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THE HILLSBOROUGH COUNTY BAR ASSOCIATION Lawyer is published six times per year by the Hillsborough County Bar Association. Editorial, advertising, subscription, and circulation offices: 1610 N. Tampa St., Tampa, FL 33602. Charges of address must reach the Lawyer office six weeks in advance of the next issue date. Give both old and new address. POSTMASTER: Send change of address notices to Hillsborough County Bar Association, 1610 N. Tampa St., Tampa, FL 33602. One copy of each Lawyer is sent free to members of the Hillsborough County Bar Association. Additional subscriptions to members or firm libraries are $20. Annual subscriptions to others: $50. Single copy price: $10.00. (All plus tax.) The Lawyer is published as part of the HCBA’s commitment to provide membership with information relating to issues and concerns of the legal community. Opinions and positions expressed in the articles are those of the authors and may not necessarily reflect those of the HCBA. Submissions of feature articles, reviews, and opinion pieces on topics of general interest to the readership of the Lawyer are encouraged and will be considered for publication.
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On Becoming a Trauma-Informed Profession

A trauma-informed approach realizes the impact of trauma, recognizes the signs and symptoms of trauma, responds by taking trauma into account when formulating policy, and avoids re-traumatization.

As retired Sixth Judicial Circuit Judge Lynn Tepper puts it, “once you see it, you can’t unsee it.” In editing this month’s articles, the big theme that jumped out at me was trauma, and the various ways we are working toward making our system more trauma-informed. A trauma-informed approach is evident in the Thirteenth Judicial Circuit’s new A Slice of Mary Lee’s House waiting area for children (see page 14). Helping veterans recover from the trauma that leads to addiction, mental health struggles, and eventually crime is the impetus for our Circuit’s Veterans Court, highlighted in both the State Attorney’s column (see page 12) and the Senior Counsel Section’s article (see page 58). The Collaborative Law Section article focuses on a more trauma-informed path toward dealing with mental illness in family law situations (see page 26). Even the Community Services’ Committee’s Pirate Plunder Party (see page 28) is designed to help traumatized children.

Those practicing family law, criminal law, or dependency are likely familiar with the move toward a trauma-informed approach, but those in other practices may be unaware of this important paradigm shift. A trauma-informed approach realizes the impact of trauma, recognizes the signs and symptoms of trauma, responds by taking trauma into account when formulating policy, and avoids re-traumatization. The Florida Supreme Court has adopted as a guiding principle in family law cases the

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J. Logan Murphy Elected Chair of The American Bar Association Young Lawyers Division

Congratulations to HCBA Member J. Logan Murphy, who was recently elected chair of the American Bar Association Young Lawyers Division (ABA YLD) for the 2019–2020 term. Murphy assumes the role of chair of the ABA YLD following his service as secretary in 2017 and chair-elect in 2018. Murphy serves as the first chair from Tampa in nearly 20 years; he is a shareholder with local firm Hill Ward Henderson.

Among his responsibilities as chair, Murphy has committed to focus on priorities including mental health and wellness in the legal profession, law school debt and finance, innovation, and the future of the practice of law.
Continued from page 4

need to ensure “therapeutic justice” and “craft solutions that are appropriate for long-term stability and that minimize the need for subsequent court action.” The trauma-informed approach accomplishes this goal by taking into account the effects of Adverse Childhood Experiences (ACEs) on both children and adults, and how those experiences and the related toxic stress can have life-long and multigenerational impact if not recognized and treated. Just one ACE increases a person’s risk of physical and mental health challenges as an adult, with those experiencing multiple traumas more likely to turn to drugs or alcohol to self-medicate, or suffer depression. When the system recognizes the signs and causes of trauma and actively works to avoid re-traumatization, those in the system have better rehabilitative outcomes.

The Florida Courts have a wealth of on-line resources for lawyers and judges on this issue. Even if you don’t work in family court, check out the Family Court Tool Kit on Trauma and Child Development: www.flcourts.org/Resources-Services/Court-Improvement/Family-Courts/Family-Court-Basics2/Family-Court-Tool-Kit-Trauma-and-Child-Development. The Toolkit goes into great depth to explain how to approach every case through a trauma-informed lens. Judge Tepper’s short introduction to trauma video linked there gives a great overview. And why should you care if you don’t practice in these areas? Once I learned to approach every case through a trauma-informed lens, I found I could even deal with business cases (and the people driving them) more effectively and compassionately. Once you see it, you can’t unsee it.

2 In re Report of Family Court Steering Comm., 794 So. 2d 518, 537 (Fla. 2001).
3 See https://acesstoohigh.com/got-your-ace-score/ (last visited September 28, 2019) and studies cited therein.
4 https://www.youtube.com/watch?v=o07y8YB9rjg&feature=youtu.be.
Supporting the Next Generation of Lawyers

The law students and the newest lawyers among us are the future of our profession.

At two September events, I had the opportunity to listen to and speak with some people who were excited about entering the legal profession but also shared with me some concerns. The first event was the HCBA’s Diversity and Inclusion Networking Social on September 7. Please see page 38 for photos. More than 60 current law students traveled to the Ferguson Law Center to meet with lawyers and judges who offered advice about internship and employment opportunities and ideas about career paths. A few students shared with me that future uncertainties worried them. They were trying to do the best that they could in school. They were trying to do their best to finance their law school education. They were trying to do their best to find a job and enter a profession that would be fulfilling and not saddle them with student debt for many years to come.

The second event was the swearing in ceremony on September 23 at the George Edgecomb Courthouse for new admittees to the Florida Bar. Please see page 44 for photos.

Continued on page 7
At this event, I addressed some of our newest members of The Florida Bar and encouraged them to accept the HCBA’s offer of a free year of membership for the attendees. At the reception afterwards, some of the new lawyers and their families approached me to say hello. I heard the new admittees mention hopes about their new jobs, and at least two parents expressed with a mix of pride, relief, and humor that they were glad their kids were able to start steady paying jobs.

The law students and the newest lawyers among us are the future of our profession. One of the ways that the HCBA is attempting to help this next generation is by providing free memberships to the attendees of these events. HCBA memberships allow them to receive news about all the events and programs in one of the busiest and most respected voluntary Bar associations in the state. They can begin to attend HCBA meetings to learn more about a topic, receive practice tips, and get acquainted with other members as they grow their network in our legal community. They can increase their awareness of the many ways that HCBA members contribute to the profession and find role models, mentors, and sponsors to offer them friendly advice for their career development.

The collegiality in our local Bar is a source of pride, but also something that we cannot take for granted. We will continue to work hard at the HCBA to provide a variety of ways — big and small — for our members to engage with each other. We represent a great variety of practice areas and interests and a range of work experiences. My thanks to all of you who enrich our HCBA community and are generous with your time and energy! May you all enjoy some well-deserved rest and quality time with loved ones this Thanksgiving and holiday season!
Time to Give Back

Whether you are a litigator or transactional attorney, or an attorney with limited time to volunteer, there is a pro bono project that fits your needs and availability.

At this time every year, we all take time to reflect on what we are thankful for and enjoy the holiday season. I hope we all can also make time to give back to our community through pro bono services. As young lawyers, we often share a reluctance to undertake pro bono work in fear that we will have to sacrifice necessary billable hours. But as someone wiser than me once said, “We have to do what we can to help wherever it is possible for us to help.” As licensed lawyers, we have a monopoly on the ability to practice law, which also brings an obligation to help those that cannot afford to help themselves.

Taking the time to give back through pro bono work is not only our obligation, but it can help enhance your practice — it provides you with valuable experience and opportunities that you likely would not otherwise receive until you are several years into practice.

There are multiple ways to volunteer your time — whether it be assisting pro se family law litigants in completing court-approved family law forms at Bay Area Legal Services’ (BALS) Family Forms Clinic, or assisting firefighters, law enforcement, and emergency medical technicians complete their wills and durable powers of attorney at Wills for Heroes. You can also get involved through the Collective — a networking group geared toward young leaders in the legal community who believe in the mission of BALS and who recognize our fundamental duty as lawyers to improve access to justice. Or you can simply sign up for BALS’ Bay Area Volunteer Lawyers Program, where you can choose a volunteer pro bono opportunity that specifically suits your interests, skills, and availability. Whether you are a litigator or transactional attorney, or an attorney with limited time to volunteer, there is a pro bono project that fits your needs and availability.

To further that goal of getting our lawyers involved in pro bono, the YLD hosted several pro bono and volunteer organizations at our quarterly luncheon on October 30 and provided a platform for each organization to share information about their services to the community. We hope our young lawyers left with information on multiple avenues to make a difference.

This year, YLD Board Members Linda Anderson Stanley, Jason Whitemore, and Zach Bayne will be working closely with the newly appointed YLD Pro Bono Committee Chairs Kaley Ogren, Jeffrey Cox, and Nicole Del Rio to coordinate and implement pro bono initiatives for our young lawyers to give back for the good of our community and profession. We encourage you to reach out to one of them to get involved and find time to give back. ■
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hcba events

December 5, 2019
Holiday Open House, Chester Ferguson Law Center

January 8, 2020
Diversity Membership Luncheon, Hilton Tampa Downtown

February 29, 2020
5K Pro Bono River Run/Food Festival, Stetson University College of Law Tampa Campus

May 12, 2020
Law Day Membership Luncheon, Armature Works

May 21, 2020
Law & Liberty Dinner, Hilton Tampa Downtown

Learn more about HCBA events at www.hillsbar.com.
STAY CONNECTED
Chief Judges Look Back to the Future in Remarks at the HCBA’s 23rd Annual Bench Bar Luncheon

“I am very proud of the work we are doing in our specialty courts. We are going the extra mile to help the people that need the help.”

