typically assumed that you must reach the 17-year mark to have the court qualify the marriage as long-term. But the statute only provides that the number of years is a “rebuttable presumption” as to whether the marriage is short, moderate, or long-term. A recent case dispels this assumption.

In *Williams v. Jones*,<sup>2</sup> the parties were married for 16 years and 11

months. Even though the marriage had not reached the 17-year mark, the court held that the wife rebutted the presumption that it was a moderate-term marriage. It agreed with the wife and held that it qualified as a long-term marriage. The court reasoned that the marriage was “just one month shy” of the statutory presumption and “one month is a *de minimis* period given the length of the marriage.”<sup>3</sup> The wife in *Williams* was awarded permanent alimony.

Conversely, in *Giles v. Giles*,<sup>4</sup> decided just five months later, the court found that the 16-year

Continued on page 41



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Continued from page 40

and 11-month marriage was not long-term. On the subject of how to rebut the presumption that a marriage must reach 17 years to be considered long-term, the court stated, “[t]here is no explanation in the statute, and none that we have found in case law, explaining how a party may rebut the presumption....”<sup>5</sup> The court held that merely relying on how close it was to 17 years, coupled with the fact that the marriage was “traditional” in terms of the parties’ roles, was insufficient.<sup>6</sup> The wife was denied permanent alimony.

Perhaps in *Williams*, the trial court was swayed by the fact that the payee suffered health issues that precluded employment, while in *Giles*, the payee was capable of work and owned multiple properties. Either way, the trial court has discretion. If the line can be drawn at 16 years 11 months, it can be drawn earlier. If your case is close, consider filing fast. ■

<sup>1</sup> *Hua v. Tsung*, 220 So. 3d 584, 588 (Fla. 4th DCA 2017).

<sup>2</sup> *Williams v. Jones*, 290 So. 3d 609 (Fla. 1st DCA 2020).

<sup>3</sup> *Id.* at 611.

<sup>4</sup> *Giles v. Giles*, 298 So. 3d 1277 (Fla. 2d DCA 2020).

<sup>5</sup> *Id.* at 1281.

<sup>6</sup> *Id.*



*Author:*  
**Lara G. Davis** - *The Women's Law Group, PL*



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## LESSONS FROM LASSO ON MEDIATION STRATEGY

Mediation & Arbitration Section

Chair: Harold Oehler – Oehler Mediation



**Ted Lasso provides  
a master class in  
mediation strategy.**



Imagine walking into a mediation and discovering that your mediator is fictional British football coach, Ted Lasso. At first you would be alarmed. But is there any doubt Ted Lasso would make an excellent mediator? Business consultants and coaches use this program to teach teamwork and leadership. At its core, *Ted Lasso* is a television show about resolving human conflict. And it provides a master class in mediation strategy for trial lawyers and mediators.

### **It's Not Just About Understanding the Law - It's About Understanding People**

Ted doesn't know his backside from an offside. But like a great

mediator, he is adept at uncovering the needs of others and finding ways to make people with competing interests work together. Ted convinces Jamie Tartt, a self-absorbed player concerned only with his own scoring, to pass to his teammates by showing him how that would ultimately lead him to greater personal success.

Mediation is a *transactional event* in the middle of an adversarial proceeding. The adversarial nature of litigation can sometimes cause litigators to default to argument during mediation and alienate the other side. We should learn from our transactional colleagues who create agreement between parties with competing agendas by *understanding the other person's interests*

and creating solutions that satisfy those needs. *It's never just about the money.* Practicing transactional law and litigation for three decades before becoming a mediator taught me that mediation is more productive, and less expensive, when you approach the bargaining table as a transactional lawyer.

### **Kindness and Empathy Create Trust**

Virtually everyone felt hostile toward Ted when he was named coach due to his lack of experience. Ted won everyone over, not by showing how much he knew (this would have been hopeless), but by using his superpowers of kindness

**Continued on page 43**



## **Mediation & Arbitration and Trial & Litigation Joint Luncheon/CLE**

On September 22, the Mediation & Arbitration and Trial & Litigation Sections held a joint luncheon to discuss their newly released "Mediation Best Practices Handbook" for Florida trial lawyers and mediators. Section Chairs Erin Jackson and Harold Oehler were joined by HCBA President Cory Person to discuss the best practices and ethical standards outlined in the new handbook.





