FOCUS

SEEING RED: WASHINGTON REDSKINS’ TRADEMARK REGISTRATIONS CANCELLED BY THE U.S. PATENT AND TRADEMARK OFFICE
By David R. Ellis

OUR DUTY TO PROTECT CHILDREN ILLEGALLY ENTERING FROM OTHER COUNTRIES
By Eric E. Ludin and Ahmad M. Yakzan

GO GET ME THE MONEY! SHOULD PARTIES DISCLOSE THEIR “BOTTOM LINE” NUMBERS TO THE MEDIATOR?
By Charles M. Ross

National Pro Bono Celebration
October 19-25, 2014
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Lessons Learned From the Monastery

A year ago last April, the St. Pete Bar invited a monk to give a presentation on listening. It turned out to be a great success with over 80 attending and the Florida Bar giving CLE credit. The Tampa Bay Times even wrote an article about it.

This affirmation from the Times, the Bar and the attendees was telling. It really struck a chord for many that skills we use in our profession cross over from other professions. The monks we found out actually develop this skill of listening by intentionally practicing it. They have it figured out so well that they can teach it and we can get CLEs for it.

This monk came from a monastery in Cambridge, MA. I have been able to observe, in addition to the listening skill, practices that seem to cross over to the legal profession.

Their practice of listening is something that really impressed me. I was amazed at the detail the monks would recall from our conversations over the years and the way they heard what I said and provided great feedback. What I learned from them about listening is not so much what they do when you are with them, it is how they control the environment. When you talk with them, the room has no outside communication devices and there are no interruptions.

When I returned from one of my visits to the monastery, I implemented what I had learned. I took the telephone out of the conference room and asked my staff to not interrupt me when meeting with clients. These two decisions, I have found, made a difference in the quality of the conversation with the client. I go so far as to tell my clients that when we meet that no one will disturb us and that I am giving them my full attention. The client really seems to appreciate that we do this knowing that the matter at hand is significant to them.

Another practice I have observed is how the monks structure their day. They have very specific times when they work, pray, eat, sleep and recreate. They tell me that this defined time forces them to get everything done within that time frame and conversely take the full amount of time to do something. For example, they don’t rush through their meals because they have to stay there anyway so they eat more slowly, which can be a lesson for all of us.

From that observation, I have taken to heart their decision to work only during certain times of the day. Our work day at the office is from 8:30 am to 5:00 pm with no weekend work. By limiting the work day to a specific time, everyone knows they have to get their work done in that time frame. Also by asking everyone to give a full 40 as I call it, personal calls seem to minimize. The balance gained from this practice accomplishes what the monks know as fully honoring all parts of your life that have meaning. For us that could be interpreted as not compromising our personal and family time by working too much.

These lessons from the monastery are being adopted by other attorneys. The attorney coaching company, Atticus (www.atticusonline.com), has created retreats for attorneys to attend at the monastery in Cambridge. They are in their fifth year of offering these retreats.

Atticus has long professed that the successful law practice hinges on an understanding that you work to serve your life and not the other way around. However, the work to gain that understanding seems to go beyond just developing the building blocks of running a law firm. And that’s where these retreats seem to fill that gap.

Fascinating, isn’t it, to consider that a monastic community could attract as many attorneys as it has over the years. You would think that people who live a cloistered life would have limited impact on those who live on the front lines of life. Maybe it is in the calling to serve others that binds this unlikely pairing together. And maybe it is the shared goal to help people see beyond their present circumstances.

As I write this article in August, the agenda for the September Atticus retreat at the monastery has just arrived. The topic: “Befriending Fear: fear of failure and fear of success.” The retreat’s goal is to show how fear can be used as a vehicle for living life passionately and for us to have the time of our lives. You know, I think these monks are on to something.

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Lawyers are in a unique position to give back to their communities, and we have both the ability and the responsibility to do so.

The American Bar Association’s Standing Committee on Pro Bono and Public Service has created an annual “National Pro Bono Celebration,” which will occur this year October 19-25, 2014. The Committee points out on its website that although the Celebration is nationwide, “[t]he legal needs of the poor are local issues,” and states the goals of the Celebration as including:

1. Recruiting more pro bono volunteers and increasing legal services to poor and vulnerable people;
2. Mobilizing community support for pro bono;
3. Fostering collaborative relationships; and
4. Recognizing the pro bono efforts of America’s lawyers.1

Having an annual Pro Bono Celebration is a great tool for focusing attention on the need for pro bono services in our local legal communities. However, as we all know, pro bono service cannot and should not be just a once-a-year activity. The Florida Bar asks every lawyer to aspire, as part of his or her professional responsibility, to contribute at least twenty (20) hours of pro bono legal services every year or, alternatively, to donate at least $350 annually to a legal aid organization.2 That works out to only a little over half an hour per week in service, or about $6.70 per week in donations.

Volunteering with or contributing to a local legal aid organization such as the Community Law Program or Gulfcoast Legal Services is a great and easy way to fulfill this professional responsibility. The Community Law Program publishes a column in the Paraclete each month, letting members know what is going on in the Program and how you can get involved. This month, I encourage you to check out Stetson University College of Law student Rebecca Adams Watts’ article on page 38, describing her experience volunteering with the Community Law Program in the area of Family Law.

This summer the St. Petersburg Bar Association Executive Committee attended a strategic planning retreat that included a discussion regarding increasing pro bono opportunities for SPBA members. Currently, planning has begun to host an “Ask a Lawyer” pro bono community event. In addition to this event, SPBA Executive Director Melissa Byers and Probate and Guardianship Section Co-Chair Ben Diamond are meeting with the Pinellas County Urban League regarding a partnership to host informational sessions on various areas of the law. The SPBA website will also include a “Pro Bono” tab that will guide members to current pro bono opportunities with the Community Law Program.

In addition to pro bono legal services, there are a plethora of wonderful opportunities to volunteer in our community here in St. Petersburg. Sharing our time and talents helps to solve community problems, improves the lives of others, and also has a very real positive impact on us as the volunteers. Volunteering provides an opportunity to participate in something you are passionate about, exposes you to new areas of law or the community, and may even prompt discovery of a talent you never knew you had. There has even been research linking one’s volunteer activities to their physical and mental health!3

Recently, the Paraclete brought back a regular feature called “Community Champions,” which highlights each month an organization or individual going above and beyond to serve our community. This month’s Community Champion is the law firm of Perenich, Caulfield, Avril & Noyes, P.A., whose Summer Read & Play Project benefited third graders of Ponce De Leon Elementary. I encourage you to read about the project on page 32 of this issue.4

We all lead busy lives, but it has never been more important to acknowledge and accept our responsibility to give back to the community we live in. I encourage you to strive to meet or exceed the aspirational pro bono requirements of the Bar, and to get involved in a community or charity organization whose cause aligns with your individual passions and beliefs. Both you and our community will be better for it.

Courtney is a partner at Englander Fischer. Courtney focuses her practice primarily on Appellate Law and also represents clients in a wide variety of commercial litigation matters. She can be reached at cfernald@eflegal.com or 727-898-7210.

1. http://www.probono.net/celebrateprobono/
2. Rule 4-6.1, Florida Rules of Professional Conduct.
3. A 2007 review of research published by the Corporation for National & Community Service reported studies suggesting that individuals who volunteer one to two hours per week may have lower mortality rates, higher levels of physical health and functioning, higher levels of happiness, life-satisfaction, and self-esteem, and lower levels of depression. Corporation for National & Community Service, The Health Benefits of Volunteering, a Review of Recent Research (2007), available at http://www.nationalservice.gov/pdf/07_0506_hbr.pdf.
4. If you know of an organization or individual who should be featured in our Community Champions section, please contact Jovita Kravitz at Jovita@KravitzLawGroup.com.
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Over the past couple of decades, there has been an increasing crescendo of criticism over the use by professional and college sports teams of Native American names and symbols for their nicknames and mascots. In one of the more highly publicized cases, decided in June, the Trademark Trial and Appeal Board (TTAB) of the United States Patent and Trademark Office (PTO) ruled against the Washington Redskins professional football team and cancelled six of its trademark registrations on the ground that its name is disparaging of Native Americans.1

The case represents another chapter in a longstanding battle between the NFL team and a group of Native Americans. The case was brought by five Native Americans seeking to cancel six federal registrations for the term REDSKINS issued by the PTO between 1967 and 1990 on the ground that the registrations were obtained contrary to Section 2(a) of the U.S. Trademark (Lanham) Act, which prohibits registration of marks that may disparage persons or bring them into contempt or disrepute.

A similar case had been brought in 1992 and was ultimately denied by a federal court on the basis of laches, i.e., that the plaintiffs had waited too long to bring their case - many years, even decades, after the registrations were issued.2

This was a new group of plaintiffs, seeking to cancel the registrations on the ground that they should never have been issued in the first place, since they were disparaging even then. The team denied that the term REDSKINS was considered disparaging at the time it was registered as early as 1967, regardless of whether changing times may possibly render the term offensive today, and again raised the defense of laches.

The Redskins began their existence as an NFL franchise in 1932 as the Boston Braves, taking their name from the major league baseball team with whom they shared a stadium. After their first season, the football team changed its name to the Redskins, and in 1937, they moved to Washington, where they won a championship. The baseball Braves eventually moved to Milwaukee and later Atlanta, where they play today.

The Redskins registered their team name and logos with the PTO over a period from 1967 to 1990. They have maintained their politically incorrect name throughout, even in the face of criticism from many, especially Native Americans. These critics have been successful over the past several years in persuading many colleges to change their ethnic nicknames to less offensive ones, and have convinced the National Collegiate Athletic Association (NCAA) to issue rulings against the use of names with Native American names and imagery.

After years of trying to convince the Redskins to change their name, seven Native Americans petitioned the TTAB in 1992 to cancel the Redskins’ registrations on the grounds that the use of the word “redskins” is “scandalous and disparaging of Native Americans, and may cast them into contempt or disrepute in violation of §2(a) of the Trademark Act.” In 1999, the TTAB agreed and cancelled the registrations. The case was then appealed to the federal district court and later to the federal appeals court, then sent back to the district court, which ruled that the plaintiffs were barred by laches.

As a result, a new group of Native Americans petitioned to cancel the Redskins’ registrations, and the case was argued primarily on the basis of stipulated evidence that had been presented in the earlier case. The TTAB looked at whether the term REDSKINS was considered disparaging at the time of registration, not necessarily whether it is considered offensive today.