— Thirteenth Circuit Chief Judge Ronald Ficarrotta

The theme for the HCBA’s 23rd Annual Bench Bar Conference held on Oct. 3 was “To the Moon and Back: Explorations in Law & Advocacy.”

The title was a play on words to commemorate the 50-year anniversary of Apollo 11’s moon landing in 1969.

The luncheon speakers were Thirteenth Circuit Chief Judge Ronald Ficarrotta and Second DCA Chief Judge Nelly Khouzam.

The judges, in their remarks, highlighted some significant changes that have occurred in the court system over the past five decades, as well as some issues to look for in the future.

“What was the Bench like in 1969?” Ficarrotta asked rhetorically to the 600 attendees gathered at the downtown Hilton.

In 1969, there were 16 local state court judges, and today there are 62 judges, Ficarrotta said.

Ficarrotta noted the population of Hillsborough County has swelled from 490,000 in 1969 to 1.3 million today.

Continued on page 11
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And he said the judges in the Thirteenth Circuit currently handle 237,000 case files each year.

In addition, Ficarrotta highlighted the ever-increasing racial, ethnic and gender diversity of the judiciary.

And he discussed the recent introduction of various specialty courts, including those focused on veterans, drugs, mental health and human trafficking.

“The trend toward these specialty courts is very exciting,” Ficarrotta said.

Ficarrotta said he will be working closely with the Florida Legislature this year on increasing funding for the judiciary and adding new judgeships.

He noted there have been no new judgeships in the circuit since 2005.

While Ficarrotta said he doesn’t know what the court system will look like 50 years from now, he said he was confident the “rule of law will still be strong.”

In her remarks, Chief Judge Khouzam talked about the work of the 16 judges in Florida’s Second District Court of Appeal, and she highlighted some issues the court is focused on.

One key issue, she said, is preparing for changes in Florida’s jurisdictional limits, and another is dealing with the long-term space considerations of the Second DCA.

Khouzam said the Second DCA’s current lease with Stetson Law School in Tampa will be ending in 2023.

“The Second DCA is the only DCA that does not have its own courtroom,” Khouzam said, adding that studies have concluded the DCA should be located in the Tampa Bay area.

“It’s a front-burner issue,” Khouzam said.

Also at the luncheon, the winners of the Thirteenth Judicial Circuit’s 2019 Professionalism Awards were announced.

This year’s private sector professionalism award went to John Schifino with the Gunster law firm, and the government sector award went to Jennie Tarr from Hillsborough County’s legal department (see photos on right).

Judges Caroline Tesche Arkin, Thomas Palermo, Samantha Ward and Emily Peacock were the Bench Bar Conference co-chairs.

In the morning, there were breakout sessions on effective advocacy and legal strategies regarding offers of judgment, on Florida’s newly adopted Daubert expert witness criteria, and on recent U.S. Supreme Court decisions and the upcoming term.

There were a record number of attendees at the various CLE breakout and plenary sessions held throughout the day.

“The collaboration for the conference this year between the HCBA, the judges, as well as all the legal professionals was extraordinary,” said Judge Arkin. “The conference really helps to bring us together each year and to learn from each other.”

In the afternoon, there were a series of breakout sessions, featuring “A View To and From the Bench” with more than 20 judges from the Thirteenth Judicial Circuit and various federal courts.

The sessions enabled attorneys to have an open dialogue with judges in order to improve communication and professionalism.

Later, there was a well-attended session featuring “A View From the Box” with panel of past jurors who shared their personal experiences as jurors and offered insight about the civil and criminal jury experience.

And at the end of the day, more than 400 HCBA members enjoyed the camaraderie and fellowship provided at the annual Judicial Reception.

Current HCBA President Grace Yang says the Bench Bar Conference continues be one of Tampa’s premier legal events each year because of the support of the local judiciary.

Yang also said the HCBA is especially grateful for financial support offered by the many generous sponsors that help make the conference a success.

“The Bench Bar Conference is one of the HCBA’s signature events,” Yang said, “and we believe the success of the conference is a testament to the tremendous support, cooperation and camaraderie between our members and the judiciary.”

Additional photos and sponsor recognitions from the Bench Bar Conference, Membership Luncheon and Judicial Reception will be included in the next issue of the Lawyer magazine.

See you around the Chet.
One of the many ways we employ a strategic problem-solving approach to criminal justice is through the Thirteenth Circuit’s Veterans Treatment Court (VTC). Hillsborough County is home to nearly 100,000 military veterans. Responding to the unique needs of the brave men and women who served this country allows us to create a safer community by directly addressing issues affecting veterans who become involved in the criminal justice system.

The VTC is a problem-solving court that holds veterans accountable for crimes in a non-adversarial context, while addressing underlying issues like post-traumatic stress disorder and substance abuse, as well as associated problems of unemployment, homelessness, and transportation. The VTC incorporates therapeutic principles and key components of problem-solving courts, primarily treatment and rehabilitation. Veterans undergo a risk-need responsivity assessment, and their progress is tracked as a phase-based system of treatment in accordance with evidence-based best practices. This treatment court model requires routine court appearances, mandatory attendance at

Continued on page 13

Administering Justice in Veterans Treatment Court

Hillsborough’s Veterans Treatment Court has become a national model for handling the distinct issues facing veterans in our criminal justice system.
treatment sessions, and frequent and random testing for drug and alcohol use.

Established in 2013, the VTC is the result of collaboration between the court system, the Public Defender’s Office, the U.S. Department of Veterans Affairs, and the State Attorney’s Office. The judges who have overseen the VTC — Judge Gregory Holder and currently Judge Michael Scionti — are essential to its success. Perhaps the most critical factor to success, however, is the partnership with mentors from Hillsborough County Veterans, a 501(c)(3) organization of current and retired veterans who volunteer to serve as “battle buddies” to the VTC defendants. Each veteran-defendant is partnered with a mentor who assumes the tremendous responsibility of supporting that person throughout the duration of case — and often after.

Seeking to build on the VTC’s past success and that of other problem-solving courts, in 2017 our office created a supervisory attorney position to oversee our Mental Health, Veterans Treatment, and Drug Courts. This position allows for greater continuity between the problem-solving courts and simplifies bringing new innovations to each court. It is part of our commitment to focus on treatment rather than incarceration for community members suffering from substance abuse or mental illness.

Our problem-solving court chief, Jeria Wilds, is a 14-year assistant state attorney who served in the U.S. Army as an officer in the Judge Advocate General’s Corps. In her oversight of the problem-solving courts, Wilds and her team focus on the root of problems that bring people into the system, rather than a punitive approach that perpetuates the revolving door of the system.

Hillsborough’s VTC has become a national model for handling the distinct issues facing veterans in our criminal justice system. In just a few years, VTC has greatly expanded. With the court infrastructure firmly in place, more veterans are being identified as suitable VTC candidates, and the stakeholders continue to seek additional legislative and grant funding to grow this program to meet the needs of all servicemen and servicewomen in our community.

Veterans are a critical part of the Hillsborough County community. Our office, along with our criminal justice partners, is proud to be part of this amazing program — not only to support veterans who have made mistakes, but also because it furthers our core mission of improving public safety while promoting fairness and justice.
A Slice of Mary Lee’s House

I encourage you to stop by the third floor of the Edgecomb Courthouse and see “A Slice of Mary Lee’s House” the next time you are in the building.

The Thirteenth Judicial Circuit is visited by over a million people each year. Many visitors have limited knowledge of court functions and processes, which may lead to uneasy feelings, or even anxiety. Now, imagine how children must feel. It is safe to say that our youngest and smallest visitors may be scared, confused and anxious. Quite often, they are brought to the third floor of the George Edgecomb Courthouse because of the trauma they have experienced, and the efforts being made to stabilize their lives. The experience can be overwhelming.

This summer, in an attempt to minimize re-traumatization, our third floor waiting area was transformed into a trauma-informed space suitable for young children. Thanks to Mary Lee’s House and The Children’s Board, we now have calming wall colors, scenic murals, a miniature library providing free books for children on the floor, and a Doggie Delivery Mailbox where kids can write and send letters to Tibet, Florida’s first Courthouse Dog. A new bench also enables children to comfortably sit and visit with Tibet before or after hearings.

On September 9, 2019, Mary Lee Farrior, the namesake of Mary Lee’s House, and J. Rex Farrior III, assisted in the ribbon-cutting ceremony to celebrate the...
Continued from page 14

debut of “A Slice of Mary Lee’s House” at the Courthouse. Ms. Farrior’s vision to create a child-friendly place for abused children and their families where they can seek meaningful resources became a reality with the opening of Mary Lee’s House in the fall of 2008. The child protection and advocacy center is an asset beyond measure. Mr. Farrior, who is Ms. Farrior’s son, serves as chairman of the board and president of Mary Lee’s House. I am very thankful for the collaboration of Jennifer Kuhn, director of Mary Lee’s House, and Kelley Parris, executive director of the Children’s Board of Hillsborough County. I encourage you to stop by the third floor of the Edgecomb Courthouse next time you are in the building. The artwork is amazing, and the children are already enjoying it.
Meet the Judge: Judge Joelle Ann Ober

“Most of us serve in these roles because we love the community, and we want to do good for this community.” — Judge Joelle Ann Ober

The fifth segment of this recurring series on Thirteenth Circuit judges highlights Hillsborough County’s longest serving county court judge: Judge Joelle Ann Ober. How does one survive more than four decades in the courthouse (or any one place for that matter)? Relationships. Building and maintaining strong relationships with the people she works with has been a career-long constant for Judge Ober. “The people I met during my first visit to the courthouse are still my friends today,” Judge Ober said. A self-described “people person,” Judge Ober took great joy in sharing how close she is with her high school friends some 44 years later. “It just enriches your life to have those relationships,” she explained.