Continued from page 42

and empathy. In order to deeply connect with his new boss, Ted brought her cookies each morning and referred to their conversations as “Biscuits with the Boss.” He took Trent Crimm, his harshest critic in the press, to dinner and gave him full access to practices. He took every opportunity to connect and find common ground with his adversaries, and he won their trust and respect.

Great mediators use their superpowers of empathy and emotional intelligence by taking every opportunity to find common ground with both the lawyers and the parties to uncover their unique needs and interests. This helps the parties create agreement where those interests meet.

## Be Curious, Not Judgmental

The actor who plays Ted describes him as “ignorant and curious.” Ted asks everyone questions with a humble curiosity that shows that he cares and values the knowledge and experience of others. Similarly, one of the mediator’s most useful tools is *curiosity*. A mediator who asks questions to understand the case, and the people involved, gains respect both for taking an interest in the parties and for valuing the opinions of others. For example, when a party proposes making a counter-productive offer, a good mediator exercises curiosity, not judgement, and asks how the offer will likely be responded to by the other side. This usually leads to the enlightenment of either the mediator or the party making the proposal.

## Treat Everyone as Important

Ted sees the best in people. He

taps everyone for ideas, even the underappreciated equipment manager, Nathan, who shares game-changing ideas once he believes Ted values his opinion. During the mediation, a skilled mediator will engage each person and encourage them to share their thoughts and solutions. This creates trust and makes the parties more willing to accept the mediator’s perspective.

## “Believe”

Ted understands that hope is powerful so he hangs a sign with only one word in the locker room: “Believe.” A mediator should display relentless optimism, from the opening statements through all the ups and downs of the mediation. The mediator should point out that cases often settle even when the parties begin mediation with the belief that their case has no chance of settling. If the mediator sincerely believes in the process, the parties will believe it too.

## Humor is a Powerful Tool

Humor often makes the truth easier to digest. Ted responds to every insult with humor and diffuses those that attack him. Humor, especially at your own expense, disarms difficult parties, avoids confrontation, and maintains a productive atmosphere for settlement.

*Ted Lasso* teaches us that approaching mediation with curiosity and a problem-solving approach, rather than argument, is the most efficient path to mediation success. ■

Author: Harold Oehler – Oehler Mediation

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## BURN PITS: PRESUMPTIONS AT LAST

Military & Veterans Affairs Committee

Chairs: Matt Hall – Hill Ward Henderson & Alex Srsic – Bay Area Legal Services



**Veterans and advocates  
alike are enthusiastic  
about these new  
presumptions, but there is  
still progress to be made.**



**F**or decades, veterans who served during Operations Iraqi Freedom and Enduring Freedom have been asking the U.S. Department of Veterans Affairs (VA) to presume certain disabilities were caused by their military service. Specifically, these veterans argued that the toxic fumes released by the constant burning of hazardous waste made them ill.

On May 27, 2021, the VA announced it would establish a list of presumptive conditions due to a National Academies of Science and

Medicine report and various other studies showing a high prevalence of respiratory conditions among veterans who served near burn pits and other environmental hazards.<sup>1</sup> Now, veterans who served in Iraq, Afghanistan, Djibouti, Syria, or Uzbekistan after September 2001 and received a diagnosis of asthma, sinusitis, or rhinitis within ten years of separation from the military are presumed to have been exposed to harmful particulate matter.

This presumption will greatly assist these Gulf War veterans in obtaining hard-earned disability

benefits, as two of the three elements of service-connection would be met automatically. Instead of having to prove an in-service event, a current disability, and a nexus between the two, they only have to show evidence of a current disability. Essentially, a diagnosis from a doctor would establish entitlement to benefits.

Until now, it was nearly impossible for these veterans to prove that their medical issues were caused by their time in service. Open-air burn pits are exactly what

**Continued on page 47**

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### **December 2, 2021**

Holiday Open House  
Chester H. Ferguson Law Center

### **January 19, 2022**

Diversity Membership Luncheon  
JW Marriott Tampa Water Street

### **March 26, 2022**

Judicial Food Festival (Pig Roast) & 5K Pro  
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### **May 12, 2022**

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## BURN PITS: PRESUMPTIONS AT LAST

Military & Veterans Affairs Committee

Continued from page 46

they sound like — pits in the ground where waste is burned. When in operation, these pits were used to dispose of almost all military waste, including medical and human waste, petroleum, plastics, rubber, chemicals, paint, munitions, and metals.<sup>2</sup> Due to the wide array of items burned in those pits, it was exceedingly difficult to prove exposure to any particular chemical or toxin. Because they generally could not prove exposure, affected veterans had difficulty demonstrating that their condition was related to toxic exposure and were essentially blocked from receiving compensation or medical care.