The Board reviewed testimony from expert witnesses in the field of lexicography to see whether the term was considered disparaging at various times since the first registration in 1967. It also considered the views of several Native Americans and cited the National Congress of American Indians (NCAI), a national intertribal organization, which stated that the term REDSKINS “has always been and continues to be a pejorative, derogatory, denigrating, offensive, scandalous, contemptuous, disreputable, disparaging and racist designation for Native Americans.”

As a result, the Board ruled by a vote of 2-1 that the Redskins registrations should be cancelled because they were disparaging to Native Americans at the times they were registered. A stinging dissent by one of the three trademark judges found the evidence relied upon by the majority very weak, both the lexicographers’ evidence and the opinion of the NCAI,
which he found was not necessarily representative of a significant number of Native Americans, and thus should be accorded little weight.

The Board ordered the cancellation of the REDSKINS registrations, with the prospect, however, that the team can and probably will appeal the decision to the federal courts. In any event, the decision concerns only the Redskins' right to register its trademarks, and does not prevent it from continuing to use them for its team name and the sale of its paraphernalia. For the time being, then, it looks like the Redskins plan to keep their name, unless and until the court of public opinion - or the NFL - prods them into adopting a new one.


David Ellis is a Largo attorney practicing trademarks, copyrights, patents, trade secrets, and intellectual property law; computer and cyberspace law; business, entertainment and arts law; and franchise, licensing and contract law. A graduate of M.I.T. and Harvard Law School, he is a registered patent attorney and Board Certified in Intellectual Property Law by the Florida Bar. He is the author of the book, A Computer Law Primer, and has taught Intellectual Property and Computer Law as an Adjunct Professor at the law schools of the University of Florida and Stetson University. For more information, see www.davidellislaw.com, or email ellislaw@alum.mit.edu.
Our Duty to Protect Children Illegally Entering from Other Countries

By Eric E. Ludin and Ahmad M. Yakzan

For the past few months, we have been hearing about the influx of children crossing the border without legal documentation. Other than the political noise we have been hearing, it is important for attorneys to understand the legal implications of this immigration crises.

The majority of these children come from four countries, Mexico, Guatemala, El Salvador, and Honduras, or what is known as the Northern Triangle. There have been several theories put forward to explain this influx, including family reunification and financial desperation at home. Also, many of these children flee persecution in their countries. More than two thirds, according to estimates, have legitimate claims for protection under U.S. immigration law. Many researchers cite the violence in these countries as the primary reason for the influx of refugees. For example, data from the United Nations shows that Honduras and El Salvador have at least triple the homicide rates of the Republic of the Congo, from which more than a half a million refugees have fled.

The United States’ international obligations mandate that we afford certain protections for these children. The United States is a signatory to several treaties, including the 1952 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol that prevent us from returning refugees to their native countries if they fear persecution because of protected grounds. The United States is also a party to the Convention Against Torture which prohibits the return of individuals if they will be tortured if returned to their countries.

A United Nations survey of these children found that 72 percent of children from El Salvador, 57 percent from Honduras and 38 percent from Guatemala met the refugee definition under international law and warranted protection. These children might qualify for asylum, special immigrant juvenile status, U visas (reserved for persons who aid in criminal prosecutions), and T visas (reserved for victims of trafficking under the Trafficking Victims Protection Reauthorization Act).

Although the majority of deportations in the United States are achieved through summary removal proceedings, the removal of children, and the process used, depends on their country of origin. Children from contiguous countries, Mexico and Canada, are put through a process called “voluntary return” where they would be returned to their countries after a determination of their capability to make independent decisions, whether they are victims of trafficking or warrant protection as refugees. Children from Guatemala, Honduras, and El Salvador are subjected to removal proceedings after their transfer from Customs and Border Protection to Health and Human Services.

Removal proceedings have been compared to trying death penalty cases in civil traffic court. Although our County Court judges are highly trained and conscientious, when in traffic court, they are often required to hear many cases in just minutes and make fast judgments without hours and days to reflect. Their decisions result in fines and potential loss of driving privileges.

Decisions made in removal proceedings can make the difference between life and death for many of these minors. Like traffic court, these cases are handled quickly and the children are often unrepresented. Most of these children cannot afford attorneys and the government is not obligated to assign one to them. One wonders how the judges can possibly fully evaluate the persecution that these children have endured. Appearing in these proceedings pro se diminishes their chances of success if they are truly afraid to return to their countries.

The Department of Justice has implemented a new rule to allow the appointment of temporary judges, and to temporarily transfer current immigration judges to Border States to deal with the increase in removal proceedings. The temporary judges will include current Department of Justice officials, former judges, and Board of Immigration Appeals officials to deal with these cases. This rule has raised concerns among the defense bar regarding the immigration judge pool.

If you are interested in providing pro bono legal services for these children, the American Immigration Lawyers Association (AILA) will work to assign you to a child in need.

Eric E. Ludin Esq. is a founding shareholder of Tucker & Ludin, P.A. and a past President of the St. Petersburg Bar Association and St. Petersburg Bar Foundation. Ahmad M. Yakzan, Esq. is an associate at Tucker & Ludin. He is an experienced immigration attorney and native of Lebanon. Together, Mr. Ludin and Mr. Yakzan are responsible for the immigration practice of the firm.

2. For a detailed discussion of the crisis, please visit the American Immigration Council’s website at http://www.immigrationpolicy.org/.
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Many litigation-based mediations are purely “distributive” in nature. Settlement is achieved through negotiations that lead one party to pay money to another in order to end a lawsuit. Personal injury cases, collections, employment claims, and business disputes often fall within this distributive arena, where position-based bargaining over money is the task at hand.

If the objective of such negotiations is to reach a “number,” should trial counsel inform the mediator of a party’s “bottom line” figure? If the “best number” is disclosed to the mediator early in the mediation process, will that expedite settlement? It is my view that the answer to these questions is “no.”

At the outset, I recognize that parties and attorneys at mediation often feel that it is important for the mediator to know a “walk away” number, in a sincere belief that such information will enhance the likelihood of settlement. As explained below, I do not inquire about a party’s bottom line number during mediation; I actually ask that such information not be shared with me.

In almost every mediation, the parties begin their negotiations with a final number in mind, and they usually expect that the other side must reach their figure if the case is to settle. However, the real truth is that these targeted numbers almost never work at mediation – the plaintiff’s “lowest number” is always higher than the settlement limits formulated by the defendant or its insurance carrier. If both sides simply hold their initial positions, impasse is almost guaranteed.

Because each side’s “walk away” numbers do not overlap, focusing on these numbers as a strategy for settlement is unproductive. By revealing such information to the mediator, and by discussing the targeted outcome during mediation, the bottom line number becomes fixed, positions harden, and the figure is given an unwarranted importance.

The real magic in mediation happens after the parties reach their original targeted numbers and then elect to continue negotiating to close the settlement gap. This occurs when lawyers and their clients utilize mediation to explore and re-evaluate their positions in the litigation. Discussions among the mediator, counsel, and the client about the strengths and weaknesses of the case, the risks of an unfavorable result at trial, costs of continuing the lawsuit, the challenges of collecting a judgment, and the time and emotional demands of litigation are all useful topics. The parties are encouraged to compare their settlement opportunities to the trial option, and select the path that works best for them. While the party’s right to self-determination is paramount in Florida mediations, a conversation about such issues helps the client make informed and rational decisions about settlement.

When these re-evaluations occur, in an honest and open fashion at mediation, new “bottom line” numbers should emerge which are more likely to result in settlement. Stated differently, a party’s walk away number at the beginning of the mediation will change over time; and that figure transforms into a better figure at the end of the day if settlement is that party’s objective.

As a mediator, I also avoid asking about a party’s “best number” because most parties consider this information to be private and strategic. Although communications with the mediator during private caucuses are confidential in Florida mediations, parties may fear that the mediator will inadvertently signal the “best number” to the other side and thereby harm the chances of achieving settlement. If the mediator raises this issue, it may place the lawyer and client in
an awkward position and make them uncomfortable about declining a mediator’s request.

Another reason that asking for a best number is dangerous lies in the honest recognition that, in most cases, the party’s articulated best figure is not completely truthful. Most parties hold back some amount to allow for “wiggle room” at the end of the negotiations, and I do not want to put lawyers or clients in the difficult position of losing face when additional changes are essential to reaching a negotiated settlement.

Further, if the parties reveal their anticipated numbers, especially early in the process, it can be discouraging to both the parties and the mediator. Because these targeted figures almost never succeed, they can cast a negative pall over the mediation and cause parties and their counsel to give up too soon. Patience and persistence are extraordinarily important to successful mediating, and “best number” dialogues do not favor those objectives.

The last reason I believe that “bottom line” figures should not be disclosed to a mediator is that an experienced mediator will almost always discern the actual settlement numbers, towards the end of the process, without being told. The negotiation process, and information exchanged both privately and to the other side, will generally predict a settlement range without any need for revealing best numbers.

Mediation can often bridge the final settlement divide when parties perceive the progress they have achieved, the benefits of settlement, and the relatively small gap remaining as compared to the distance they travelled to reach it. This effort is not enhanced by a consideration of “best numbers,” especially those formulated early in the process, and I believe a mediator can work more effectively without knowing such information.

Having expressed my views, I certainly do not want to be perceived as telling lawyers or their clients how to negotiate at mediation. It is my hope, however, that these observations, as seen from the neutral’s point of view, may be of some value as you pursue mediated settlements in the future.

Charles W. Ross, Esq., has been a Florida trial attorney since 1979. He received his law degree from the University of North Carolina and his mediation training at Harvard Law School. He is a full time Florida Supreme Court certified mediator for both circuit civil and appellate cases and has handled over 3,000 mediations in both state and federal court matters. Mr. Ross is the founder of the Ross Mediation Center in St. Petersburg, Florida.
Six Pitfalls to Avoid During a Performance Evaluation

Managing people is both the best and worst component of managing a practice. Productivity and fulfillment can skyrocket when we are surrounded by great people. Conversely, our productivity and fulfillment can plummet if we are surrounded by mediocre people. Finding and hiring the right people is a critical component of running a successful practice. Very seldom do we hire people that are so phenomenal that they work hard, go above and beyond expectations, read our minds, and finish our sentences.

Instead, we must invest in our relationships with people and provide ample training so that they learn what is expected of them. Most employees wonder how they are doing. They may only be told to do something in a certain way and follow a particular procedure. Most often, they are given feedback only when they have made a mistake or error. Employees often spend time guessing if their performance is meeting their employers’ expectations.