Judge Ober began cultivating those friendships from the moment she walked into the courthouse in January of 1979 as a college intern. She spent that semester shadowing Judge Harry Lee Coe III and became fascinated by the role of a judge in the judicial system.

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At the time, she had trifling law school aspirations, but observing the lawyers and other positions throughout the courthouse that semester solidified her career aspirations. “It only took 18 more years to actually get the position I admired,” she laughed.

Judge Ober was born in Staten Island, New York. The family later relocated to Sarasota for her father’s job. When the time for college approached, Judge Ober knew she did not want to go too far from home. In fact, college was never really in her life plan. Back then, she wanted to share her musical talents and perform. But it was her mother...
Marian’s resounding “you will go to college” repeating anthem that made Judge Ober a first-generation college attendee. She had friends at the University of South Florida, so she enrolled there. Looking back, Judge Ober is particularly grateful to her now 91-year-old mother, and best friend, for encouraging higher education. And there’s little doubt of how proud Marian is of Judge Ober, as she regularly brags about her daughter’s achievements to the other folks at her assisted living facility.

Judge Ober started college as a voice major. After coming to terms with what she considered unrealistic career options in the performing arts industry, she switched course. A criminology class captured her fascination right around that time. But the interest had always been there. As an avid young reader, murder mysteries captivated her. These stories came to life in her college criminal justice classes, and soon she uncovered her passion for the law, especially criminal law. This explains the last semester internship at the courthouse.

Before making her way to law school, Judge Ober worked at the State Attorney’s Office as a receptionist and a docket clerk. She then attended South Texas College of Law. At the time, many people from Tampa enrolled in the Houston school. Law school classmates soon joined her family of friends.

After law school, Judge Ober returned to the State Attorney’s Office, this time as an Assistant State Attorney. She later became an Assistant Public Defender, followed by a brief stint in private practice while running for judge. Making her way back to where it all started, Judge Ober was elected to the county court bench in 1996. She has been re-elected four times since.

Her judicial journey has not always been an easy one. She acknowledged that the path wasn’t paved in gold, especially for women at that time. When she first came to the courthouse as an intern in 1979, she recalls only a handful of female attorneys. When she began her legal career in the State Attorney’s Office, there still were few women, although trailblazers were emerging. By the time Judge Ober ran for judicial office, several others had paved the way for a female presence on the bench. Despite personal and professional challenges, after 24 years on the bench, she is certain it has been a fulfilling experience.

In what seemed like a preordained nod to her collegiate passion, she spent her first 12 judicial years solely overseeing criminal cases. Since that time, Judge Ober has seen every type of case in county court. That is one of the aspects of this position she loves most — the variety of situations and legal issues, from landlord/tenant disputes to PIP claims to injunctions; you name it, and she’s seen it. The mixed bag of cases she handles allows her to still learn something new every day, even after almost 40 years of practice.

To Judge Ober, the most challenging aspect of being a judge is the caseload, though she said it in a more personal way — that she wished she had more time for each litigant. In her time on the bench, Judge Ober has presided over hundreds of thousands of cases, including over 400 jury trials while assigned to the criminal division. She explained that the sadness judges see can also be difficult to watch, knowing that she cannot always help in the way she might want to. Yet, despite these limitations, Judge Ober is proud of her efforts to give
every case fair and unbiased review and every litigant their day in court.

Judge Ober was very keen on describing her “position” (because “this is not just a job to me,” she explained) as a “public position of trust,” giving great deference to the office itself and what it stands for. In her view, the role of a judge is one of community service. “We’re not here for the pay or some other motivation,” she explained, “most of us serve in these roles because we love the community and we want to do good for this community.” Judge Ober’s service to the Tampa community has gone beyond the walls of the courthouse.

Her community service is too vast to fully elaborate here. But Judge Ober was most proud of her efforts to start a law studies internship program at Jefferson High School, which included a judicial shadowing component; students around the county have flocked to the school to enroll. Through the Hillsborough Association of Women Lawyers, she was also heavily involved in creating the Take Your Sons and Daughters to Work Day program; another effort to expose young minds to the legal system. Her 12 years on the Board of Directors for The Spring of Tampa Bay, an organization focused on the prevention of domestic violence, is also particularly noteworthy. That service stemmed from passion developed through her judicial divisional assignment as well as her participation in the critically acclaimed PBS documentary entitled Domestic Violence 1 and 2 by Academy Award Honoree Frederick Wiseman.

While it is relationships that make Judge Ober’s work life meaningful, music is what brings deep joy to her personal life. “Music is my passion,” she said, with genuine warmth. She sings it, she watches it, and she shares it with others. She isn’t partial to any one genre, “I love all kinds of music — opera, the classics, country, even rap,” she smiled.

It is a shared family passion. Judge Ober has two brothers — her oldest is a retired banker living in Atlanta, while the younger is a musician that plays gigs around Sarasota.

Music is her outlet. She loves live performances and concerts. In fact, she recently attended the concert of an otherwise unnamed, twenty-something pop artist with her staff attorney, Melissa Foss — just another example of how her colleagues become family. Surrounded by screaming teenaged girls, she laughed that she might have been the oldest person in attendance.

If she’s not at a concert or a musical in her free time, she is definitely spending that time with family. She is particularly close with her nieces, nephew, and two grand nephews, and they visit often.

With retirement on the horizon, she ponders travel, particularly exploration of her Italian and Sicilian ancestry. She will certainly continue her charitable work. She hopes that in her retirement years, music will become a daily constant, beyond just singing in her car on the way to the courthouse. Perhaps we will see her brother/sister duo on America’s Got Talent, she mused — her behind the mic, her brother strumming his guitar … or maybe she will give in to the requests of her other musically-inclined judicial colleagues who have attempted to recruit her for various chorus groups.

Author: Lyndsey E. Siara - Thirteenth Judicial Circuit
HCBA PRO BONO RIVER RUN – ANSWERING THE CALL
5K Pro Bono River Run Committee
Chairs: Judge John Conrad and Judge Miriam Valkenburg – Thirteenth Judicial Circuit

Runners, Take Your Mark. Get Set. STOP! O.K. We know what you’re thinking. Of course, the next word should be GO. Well, just relax a minute, and let’s review why the 12th Annual HCBA Pro Bono River Run is not just a typical race. Yes, there’s the chance to come in first place in your age group, set a PR (Personal Record), burn off some early morning calories, and chow down the rest of the day. But the Pro Bono Run offers runners all of that and the chance to do real good in our community.

The Pro Bono River Run was established to address the need of those facing difficult challenges through involvement in the legal system without the resources to hire private counsel, by requiring race participants to pledge pro bono hours when they register. The participants then perform the pledged hours in the year following the Run. This pro bono service is invaluable in ensuring everyone has equal access to our judicial system.

As a result of the previous Pro Bono Run held on April 13, 2019, participants pledged a total of 2,137 pro bono hours. Since the inception of the Run, participants have performed almost 18,000 hours of pro bono service, assisting the indigent in our community.1 No other race gives you the personal satisfaction that comes from helping others who need your time, talent, and ability to resolve legal matters that dramatically affect their daily lives.

Next year’s Run will be held on Saturday, February 29, 2020, beginning at 10:30 a.m. The route will again be along the Tampa Riverwalk, beginning and ending at Water Works Park (out and back). Last year was the first time we used the Riverwalk, and the overall feedback was very positive. The race will also be chip-timed for the competitive at heart. In order to encourage our goal of supporting pro bono service, we will be offering a reduced registration fee again of $25 for every runner who pledges at least 25 hours of pro bono service. After you finish the Run, you can enjoy a post-race celebration at the Judicial Food Festival (formerly Pig Roast) at Stetson University’s Tampa Law Center. This event is free to HCBA members and their families and guests. Online registration will open on November 4 at www.hillsbar.com.

So, before we say GO, please take a moment to envision yourself at the starting line of the Pro Bono River Run on February 29, 2020. You are there with a few hundred other people waiting for the horn to sound the beginning of the race. We hope it will be a beautiful day and we know it’s at a beautiful location. But before you take that first step, enjoy the satisfaction of knowing that in the year ahead, you will make a difference in the lives of others who may have never come your way, except for this Run. It is a noble cause that makes our profession noble. On behalf of our committee, we thank you in advance for participating in the 12th Annual Pro Bono River Run and for answering this call to service... NOW GO!

1 An amazing list of pro bono opportunities is available on the 13th Judicial Circuit website at http://www.fljud13.org/Portals/0/Forms/pdfs/Pro_Bono_Opportunities_HillsCty.pdf

Authors: Judge John Conrad and Judge Miriam Valkenburg – Thirteenth Judicial Circuit
HCBA WELCOMES ITS NEW MEMBERS
AUGUST/SEPTEMBER 2019

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Did a jury put coal in your stocking? Appeal.