Veterans and advocates alike are enthusiastic about these new

presumptions, but there is still progress to be made. We need a more expansive list of presumptions to fully envelop the wide variety of disabilities from which veterans suffer. While respiratory issues make up a large percentage of the issues,<sup>3</sup> many of these veterans are also living with — or dying from — multiple forms of cancer.<sup>4</sup> ■

<sup>1</sup> 86 FR 42724.

<sup>2</sup> U.S. Department of Veterans Affairs, *Public Health: Airborne Hazards and Burn Pit Exposures*, <https://www.publichealth.va.gov/exposures/burnpits/index.asp> (last visited Sept. 10, 2021).

<sup>3</sup> See generally Jason Liu, *Scd et. al.*, *Burn Pit Exposure and Respiratory and Cardiovascular Conditions Among Airborne Hazards and Open Burn Pit*

*Registry Participants*, 58 JOURNAL OF OPERATIONAL AND ENVIRONMENTAL MEDICINE 7 (2016).

<sup>3</sup> See generally Catherine Valentine and Brianna Keilar, *Surviving Combat Only to Die at Home: Returned Staff Sgt. Wesley Black is Picking Out His Coffin at 35 Years Old*, CNN (June 21, 2021), <https://www.cnn.com/2021/06/21/politics/homefront-iraq-afghanistan-burn-pits/index.html>; Kenzi Abou-Sabe and Didi Martinez, *Veterans Face*

Uphill Battle to Receive Treatment.

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



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## HAPPY HOLIDAYS, LAWYER STYLE

Professionalism & Ethics Committee

Chair: Shelton Bridges, Bridges Law Group



May your holiday season  
be safe, peaceful, and  
focused on the things  
that really matter.



**T**he last two months of the year are upon us. As the days grow shorter and the temperature (sort of) gets cooler, our thoughts turn to family, food, festivities, and fun. Often, the last thing we want to do is work — but duty calls. Here's a HAPPY HOLIDAYS blessing for all of us lawyers:

**H** is for *hearings*. May yours be few and far between — and blessedly brief — and may the rulings be in your clients' favor.

**A** is for *advocacy*. May you zealously and ethically present your clients' cases, and may your labors on their behalf be rewarding for you in every sense of the word.

**P** is for *proposals for settlement*. May your opponents accept yours and if

not, may you beat yours at trial.

**P** is for *presumption of innocence*. May everyone — especially prosecutors, criminal defense attorneys, and judges — embrace, honor, and enforce this bedrock of American jurisprudence.

**Y** is for *yes*. May you receive this word in response to your requests,

Continued on page 49

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Continued from page 48

and may you be willing to say it when others ask of you.

**H** is for *home*. May you make ample time to be at yours with relatives and friends, and without your laptop and cell phone.

**O** is for *objections*. May you encounter precious few, may opposing counsel's be overruled, may yours be sustained, and when we must object, let us refrain from being objectionable.

**L** is for *life*. May you remember that yours consists of much more than the practice of law, and may you make time to enjoy it.

**I** is for *instruction*. May you be willing to receive it with humility, dispense it lovingly, and remember that no one knows it all.

**D** is for *deliberations*. May your juries' be thorough, thoughtful, and true, and may they result in justice for the parties.

**A** is for *association*. May your appreciation of the Hillsborough County Bar Association increase, may you strive to strengthen and improve it, and may you remember how your words and actions reflect upon it.

**Y** is for *year*. As 2021 draws to a close may you give thanks for the good, let go of the bad, and prepare for 2022 with resolve and optimism.

**S** is for *settlements*. May all of yours — whether civil, family, or criminal — be to your clients' satisfaction.

Happy Holidays to all of you from the HCBA Professionalism

and Ethics Committee! May your holiday season be safe, peaceful, and focused on the things that really matter. ■

*Author: Shelton Bridges - Bridges Law*

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**Celebrate the Season  
at the HCBA  
Holiday Open House  
on December 2 at  
the Chester Ferguson  
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## FLORIDA STATUTE CHANGE, COMPENSATION OF ATTORNEY FOR PERSONAL REPRESENTATIVE

Real Property, Probate & Trust Law Section

Chairs: Kasey Feltner – Shutts & Bowen & Elaine McGinnis – Law Office of Elaine McGinnis, P.A.