Giving on-going feedback, both negative and positive, is critical to truly develop talent. Unfortunately, uncomfortable conversations and reinforcing activities that seem standard often require so much time and energy that they are ignored. The beauty of the annual evaluation process is that it forces managers/executives to take the time to deliver important feedback. It also provides an opportunity for employees to gain clarity about their role and expectations within the organization. The goal of an evaluation is to develop, grow, and nurture your relationships and thereby enhance employee engagement. In order to achieve this outcome, be aware of six common pitfalls that can derail your objectives:

1. Using an evaluation as a reprimand. Waiting until you are frustrated and want to take action against an employee is unfair. Your expectations should be crystal clear to your employees and it should also be crystal clear when they have not met expectations. Saving up all your frustrations and then delivering them during an evaluation has the potential to backfire. Instead, give feedback continuously and give an evaluation with a balance of positive and negative feedback.

2. Ignoring biases. All evaluations are subject to human nature. When preparing for an evaluation, consider performance across a long period of time, not just the most recent few weeks. Also know, if you are using a rating scale, that there is a common tendency to score each person within a narrow range. Instead, consider each item independently (these can be done at different times) instead of scoring each item at the same time.

3. Comparing employees. A sure-fire way to breed hostility and create a negative climate is to tell one employee that they should be like another. During an evaluation you want to treat each employee as an individual with their own strengths and assets. If you would like them to emulate behaviors that another employee exhibits, then state the specific behavior you would like them to demonstrate without including the comparison.

4. Focusing only on money. Performance evaluations should be a tool to create open reciprocal communication. The evaluation gives you a chance to learn more about your employee as an individual and create a specific game plan to increase their engagement. It is not just about money and giving raises. If you make the evaluation only about money, you and your employee will both miss the bigger opportunity.

5. Foggy intentions. Be clear about what behaviors and activities you would like to see performed. Consider what would be considered average and what would be considered extraordinary. Create a detailed list of observable behaviors. You want to have clear statements that can be measured and attempt to eliminate general statements and ideas.

6. Reading the evaluation. The purpose of the performance evaluation is to create a dialogue. You want to encourage an open sharing of ideas and comments. This should not be a monologue or rehearsed script. Instead, use the evaluation as an outline to cover specific areas.

An annual review is the bare minimum for providing feedback to your employees. You can use the evaluation form as a guide to continuing discussions throughout the year. Each evaluation should include goals and specific objectives for the next year. Listen for ideas, solutions, and resources to facilitate performance and growth. Be in a position to show that this is important and that you are also willing to listen. This will remove potential defenses and create a safe context to share.

Robin Lavitch is the owner of Surpass Your Goal; a company that provides coaching to a variety of businesses from realtors to financial planners, but specializes in coaching trial attorneys to taste victory. She holds a Master’s Degree in Psychology and a certification as a Professional Coach.
**Bar and Court News**

**ASSOCIATION OF LEGAL ADMINISTRATORS - SUNCOAST CHAPTER:**

The Suncoast Chapter of the ALA meets on the second Wednesday of each month for the meetings held in Tampa and on the second Thursday of each month for the meetings held in St. Petersburg. For more information please contact Meetings/Edu. Chair Lisa Guillory, lguillory@bajocuva.com or visit the ALA website at http://alasuncoast.org/ for more information.

**Date:** Thursday, October 8, 2014
**Time:** 11:45 a.m. – 1:00 p.m.
**Program:** Optimizing Your Potential For Success
**Speaker:** Barry Foster, CRC, RCC, CPBA
**Location:** Bascom’s Chop House
3665 Ulmerton Rd.
Clearwater, FL 33762

**ST. PETERSBURG ASSOCIATION OF LEGAL SUPPORT SPECIALISTS**

SPALSS is back! Please join us for dinner and camaraderie at our quarterly meetings for 2014 on October 7th and November 4th at 6:00 p.m. at Orange Blossom in St. Petersburg, FL. For more information about the meetings or SPALSS, please contact Debora Shirley, President at (727) 417-0524.

**Date:** Tuesday, October 7, 2014
**Time:** 6:00 p.m.
**Program:** Annual Judicial Assistants Appreciation Banquet
**Location:** Orange Blossom
220 4th St. N.
St. Petersburg, FL 33701

**PINELLAS COUNTY CHAPTER OF THE PARALEGAL ASSOCIATION OF FLORIDA:**

Monthly meetings for the Pinellas County Chapter of PAF, Inc. are on the second Tuesday of each month. Paralegals, student paralegals, non-members and attorneys are always welcome. For further information or to make reservations, please contact Cherie Dantzsch at cdantzsch@meiroselaw.com. For more information on the local chapter contact Crystal Siegel, President at csiegel@brasfieldlaw.net or visit the Paralegal Association of Florida website at www.pafinc.org. The next meeting is:

**Date:** Tuesday, October 8, 2014
**Time:** 6:15 p.m.
**Speaker:** To Be Announced
**Topic:** To Be Announced
**Location:** The Hangar
540 1st St. SE
St. Petersburg, FL 33701

**PINELLAS COUNTY CHAPTER OF THE FLORIDA ASSOCIATION FOR WOMEN LAWYERS:**

PFAWL meets on the 1st Tuesday of each month at 6:00 p.m. at different locations each month. During October the social will be combined with the Annual Shrimp Boil on Thursday, October 2nd, details below. For more information on events contact Shavarne Dahlquist at shavarne.dahlquist@raymondjames.com. For membership inquiries contact Meredith Gaunce at meredithgaunce@gmail.com.

**Date:** Thursday, October 2, 2014
**Time:** 6:00 p.m.
**Program:** Annual Shrimp Boil
**Location:** Home of Attorney Elisa K. Winters
609 East Turner Street
Clearwater, FL
RSVP to ewinters@ellsekwinters.com by September 29, 2014.

PFAWL officers and directors will be available to answer questions about membership and discuss the benefits of being a PFAWL member. The event is free and features an open bar, along with a buffet style meal of shrimp, sausage, ribs, corn, potatoes, rice and salad. It is open to member and non-member attorneys and law students.

**PINELLAS ASSOCIATION OF CRIMINAL DEFENSE LAWYERS:**

The PACDL monthly meetings are held the third Thursday of each month. Locations vary, but are frequently at the Criminal Justice Center from 12:00 to 1:30 p.m. Lunch is typically provided. For more information on PACDL please contact Garry L. Potts at gotts@gpottslaw.com or (727)538-4166. Meetings are open to members and those who come to join. Visit: PACDL.com.
It’s no secret that our beautiful state and miles of beaches are a tourist haven, particularly during the winter months, causing the great migration southward for folks seeking warmer climates and a little less snow. The extra money that these tourists and snowbirds pump into our local economy is nothing to sneeze at either. However, not every fulltime resident wants a revolving door of vacationers right in their neighborhood. Unfortunately that is the perception of short term rentals in residential neighborhoods, particularly in our beloved beach communities. More and more people are seeking to rent homes, or even a room in a home, so that their vacation does not make them feel like a tourist and they can get a true flavor for our local communities. Well, this is where zoning codes can come into play.

Many of Pinellas County’s cities and towns have some sort of zoning ordinance on the books addressing which areas permit, either outright or as a conditional use, short term rental properties. Some communities even had an outright prohibition, taking a NIMBY¹ attitude, and stating that tourists belong in hotels and motels and not in our homes. Gleaning that this would have an impact on overall revenue dollars from the tourist industry, the state decided to step in and pass legislation exerting control over the issue.

Back in 2011, under Laws of Florida 2011-119, the legislature specifically preempted the regulation of “vacation rentals” to the state, and further added the following language:

“A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.”²

Using the term “vacation rentals,” which sounds less invasive than “short term rental,” it is defined in Fl. Stat. Ann. § 509.242 as “any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, or four family house or dwelling unit that is also a transient public lodging establishment.” A transient public lodging establishment means “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.” Fl. Stat. Ann. § 509.013. Certainly “transient” is the term that gives fulltime resident homeowners a sense of uneasiness.

Local governments rushed the time gate, attempting to exert the last modicum of control over their beloved communities. For the most part, this was not an attempt to exclude tourists totally from the beach; it was an effort to keep family neighborhoods intact, without strangers who have very little invested in the health and wellbeing of our communities interfering with the peace and quiet of our daily lives. Essentially the legislature threw local governments a life raft by allowing existing ordinances to remain on the books, but took away the ability to change anything in those ordinances without the law falling under the State’s new preemption.

This year, the legislature decided to revisit the issue, and drew back some of the blanket control that it had initially exerted over the prohibition on local laws, ordinances, and regulations regulating vacation rentals. During the 2014 legislative session, under Laws of Florida 2014-71 effective on July 1, 2014, the legislature amended the law to read as follows:

“A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency...
of rental of vacation rentals. This paragraph does not apply to any local law, ordinance or regulation adopted on or before June 1, 2011."

Then under Laws of Florida 2014-133, the definition of “vacation rental” was amended to specifically exclude “timeshare projects.” Timeshare projects are timeshares, as defined in Fla. Stat. Chapter 721, that are also transient public lodging establishments. Therefore, these specific types of transient lodgings are no longer covered under Fla. Stat. sec. 509.032(7). “Timeshare projects” are a new creature of the legislature under this bill, and I have not seen any local codes that mention these by name.

Although the Florida League of Cities supported this amendment stating that it gives municipalities and counties some leeway to regulate vacation rentals, for many it does not get to the heart of the matter. When the frequency with which your next door neighbors rent out their backyard bungalow is the issue, this change is not going to give you much protection. Local governments have the right under Home Rule Power to regulate planning and zoning matters within their communities, but this legislation flies in the face of that very concept. Like many other issues, the value of the tourist dollar and promise of rental income for non-resident homeowners has superseded the right of homeowners and fulltime, tax paying resident to quiet and peaceful enjoyment of their homestead.

Regina Kardash is an associate attorney with the firm Trask, Metz & Daigneault, LLP in Clearwater. She practices primarily local government law and family law.

1. “Not In My Backyard”

Photo Credit: Alden Suites Resort, St. Pete Beach
The Judge’s Chambers is a glimpse into the life of one of our local judges. This month the Paraclete is proud to feature The Honorable Judge Thomas Ramsberger.

Why did you decide to become a lawyer?