Whether your jury was naughty or nice, let us bring cheer to your holiday season. Appeals are all we do.
YLD Fall Happy Hour

The Young Lawyers Division welcomed back its members for the start of the new Bar year at its Fall Happy Hour on October 2. The members gathered at Bulla Gastrobar to catch up and network.

Thank you to our YLD Happy Hour Sponsor:

Regions
F
torida appellate courts have long strived to assist trial judges and litigators in “conforming with article I, section 16, Florida Constitution, and the equal protection provisions of our state and federal constitutions,” with the laudable goal of eliminating “discrimination in the exercise of peremptory challenges.”

In Melbourne v. State, the supreme court refined the procedure for Batson objections, with the proviso that the right to an impartial jury “is best safeguarded not by an arcane maze of reversible error traps, but by reason and common sense.” In Step 1, the opponent of the peremptory challenge must object, show the venireperson belongs to a protected class, request the court ask the proponent its reason for the challenge.

In Step 2, the proponent must provide a non-discriminatory explanation. In Step 3, the court must determine whether that explanation is genuine; if it is, the strike will be sustained. Critically, the burden of persuasion never leaves the opponent to prove purposeful discrimination. The opponent must renew the objection before the jury is sworn.

Twenty years later, the Second District provided a comprehensive roadmap for preserving Melbourne issues. Addressing Step 3, the Second District concluded that trial courts do not have an “automatic burden” to perform a genuineness analysis every time an opponent objects and the proponent provides a facially neutral explanation. To preserve the issue, the opponent must expressly make a claim of pretext, proffer circumstances supporting the claim, and object to deficiencies in the procedure.

Although it is “unquestionably the better practice” for the trial court to ask the opponent whether he or she wishes to raise a genuineness challenge and what circumstances support the claim, the Second District saw no reason to reverse for the “drastic” new-trial remedy when the trial court omits Step 3 without objection and the opponent fails to ensure the record is adequate for review. A plurality of the Supreme Court approved the Second District’s decision but not its analysis. The plurality explained that a trial court “has a duty to perform the correct legal analysis independent of trial counsel’s duty.” Below, the trial judge performed this duty by requesting a response from defense counsel following the State’s purported non-discriminatory explanation and before ruling on genuineness.

The plurality found the issue preserved but determined the trial court did not err in overruling the objection in light of defense counsel’s failure to respond to the State’s explanation.

Despite the disapproval of the Second District’s preservation analysis by a plurality of the supreme court, the takeaway is clear: litigants should ensure the trial court proceeds through each step of the Melbourne procedure and confirm the record contains the basis of the objection for appellate review.

3 Melbourne, 679 So. 2d at 765.
4 Id. at 764.
5 Id. at 765.
6 Spencer v. State, 196 So. 3d 400 (Fla. 2d DCA 2016).
7 Id. at 401.
8 Id. at 407.
9 Spencer v. State, 238 So. 3d 708, 711 (Fla. 2018).
10 Id. at 716.
11 Id. at 717.

Author: Chance Lyman - Buchanan Ingersoll & Rooney PC
Hillsborough County Bar Association 100 Club

Law firms with 100% membership in the HCBA

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TO BE ADDED TO THIS LIST, PLEASE EMAIL A LIST OF ATTORNEYS IN YOUR FIRM TO STACY@HILLSBAR.COM.
Mental illness in a marriage increases the risk of divorce by 12 percent.

According to a 2011 multi-national study, the existence of mental illness in a marriage increases the risk of divorce by 12 percent, with major depression, specific phobias, alcohol abuse and PTSD identified as being the largest contributors to the increased divorce rate.1

I have always believed that the family law courts are ill-equipped to address mental illness, especially when the divorcing family has children. Judges, very simply, are not mental health experts. Even when mental health experts are brought into the proceedings — whether as guardians ad litem, social investigators, timesharing evaluators, substance abuse evaluators or treatment providers — they are usually not called to offer treatment recommendations for the party suffering from mental illness. Instead, they are asked to offer opinions on the harm the mental illness may cause and the best way to protect the children from the struggling parent. At the same time, competing experts may be called to present evidence that the mental illness is not a problem, even when it is.

This approach fails to address the core problem, and in very few instances do the children or the other spouse completely escape exposure to the untreated mental illness. The effects of the mental illness continue long after the divorce case concludes.

Collaborative divorce, with its focus on problem solving, provides options to families affected by mental illness. The collaborative process allows for flexible approaches and solutions tailored to give these families hope for a future filled with less chaos, anger and struggle. If both parties are committed to the process and the suffering party can acknowledge needing assistance, then the team can develop a plan that addresses the family’s unique concerns to everyone’s benefit.

Continued on page 27
Where litigation often focuses on whether and how to limit the children’s exposure to the suffering parent, a collaborative divorce can result in a nuanced plan that addresses the mental illness directly and maximizes both parents’ involvement in their children’s lives while protecting the children.

Instead of hiring a mental health expert to “attack” the suffering party’s parenting, the team can, for example:

- Retain substance abuse experts to provide treatment recommendations;
- Use parenting coaches to assist both parents with conflict resolution; and/or,
- Involve treatment providers who obtain information from the team and suggest approaches to resolution that will support, rather than erode, treatment progress.

Most importantly, at the end of the collaborative process, the parents will not have spent months or years attacking and blaming each other in a public forum. Instead, they will have worked together to address the mental illness that likely contributed to their divorce in the first place. And, in doing so, they will hopefully find a way to move beyond their past problems and to create an environment where they can co-parent their children as a family.


Author: Jessica Felix - Felix, Felix & Baseman
THANK YOU FOR THE SUPPORT OF OUR SPONSORS AND VOLUNTEERS!
Community Services Committee

The Community Services Committee (CSC) enjoyed an amazing 2018-2019 Bar year due to the support and generosity of our wonderful volunteers and donors and looks forward to another year of making a difference — with your help!

Our final event of last year took place in May 2019 at A Kid’s Place in Brandon, which is an amazing nonprofit center for abused and abandoned children. To help these wonderful children feel like kids for a day, the CSC threw our annual Pirate Plunder Party (chaired for the sixth year by Captain Lisa Esposito of the Law Offices of Lisa Esposito, P.A.). It was a resounding success, surpassing prior years, thanks to all who donated and helped! A big thank-you to our two main sponsors — Stingray Chevrolet (and its Finance Manager John Whaley) and Fernando Rodriguez (and his company National Services, Inc.). YOU ROCK!

Both kids and volunteers had a blast. This year we added more games, additional rides, and new creative treats. For the first time, we had a real train, sponsored by the GFWC Women’s Organization (thanks to Donna Chastain for bringing that organization aboard). The kids loved riding around in the pirate plunder train; in fact, some adults did too (you know who you are, but, rest assured, your secret is safe with us).

We also added Captain Cooks’ Creative Cookie Creations, allowing the little pirates to use edible paints to create pirate cookies (created by the generosity of Kristen’s Cookies and sponsored by Black Rock Trial Lawyers and their Captain, Gil Sanchez). The Scallywag Game Room a/k/a Lee’s Portable Game Room was a huge hit and wouldn’t have been possible without the generosity of owner Nijah Lee and sponsor, Tempus Business Strategists.

Pirate games included Jump the Plank, where the little buccaneers walked the plank without falling into shark-infested waters (thanks to our game sponsors — Law Offices of Lisa Esposito, P.A. and Lara LaVoie and her firm, LaVoie & Kaizer, P.A.). Advanced Diagnostics Group sponsored the pirate corn hole. We also dressed the little buccaneers as pirates (thanks to a donation from Jennifer L. Hamey, P.A.). For the second year in a row, DJ Brian Ferrito generously donated his services, and pirates were dancing in the streets and singing on their ships (thanks April Kennedy for introducing us to DJ Ferrito). Mr. Photobot again discounted the doubloons to allow the return of the Purty Pirate Photo Booth (sponsored by LaFleur’s Gymnastics & Little Flipper Swim School — with a special thanks to Lance Cochran). We might even add that some of the scurvy dogs cleaned up real purty and nary a one broke the camera! The face painter and balloon artist (sponsored by AJ’s Bikes and Boards and Client Legal Funding) were hits again this year, thanks to Glitterbug. If you happen to visit any of these vendors, please tell them how their generosity brought smiles to some very deserving kids!

The kids also enjoyed a dunk tank, sponsored by Eric & Laura Sugrue, who also donated their time and talent by helping to create the sponsor signs and sorting through thousands of toys). The kids loved dunking their social workers and house parents, and we even saw some pirates going swimming in the tank!

The treasure chest toys (a/k/a plunder) overflowed through the generously donated doubloons by many a pirate and krewe. Thanks to the contributors, including the Law Offices of Lisa Esposito, P.A.; the law firm of LaVoie & Kaizer, P.A.; Mary Simmons, CPA, P.A.; Jennifer L. Hamey, P.A.; Anton/Garcia Attorneys At Law; Sandra Puerta/CSB Healthcare Solutions, Inc.; Hill Ward Henderson Law Firm (with a special thanks to two of the HCBA’s past presidents, Gordon and Ben Hill, who also helped at the event); Yvette Hammett; Wenzel, Fenton & Cabassa; Lee Everett; Fernando Llop; Helen Gilmore; the Horgen Family; and Pam Olsen of the Olsen Law Firm, P.A.

