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THE HILLSBOROUGH COUNTY BAR ASSOCIATION
TAMPA, FLORIDA | MAY - JUNE 2016 | VOL. 26, NO. 5





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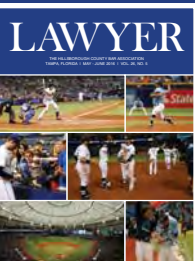
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ABOUT THE COVER

In this issue we are featuring scenes from our local favorites, the Tampa Bay Rays. With their season opener in April, the Rays are celebrating the start of their 16th season as Tampa Bay's Major League Baseball team.

Photo credit: Skip Milos / Tampa Bay Rays

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We Shall Keep the Faith

“We’ll teach the lesson that ye wrought.”

Most nights when I get home from work, I walk my daughters around the block in their wagon. When we first got the wagon, my daughters were just learning the Pledge of Allegiance at their preschool. So every time we got to a house with a U.S. flag, we had to stop and say the Pledge of Allegiance. One night, after the San Bernardino attack, my oldest daughter asked me why the flag at one particular house was only halfway up the flagpole.

Of course, I know the President can order the flag to be flown at half-staff as a sign of mourning. What I hadn’t realized is that other than for the death of a President, Vice President, member of Congress, or Supreme Court Justice, the Flag Code only specifies two days the flag should be flown at half-staff: Memorial Day and Peace Officers Memorial Day. Even more curious, I didn’t realize that while the flag is ordinarily flown at half-staff from sunrise to sunset, it should only be flown at half-staff until noon on Memorial Day, when it is then raised to full-staff for the remainder of the day.

Why only half-staff until noon? According to www.usmemorialday.org, the flag is flown half-staff in the morning to honor the more than one million men and women who have paid the ultimate sacrifice for their country; and at noon, “their memory is raised by the living, who resolve not to let their sacrifice be in vain.”

This sentiment is perhaps best captured by John McCrae (a Lieutenant Colonel in the Canadian Expeditionary Force) in one of the most famous World War I poems, *In Flanders Fields*. In the poem, the deceased soldiers implore the living not to let their sacrifice be in vain:

Take up our quarrel with the foe:
To you from failing hands we throw
The torch; be yours to hold it high.
If ye break faith with us who die
We shall not sleep, though poppies grow
In Flanders fields.



Moina Michael, an American professor spellbound by that verse, penned the poem, *We Shall Keep the Faith*:

Oh! you who sleep in Flanders Fields,
Sleep sweet — to rise anew!
We caught the torch you threw
And holding high, we keep the Faith
With All who died.

* * * * *

And now the Torch and Poppy Red
We wear in honor of our dead.
Fear not that ye have died for naught;
We’ll teach the lesson that ye wrought
In Flanders Fields.

Traditionally, Memorial Day has been observed in a number of ways: wearing a red poppy, which, thanks to Michael’s poem, became a symbol of remembrance for those who died in war; placing flags at military gravesites; or observing a moment of silence or listening to taps at 3 p.m. local time, as suggested by Congress in the National Moment of Remembrance resolution. But we ought to remember it is not enough to simply honor their sacrifice; we must resolve to ensure that sacrifice won’t be in vain.



The Living Legacy of a Great Judge from the Greatest Generation: Be Fair and Do Your Very Best

“Judge Melton’s work from the bench was in fact timeless — he dealt not only with the problems of his time, but also those of our time.”

United States District Judge Howell W. Melton passed away peacefully at his home in St. Augustine on December 18, 2015, at the age of 92. Like many others in what Tom Brokaw dubbed

“The Greatest Generation,” Judge Melton answered the call of servant leader, with humility, for his entire life. For the hundreds of friends, family, and colleagues at the Bench and Bar who attended his memorial service, we were lifted up by his legacy of love and loyalty, and humor and humility.

Judge Melton was a beloved leader in St. Augustine, serving as a state and federal judge spanning six decades. Along with his wife of 65 years, Catherine Wolfe Melton, Judge Melton also served numerous local organizations, including the founding board at Flagler College, where he continued for 40 years.