I had an interest early in my life due in large part to my father, a professor of political science, who was a very smart and compassionate man. He spoke frequently of the importance of our democracy and how lawyers play a major role in maintaining our democracy and independence.

What was your first legal position upon graduation from law school?

I began as an Associate with a large central Florida law firm and it was a very good apprenticeship for a new lawyer.

What areas of legal practice did you engage in prior to taking the Bench?

Principally, I had a transactional practice (finance, real estate & corporate) as well as engaging in commercial litigation and mediation as a Florida Supreme Court certified civil mediator.

Why did you decide to become a judge?

Becoming a judge was a natural extension of my 25 plus years as a practicing attorney. I was encouraged by many colleagues to seek a position on the bench and after speaking with judges and attorneys about the attributes they believed made for a good jurist, I believed that I could make a positive contribution to the long-standing tradition of reputable and dedicated Sixth Judicial Circuit judges.

What have you discovered to be the most rewarding part of your career as a lawyer and as a judge?

Resolving problems on behalf of clients was always rewarding. Resolving problems as part of the judiciary, especially when cases involve the best interests of children, is both challenging and rewarding.

What advice would you offer to new lawyers?

Seek mentorship(s) with experienced lawyers who can provide technical, practice, and ethical guidance. Work hard to do things right.

What are the benefits of living and practicing law in the Sixth Judicial Circuit?

One benefit for me personally has been to raise our family in my hometown while pursuing careers; this is an exceptional place to live and work. For practitioners, I believe our local legal professionals strive to maintain professionalism and comradery, which creates opportunities for long and fulfilling careers.
ROBERT E. BIASOTTI

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- Selected for Membership in Florida’s Legal Elite, Best Lawyers in America, Best Law Firm
- Board Certified in Appellate Practice by The Florida Bar
- Former Shareholder of Carlton Fields, P.A.
- Member of the New York Bar
- Handled over 300 appeals and trial support in Florida; argued appeals in the Florida Supreme Court, Eleventh Circuit, and all Florida District Courts of Appeal.
- Handled reported cases in diverse civil matters for both Plaintiffs and Defendants
- Prior to attending Stetson Law School, was Treasurer, Vice President of Finance, and Chief Financial Officer for Columbia Artists Management Inc. (1982-1994). As a business executive, handled financing, business issues, was a trustee and administrator of medical, retirement, ESOP, and VEBA plans.
- Received the Pro Ecclesia Et Pontifice Award from Pope Francis in 2013 (the highest award that can be presented to a lay person in the Catholic Church)
Riparian Rights and the Ongoing Conflict Over Water

By Stephen C. Chumbris, Jr.

One of the most unique characteristics of Florida, compared to all other States, is that Florida is almost entirely surrounded by water. Florida’s proximity to the Atlantic Ocean and the Gulf of Mexico is arguably one of its greatest resources, be it for recreation, a source of food, or travel and commerce, just to name a few. Despite the many benefits that our access to water can bring, it can also be the source of serious controversy between Florida and its citizens. Many times these problems will arise between the State and property owners, but sometimes, as we will see in this article, these controversies will arise between two property owners. In a recent Florida Second District Court of Appeal decision, 5F, LLC v. Dresing, 2014 WL 3446296 (Fla. 2d DCA 2014), the court was asked to examine one property owner’s water rights, or riparian rights as it is frequently called in American Jurisprudence, versus the riparian rights of another property owner.

Factual Background

The Dresing family owns a piece of property in a subdivision in Lee County that extends to the mean high water line. The submerged land behind the Dresings property is owned by 5F, LLC. In March 2010, the Dresings obtained a permit from Lee County to construct a pier which would extend from their property onto the submerged land owned by 5F. Construction of the pier began in October 2010, and was completed in December 2010. Approximately seven months after construction was completed, 5F mailed a letter to the Dresings objecting to the building of the pier, and subsequently filed a lawsuit against the Dresings. The Dresings filed their answer and affirmative defenses, claiming that they had a riparian right to construct the pier. When both sides moved for summary judgment the lower court found in favor of the Dresings.

Common Law Riparian Rights

The primary issue on appeal was whether the Dresings had a right to construct the pier from their property onto the privately owned submerged land held by 5F. The court first looked to the English common law, which is the source of riparian rights in the United States.

Under the common law of England the crown in its sovereign capacity held the title to the beds of navigable or tide waters, including the shore or the space between high and low water marks, in trust for the people of the realm who had rights of navigation, commerce, fishing, bathing, and other easements allowed by law in the waters. This rule of the common law was applicable in the English colonies of America.

After the Revolution resulting in the independence of the American states, title to the beds of all waters, navigable in fact, whether tide or fresh, was held by the states in which they were located, in trust for all the people of the states respectively.

The court also identified to whom riparian rights extended, saying “[r]iparian rights are incident to the ownership of lands contiguous to and bordering on navigable waters.” These riparian rights included (i) the right of access to the water from the land for purposes expressed or implied by law, (ii) the right to reasonable use of the water for domestic purposes, (iii) the right to the flow of the water without serious interruption, (iv) the right to have the water kept free from pollution, (v) the right to protect the abutting property from trespass or injury by the improper use of the water, (vi) the right to prevent obstruction to navigation or to prevent an unlawful use of the water, shore or bed that specially injures the riparian owner in the use of his property, (vii) the right...
to use the water in common with the public for purposes in which the public has an interest.11

Florida Case Law

Along with examining the traditional common law doctrine of riparian rights, the court also looked to Florida case law to see how Florida courts have interpreted and applied common law riparian rights in similar factual scenarios. The Florida Supreme Court has explicitly and consistently set forth the common law rights of riparian landowners, and have included “as a privilege or qualified right, inferior to the rights of the public as to navigation and commerce but concurrent in other aspects, the benefit of building ‘wharves, or other structures to facilitate his business or pleasure.’”12 After careful consideration and analysis of numerous cases that spanned nearly one hundred years of Florida’s history, the appellate court determined that there is extensive authority establishing riparian landowners rights to “wharf out”, subject only to the public trust.13

The Court’s Holding

The appellate court upheld the lower court, and ultimately concluded “there is a common law qualified riparian right or privilege to construct piers or wharves from the riparian owner’s land onto submerged land to the point of navigability but not beyond the low water line, subject to the superior and concurrent rights of the public and to applicable regulations.”14 The court also noted that this is true regardless of whether the submerged land is owned by the State or held privately by an individual landowner.15

Stephen C. Chumbris, Jr. is a St. Petersburg native and practices at Fisher & Sauls, P.A. in the areas of Real Estate, Banking and Commercial Finance. He is the current chair of the Real Property Section.

1. At the time this article was written, the court’s opinion had not yet been published in the permanent law reports and remained subject to revision or withdrawal by the court. 2. 5F, LLC, 2014 WL 3446296, at 1. 3. Id. 4. Id. 5. Id. 6. Id. 7. Id. 8. Id. at 2. 9. Id. citing Brickell v. Trammell, 82 So. 221, 226 (Fla. 1919). 10. Id. citing Ferry Pass Inspectors’ & Shippers’ Ass’n v. White’s River Inspectors’ & Shippers’ Ass’n, 48 So. 643, 644 (Fla. 1909). 11. Id. citing Ferry Pass, 48 So. at 644–45. 12. Id. at 3, citing Ferry Pass at 645. 13. Id. at 5. 14. Id. at 8-9. 15. Id.
Software giants like Google and IBM will continue to wage war after the supreme nine unanimously decided software is worthy of patent protection. This past term, the United States Supreme Court had the ability to end the software war by determining that software is not patent eligible in *Alice Corp. v. CLS Bank*, a case involving patent claims to a computer-implemented method for mitigating settlement risk.1

While the unanimous Court, relying on its own precedent extending as far back as 1854 to a case involving the telegraphy, tossed out Alice’s patents on its settlement risk software as being directed to an “abstract idea,” the Court declined to render software as a category that is ineligible for patent protection. Without singling out software as a separate class, the decision rightly focused on balancing the long-standing exclusionary principle that an abstract idea, a law of nature, and natural phenomena are patent ineligible with patent eligible inventions built upon those concepts.

The Court’s decision in *CLS Bank* has been criticized for dodging the fundamental question of whether software is patent eligible. While the Court wisely did not put software into one box over another with a tidy shrink wrap, the Court provided guidance on how to separate unpatentable abstract ideas from inventive software that is patentable. And this guidance is a clear indication that software patents are alive and well in the United States.

**Two Part Test for Software Patent Eligibility**

The Court leaned heavily on its patent eligibility precedent established in *Mayo Collaborative Services v. Prometheus Laboratories*, a case involving patents directed toward a method of giving a drug to a patient by measuring metabolites of that drug and determining dosage based on known efficacy.2 In Mayo, the Court tossed the patents at issue as being invalid because they covered a law of nature, one of the patent-ineligible concepts. In finding the patents invalid for covering a law of nature, the Court articulated a two-part test to determine when a patent was directed to a law of nature itself as opposed to an invention built upon the law.

In *CLS Bank*, the Court used the *Mayo* test to determining when a software patent is a patent-eligible application of an otherwise patent-ineligible abstract idea. The Court explained that the first step is to determine whether the patent is directed to one of the patent-ineligible concepts. If it is, then in the second step, the patent is examined bit-by-bit and in combination to determine whether the patent includes additional features so that in practice, the patent is significantly more than a patent on the ineligible concept itself.

This two-part test is far from establishing black-and-white guidelines for when software can be patentable. Arguably the Court could have articulated a clearer approach. However, I believe the Court purposefully refrained from developing a more definitive test for fear of creating a framework that would otherwise render patentable technology unpatentable. Several times, in its decision, the Court expressed its concern in construing the exclusionary principle in a manner that could “swallow all of patent law.” So while the two-part test is a color pallet of greys, it
does set forth some guidelines without expanding the exclusionary principle.

**United States Patent Office Examination Guidelines**

In response to the Court’s decision in *CLS Bank*, Andrew Hirshfeld, the Deputy Commissioner for Patent Examination Policy of United States Patent and Trademark Office, issued a memorandum to the Patent Examining Corps that provides preliminary examination instructions relating to patent eligibility of computer-implemented abstract ideas, e.g., software. The memorandum identifies abstract ideas as including fundamental economic practices, certain methods of organizing human activities, an idea itself, and mathematical relationships and formulas. The memorandum also provides examples of features that might be enough to satisfy the second part of the Court’s test, which include improvements to another technology or technical field, improvements to the function of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment.