The barbecue was awesome, thanks to the generosity of

Continued on page 29
BubbaQues and South Tampa Dermatology. BubbaQues was so moved by this charitable cause that they donated their time to help serve over 110 hungry pirates! The pirate cupcakes and cookies were absolutely delicious, thanks to the generosity of Petite Madelyn’s Bakery in Valrico/Brandon and sponsorship by Dr. Craig Baker and Baker Cosmetics and Family Dentistry. The yummy popcorn, refreshing icee machine and delicious cotton candy and candy maker machines were made possible through generous donations from Stravino Penrod Search Partners and Maria Maranda and her State Farm Agency (whose krewe also has volunteered year after year). It was a thirsty day for pirates, so we be thankful to both Nita Hospel and real estate agent Tishara Griffis for donating tasty grog!

The pirate bouncy house is always a hit, thanks to Steve Sciacca and King of Bounce of Tampa, and the generous sponsorship by Shutts & Bowen. Shutts & Bowen not only sponsors this awesome ride, but brings their own merry krewe to watch the little buccaneers bounce! Hats off to you and to your amazing pirate, Juanita Sanchez, who rallies the krewe each year!

This year two new volunteers not only donated their time and goods, but also obtained donations and brought along some wonderful Boy Scouts, whose enthusiasm rocked the event. Thanks to Origami Owl representative Judy Gray who donated personalized “You’re Enough” necklaces to every teenage girl. Tears were flowing from many a salty pirate who witnessed this act of kindness. Thank you also to Belinda Bridges Smith, who not only introduced Judy to our merry group of pirates, but also brought her daughter, Nikki Lucas, and partner, Patti Hughes, who donated Lularoe leggings to each girl, and her hardworking grandson, Dawson Gomez, and his Scout troop.

The Community Services Committee is so excited to thank a new sponsor this year, Tampa Bay Paralegal Association, for sponsoring the tables and chairs, and again thanks the Law Offices of Lisa Esposito, PA, for providing over a dozen tents to keep our pirates cool.

The Committee is truly humbled and overwhelmed by the amount of donations and volunteer support that we received for this event. We would like to thank all of our volunteers, the Hillsborough County Bar Association, and all of our donors! We hope that we didn’t forget anyone!

Finally, the Committee would like to provide a special thank you to Lisa Esposito for spearheading and chairing this Annual Pirate Party, as well as a thank you to Lara LaVoie; Scott Strange; Cheryl Mosley; Robin Whaley; Liz and Morgan Tomlin; Jennifer, Dolores and Sharon Esposito (three generations of a family); Taino Martinez; Rebecca Matias; and Vanessa Ferrer.

After ending the 2018-2019 year on such a positive note, the Committee hit the ground running again this year with our annual Make A Difference Day/Adopt-a-Veteran event on October 26, where we asked volunteers to adopt an elderly veteran with no family and little money and purchase some items on their wish list to thank them for their service. Our generous volunteers also personally

Continued on page 30
THANK YOU FOR THE SUPPORT OF OUR SPONSORS AND VOLUNTEERS!
Community Services Committee

Continued from page 29

delivered gifts to these wonderful veterans and spent some quality time listening to their amazing stories. It was a heartwarming and humbling experience for all who participated.

The Committee has more great events planned for this upcoming year. In November and December, we (through Head Elf Lisa Esposito) will participate in Elves for the Elders, where elderly wards of the state (in the five surrounding counties) fill out holiday wish lists requesting both necessities and a small luxury item that they otherwise could not afford. There are over 300 elders in the program, and we work very hard to get them all adopted. We then travel to a needy nursing home in Tampa, to sing songs (off-key Rudolph is our favorite) and deliver gifts to every resident. We are glad that some of us chose the legal profession and not entertainment! Regardless, it truly reminds you of the reason for the season.

In March, we will participate in a week-long event, Dining with Dignity at Trinity Café, where we help serve a three-course, sit-down lunch to the local working poor and homeless (elderly, veterans, and families with children). This is sometimes the only meal these deserving people eat all day! Many of the local judiciary volunteer at this annual event, and it is truly inspiring to see the positive interaction between our local judges and less fortunate.

In conclusion, our hearts are big, our dreams are endless, and the need is great, so please contact the Community Services Committee to get involved. You might just find that you gain more than you give. The commitment and dedication of our volunteers and donors makes all the difference. Thank you!

For more information about joining the Committee and participating in one of our amazing events this year, please contact Co-Chairs Lara LaVoie, (813) 898-6786/lara@lkinjurylaw.com; Janae Thomas, jet07e@gmail.com; Wendy DePaul, (813) 606-4446/wendy@cohenanddepaul.com; or Lisa Esposito, (813) 223-6037/lisa@lesposito.com.

Author: Lara M. LaVoie - LaVoie & Kaizer, P.A.
2020 marks the 100th anniversary of the 19th Amendment. The Equal Rights Amendment was first proposed in 1923 and its passage is long overdue.

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Section 553.791, Florida Statutes, often referred to as Florida’s “Private Provider Statute,” provides a framework for owners and their authorized contractors to use private providers (in lieu of a local jurisdiction’s building department) for plan review and building inspection services. Since its enactment in 2002, the Statute has been amended six times, most recently in the 2019 regular legislative session. Subject to certain requirements, the Statute allows an owner to use a qualified private provider for plan review and/or building inspection services.

The Statute has been amended in part to clarify and expand upon the nature, scope, and calculation of required fee reductions. Subsection 553.7912(b), first added in 2017, sets forth the Legislature’s explicit intent that owners “pay reduced fees” when using a private provider, and also requires a local jurisdiction to calculate its resulting cost savings when a private provider is used and reduce certain fees accordingly. Through the most recent amendment, § 553.791(2)(b) also prohibits a local jurisdiction from charging a building inspection fee when a private provider is used for such services (except that a “reasonable administrative fee” may be charged). § 553.791(2)(b), Fla. Stat. (2019). As such, the amendments clarify how and to what extent fees must be reduced, and also provide additional guidance to jurisdictions for ensuring compliance with the calculation and fee reduction requirements.

The Statute also allows local jurisdictions to audit the performance of private provider services, subject to certain limitations as expanded and clarified in the most recent amendment. Pursuant to § 553.791(18), a local jurisdiction may audit a private provider’s building inspection services, provided, however, that such audit may not delay work on a building already inspected, approved, and duly noticed by the private provider. As most recently amended, § 553.791(18) also imposes a general limit of no more than four audits per calendar year of any particular private provider. The reasoning behind this added limitation may be gleaned from the corresponding amendment to the definition of “audit” under § 553.791(1)(b), which was first added in 2007. Specifically, an audit entails “the process to confirm that the building code inspection services have been performed by the private provider….” § 553.791(1)(b), Fla. Stat. (2019). Through the most recent amendment, § 553.791(1)(b) also clarifies that a “local building official may not replicate the plan review or inspection being performed by the private provider, unless expressly authorized by this section.” Id. As such, local jurisdictions are encouraged to avoid unnecessary or excessive auditing practices, including the improper duplication of private provider work.

Ideally, these recent amendments will allow local jurisdictions to meaningfully analyze their existing private provider practices and policies, which will facilitate better compliance and encourage more uniformity in the Statute’s implementation.

Author:
Kendra McCan
Lyman – Hill
Ward Henderson
Solo/Small Firm Section Luncheon

On September 18, the Solo/Small Firm Section held its first luncheon/CLE of the year on the important topic of trust accounting. The speakers, Don Smith and Debra Davis of Smith, Tozian, Daniel & Davis, P.A., gave a thorough overview on the subject, including the rules governing trust accounts; fiduciary responsibility; trust account requirements; and record-keeping requirements.
Welcome Back Membership Reception

The HCBA tried a little something different this fall and opened the new Bar year with a Membership Reception, instead of a luncheon. Approximately 300 members gathered for an evening of networking and reconnecting with colleagues, while taking in the lovely ambiance of The Vault, located in the renovated and re-purposed Exchange National Bank building. HCBA also welcomed special guest, Florida Bar President John Stewart, to the reception.

The HCBA would like to thank its reception sponsor, The Bank of Tampa, for their continuing support.
Welcome Back to Another Great Year
Diversity & Inclusion Committee
Chairs: Marsha Moses - Law Offices of Kubicki Draper and Abraham Shakfeh - Butler Weihmuller Katz Craig, LLP

What a great year 2019 has been for the HCBA's Diversity & Inclusion Committee. Our first major event was a top-notch speech at the January Diversity Membership Luncheon by Adam Foss about the important topic of maintaining a criminal justice system that is smarter, rehabilitative, and makes us safer, instead of focusing on punishment for the sake of punishment. More importantly, Foss highlighted the need for a system that does not disproportionately harm minorities.

Building upon the theme of criminal justice reform and minorities, we had an excellent CLE in April. Tammy Briant Spratling, former dean of student affairs at Stetson University College of Law, talked about the history of racial injustice in the South and the progress we have made. She also reminded us of the activists who fought against the overwhelming tide of persecution and their struggles. She was joined at the CLE by Rachel Streitfeld of the ACLU, who spoke about progress that still needs to be made. She also had some amazing raffle prizes. We are grateful to the sponsors and participants that helped make this event a success. (Photos from the Diversity Networking Social are on page 38.)