At age 19, Judge Melton was a University of Florida student when

the Japanese attacked Pearl Harbor on December 7, 1942. The next day he enlisted in the U.S. Army. He completed his artillery training in Oklahoma and was then deployed to Europe with the infantry. He fought in major battles, including the Battle of the Bulge. In 1946,

Judge Melton returned to the University of Florida, where he received his law degree in 1948.

Judge Melton began his legal career in St. Augustine working for Frank D. Upchurch, Sr., in his law firm, which eventually became known as Upchurch, Melton & Upchurch. Judge Melton also continued to serve the Army as part of the Judge Advocate General (JAG) Corps from 1949 to 1953. In 1961, Judge Melton became a circuit judge for the Seventh Judicial Circuit of Florida. He remained on the state court bench until he was nominated by



United States District Judge
Howell W. Melton

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President Jimmy Carter in early 1977 to serve on the U.S. District Court for the Middle District of Florida.

Those who knew Judge Melton best tell stories of how he never got angry or showed any frustration during his years on the bench. Nor did Judge Melton ever seek notoriety for his work. He rarely designated his opinions to be published, and he was committed to two guiding principles: he tried to be fair and to do his very best. Despite his humble approach, much of Judge Melton's work has been widely praised.

Judge Melton's ruling in *Robinson v. Jacksonville Shipyards Inc.*, 760 F. Supp. 1486 (M.D. Fla. 1991), established important law for sexual harassment litigation that continues to be cited regularly today. But equally important, his ruling put an end to the "boys club" mentality and harassing conduct towards women employees in the predominantly male workplace of the Jacksonville shipyards.

In the 1988 criminal trial of Colombian drug lord and co-founder of the Medellin drug cartel, Carlos Lehder, Judge Melton showed no fear when Lehder "vowed that if he was ever captured, he'd have a federal judge killed once a week." The case required constant federal security at the old federal courthouse during the seven-month trial, including snipers on the roof. Judge Melton handed down a sentence of life without parole, plus an extra 135 years.

The Robert "Tinker" Parker case, *Parker v. Dugger*, 498 U.S. 308 (1991), a widely publicized Jacksonville case that involved horrific facts of drug dealing and a triple murder, came to Judge Melton on a writ of habeas corpus. Despite a jury showing mercy to Parker with a recommended sentence of life in prison, the state courts,

including the Florida Supreme Court, upheld the trial judge's imposition of the death sentence. Judge Melton concluded that the failure of the trial judge to find the presence of nonstatutory mitigating circumstances fairly supported by the record rendered the death sentence unconstitutional. He therefore granted the writ of habeas corpus and ordered the State to vacate the death sentence and hold a resentencing hearing. Judge Melton was reversed by the Eleventh Circuit, but the United States Supreme Court, in an opinion authored by Justice Sandra Day O'Connor, sided with Judge Melton and reversed the Eleventh Circuit. One could say that the Supreme Court held that Judge Melton was fair and did his very best.

A First, and a Widening Circle, a March 1966 editorial from the Daytona Beach News Journal, which is reprinted on page 6, recounts the momentous trial of Charles Alexander Cirack, over which Judge Melton presided as a circuit judge. The Florida Supreme Court opinion in *Cirack* can be found at 201 So. 2d 706 (Fla. 1967). The editorial says it best, but the case appears to be the first case in the American South in which a white man was sentenced to die for killing a black man. At the time, Judge Melton already had a history of leadership in St. Augustine solving problems of racial injustice and had never before pronounced a death sentence. Nor was Judge Melton particularly fond of capital punishment, but as he said: "It's the law."

Fast forward 50 years to 2016 in Florida, and we can still find daily examples of racial tension in our State, and debate over capital punishment. In fact, the United States Supreme Court recently held that Florida's method of capital punishment was unconstitutional. It seems Judge Melton's work from the bench was in fact

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HAVE AN EMPLOYMENT/EMPLOYEE BENEFITS CASE? NEED A MEDIATOR?