**Effective October 1, 2021,  
probate attorneys must include  
detailed language in their  
engagement letters regarding  
compensation of the attorney  
for a personal representative to  
ensure payment for services.**



**T**his article discusses the change to Section 733.6171 of the Florida Statutes regarding compensation of the attorney for a personal representative. Historically, Section 733.6171 has set forth the reasonableness of attorney fees for the attorney for a personal

representative. Effective October 1, 2021, that statute has changed, adding paragraph 2(b), as follows:

(b) An attorney representing a personal representative in an estate administration who

intends to charge a fee based upon the schedule set forth in subsection (3) shall make the following disclosures in writing

**Continued on page 51**

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## Continued from page 50

to the personal representative:

1. There is not a mandatory statutory attorney fee for estate administration.
2. The attorney fee is not required to be based on the size of the estate, and the presumed reasonable fee provided in subsection (3) may not be appropriate in all estate administrations.
3. The fee is subject to negotiation between the personal representative and the attorney.
4. The selection of the attorney is made at the discretion of the personal representative, who is not required to select the attorney who prepared the will.

5. The personal representative shall be entitled to a summary of ordinary and extraordinary services rendered for the fees agreed at the conclusion of the representation. The summary shall be provided by counsel and shall consist of the total hours devoted to the representation or a detailed summary of the services performed during the representation.

The statute further states that the personal representative must timely acknowledge the above disclosures in writing, and if not, the attorney may not be paid for services without either court approval or written consent of all interested parties in the proceeding. Therefore, it is prudent for probate practitioners

to review the change in statute and add the required disclosures to their engagement letters.

An engagement letter, signed by the personal representative before commencement of the case, with said disclosures, should be used in every probate to avoid the requirement of court approval for fees. Without court approval, the attorney may obtain written consent of fees by all interested parties in the probate. An interested party “means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved.”<sup>1</sup> Keep in mind that obtaining written approval of fees from all interested parties may become quite cumbersome.

Probate attorneys should also be mindful of keeping accurate time records for each case, distinguishing between ordinary and extraordinary services. A personal representative shall be entitled to a summary of services rendered showing total hours spent at the conclusion of the probate. Although the attorney and personal representative may have agreed upon a flat fee for the administration of the probate; presumably the negotiated fee should reflect the attorney’s time spent on the probate administration.

Although engagement letters and maintaining accurate billing records is nothing new in the practice of law, now, probate attorneys must include the required statutory language in their engagement letters to avoid obstacles to receiving compensation at the conclusion of a probate. ■

<sup>1</sup> Section 731.201(23), Florida Statutes.

*Author: Elaine N. McGinnis - Law Office of Elaine McGinnis, P.A.*



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## CIGAR CITY TAMPA

### Senior Counsel Section

Chairs: Thomas Newcomb Hyde, Thomas Newcomb Hyde – Attorney at Law & Don Smith, Smith, Tozian, Daniel and Davis, P.A.



**By 1910, only  
twenty-five years  
after Vicente Ybor  
arrived, there were  
over 150 cigar  
factories in Ybor City.**



In 1885, Vicente Martinez Ybor, confronted with labor problems in Key West, was looking to move his cigar factory. Tampa's deep-water port, railroad lines to the north, and closeness to Cuba made it a desirable location. In addition, Tampa's hot humid weather made it a "natural humidior" needed to keep cut tobacco workable. A \$1,000 offer from the Tampa Board of Trade clinched the deal, and Ybor established his factory in an area now known as Ybor City.

Eric Newman, the president of the J.C. Newman Cigar Company, spoke of the history of the cigar industry in Tampa, the role of the J.C. Newman Cigar Company, and the future of the company to an audience of judges and lawyers at the Senior Counsel luncheon in

September. Eric explained that by 1910, only twenty-five years after Vicente Ybor arrived, there were over 150 cigar factories in Ybor City manufacturing 500 million cigars each year. The factories were typically three-story red-brick buildings with a basement. They faced north to take advantage of the natural light coming from the west in the afternoon. About two dozen of these buildings are still standing.