In the upcoming year, you can expect more great diversity-focused programming. The HCBA Diversity Membership Luncheon is scheduled on January 8, 2020, and we hope to see everyone there. We also will have our annual CLE in April 2020.

We invite everyone to join us in working to make the Hillsborough County legal community welcoming and inclusive to persons of all backgrounds. Our committee meetings are the third Monday of every month at 12:00 pm in the Chester H. Ferguson Law Center, and it would be our pleasure if you could attend. We also write periodic articles for the HCBA's Lawyer Magazine, and submissions are welcome from HCBA members.

Our mission is to increase diversity and inclusion, so that legal community reflects the demographics of our state. We need your help to accomplish this. The most important thing you can do is to be welcoming of other people from all backgrounds. If you see someone metaphorically sitting alone at a table, invite them to join you, or join them. We look forward to working with you this Bar year and seeing you at our events.

Author: Abraham Shakfeh - Butler Weihmuller Katz Craig
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The HCBA Diversity Networking Social on Sept. 7 was a major success, with 26 sponsoring firms and legal organizations, and more than 60 law students from law schools around Florida. Diversity & Inclusion Committee volunteers provided one-on-one career consultations to the students, discussed job opportunities and student clerkships, and offered support and encouragement. The students also enjoyed great raffle prizes and free headshots from Thompson Brand Images.

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Two Florida statutes protect persons who “blow the whistle” on an employer’s illegal practices. One covers private sector employees (Fla. Stat. § 448.102), and another protects individuals in the public sector (Fla. Stat. § 112.3187). The latter, known as the Florida Public Whistleblower Act (FPWA), protects employees and independent contractors who expose legal violations, fraud, malfeasance, or gross mismanagement by public employers or independent government contractors.

Whistleblower law is a constantly evolving area of law, and two recent decisions demonstrate the nuances of the Public Whistleblower Act in Florida.

The most striking recent FPWA decision came on July 24, 2019, in Iglesias v. City of Hialeah, when the Third District Court of Appeal held compensatory damages were recoverable under the FPWA. Prior to Iglesias, no controlling authority from the appellate courts or the Florida Supreme Court existed on the recovery of emotional damages under the FPWA, although a few lower courts were split on the issue.

Under the FPWA, relief awarded must include:

- Reinstatement to the same or equivalent position, or reasonable front pay;
- Full reinstatement of fringe benefits and seniority rights, as appropriate;
- Compensation for lost wages, benefits or other lost remuneration, as appropriate;
- Reasonable attorneys’ and court fees;
- Issuance of an injunction, if appropriate;
- Temporary reinstatement to the former or equivalent position in certain circumstances.

The Third District held the statutory language was “a floor, rather than a ceiling.” Since the statute did not expressly prohibit other recoverable damages, a prevailing plaintiff could seek non-economic damages in addition to the relief specifically outlined in the FPWA. Over a decade ago, the First District Court of Appeal applied similar reasoning in O’Neal v. Fla. A&M Univ. ex rel. Bd. of Trs. for Fla. A&M Univ., when upholding the right to a jury trial under the FPWA, a decision relied upon in the Iglesias decision.

The other recent decision involved exhaustion and notice requirements. On April 26, 2019, in School Board of Hillsborough County v. Woodford, the Second District Court of Appeal reversed (in a split decision) a district court’s denial of motion to dismiss a FPWA claim for the failure to exhaust administrative remedies, holding that the district court departed from the essential requirements of law by improperly inserting two requirements into the statute not supported by its text that: (1) the contract between the School Board and the Division of Administrative Hearings (DOAH) explicitly reference the FPWA; and (2) the local governmental authority provide notice to a prospective claimant. The Court held the law required neither. Rather, the plaintiff “had a legal obligation to exhaust her administrative remedies and failed to do so,” even without having been given notice of those requirements. The Court therefore quashed the order denying the Board’s motion to dismiss.

1 No. 3D18-639, 2019 WL 3309040 (Fla. DCA July 24, 2019).
2 f989 So. 2d 6 (Fla. 1st DCA 2008).
3 270 So. 3d 481 (Fla. DCA 2019).

Author: Amanda L. Biondolino – Sass Law Firm
We’ve all faced this question from a client in a dissolution of marriage who owns real property acquired before the marriage: “The marital residence? It’s mine only—I bought it before we got married and the deed is in my name only. My wife is not entitled to any of the equity, right?”

If the title was transferred to the other spouse before or during the marriage, then pursuant to Section 61.075(6)(a)2, Florida Statutes, the presumption is that the property becomes marital, and the entire asset is subject to equitable distribution. If, however, the deed remains solely in the name of the spouse who acquired the property, then until recently, we would refer to Kaaa v. Kaaa,1 to assist in the calculation of the marital share.

Effective July 1, 2018, the equitable distribution statute was amended to provide a formula to replace Kaaa for determining the marital portion of non-marital real property.

The new statutory language provides a formula to replace Kaaa for determining the marital portion of non-marital real property.

The marital portion of non-marital property is calculated by adding all of the following:
1. The principal paydown of the mortgage during the marriage from marital funds;
2. Any active appreciation of the property during the marriage; and
3. The marital share of the passive appreciation of the property.

The new language below assists with the third component above. To determine the marital share of the passive appreciation, use these six steps:

1. Calculate the paydown of the mortgage: principal owed at date of filing minus principal owed on date of marriage.
2. Calculate the active appreciation: value added to the property during the marriage because of remodels, additions, or enhancements paid by marital funds/labor.
3. Calculate the passive appreciation by subtracting the value of the property on the date of the marriage (or a later date) from the value on the date of filing (or other valuation date), minus any active appreciation and any other notes taken during the marriage.
4. Apply the coverture fraction: The numerator is the mortgage paydown and the denominator is the value on the date of marriage.
5. Multiply the coverture fraction by the passive appreciation to get the marital share of the passive appreciation.
6. Add the marital share of the passive appreciation to the mortgage paydown to get the total marital share.

It may be wise to request mortgage statements from the date of marriage and the date of filing, remodels or additions during the marriage, and any notes taken during the marriage. It may also be helpful to retain an appraiser to value the property on the date of marriage and the date of filing.

158. So.3d 867 (Fla. 2010).


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

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Construction Section Luncheon

On September 19, the Construction Section held its first luncheon of the year, where the members received an update on the Water Street Tampa project in downtown Tampa. The Section heard from Dave Bevirt, the executive vice president of corporate leasing and strategy for Strategic Property Partners (SPP), and Allie Kessler, the manager of corporate leasing and strategy for SPP, who discussed the leasing efforts on the office portion of the nine million square feet, 50-acre development.
Congratulations To New Bar Admittees

Eighteen admittees to The Florida Bar gathered at the George Edgecomb Courthouse on September 20, for a celebratory swearing-in ceremony by the judges of the Thirteenth Judicial Circuit. The Hon. Ronald Ficarrotta presided over the ceremony, with the Hon. Frances Perrone discussing the importance of professionalism. HCBA President Grace Yang and YLD President Jeff Wilcox also spoke to the new admittees about the benefits of joining the HCBA.

Congratulations to all who were sworn in, and thank you to the HCBA Young Lawyers Division for sponsoring this event!
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Thank you to the BLI sponsor: The Bank of Tampa
Thanks to All of our FOX 13 Ask-a-Lawyer Volunteers!

The attorneys from the Lawyer Referral & Information Service were on the job once again in August and September, answering phones as part of Fox 13’s Ask-A-Lawyer program. We appreciate all those who volunteered to take calls and help out local residents.

- Richard Alexander
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Professionalism & Ethics Committee

Chairs: Joan Boles - Bay Area Legal Services, Inc. and Lynn Hanshaw - Langford & Myers, P.A.

While the idea of spending your entire career with one law firm is delightful, the reality is that attorneys are more mobile than ever. Whether you are changing cities, seeking better opportunities, or just testing out greener pastures, a move to another firm involves more than just a change of address. Below are some tips that will help ensure that you abide by your ethical obligations while transitioning.

**DO’S**

**Inform your clients.** Rule 4-5.8(c)(1) of the Rules Regulating the Florida Bar states: “[A] lawyer who is leaving a law firm may not unilaterally contact those clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer has approached an authorized representative of the law firm and attempted to negotiate a joint communication to the clients concerning the lawyer leaving the law firm and bona fide negotiations have been unsuccessful.”

Rule 4-5.8(d)(1) adds that, when a joint response cannot be agreed upon, the lawyer leaving the firm must notify her clients and “provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms.”

Remember that the focus must remain on the client.

**Ensure that your clients’ pending matters will be handled.** If you work at a big law firm or are part of a large team for a particular client, it is generally expected that other attorneys will take over your duties after you leave. However, if you are the only associate who works with that particular client, you will need to ensure another attorney can get up to speed and be able to adequately represent that client’s interests.

**Remember the conflicts check.** Your new firm will perform a conflicts check. While the Rules prohibit attorneys from disclosing any information about their representation of a client, Rule 4-1.6(c)(6) contains an exception to: “detect and resolve conflicts of interest.” In order to ensure an accurate conflicts check is performed, be thoughtful about disclosing all the clients you have represented so far.