**Federal Circuit Affirms Data Structure Is Unpatentable**

Lower courts are also beginning to respond. The Federal Circuit in *Digitech Image Techs., LLC v. Elecs. For Imaging, Inc.*, its first patent eligibility case since the Supreme Court’s decision in *CLS Bank*, affirmed the district court’s holding that a patent directed toward data structure is not patent-eligible because it is an abstract idea that does not provide something more than application of the idea itself.

The patent in *Digitech* was directed toward tagging digital images with information about the device used to take a digital image and the device’s color and spatial image qualities to create a “device profile.” The district court found that the “device profile” was nothing more than a bit of data that did not fit into one of the four categories of patentable subject matter (i.e., a process, machine, manufacture, or composition of matter). The court additionally found that the device profile was nothing more than an abstract idea. The Federal Circuit, applying the Mayo test, agreed with the district court and affirmed its decision.

In sum, while the *CLS Bank* decision undoubtedly invalidated numerous software patents that are unable to meet the demands of the Mayo test, the Supreme Court was clear that software is still patentable. And applicant’s should closely watch how

Stephen Lewellyn is a registered United States Patent Agent with Maxey Law Offices, PLLC, of St. Petersburg, Fla. He is versed in international patent law and has accumulated appellate experience before the U.S. Board of Patent Appeals and Interferences. Stephen provides client counseling for all aspects of patent application, design and maintenance.

5. Id.
Defense of Deficiency Judgments: Burdens of Proof and Some Ideas on How to Attack Appraisal Testimony: Part I

By Leonard S. Englander

Introduction

Without a destination, any road will get you there. Knowing where you want to be when a trial judge renders a judgment at the end of your deficiency case is critical. Is your case strong enough for a total victory on some equitable defense or on valuation issues alone? Once your destination is clear, organizing a strategy becomes infinitely clearer and easier on your client’s pocket book and the court’s resources. This article will focus on valuation defenses.

Burdens of Proof

In a deficiency proceeding, there is often confusion about who leads off the hearing and who must carry the burden. This shouldn’t be so, because enough appellate decisions have made the procedure clear. The mortgagor has the initial burden of proving that the fair market value of the foreclosed property is less than the debt, and this is accomplished by introduction of: (1) the Final Judgment of Foreclosure; (2) the Certificate of Sale; and (3) the Certificate of Title. The price paid at sale is then presumed to be the fair market value and the mortgagor may rest its case. The burden then shifts to the mortgagor to establish a contrary value, or some equitable or legal reason why a deficiency should not be awarded. Florida law makes clear that the mortgagor is entitled to a complete satisfaction of the judgment if the fair market value of the property sold at sale is not equal to the judgment.

In a contested evidentiary setting, instead of resting, mortgagor’s counsel often refuses to cede the floor and immediately calls an expert as its first witness to establish precisely what the fair market value of the property is. Procedurally, there is no requirement for this to happen, and strategically, it can be dangerous. It provides mortgagor’s counsel with an opportunity to engage in a spirited cross-examination and challenge of the appraiser’s analysis at the outset of the case, thereby grabbing the psychological opportunity of primacy and recency. This could lead to the appraiser’s testimony being stricken. The mortgagor can then put on evidence of fair market value through the mortgagor itself or an expert, and if that testimony survives after the mortgagor’s cross examination, some courts have ruled that the mortgagor must win because its testimony is the only evidence of valuation at the end of the case.

The Court’s Discretion

The function and limitation of a trial judge in a deficiency setting is clearly described in FDIC v Hy Kom Development, 603 So. 2d 59 (Fla. 2nd DCA 1992):

The entry of a deficiency decree shall be within the sound judicial discretion of the court. § 702.06, Fla.Stat. (1989). However, a trial court’s discretion in granting or denying a deficiency decree must be supported by established equitable principles as applied to the facts of the case, and the exercise of which is subject to review on appeal. Carlson v. Becker, 45 So.2d 116 (Fla.1950). The exercise of the trial judge’s discretion allows inquiry into the reasonable and fair market value of the property, the reasonableness of the price at the foreclosure sale and other equitable considerations. Savers Federal Savings & Loan Association v. Sandcastle Beach Joint Venture, 498 So.2d 519 (Fla. 1st DCA 1986). The granting of a deficiency judgment is the rule rather than the exception unless there are facts and circumstances creating equitable circumstances justifying the court’s denial of the deficiency. Flagship State Bank of Jacksonville v. Drew Equipment Co., 392 So.2d 609 (Fla. 5th DCA 1981). A denial of a deficiency judgment will not be disturbed absent a clear abuse of discretion where there are facts and circumstances that create equitable considerations supporting the trial court’s denial. Wilson v. Adams & Fusselle, Inc., 467 So.2d 345 (Fla. 2d DCA 1985).

Relevant Valuation Date

Importantly, as a backdrop to the entire valuation analysis, is recognition that the only relevant date for purposes of establishing valuation is the date of the foreclosure sale itself. An exception may exist, however, if the mortgagee delays in moving the property to sale, motivated by any number of otherwise legitimate practical reasons such as not wanting to deal with environmental, homeowner, condo, tax, or other issues. As practical as these reasons may be for the lender, the unintended result can be devastating. In FDIC v. Senkovich, 806 F. Supp. 245 (M.D. Fla. 1992), the lender did not schedule the sale until 15 months after the order authorizing it. At trial, it offered fair market value evidence as of the date of the sale and the mortgagor offered evidence of fair market value for a date...
within a reasonable period after the order authorizing the sale. The court found that the mortgagor’s target date was the only appropriate date, rejected the lender’s evidence as being irrelevant, and upheld the mortgagor’s valuation testimony. “Accordingly, for purposes of fixing the gross amount of the deficiency, the property should be valued as of a reasonable time after the order authorizing the sale rather than the actual sale date.”

Notwithstanding this analysis and the opinions of other courts, there are cases which hold that post foreclosure sales of the subject property are admissible to consider valuation. Importantly, these are simply evidence of value, not conclusive, not irrefutable, and certainly subject to rebuttal.

Calculation of the Deficiency

The correct formula to determine a deficiency is to take the face amount of the final judgment of foreclosure and subtract it from the fair market value of the property as determined in the deficiency proceeding. Mortgagee’s counsel may seek a deficiency which includes a calculation of interest from the date of sale through the date the court determines the deficiency amount. This is improper. The mortgagor is only entitled to statutory interest on the deficiency amount, calculated from the date that the deficiency is determined – not the date of the foreclosure judgment.

Once the fair market value is determined, the trial court should further deduct from the value the amount of delinquent real estate taxes.

Substantive Valuation Challenges

Whether or not the mortgagor elects to go further then advancing the ball beyond its initial burden of proof, a vigilant mortgagor should be prepared to persuade the trial court that the mortgagor’s expert valuation is flawed and an equally vigilant mortgagee will be prepared to similarly challenge the mortgagor’s valuation expert. To successfully do this requires an understanding of the appraisal process, and wise counsel will elicit the help of an appraiser consultant. Generally speaking, the appraisal of property will employ one or more of three valuation methods, the most common of which is the sales comparison approach. We’ll focus on that here.

The sales comparison approach compares the characteristics of the subject property with those of other properties that have recently sold so that objective data can be used to arrive at fair market value of the subject. An appraiser will scour the market to find properties with similar characteristics to the subject, such as location, size, use, condition, distance from the subject, lot size, etc. The appraisal report will typically contain a description of each comparative sale and a grid outlining the similarities and differences together with percentage adjustments made to account for the variations.

The Comparative Sales Selection Process

Years ago, appraisers spent considerable time and energy personally interviewing brokers, buyers, sellers, lenders, and reviewing the public records to find relevant, valid, comparative data. With the crush of the recent economic crisis, and the technological revolution, appraisers have been pressured to reduce fees and operate quicker and more efficiently. To do this, many appraisers rely upon AVMs, or automated valuation models. These are computer programs that extrapolate values based on data electronically gathered through public record databases such as CoStar and LoopNet. In effect, sales are gathered which the computer models believe are comparable. A good appraiser will verify the data, but not all do, and this provides the mortgagor’s attorney with opportunities.

Leonard S. Englander is a founding partner of Englander Fischer and has been in private practice for over 39 years. Mr. Englander is Board Certified in Business Litigation by The Florida Bar, has been listed in Tampa Bay Magazine as one of Tampa Bay’s Top Lawyers in Civil Litigation, and was recently awarded the St. Petersburg Bar Association Professionalism Award. He can be reached at lenglander@eflegal.com.

1. Florida law allows a mortgagor to offer an opinion of the fair market value of its property. Federal Home Loan Mortgage Corp. v. Molko, 584 So. 2d 76, 77 (Fla. 3d DCA 1991).
2. Florida law is clear that the only relevant date of value in a deficiency hearing is the date of the foreclosure sale. Estepa v. Jordan, 678 So. 2d 876, 878 (Fla. 5th DCA 1996). It is reversible error for the trial court to consider an appraisal that evaluates the property as of a different date than the foreclosure sale. MiznerBank v. H. Adib, 588 So. 2d 325 (Fla. 4th DCA 1991).
3. Ironically, the result was irrelevant because the court found there was no material difference in the evidence of valuation between the two dates.
5. Merill v Nuzum, 471 So. 2d 128 (Fla. 3rd DCA 1985).
6. Morgan v Kelly, 642 So. 2d 1117 (Fla. 3rd DCA 1994).
7. Shaw v. Charter Bank, 576 So. 2d 907 (Fla. 1st DCA 1991). “From the date of the foreclosure sale, statutory interest may only be awarded against the remaining debt (original debt minus the fair market value for the property received).”
8. Edwards v FDIC, 746 So. 2d 1157 (Fla. 4th DCA 2000).
9. This article is Part I of a three part article, with the remaining two parts to be published in subsequent issues of the Paraclete. The balance of the article will discuss valuation issues born in the appraisal and the appraiser’s testimony.
Deborah Eldridge is a partner with Abbey, Adams, Byelick, & Mueller, LLP., in St. Petersburg, Florida. Her practice focuses on the defense of workers’ compensation claims, representing carriers, municipalities, self-insured employers and professional employer organizations. She has written and presented a variety of seminars on topics pertinent to workers’ compensation professionals. She can be reached at (727) 821-2080 or by email at DEldridge@AbbeyAdams.com

When you were a child, what did you want to be when you grew up? Does that play into your life/ legal practice at all?