But the J.C. Newman Cigar company was not in Tampa in 1910. Julius Caesar Newman was born in 1875 in Austria-Hungary. His family moved to the United States and settled in Cleveland, Ohio. In 1890, fifteen-year-old Julius borrowed \$600 from his mother and started a one-man

cigar factory in a garage. Business expanded in Cleveland until the Marion, Ohio, Chamber of Commerce invited him to build a cigar factory in their city. The head of the Marion Chamber of Commerce was future President of the United States, Warren G. Harding, who would later invite Newman to the White House to smoke cigars.

In 1954, J.C. Newman relocated his business to the historic *El Reloj* cigar factory in Ybor City. J.C. Newman began selling five-cent cigars. He later decided to get into the premium cigar business, eventually teaming up with Carlos Fuente to make "the best cigars in the world." Manufacturing cigars

**Continued on page 53**



**Left to right: Senior Counsel Chair Thomas Newcomb Hyde, Gilbert Singer, Speaker Eric Newman, and Senior Counsel Chair Don Smith at the Senior Counsel luncheon in September.**





Built in 1910, the Regensburg factory was one of the last and largest cigar factories ever built in Tampa. Like every cigar factory in town, the Regensburg had a nickname: El Reloj, Spanish for "The Clock." For generations, residents had risen and retired to the hourly chimes ringing from its tall brick clock tower. After decades of silence, the landmark El Reloj now rings again thanks to a loving restoration by the Newman family in 2002. Visit [www.jcnewman.com](http://www.jcnewman.com) to read additional information.



### Continued from page 52

for over 125 years has faced one challenge after another: pandemics, the Great Depression, and two World Wars. One challenge was the Cuban embargo proclaimed by President John F. Kennedy in 1962, cutting off all tobacco from Cuba. Newman eventually solved the problem by importing tobacco from the Dominican Republic and from Cameroon in West Africa.

The J.C. Newman Cigar Company is a family-owned business now in its fourth generation of Newman ownership. Eric Newman is the grandson of J.C. Newman. Eric Newman's son, Drew, is also in the business. A graduate of American University's Washington College of Law,

Drew is corporate counsel for the J.C. Newman Cigar Company. Drew has developed the idea of "The American," a 100 percent American-made cigar. The tobacco comes from Connecticut, the outside wrapper from Clermont, Florida, and the hard wood cabinet boxes are made in Miami. "The American" is hand rolled in the El Reloj cigar factory, the oldest working cigar factory in America.

The Senior Counsel Section is grateful to Eric Newman for speaking at its luncheon and sharing the history of Cigar City Tampa. ■

*Author: Thomas Newcomb Hyde,  
Thomas Newcomb Hyde – Attorney  
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## BEST PRACTICES FOR SOLOS AND SMALL FIRMS WHO ARE WORKING REMOTELY

Solo & Small Firm Section

Chairs: Matthew Crist – Crist Legal, P.A. & Rick Duarte – The Duarte Firm, P.A.



**With virtual hearings and depositions becoming commonplace, it seems that an attorney can work from just about anywhere. However, there are numerous considerations they must take into account.**



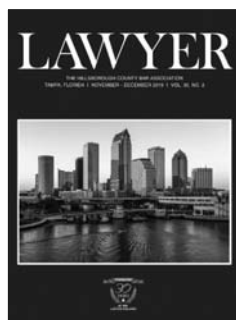
Earlier this year, the American Bar Association's Standing Committee on Ethics and Professional Responsibility issued ABA Ethics Opinion 498. The opinion sets forth guidance on ethical issues surrounding practicing law virtually. This guidance is more relevant than ever given that firms are allowing employees to work from home on a full-time or part-time basis. Additionally, the Delta variant outbreak has caused some firms to transition back to full-time remote work. With virtual hearings and depositions becoming commonplace, it seems that an attorney can work from just about

anywhere. However, if an attorney wishes to continue working remotely, there are numerous considerations they must take into account.