**DON'TS**

**Badmouth anyone.** Even if you feel like leaving your current job is like escaping Alcatraz, resist the temptation to criticize. First, this is futile — you are leaving, and you will no longer be involved with any of the firm’s politics. Second, the legal profession is a close-knit community, so whatever you say may eventually make its way outside of the firm. Third, your coworkers may go in-house in the future, become judges, or even join your new firm. Do not allow their last impression of you to be a negative one.

**Forget your pro bono clients.** Just like paying clients, pro bono clients are entitled to receive the same notification and choice of counsel. Remember to give them your new contact information, especially if your current firm agrees that these clients can follow you to your new firm.

**Author:** Adriana Paris - Jackson Lewis, P.C.
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Earlier this year, Governor DeSantis signed into law what is commonly referred to as House Bill 1159, which substantially limits the ability of local governments to regulate the trimming and removal of trees on private property effective July 1, 2019.

First, the law creates a new Property Owner Bill of Rights. Although this declaration of private property rights does not create a civil cause of action, it emphasizes individuals’ rights to acquire, use, enjoy and dispose of property, to exclude others from it, to receive just compensation when their property is taken for public purpose or when government regulations unfairly affects their property, and affirms their rights to due process.

More importantly, however, the new law substantially constrains local governments in their fight to protect trees on private property from trimming, pruning, or removal by landowners. The new law may also have more general implications for home rule: the principle in Florida that local governments can adopt their own ordinances and regulations on any issue in the absence of any state law specifying otherwise. By limiting local government authority to regulate homeowner tree removal and control local tree populations, the new law may lead to an erosion of other local government powers and restrict the scope of home rule.

The new law substantially constrains local governments in their fight to protect trees on private property from trimming, pruning, or removal by landowners.

trees after removing an old tree. Similarly, the law amends an existing statutory provision to now prevent local governments from requiring utility companies to obtain special municipal approval to trim, prune, or remove trees as part of right-of-way tree maintenance procedures.

Historically, local governments have enjoyed extensive power to regulate the trimming and removal of trees within their municipalities. For example, citing a concern for maintaining sufficient canopy cover and preserving the city’s tree population, the City of Tampa has previously passed ordinances restricting the ability to trim and remove trees on their land. Tampa’s regulations require homeowners and developers to go through what can be an extensive permitting process before they can remove trees. The City has similarly adopted rules requiring property owners to replant new trees after removing an old tree with a trunk in excess of a certain diameter.

The new law’s restrictions on local governments will likely limit the scope of these and other city tree ordinances and make it much easier for property owners to trim and remove trees on their land.

The new law may also have more general implications for home rule: the principle in Florida that local governments can adopt their own ordinances and regulations on any issue in the absence of any state law specifying otherwise. By limiting local government authority to regulate homeowner tree removal and control local tree populations, the new law may lead to an erosion of other local government powers and restrict the scope of home rule.

1 Ch. 2019-155, Laws. of Fla.

Authors: Ryan Divers, Summer Associate from Harvard Law School, and Derek Larsen-Chaney – Phelps Dunbar
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In his Second Inaugural Address in 1865, President Abraham Lincoln urged our nation “to care for him who shall have borne the battle, and for his widow and his orphan….”¹ This has become the motto of the United States Veterans Administration,² as well as the theme of Justice for Vets, an advocacy group dedicated to the establishment of Veterans Treatment Courts throughout the nation.³

In September, Hillsborough Circuit Court Judge Michael Scionti addressed a joint luncheon of the Senior Counsel Section and the Military & Veterans Affairs Committee. Judge Scionti, himself a decorated combat veteran who served in both Iraq and Afghanistan, described how the Veterans Treatment Court was begun in Hillsborough County in 2013 with Judge Richard Weiss, continued under Judge Gregory Holder, and has operated under his direction since 2017.

The Veterans Treatment Court is saving veterans. Its goals are to develop treatment plans to meet the individual needs of veterans, to rehabilitate veterans in order to foster their reintegration back into society, and to promote public safety by lowering crime rates and reducing recidivism.⁴ Veterans appearing before the Veterans Treatment Court have violated the law and often have victimized others. But Judge Scionti explained that the court objectives are to identify mental health and substance abuse risk factors, implement therapeutic measures and incentives to encourage treatment, and develop problem-solving skills for long-term care and recovery.

The judge in the Veterans Treatment Court is part of a team which includes the State Attorney’s Office, the Office of the Public Defender,

Continued on page 59
the Veterans Administration Justice Outreach Officers and veteran mentors. Several veteran mentors from MacDill Air Force Base were present at the luncheon. They volunteer to help save other veterans. Bay Area Legal Services and other local organizations also contribute to the success of this program to save veterans.

Hillsborough County Public Defender Julianne Holt summed it up well: “Our Veterans Treatment Court is saving lives daily. The unique partnership of the court team members creates a holistic approach which addresses the needs and challenges of veterans who find themselves in this

problem-solving court. Our goal is to ensure our veterans know they are not alone and that we will always be there for them.”

Hillsborough Circuit Court Judge Gregory Holder added, “The Veterans Treatment Court is a hybrid court, blending the aspects of the traditional drug, criminal, mental health and diversionary court processes. Our focus is on the identification, treatment, and successful reintegration of every enrolled veteran back into society. Partnering with the Veterans Administration, we break the cycle of hopelessness and non-recovery, and ultimately save our warriors from serious injury or death.”

The Senior Counsel Section and the Military & Veterans Affairs Committee were honored to hear Judge Scionti’s moving presentation and to learn more about the Veterans Court and how it is saving our veterans.

3 For more information about Justice for Vets, visit https://justiceforvets.org/.
4 http://www.fljud13.org/CourtPrograms/DrugCourtPrograms/VeteransTreatmentCourt/AboutUs.aspx (visited Sept. 24, 2019).

Author: Thomas Newcomb Hyde - Attorney at Law
As small firm practitioners, we should always be looking for tools and resources to help us be better lawyers and better business owners. Here’s a list of some of the best books I have read that are my go-to resources whenever I need a refresher on what I need to be doing to keep my firm productive and successful.


Thinking about starting your own firm? The gold standard is the American Bar Association Press’ How to Start & Build a Law Practice, by Jay G. Foonberg (5th Ed. 2004). Another excellent resource is Solo by Choice: How to Be the Lawyer You Always Wanted to Be, by Carolyn Elefant (2d Ed. 2011).

Want to get better at negotiating using hundreds of years of philosophy and history as your guide? You can’t beat The 48 Laws of Power, by Robert Greene (1998). Some notable chapter titles include “Always Say Less Than Necessary,” “Concentrate Your Forces,” and “Master the Art of Timing.” This is a must-read for anyone involved in high-stakes transactions or litigation.

Want to boost your productivity? Looking to beat the daily grind? You won’t be able to put down The 4-Hour Work Week: Escape 9-5, Live Anywhere, and Join the New Rich, by Timothy Ferriss (2d Ed. 2009). Want practical tips and tools from some of the world’s most successful people, from Malcolm Gladwell to Arnold Schwarzenegger? This author also wrote Tools of Titans: The Tactics, Routines, and Habits of Billionaires, Icons, and World-Class Performers (2017).

Want to learn about embracing obstacles, overcoming adversity, and keeping your perspective? Check out The Obstacle is the Way: The Timeless Art of Turning Trials into Triumph, by Ryan Holiday (2014). Another excellent book from this author about overcoming internal struggles is Ego is the Enemy (2016).

Want to be inspired and get your creative juices flowing? You will want to read The War of Art: Break Through the Blocks and Win Your Inner Creative Battles, Steven Pressfield (Black Irish Entertainment) (2002). You can read it one on sitting, and you won’t be the same afterward. After reading that, you should then pick up this author’s Turning Pro: Tap Your Inner Power and Create Your Life’s Work, by Steven Pressfield (2012).

We hope these materials help you break through your productive and creative challenges and make you a better lawyer and small firm practitioner.

Author: Matthew Crist - Crist Legal | PA

Interested in writing an article for the Lawyer magazine?
Contact Stacy Williams at stacy@hillsbar.com for more information.
The Florida Supreme Court has receded from its prior decision not to adopt the Legislature’s Daubert amendments to the Evidence Code.

The Florida Supreme Court, in a 5-2 decision, has receded from its prior decision not to adopt the Legislature’s Daubert amendments to the Evidence Code, and has now held that the Daubert standard for admission of expert testimony applies in Florida.1

The Daubert amendments2 revised sections 90.702 (Testimony by experts) and 90.704 (Basis of opinion testimony by experts), Florida Statutes, to replace the Frye standard with the Daubert standard for determining the admissibility of expert testimony.

In 2017, the Court declined to adopt the Daubert amendments, to the extent they are procedural, due to “grave constitutional concerns” raised by the Florida Bar Code and Rules of Evidence Committee and commenters who supported the Committee’s recommendation that the Court not adopt the Daubert amendments.3 Those concerns included undermining the right to a jury trial and denying access to the courts.

In October 2018, in a 4-3 opinion, the Court found the Daubert amendments unconstitutional, reasoning that they infringe on the Court’s rulemaking authority. The Court determined that Frye, not Daubert, remained the standard in Florida for determining the admissibility of expert testimony.4

But just over seven months later, the Court receded from its 2017 decision, and adopted the Daubert amendments. In doing so, the Court cited Justice Polston’s 2017 dissenting opinion in which he observed that federal courts have routinely applied Daubert since 1993, a “majority [of] state jurisdictions adhere to the Daubert standard,” and “there are 36 states that have rejected Frye in favor of Daubert to some extent.” Justice Polston cited the advisory committee’s note to the 2000 amendment to Fed. R. Evid. 702 that “[a] review of the case law after Daubert shows that the rejection of expert testimony is the exception rather than the rule,” and ultimately opined that the “grave constitutional concerns” regarding the Daubert standard were “unfounded.”