When I was little, I wanted to be the first female astronaut. My grandmothers were both widowed as young mothers and raised their families on their own. They were inspirational role models and they always said I could be anything I wanted to be; so I dreamed big. Their influence as strong and independent women has definitely molded my career as a lawyer and my life as a whole.

What motivated you to go into the practice of law?

I started my career as an insurance adjuster and worked with lawyers on a routine basis. Seeing their different practice styles both in and out of the courthouse, I realized my abilities and interests were best suited to the practice of law. So, after my first daughter was born, I went to law school at University of Florida and have been practicing since 1993.

What has been the most rewarding part of your career as a lawyer? The most challenging?

The most rewarding and challenging aspect of my career is one and the same; it has been striking a balance between my life as a mother of four and my career focus. Family and the practice of law are both full-time commitments. But the rewards are well worth the challenges.

If you could change one thing about the practice of law what would it be?

I would restore a higher level of civility to the practice. Like most members of the Bar, I believe some disputes could be resolved more efficiently if we set personal differences aside and focused on what is best for our clients.

What was the best piece of advice you got as a new attorney and/or what advice would you give to new attorneys?

Prepare. Prepare. Prepare. You might not know as much about the law as a more seasoned opponent, but your ability to out-prepare him is completely within your control.

What do you like to do when you are not practicing law?

I love to go tent camping with my family. I also enjoy almost anything that has to do with sports: going to hockey, baseball or football games, and playing golf.

What is your favorite part of living/ working in St. Petersburg?

One of my favorite things about St. Petersburg is that, despite being a larger city, the Bar has remained relatively small and congenial; everyone knows each other. I like seeing familiar faces at Bar functions and in the courtroom.

What is the best vacation you have ever taken and why?

The best vacation was a big family get-together at Myrtle Beach, South Carolina. I have four siblings and we are all scattered throughout the country so it is not often that we are all together in one place. We rented a big house at the beach and the whole family got together; my parents, all of my siblings, and all of their children came. Seeing all of our kids interact was just really cool.

Do you have any personal heroes?

My maternal grandfather. He was married with four small children when he joined the United States Army during World War II. He enlisted voluntarily because he believed it was his patriotic duty. He was killed in combat in the Ardennes and buried in Belgium. The morning he was killed, he wrote a beautiful letter to my grandmother, reassuring her he would be home soon. She got that letter on the same day she was told of his death. He sacrificed all for his country. That is hero material.

What is one thing people would be surprised to learn about you?

That I have four children aged 9 through 25; that I can sew a 3-piece suit; and that I have always dreamed of being a chef.
St. Petersburg Bar Association

September 5, 2014
Membership Meeting
Mirror Lake Lyceum

Keynote Speaker:
Gregory W. Coleman, Esq.
2014-2015 President of The Florida Bar

Thank you to our Presenting Sponsor!

Fifth Third Bank
Diversity in the Bar

By Timothy C. Martin

Ask a dozen people to define the word “diversity” and you could get a dozen different responses, to varying degrees. Diversity in the legal profession has historically included race and gender, and while these categories are still relevant today, the concept of diversity has been undergoing a transformation of late. Diversity now frequently encompasses additional categories such as disability, nationality, veteran status, gender identity, and sexual orientation, to name a few. The St. Petersburg Bar Association is embarking on an educational and awareness initiative to recognize and embrace the diversity of all of our members, and to foster an environment of inclusion.

The true diversity of the Bar’s membership may not be readily noticeable, unless you dig a little deeper than mere outward appearance. The color of our skin is arguably one of the first things others notice about us. Or perhaps it is our apparent gender, or age, or maybe even the resemblance of individuals in a group setting. Two people who might look comparable could still be quite diverse in their economic backgrounds, religions, personal beliefs, experiences, and more.

Diversity, variety, tolerance, whatever label you want to use, should be welcomed and accepted. It is often because of such distinctions that we as individuals, society as a whole, and the Bar in particular learns and grows. Accepting others for who they are and how they may be different is a goal we should all strive to achieve. By the same token, similarities should be equally embraced, for to disregard anyone just because they may appear to be alike is to do each of them and yourself a disservice. Diversity is not about exclusion of individuals or groups because of their perceived homogeneity. Instead, diversity is about acceptance and inclusion of everyone – the old guard, the vanguard, and the avant-garde, and all the subtleties in between.

Intolerance and prejudice are learned behaviors. Watching a group of pre-school children playing together clearly shows that kids generally accept other children regardless of their differences. They just don’t seem to have the same hang-ups as many adults. It’s when they are older you realize they have learned to treat others differently. Instead of bigotry and prejudice, they should be taught diversity, acceptance, and inclusion. The recent death of poet Maya Angelou reminded me of something she once said about teaching young people that there is beauty and strength in diversity. I couldn’t agree more.

Timothy C. Martin is the owner/operator of Martin Law Office, P.A., a solo practitioner law firm focusing on animal law, business law, LGBT advocacy, real property, and wills, trusts and estates. Tim currently chairs the CLE subcommittee of The Florida Bar’s Animal Law Committee and the SPBA’s Diversity Committee, and is a member of the diversity committees of the HCBA and Florida Bar. He is a member and director of LGBT Bar Association of Tampa Bay, member of National LGBT Bar Association, and member of Florida Association of LGBT Lawyers and Allies.

As the newly appointed Chair of the Diversity Committee, my goals are to: (i) create an atmosphere of inclusion for all Bar members regardless of gender, national origin, racial and ethnic background, sexual orientation and gender identity, disability, the economically disadvantaged, and veteran status; (ii) help the Bar and our members recognize diversity opportunities when organizing speakers, CLE programs, and similar activities; and (iii) assist other sections and committees with diversity issues. The Diversity Committee will hold regular meetings to discuss and implement diversity/inclusion programs, and welcomes input from all members.
PFAWL would like to thank Sean McQuaid for speaking at our August 5, 2014 social at the Yard of Ale. Sean gave a presentation on the Judicial Nominating Commission.

PFAWL is very excited to announce that Kira Doyle has been nominated for the St. Petersburg Bar Foundation Rising Star Award. Good luck Kira!

PFAWL is pleased to announce that we are co-sponsoring the Tampa Bay Chapter of the Federal Bar Associations’ 2015 Leadership Program: “Staying in the Game - Women, Leadership, and the Law.” For more information please contact PFAWL’s CLE Program Director Carmen Johnson at carmenjohnson@outlook.com.

Our annual membership shrimp boil will be held on Thursday, October 2, 2014 at 6:00 p.m. at the home of Attorney Elise K. Winters, 609 East Turner Street, Clearwater, Florida. This event is free and is open to member and non-member attorneys and law students. Please RSVP to Elise Winters at ewinters@elisekwinters.com.

On October 15, 2014, we will be meeting at the Yard of Ale on Ulmerton Road from 6:30-8:00 p.m. for a fun night of music and movie trivia. Our next social will be held on November 4, 2014 at the Courtside Grille. This event is open to member and non-member attorneys and law students. We will be collecting non-perishable goods for Daystar Life Center, Inc. Daystar was founded in 1982 as a small parish ministry of “people helping people” to provide emergency assistance to individuals and families. Recognized as an important asset in the community, Daystar has grown into a major social service agency and impacts the lives of more than 40,000 children, women, and men annually.

The American Woman’s Society of CPAs, Tampa Bay Affiliate, will be hosting an ABLE (Accountants, Bankers, Lawyers, and Engineers) event on November 6, 2014. It will be held at the Rusty Pelican in Tampa. PFAWL will be co-sponsoring. The event is open to accountants, bankers, lawyers, and engineers.

PFAWL is one of 32 chapters of FAWL, which is a voluntary bar association that provides a statewide voice for Florida’s women lawyers. Membership in our organization is open to every attorney that supports the organization’s mission, and we encourage both men and women to participate in and attend our socials and events. For membership inquiries contact Meredith Gaunce at meredithgaunce@gmail.com.
Our reasons for joining the St. Petersburg Bar Association are personal and varied. Take a moment to ask yourself why you became a member of the SPBA. Perhaps you were encouraged to join by a member of your firm, a friend, or a family member who was already a member? Perhaps you wanted to avail yourself of networking opportunities with other local attorneys and opportunities for client referrals? Maybe you wanted the opportunity to enhance your practice through participation in the SPBA’s cost-effective CLEs? Or maybe it was a combination of several of these (or other) reasons?

Once you joined the SPBA, did you find that your expectations for membership benefits were met? Have you been inspired to become an active participant in SPBA events and leadership? If you do not participate in SPBA general membership meetings, socials, or CLEs, are there specific reasons why or ways in which SPBA’s programming is not meeting your needs? What can we do better to enhance the value the SPBA provides to its members?

On June 20, 2014, the St. Petersburg Bar Association Executive Committee and Executive Director, Melissa Byers, participated in the type of reflection during a day-long strategic planning session facilitated by Karyn Linn of the ABA Division for Bar Services (Chicago). The purpose of the strategic planning session was to identify key priority areas for the next three years and to outline an action plan to reach our goals. The SPBA leadership decided to engage in focused strategic planning as a means to enhance the value the SPBA provides to its members and to ensure that the SPBA remains a dynamic organization that is continually evolving to meet the ever-changing needs of its members and the local legal community.

One of the key priorities identified during the strategic planning session was a renewed focus on member engagement. Specifically, the Executive Committee recognized a need to focus on engaging and developing new leaders, with special attention given to young lawyers, new members, and members who have not previously participated actively in the Bar. The health and longevity of the SPBA depends on the continual reenergizing effect of new ideas and new leadership. The continual development of new leaders within the Bar contributes to the personal and professional growth of those assuming such positions and helps to prevent burnout among the currently relatively small group of leaders.

A number of suggestions were proposed as to how we could achieve better leadership development. For example, general agreement exists that we need to increase opportunities for new leadership by eliminating the overlap between practice section chairs and Executive Committee members (currently the members of the Executive Committee also happen to be chairs of various practice sections). This will allow new people and new energy to play a role in charting the course of the Bar.

Who will these new leaders be? They will be YOU! For those of you who have been considering getting more involved in Bar leadership, I urge you to seize the opportunity now to plan how you will accomplish this. If you have not known how to start your SPBA leadership journey, I have included below two schematics to show sample leadership tracks that can take you (in 5 years or less) to positions on the Executive Committee and/or as Chair of the Young Lawyers Section. I know this works because these have been my paths within Bar leadership.