Lawyers need to ensure that their technology, work environment, and other assistance falls within their obligations under the Model Rules. Model Rules 1.1, 1.3, and 1.4 address the core ethical duties of competence, diligence, and communication of lawyers regarding their clients. And Model Rule 1.6 imputes a duty of confidentiality on lawyers to all clients. Under Model Rule 1.6, lawyers "shall not

reveal information relating to the representation of a client" and shall "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Further, supervisory lawyers have their own duty to ensure that subordinate lawyers and nonlawyers within their firm comply with these rules. The duty to supervise subordinate lawyers and nonlawyers extends to work both within and outside the physical law office.

**Continued on page 55**



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Continued from page 54

Law offices typically have the infrastructure in place to maintain and protect client confidentiality — secure physical storage, office space for confidential conversations, and a secure internet connection. Lawyers working from home or some other remote location, however, may not always have the infrastructure in place to maintain and protect client confidentiality. Fortunately, there are actions that lawyers can take to meet their duty of confidentiality when working remotely.

First, a lawyer should ensure they are connected to a secure internet connection. Options include not working on a public internet connection, using a virtual

private network (VPN), and utilizing two-factor authorization when accessing the firm's network. Further, a lawyer should ensure that they have a private workstation, preferably a separate room with a door that can be closed. Even then, one should use headphones during phone calls or video conferences to reduce the likelihood of others hearing confidential information. A privacy screen also decreases the possibility of unauthorized persons seeing anything confidential. Finally, having secure storage space to file documents and having an at-home shredder to dispose of documents prevents someone from accessing confidential information. Lawyers need to ensure their subordinates are also taking similar precautions.

As lawyers continue to practice outside the traditional law office setting, they must remember that the Model Rules apply to remote

work just as much as in-office work. Ensuring their compliance with the Model Rules can lead to a successful practice located from anywhere they so choose. ■



*Authors:*

*Rick Duarte  
& W. Austin  
Engelbrecht —  
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Firm, P.A.*

## Solo & Small Firm Luncheon/CLE

On September 15, the Solo & Small Firm Section held a CLE on the important topic of advertising with social media under the Rules Regulating The Florida Bar. Speakers Madison Hedding and David Waldron with marketing agency White Whale Solutions discussed the relevant portions of Subchapter 4-7 of the Rules Regulating the Florida Bar, examples of advertisements that adhere to the rules, and easy-to-implement social media strategy.



## VOIR DIRE IN COVID-19 TIMES AND BEYOND

Trial & Litigation Section

Chair: Erin Jackson, Johnson Jackson LLC



COVID-19 has left courts with an unprecedented backlog of cases. While civil courts are open for jury trials, courts are faced with the challenge of relieving the massive backlog while continuing to operate safely in the face of variant surges. Some courts have tried to balance these challenges by limiting voir dire. Some circuits have even issued administrative orders uniformly applying 45-minute per side limitations on voir dire. Courts should use this tool sparingly and flexibly to protect one of the pillars of a free democratic republic, free and fair jury trials.

The voir dire process is governed by Rule 1.431, “the rights of the



**Inflexibility in the amount of time period for voir dire is not a wise path upon which to continue to travel.**

parties to conduct a reasonable examination of each juror orally shall be preserved.”<sup>1</sup> A reasonable voir dire examination is a fundamental right to ensure a “fair and impartial jury.” “Time restrictions or limits on numbers of questions can result in the loss of this fundamental right. They do not flex with the circumstances, such as when a response to one question evokes follow-up questions.”<sup>2</sup>

While cases have recognized a court’s discretion in placing reasonable limitations on voir dire, courts have widely recognized a prohibition against arbitrary time limits on voir dire.<sup>3</sup> The principles behind protecting the right to meaningful voir dire apply in civil matters too. In *Carver v. Niedermayer*, the trial court imposed

**Continued on page 57**

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Continued from page 56

a 45-minute per side time limit to question potential jurors.<sup>4</sup> The appellate court reasoned that with 19 potential jurors, the court's limit allowed only 1.5 minutes per juror; an abuse of discretion as a matter of law. The court acknowledged a trial judge has authority to control argumentative and repetitive voir dire. But, it held, that authority should not be used to interfere with counsel's legitimate right to ascertain patent or concealed pre-judgments by prospective jurors.

Many courts have noted that time limits must be reasonable and "flex with the circumstances." The Fourth DCA in *Hopkins v. State*,

reversed a murder conviction, holding that limiting voir dire to 3 hours per side in a complex, high stakes case was an abuse of discretion.<sup>5</sup> While reasonable limitations on voir dire might be merited in these unusual COVID-19 times, once the safety concerns are lifted, so should any rigid time limitations. Even during times like the Delta variant surge, any time limitations imposed must flex with the circumstances of the case so that the important right to reasonable voir dire is preserved. ■

<sup>1</sup> Rule 1.431, Fla. R. Civ. Pro.