However, the Court did not decide the constitutional or other substantive concerns raised about the amendments, and specifically stated that those issues must be left for a proper case or controversy. So while Daubert is now the standard in Florida for determining the admissibility of expert testimony, further challenges may be on the horizon.

1 In re Amendments to the Florida Evidence Code, No. SC19-107, 2019 WL 2219714 (Fla. May 23, 2019).
2 Ch. 2013-107, §§ 1 and 2, Laws of Fla.
3 In re Amendments to the Florida Evidence Code, 210 So. 3d 1231 (Fla. 2017), superseded by In re Amendments to the Florida Evidence Code, No. SC19-107, 2019 WL 2219714 (Fla. May 23, 2019).
4 DeLisle v. Crane Co., et al, 258 So.3d 1219 (Fla.2018). See also Jaret J. Fuente & Monica L. Strady, Florida Florida Supreme Court Reaffirms that Frye is the Standard, HCBA Lawyer Magazine (Vol. 29, No. 4, March-April 2019).

Author: Jaret J. Fuente - Carlton Fields
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In a recent case, the First District avoided a statutory interpretation issue regarding what constitutes a compensable injury that prevents an “employee from working sufficient quarters to be eligible” for social security benefits. The Court instead ruled that a party’s uncontroverted testimony that they would not be eligible for social security, without more, is insufficient evidence to overcome the age cutoff.

In SBCR, Inc. v. Doss, when Doss reached the age of 62, his employer/carrier terminated his supplemental permanent total disability benefits, citing Section 44.15(1)(f): “Supplemental payments shall not be paid or payable after the employee attains age 62, regardless of whether the employee has applied for or is eligible to apply for Social Security benefits under 42 U.S.C. s. 402 or s. 423, unless the employee is not eligible for Social Security benefits ... because the employee’s compensable injury has prevented the employee from working sufficient quarters to be eligible for such benefits.”

Doss testified that while he was eligible for Social Security retirement, he was not eligible for Social Security disability because he had not worked enough quarters to meet the eligibility requirement of working at least 20 quarters in the ten years. He testified that if not for the compensable injury, he would have continued to work for his employer and earned enough quarters to be eligible. His employer/carrier appealed the Judge of Compensation Claims’ finding in Doss’ favor.

The First District reversed, holding that there was not competent substantial evidence to support the finding. It noted that there was no documentation that a claim for Social Security Disability would be denied, and no details to support the assertion that he did not qualify for disability or that he would have continued to work for his employer if he had not been injured. It also noted that before working for this employer, Doss worked in jobs with no Social Security coverage, and his employment for this employer was sporadic. The court held that it was speculative to find that he would have worked sufficient quarters if the compensable injury had not prevented him from working.

This decision is interesting, because there is no evidence cited opposing Doss’s assertions. His employer could have testified that it would not have continued to employ him for the additional quarters, but it apparently did not. The carrier also could have hired a Social Security expert or attorney to testify against his assertions, but there is no mention of such evidence. Doss had a substantial pecuniary interest in obtaining Social Security Disability benefits, both because the income would likely be as much or more than the amount of permanent total disability supplements and because it would trigger early Medicare eligibility. Despite this, the Appellate Court held that his testimony was inadequate. The First District made clear that to establish entitlement to continued disability supplements under this section, there must be more than just uncontradicted testimony from the claimant.

1 275 So.3d 1290 (Fla. 1st DCA 2019).

Author: Anthony V. Cortese – Attorney at Law

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Carlton Fields – Carlton Fields is pleased to announce that five of its attorneys—Aaron C. Dunlap, Jon T. Gatto, Laura Jo Lieffers, Kevin P. McCoy, and Eleanor M. Yost—are newly board certified by The Florida Bar in their respective areas of legal practice.

Ceci C. Berman – Ceci Berman of Brannock & Humphries presented “Preserving the Record on Appeal” at The Florida Bar Family Law Section’s 2019 Trial Advocacy Workshop.

Steven L. Brannock – Steve Brannock of Brannock & Humphries presented “West Palm Beach Stormwater Utilities Update” at the Florida Stormwater Association’s Annual Conference.

Vivian Cortes Hodz – Congratulations to Vivian Cortes Hodz of Cortes Hodz Family Law & Mediation, P.A., who will serve as chair of The Florida Bar Voluntary Bar Liaison Committee and will also chair the Annual Convention Committee of The Florida Bar.

Bradley Crocker – Quarles & Brady LLP welcomes Bradley Crocker, who has joined the firm’s Litigation and Dispute Resolution Practice Group in its Tampa office.

Elizabeth DeConti – GrayRobinson, P.A. is pleased to announce that Shareholder Elizabeth DeConti was elected to the United States Tennis Association (USTA) Florida Foundation Board of Directors.

Megan Proulx Dempsey – The law firm of Shumaker, Loop & Kendrick, LLP welcomes Megan Proulx Dempsey, who has joined their Tampa office as a partner in the Real Estate practice group.

Giovanni Giarratana – Bradley Arant Boult Cummings LLP is pleased to announce that Giovanni P. Giarratana has joined the firm’s Tampa office as an associate in the Government Enforcement and Investigations Practice Group.

Melanie S. Griffin – Shumaker, Loop & Kendrick, LLP and Shumaker Advisors Florida, LLC announces the addition of Melanie S. Griffin as a new strategic team member. Griffin’s role will include serving as Of Counsel within the Litigation practice group, as well as Senior Advisor, Business-to-Business Relationships, for Shumaker Advisors Florida.

Kristie Hatcher-Bolin – GrayRobinson, P.A. congratulates attorney Kristie Hatcher-Bolin, who has achieved board certification by The Florida Bar in the area of Appellate Practice.

Holland & Knight – Holland & Knight congratulates partners Brad Kimbro and Jason Baruch, who have earned board certification in Business Litigation from The Florida Bar.

Celene H. Humphries – Celene Humphries of Brannock & Humphries joined Florida appellate judges and other appellate practitioners at The William A. Van Nortwick Appellate Workshop, hosted by The Florida Bar’s Appellate Practice Section.

Maegen P. Luka – Maegen P. Luka of Brannock & Humphries was appointed chair-elect of the Florida Justice Association’s Appellate Practice Section.

Andrew Mayts, Jr. – Shumaker, Loop & Kendrick, LLP welcomes Andrew J. Mayts, Jr., who has joined the Tampa office as a partner in the Litigation practice group.

J. Logan Murphy – Hill Ward Henderson is pleased to announce Shareholder J. Logan Murphy was elected chair of the American Bar Association Young Lawyers Division.

Patrick Colin Rice – Shumaker, Loop & Kendrick, LLP welcomes Patrick “Colin” Rice, who has joined the Tampa office as an associate in the Real Estate and Land Use and Zoning practice group.

Angelica Roselló – Congratulations to Angelica Roselló of Cortes Hodz Family Law & Mediation, P.A., who has been elected secretary of the North Tampa Bar Association.

Thomas J. Seider – Congratulations to Tom Seider of Brannock & Humphries, who has earned board certification by The Florida Bar in Appellate Practice.

John V. Tucker – John V. Tucker of Tucker Law Group, P.A. recently presented “Ethically Drafting Releases in Bodily Injury and Uninsured Motorist Cases to Avoid or Reduce ERISA Liens and Offsets” at the American Association for Justice Annual Convention. Tucker is the co-chair of the AAJ ERISA Litigation Group.

Continued on page 66
AROUND THE ASSOCIATION

Continued from page 65

Dineen P. Wasylik – Congratulations to Dineen Pashoukos Wasylik of DPW Legal, who has been asked to serve as the chair of The Florida Bar Intellectual Property certification committee.

Ryan Wierenga – Congratulations to Ryan Wierenga of FisherBroyles, who achieved board certification by The Florida Bar in Health Law.

Edmund S. Whitson, III – Adams and Reese welcomes Edmund S. Whitson III, who has joined the firm’s Commercial Restructuring and Bankruptcy practice as a partner in the Tampa office.

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JURY TRIALS

For the month of July 2019

Judge: Hon. Susan G. Barthle

Parties: Jane Hancock, as personal representative of the estate of Joseph N. Hancock v. Desiree Nathe


Nature of case: wrongful death; automobile v. bicycle.

Verdict: $13,550,592.00
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Lawyer Magazine 30-Year Anniversary: Favorite Covers from 1996-2000

To celebrate the 30th anniversary of the HCBA Lawyer magazine this Bar year, we are highlighting some of the beautiful covers the magazine has displayed over the years.

For each issue, members will be able to vote through an online survey for their top five covers for each five-year period that the magazine has been published.

In this issue, we are featuring the five favorite covers from 1996-2000, the second interval of five years that the magazine was published. (Note: Because there were more than 40 magazines for this period, HCBA staff voted and narrowed down the choices to 12, and then members voted on their favorite five from those choices.)

Keep an eye out for another online poll in early December to vote for your favorite covers from 2001-2005 for the next issue!
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