**TRACK TO EXECUTIVE COMMITTEE MEMBER**

Join one or more practice sections and regularly attend the section’s meetings ↓

Write an article for the Paraclete on behalf of the practice section on a topic of your choice. *(The Chair of the Section will greatly appreciate this, as each Section must contribute material to the Paraclete!)*

Volunteer to be the Vice-Chair or Co-Chair of a practice section. *(Again, the Chair will appreciate the help and you will get a valuable learning experience before conquering the Chair position.)*

Volunteer to be Chair of a practice section ↓

Discuss with members of the Executive Committee and the Executive Director your desire to be considered for nomination to the Slate of Candidates for the Executive Committee ↓

Executive Committee Member
(After being elected of course – this may take a couple of tries, so do not be frustrated. Each time you run you are increasing your visibility within the Bar.)

TRACK TO YOUNG LAWYERS SECTION CHAIR

Join the Young Lawyers Section and attend monthly socials ↓

Join one or more committees for specific events, such as Oktoberfest or Holidays in July. (This gives you a great introduction not only to the individual event but also to the processes of the Section.) ↓

Chair (or Co-Chair) an event committee ↓

Discuss with current YLS Chair your desire to serve as a future YLS Chair. (This will allow the current Chair to incorporate you into planning and to provide leadership training to ease your transition into the Chair position.) ↓

YLS Chair

It really is that easy! Volunteer enthusiastically and often and follow through on your commitments – you will quickly make a name for yourself. If you would like additional information about current leadership and volunteer opportunities, please do not hesitate to contact me at esmith@fishersauls.com or (727) 822-2033. We need YOU!

In addition, the Executive Committee and Melissa are very interested in gaining a better understanding of the current needs of Bar members. Please take a moment to email either Melissa directly at mbyers@stpetebar.com or the Bar office at info@stpetebar.com. Please feel free to be open in communicating changes you feel would be beneficial to Bar members. The SPBA leadership endeavors to provide exceptional member service - on behalf of the SPBA Executive Committee and the YLS, please let us know how we’re doing!
The Tampa Bay personal injury law firm of Perenich, Caulfield, Avril & Noyes, P.A. recently gave back to the community of Ponce De Leon Elementary through their Summer Read & Play Project. The attorneys gave each of the 100 third graders a book and playground ball to enjoy during the summer. Also, the attorneys spoke to the kids about safety in the car, on their bikes and while walking. “It is important that kids are taught about safety to prevent accidents,” says Matthew Noyes, partner with the law firm. “Also, to see the smiles on the kids’ faces when they choose their ball and book is priceless,” Noyes adds. This is the sixth year that Perenich, Caulfield, Avril & Noyes, P.A. has held their Summer Read & Play program.
Can’t We All Get Along, Here? (Not always.)

It’s not always that there are good guys and bad. Sometimes good guys can disagree. When that happens, you can head to court or for governmental, environmental, land use and other complex litigation and administrative matters you can call the Lewis, Longman & Walker, P.A. Mediation and Special Master Services Group.

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Charles W. Ross, Esq.
Certified Circuit and Federal Mediator

- Florida Supreme Court Certified Mediator for Circuit Civil, Federal, and Appellate Mediations
- Civil Trial Lawyer since 1979; Martindale-Hubbell attorney rating—AV
- Graduate of Harvard Law School Advanced Mediation Program for Lawyers (2001)
- Selected for Membership in Florida’s Legal Elite and Best Lawyers in America
- Member of National Academy of Distinguished Neutrals
- Handled over 3,000 mediations including commercial litigation, construction claims, employment disputes, business torts, personal injury lawsuits
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“Tell her if she moves again, I’ll kill you.” Those were the words that set the stage for the most terrifying night of my life.

It was late in January 1989. My husband, Paul, and I had been married for a little over three years. We both had busy work schedules and were raising our special needs foster son, so we didn’t have a lot of leisure time. We were grateful to have an evening to ourselves thanks to a family member volunteering to babysit. We headed out to what we thought would be a relaxing date night of dinner and a movie. Afterwards, we stopped our new mini van to get gas at a station in the Tyrone area of St. Petersburg. It was just after midnight. Paul got out of the van next to a pump. He pulled some folded up bills out of his pocket and counted them. He noticed a sign on the pump that read, “Pay inside after dark,” so he headed to the station. He pulled on the door only to find it locked; the station had just closed. He put the bills back in his treasured monogrammed money clip that I had bought him for an anniversary gift, and slipped it back in his pocket.

Paul walked back to the van and jumped in the driver’s seat. He locked the doors, put on his seatbelt, and turned to tell me about the store’s closure. Suddenly, the short barrel of a handgun protruded through the driver’s side window, which was about halfway down to let in the cool night air. The gunman pointed the gun at Paul’s temple and demanded his wallet. I don’t remember what was running through my mind at that moment, but I do remember having trouble processing what was happening, and that my hands were restless and fidgeting. That is when I heard the gunman utter those threatening words, “Tell her if she moves again, I’ll kill you.”

I froze. Paul did not. He kept a cool head despite having a gun pressed against it. Now that I’ve known him for over thirty years, I’ve learned that this is what you can expect from him on any given day and in any situation. But as a newlywed, I learned a lot about him that night. Paul told the gunman that he didn’t have a wallet (true) and that he didn’t have any money (not true). The gunman must have seen Paul pull his money out of his pocket earlier to count it, so he was insistent. I finally scolded Paul in a most unladylike manner and told him to just give him the (expletive) money. Meanwhile, Paul had surreptitiously placed his hand in his pocket, tossed his credit card and precious money clip on the floorboard, and wadded up the remaining bills (a whopping $35) in his fist. When the gunman made another demand, Paul took the cash and threw it out the partially open window. Unbeknownst to me, he had quickly formulated a plan. While my way of thinking was, “He has a gun, just do what he says,” Paul’s way of thinking was, “He’s high on something, he’s half my size; if I can disarm him, I have a chance.” I would later learn that Paul was hoping that the crumpled up bills would fall to the pavement and that the gunman would bend over to pick them up. Paul figured he could then reach the door handle, swing the door open and knock down the bad guy, step outside the van, and well, I’ll leave the rest to your imagination. (Let’s just say he’s attended quite a few hockey games!) Unfortunately, the gunman stopped the cash against the side of the window with the palm of his free hand. He then started to walk around to my side of the van, saying, “What’s she got?” with the gun pointed at us through the windshield. I remained frozen, unable to move a muscle.

Paul fumbled with the keys in the ignition, but being unfamiliar with our new vehicle, could not get it to start. He then began to yell at the gunman in a deep, guttural voice that I had never heard before and haven’t heard since. He cursed; he made threats about what he would do to the gunman if he harmed me. To my relief, the gunman, looking startled, backed off, literally. He started walking backwards, the gun still pointed at us, while a yellow Cadillac pulled up alongside us. The gunman jumped in, and the car took off.

It has taken me over twenty-five years to commit this story to writing. My heart still pounds a little when I recall it, so I wasn’t keen on retelling it in written form. My purpose in doing so now is to share what I learned on that terrible night, and in the years to follow, about personal safety. When I was growing up, my parents told me that if I were facing a danger like this, that I should cooperate and do what I am told. They reasoned that no amount of money was worth my life. Hence, I did what the bad guy told me to do; I certainly didn’t want Paul to get shot just because I moved. I don’t fault my parents for this advice, because I believe it was the conventional wisdom at the time. But times have changed. I have been fortunate through my work in the court system to have access to training from court security. The new advice to follow when facing personal danger can be boiled down in three simple instructions. Run; hide; fight.
Your first option should always be to try to escape the danger (run). If that isn’t possible, you should hide from the danger. Finally, if you can neither run nor hide, you should fight. But if you decide to do that, you should pull out all the stops. You should fight like your life depends on it, because it does. If you want to be the one left standing in a life or death struggle, you have to do what you can to disable or even kill the bad guy, as horrible as that might sound. One of the female deputies at a training session I attended put it this way if you do decide to fight: “Release your inner beast.” This is especially helpful for women like me who were not raised to think about self-defense. You have to use whatever resources you have available to you, whether it be your hands, fists, feet, nails or even teeth. Even if you are armed, the circumstance may be such that you can’t get to your weapon.

This is what my husband knew instinctively during our armed robbery. He could not run or hide, so he made a decision to fight. His survival instinct kicked in, and he “released his inner beast.” Despite a fairly dire situation - he was seat-belted in a locked and unfamiliar van, with no weapon and a useless sidekick – he made a plan. He didn’t have much at his disposal, other than a wadded up roll of bills, and a menacing tone of voice, but through his ingenuity and good judgment (my own personal MacGyver!), we survived that night unharmed. I’ll be forever in his debt and in awe of how he handled himself. For those of us who are not as cool headed, it is probably a good idea to get some formal self-defense training, or at least run through scenarios in your mind so that you won’t mentally or physically freeze when faced with a threat against your life.

And don’t forget about what your children need to know. The advice I received as a child, at least in my estimation, is no longer valid in today’s society. For one thing, when I was born, there were about half as many people living in the United States as there are today. Unfortunately, this seems to mean that your odds of running into an unsavory character and a dangerous situation have increased. Our children are going to need our advice on personal safety more than ever, and they will likely rely on their childhood teachings if, Heaven forbid, they find themselves in danger as an adult. Again, I don’t blame my parents for giving me what was sound advice at the time, but children today need different tools. I am no expert; the information in my column is only anecdotal and based on one isolated personal experience. I encourage you to look into formal training sessions to learn how to teach your children to react in various emergency situations. A quick Google search uncovered several self-defense programs offered in Pinellas County specifically geared to children. The Pinellas County Sheriff’s Office also has a program called “Live Safe – Personal Safety” that may be helpful; you can find the information about this program on their website, http://www.pcsoweb.com/operations/programs-and-services/live-safe/ under “Programs.” You may also call the Pinellas County Sheriff’s Office Community Services department at (727) 582-2222 to ask about the “Live Safe” program.

Those in law enforcement receive many hours of training on various scenarios, because they have learned that the best way to know how to react when the unexpected happens is to be prepared for it. In fact, a great piece of advice can be found on the Pinellas Sheriff’s website. “Have a plan – your would be attacker already does.” Thank goodness Paul was able to quickly devise one; I know it saved our lives. And for those of you with curious minds, he still has that money clip!
If you are a regular reader of this column, you are no doubt familiar with Stetson’s highly regarded Center for Excellence in Advocacy. Stetson continues to rank as the nation’s best law school for trial advocacy in the U.S. News & World Report rankings, a recognition we have held 16 times since 1995. Stetson’s reputation in this area has been built over generations of hard work by dedicated faculty, staff, students, alumni and members of the bar who have volunteered as coaches and judges. We are grateful for all who have been – and continue to be – part of our success.