<sup>2</sup> *Williams v. State*, 424 So. 2d 148, 149 (Fla. 5th DCA 1982).

<sup>3</sup> *Miller v. State*, 785 So. 2d 662 (Fla. 3rd DCA 2001).

<sup>4</sup> 920 So. 2d 123 (Fla. 4th DCA 2006).

<sup>5</sup> 223 So. 3d 285 (Fla. 4th DCA 2017) (citing *Perry v. State*, 534 So.2d 912 (Fla. 3rd DCA 1988)), (holding 1-3 minutes per prospective juror is unreasonable and an abuse of discretion as a matter of law). *See also Strachan v. State*, 279 So. 2d 1231 (Fla. 4th DCA 2019) ("Inflexibility in the amount of time provided for voir

dire is not a wise path upon which to continue to travel.").

*Author:*  
*Charles T. Moore –*  
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Continued on page 59



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## IMPACT OF PERSONAL MEDICAL CONDITIONS ON WORK CLAIMS

Workers' Compensation Section

Chairs: Anthony Cortese – Anthony V. Cortese-Attorney at Law & Ya'Sheaka Williams – Eraclides, Gelman, Hall, Indek, Goodman



**The hindrance to recovery doctrine requires an employer/carrier to provide care and treatment to a personal medical condition that is not a compensable condition.**



**H**indrance to recovery is at times controversial, in that the doctrine requires an employer/carrier to provide care and treatment for a personal medical condition that is not a compensable condition, and one that is not causally related to the work injury. Judge Medina-Shore's opinion in *Lyneer Staffing Solutions, LLC and American Zurich Insurance Co. v. Perez-Pupo*, OJCC No. 15-009794 (3/20/2020), awarding care by a primary care physician (PCP) to treat the injured employee's personal diabetic medical condition was recently affirmed, per curiam, by the First District Court of Appeals.

No. 1D20-1388, 2021 WL 3160878 (Fla. 1st DCA, July 27, 2021).

The employee, Mr. Perez-Pupo, sustained an injury to his thumb on April 20, 2015. As a result of the accident, he suffered a distal phalanx fracture, crush injury, and partial nail bed amputation. Over the course of his recovery, he developed Complex Regional Pain Syndrome (CRPS) in his left arm. He was diagnosed with neuropathic pain after the crush injury to his left hand as well. He received care and treatment to include orthopedic, pain management, and

psychiatric care. During treatment, he developed diabetes, which was first documented four years after the work accident and later progressed to diabetes mellitus 2, uncontrolled. His authorized physicians could not causally relate the injured employee's diabetes condition to the work injuries. Both parties secured Independent Medical Exams (IMEs) and the opinions were the same, the work injuries did not cause Mr. Perez-Pupo to develop diabetes.

**Continued on page 61**

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Continued from page 60

Judge Medina-Shore relied on *City of Miami v. Korostishevski*,<sup>1</sup> which provides that an employer/carrier is responsible to treat an unrelated condition if the purpose of the treatment is also the removal of a hindrance to recover from the compensable injuries. Dr. Alex, the authorized orthopedist, testified that the diabetes hindered the treatment of the diagnosed CRPS. In fact, there were Platelet-Rich Plasma (PRP) injections prescribed for the injured employee that he could not receive because his blood sugar was too high. Additionally, Dr. Alonso, the authorized psychiatrist, testified that there were medications being prescribed to treat the employee's depression that had side effects of

causing an increase to the injured employee's glucose level. However, he had to balance prescribing the medication to treat the employee's severe depression against his diabetes worsening. Both Dr. Alonso and Dr. Alex testified that the injured employee's diabetes interfered with their ability to treat the work injuries, and provided specific examples.

The employer/carrier argued that there was no expectation of recovery as the injured employee had reached maximum medical improvement (MMI) and that his diabetes did not hinder his recovery from his compensable injuries. As such, it argued that the request for a PCP would be to treat the employee's general health and safety. Additionally, the employer/

carrier argued that the injured employee was receiving only palliative care and there was no real expectation of recovery from his injuries. The Judge disagreed with the arguments and awarded the benefits sought, holding that the hindrance to recovery doctrine is not limited to remedial care. The employer/carrier was held responsible for authorizing a PCP to treat the employee's diabetes until the diabetes no longer hinders his recovery from the compensable injuries. ■

<sup>1</sup> 627 So.2d 1242,1244 (Fla. 1st DCA 1993).