I am proud to say that we have had another wonderfully successful year. Our advocacy teams won an international competition, four national championships, four regional and state titles, as well as an impressive number of individual student awards. Stetson also recently held our eighth annual Educating Advocates conference, sharing our method of advocacy education at our Gulfport campus. This year, 75 law professors and attorneys from around the world attended. More than 400 have participated in the conference since its inception.

While we remain committed to continuing Stetson’s legacy of excellence in competition and professional development, I am pleased to announce two important new programs that are expanding our influence in the legal profession.

In July, Stetson launched its first-ever advocacy training seminar in Ireland at the University College of Dublin Sutherland School of Law. In a well-received program, Stetson professors led a group of legal academics and practitioners over a two-day period. We were delighted to have an opportunity to share the Stetson method of trial advocacy across the Atlantic, covering topics including persuasive communication techniques for storytelling, direct examination and cross-examination. One of Ireland’s leading members of the bar, Michael Collins SC, gave the keynote address. The program was a great success, and we look forward to future activities in the Emerald Isle.

Stetson will also begin offering a new J.D./LL.M. in Advocacy dual-degree program starting in spring 2015. This unique program provides an opportunity for students to earn both a Juris Doctor degree and a Master of Laws in Advocacy from Stetson in seven semesters. This program will build upon our strengths as America’s top-ranked law school for advocacy by preparing our graduates for the advanced practice of law, while realizing a significant savings in time and cost in pursuing the LL.M. degree. Students in this new program will save a semester of full-time study by applying 12 hours of prescribed J.D. courses toward the LL.M. degree, allowing them to complete the LL.M. degree in less than six months. Any Stetson Law student graduating in spring 2015 and forward will be eligible to apply for this program.

In an increasingly competitive legal marketplace, I look forward to extending Stetson’s reach as a world leader in preparing lawyers ready for the practice of law. We look forward to partnering with many in the Tampa Bay region to provide unique training experiences that build on our advocacy expertise.
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December 2014/January 2015 Issue
Copy must be received by noon, October 5th, 2014

February 2015 Issue
Copy must be received by noon, November 5th, 2014

March 2015 Issue
Copy must be received by noon, December 5th, 2014

- Copy and ads received after the deadline will run in the next issue –

Kenneth C. Deacon, Jr.
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Ken Deacon has over forty years civil trial experience and has tried, as lead counsel, over 200 major civil jury trials.
Ken has represented both plaintiffs and defendants.
I was unlike the average kid who could articulate exactly what they wanted to do “when they grew up.” My response to the age-old question was always much broader: “I’m not sure how, but I want to help people.” It took me many years to figure out the best way I could actually do that.

Last summer I had the privilege of completing an internship with a family law Judge here in Pinellas County. On one of the first days of the internship he asked me, “What do lawyers do?” It seemed like an easy enough question, so I started firing off all the things that law students hear during their 1L year: “They advocate, represent a clients interests, litigate, navigate the legal system...” I probably kept going for another minute before he stopped me and simply said, “HELP. Lawyers help people.” It’s true that lawyers do everything I mentioned, but it all boils down to the paramount issue of helping people.

While volunteering with the Community Law Program, I’ve truly been able to see how easy it is to help people with these important issues. The Sixth Judicial Circuit has done an impressive job at making family law forms available and as understandable as they can possibly be, but it can still be a very daunting task for a person who is not familiar with the system. The cost of hiring an attorney can be great and is out of reach for many during these tough economic times.

The Community Law Program helps people who can’t afford representation on these essential and personal issues. As a volunteer, this sometimes means assisting with properly filling out family law forms or advising the clients on their rights as a parent or spouse. It can also mean helping by simply listening to the client’s issues and assuring them that they have done everything they possibly can to handle their matter the right way. By listening, advising and assisting, these clients leave with the confidence to handle their family law matter properly.

The last week in October is National Pro Bono Celebration Week, an effort to encourage pro bono participation started by the ABA. I hope everyone takes the time to explore the website and also participate in this national celebration. (http://www.probono.net/celebrateprobono/)

“Everyone can be great... because anyone can serve. You don’t have to have a college degree to serve. You don’t have to make your subject and verb agree to serve. You only need a heart full of grace. A soul generated by love.” – Martin Luther King, Jr.

Rebecca Watts is a law student at Stetson University College of Law and a volunteer at the Community Law Program.
Alcoholics Anonymous of Pinellas County

www.aapinellas.org
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Spanish
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What’s Up and Who’s New

THANK YOU TO THE PROCTORS FOR THE FEBRUARY 2011 BAR EXAMINATION

The Florida Board of Bar Examiners wishes to acknowledge with appreciation the following St. Pete Bar member volunteers for their assistance in proctoring the Bar Examination held July 29-30, 2014, at the Tampa Convention Center:

Andra Brumberg
Jacqueline Egan
Robyn Featherston
Kristina Feher
Edwin Hightower
Amber Hill
Patrick Hogan
Hon. Stephen L. Rosen
Petia Tenev
Kit Van Pelt

The success of the examination was due in no small part to their able assistance.

Robert E. Biasotti of Biasotti & Associates, is pleased to announce the October 1, 2014 opening of Biasotti Mediation Center, located at 5999 Central Avenue, Suite 303, St. Petersburg, FL 33710. They will be available to do Civil and Appellate Mediations.

Congratulations – SPBA member Kristina Feher began her term as Sixth Circuit Representative for the Florida Bar Young Lawyers’ Division Board of Governors in June. The term is two years.

NEW AND REINSTATED MEMBERS

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Calendar of Events

Register for all events on our calendar at www.stpetebar.com or contact the St. Pete Bar Office 727-823-7474. See our online calendar for registration, cost and other information. All events are in St. Petersburg unless indicated.

OCTOBER

1

PINELLS COUNTY LAW LIBRARY
OPEN HOUSE & RECEPTION
THE OLD HISTORIC COURTHOUSE
324 SOUTH FORT HARRISON AVENUE
CLEARWATER
8:30 AM – 9:30 AM
RSVP TO 727-464-4470

3

ST. PETERSBURG BAR MEMBERSHIP LUNCHEON
FEATURING CHIEF ANTHONY HOLLOWAY
ST PETERSBURG POLICE DEPT.
11:30 AM – 1:00 PM
MIRROR LAKE LYCEUM
737 THIRD AVENUE NORTH, ST. PETERSBURG

3

SWARING IN CEREMONY & RECEPTION
3:00 PM
PINELLS COUNTY JUSTICE CENTER
14250 49TH STREET NORTH
COURTROOM ONE, FOURTH FLOOR, CLEARWATER

4

OKTOBERFEST
AT HORAN PARK
ST. PETE BEACH COMMUNITY CENTER
7701 BOCA CIEGA DRIVE, ST. PETE BEACH
6:00 TO 10:00 PM
SPONSORS NEEDED. DETAILS TO BE ANNOUNCED

8

1 HR. CLE - LEADING AND MOTIVATING STYLES
SPEAKER: ROBIN LAVITCH, MA, CPC
12:00 – 1:00 PM – LUNCH INCLUDED
ST. PETE BAR OFFICE
2880 1ST AVE. N., ST. PETERSBURG

14

PROBATE & GUARDIANSHIP SECTION
1 HR. CLE: THIRD PARTY TRUSTS IN DIVORCE ACTIONS
SPEAKER: BRIAN C SPARKS, ESQ.
12:00 - 1:00 PM – LUNCH INCLUDED
ST. PETER YACHT CLUB
11 CENTRAL AVENUE, ST. PETERSBURG

21

1 HR. CLE: LEGAL WRITING FOR PUBLICATION
SPEAKER: JOVITA KRAVITZ, ESQ.
12:00 - 1:00 PM – LUNCH INCLUDED
ST. PETE BAR OFFICE
2880 1ST AVE. N., ST. PETERSBURG

23

REAL PROPERTY SECTION
1 HR. CLE: COMMUNITY ASSOCIATIONS
SPEAKER: JONATHAN JAMES DAMONTE, ESQ.
12:00 - 1:00 PM – LUNCH INCLUDED
ST. PETER YACHT CLUB
11 CENTRAL AVENUE, ST. PETERSBURG

24

CLE: GUARDIAN ADVOCACY
PRESENTED BY COMMUNITY LAW PROGRAM, BAY AREA LEGAL SERVICES & LEGAL AID OF MANASOTA
9:00 AM - 12:00 NOON
ST. PETE COLLEGE EPI CENTER
13850 58TH STREET NORTH, CLEARWATER

25

MORNING AT THE COURTHOUSE
9:00 AM - 1:00 PM
ST. PETERSBURG JUDICIAL BUILDING
545 1ST AVE. N., ST. PETERSBURG

NOVEMBER

6

1 HR. CLE: CIVIL COMMITMENT
INCOMPETENCY, INSANITY & BAKER ACTS
SPEAKER: CAROLINE JOHNSON LEVINE, ESQ.
12:00 – 1:00 PM – LUNCH INCLUDED
ST. PETE BAR OFFICE
2880 1ST AVE. N., ST. PETERSBURG

14

3.5 HR. CLE/INC. 1 HR. ETHICS: 2014 WILD, WILD WEST BENCH & BAR-B-QUE AND CLE CONFERENCE
12:00 – 6:00 PM – LUNCH & RECEPTION INCLUDED
STETSON UNIVERSITY COLLEGE OF LAW
1401 61ST ST. S., GULFPORT

18

1 HR. CLE: THIRD PARTY TRUSTS IN DIVORCE ACTIONS
SPEAKER: BRIAN C SPARKS, ESQ.
12:00 - 1:00 PM – LUNCH INCLUDED
ST. PETER YACHT CLUB
11 CENTRAL AVENUE, ST. PETERSBURG

23

1 HR. CLE: COMMUNITY ASSOCIATIONS
SPEAKER: JONATHAN JAMES DAMONTE, ESQ.
12:00 - 1:00 PM – LUNCH INCLUDED
ST. PETER YACHT CLUB
11 CENTRAL AVENUE, ST. PETERSBURG

30

MORNING AT THE COURTHOUSE
9:00 AM - 1:00 PM
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