*Author: Ya'Sheaka C. Williams – Eraclides, Gelman, Hall, Indek, Goodman*



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## YLD Joint Happy Hour

The Young Lawyers Division started the new Bar year off right on September 5 with a wonderful joint happy hour at Big Storm Brewery with the Clearwater Bar YLD, St. Pete Bar YLD and West Pasco Bar YLD. The event also included a successful back-to-school supply drive. Thank you to everyone who joined us!

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Congratulations to **Brian Albritton of Phelps**, who was recognized by the “Best Lawyers in America 2022” as “Lawyer of the Year” in the Tampa chapter of its latest rankings.

**GrayRobinson** is proud to announce **Cole Carlson** as one of the firms’ newest lawyers to join the ranks of shareholder. Carlson has also been recently named among the “Ones to Watch” for 2021-2022 by Best Lawyers in America.

**Stearns Weaver Miller** announces the addition of shareholder **Vinette D. Godelia** to the firm’s Tampa office, who will join the firm’s expanded statewide Land Development, Zoning & Environmental practice.

Congratulations to **Col. DJ Reyes**, who was the recipient of the 2020 Father William Corby Award for Distinguished Military and Community Service by an alumnus, given by Notre Dame University. Col. Reyes is the Senior Mentor Program Coordinator for the 13th Circuit’s Veterans Treatment Court.

**Fisher Phillips** is pleased to welcome **Marisol Ruiz**, who has joined the firm as an associate in the Tampa office. Ruiz will advise businesses on a range of employment-related matters, including defense in litigation.

**Englander Fischer** is pleased to announce that **Iurillo Law Group** has merged its practice with Englander Fischer’s practice. This partnership will significantly expand the firm’s practice areas in commercial bankruptcy and creditor’s rights.

Abrahamson & Uiterwyk .....	47
Barnett Kirkwood Koche Long & Foster .....	53
Bay Area Legal Services .....	15
Boyd Settlements .....	26
Buell & Elligett .....	17
Bush Ross.....	57
Cardillo Law .....	60
CBIZ.....	13
Community Foundation Tampa Bay .....	61
Florida Lawyers Mutual Insurance Company .....	40
Garcia Mediation .....	64
Griffin Mediation .....	9
Gunn Law Group .....	Inside Front Cover
Holland & Knight .....	48
Icard Merrill Cullis Timm Furen & Ginsburg, PA .....	29
Jeffrey D. Murphy, P.A. ....	5
Johnson, Pope, Bokor, Ruppel & Burns LLP - Scott Ilgenfritz .....	8
Law Office of Robert Eckard & Associates.....	43
LawPay .....	Inside Back Cover
LCG Advisors.....	24
Older Lundy Alvarez & Koch .....	44
Phelps LLC .....	41, 47
Robert Bonanno .....	49
Sessums Black Caballero Ficarrotta .....	26
Shutts & Bowen LLP .....	16
TCS .....	37
The Bank of Tampa.....	Back Cover
The Centers .....	28
The Fraley Law Firm, P.A. ....	56
Thompson Brand Images .....	45
Tucker Law Group .....	4
Wagner McLaughlin .....	51
Wenzel Fenton Cabassa.....	20
Yerrid Law Group .....	21

**For the month of August 2021**

**Judge:** Hon. Caroline Tesche Arkin

**Parties:** James Ivey and Tandra Ivey v. Anthony Lamar Hall and National Environmental Technologies, Inc.

**Attorneys for plaintiff:** J. Troy Andrews (Andrews Law Group)

**Attorneys for defendant:** Manny Alvarez and Matt Holtsinger (Rywant, Alvarez, Jones, Russo & Guyton, P.A.)

**Nature of case:** Injury claim for damages following a school bus/truck collision. Negligence and causation determined for plaintiff by summary judgement. Claims of TBI, balance disorder and cervical dysfunction.

**Verdict:** Award for plaintiffs in the amount of \$36,000 (pending post trial setoffs). No permanent injury.

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