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Mr. Taldone is a certified circuit and county mediator and was an in-house employment lawyer for a Fortune Global 500 company. Admitted to practice law in Florida (1997), New York (1980), New Jersey (1983), and California (1985).

Mr. Taldone is not a Florida Board Certified Labor and Employment lawyer.

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timeless — he dealt not only with the problems of his time, but also those of our time.

Judge Melton's legacy to Florida is best known in St. Augustine, where his leadership during the civil rights era and his efforts for Flagler College truly changed the direction of a sleepy Southern town. Lawyers today understand the level of respect and excellence one must achieve to become a federal judge — one can only imagine how the Greatest Generation felt about Judge Melton, who rose to federal judge in their time.

Judge Melton also leaves a legacy of family lawyers: his son Howell W. "Hal" Melton Jr. is a retired senior

partner in Holland & Knight's Orlando office, who served as the firm's managing partner for five years; his daughter Carol Melton is an accomplished lawyer who serves as Time Warner's executive vice president of global public policy in Washington, D.C.; and our own Howell W. "Web" Melton, III, practices here in Tampa with Bush Ross and currently serves as president-elect of the HCBA Young Lawyers Division. To those who know Hal, Carol, and Web, I am certain this article rings true — Judge Melton has left a living legacy of humble servant leaders. His examples of love and loyalty — and humor and humility — are the things we see in Hal, Carol, and Web every day. We should all follow his wonderful legacy to "be fair" and "do your very best."

A First, And A Widening Circle

DAYTONA BEACH NEWS JOURNAL EDITORIAL MARCH 29, 1966

MOSES JACKSON died for no good reason and not very many people noticed it. But in a strange way his death may rate a line or two in a chronicle of Southern justice should one ever be written.

Jackson had lived for 58 years, sired nine daughters and one son, who in turn had presented him with 19 grandchildren, and he died with a bullet in his head.

Jackson was a Negro but in the usual sense his death had nothing to do with the color of his skin. He wasn't marching for his civil rights. He wasn't the victim of a Ku Klux Klan assassination.

He was picked up while hitchhiking, driven to a palmetto scrub in Southwest Volusia, shot in the head, and he died enroute to a hospital.

• • •

MOSES JACKSON was a black man shot by a white man but there was no sign of national indignation. No network television commentator mentioned the incident and no mass circulation news magazines took note of it.

Shortly after Jackson breathed his last, two young men were arrested and charged with the crime. One was tried and found guilty of first degree murder without a recommendation of mercy. The jury called for mercy in the conviction of the other man.

Thus, Charles Cirack has become what may be the first White in the modern history of the South to be sentenced to die for killing a Negro.

• • •

SITTING as trial judge was a man who is no stranger to racially explosive situations — Howell Melton of St. Augustine. It was he who set judicial precedent in the Summer of 1964 by calling a Grand Jury into session to explore the reasons for, and possible solutions to, the race riots in the Ancient City.

Prosecuting Cirack for the state was Dan Warren, State Attorney from Daytona Beach. Warren had acted as legal advisor to the 1964 St. Augustine Grand Jury and had walked the streets of the city during the height of the violence.

Race was not an issue in the Cirack trial although it did come up during the jury selection when Warren asked prospective jurors if they harbored racial prejudice and the defense attorney inquired if any held membership in the Klan or the NAACP.

It was the death sentence, not color, which became the overriding consideration in the selection of a jury. A total of 106 prospective jurors were questioned and 41 of them, including one Negro, voiced opposition to the death penalty.

• • •

THE FINAL MAKEUP of the jury was all male and all White. When Warren, in his closing argument asked for a conviction without mercy, the jury deliberated three hours and five minutes and returned with the verdict Warren had requested. It was the first no mercy conviction Warren had secured since he became State Attorney in 1961.

For Circuit Judge Melton the Cirack Conviction is a first. Never before had he pronounced a sentence of death.

Melton is noncommittal on the question of capital punishment. "It's the law," he said.

Warren says he does not feel the death penalty is a deterrent to crime but echoed Melton's comment that "it's the law."

Moses Jackson died May 8, 1965. His death touched the lives of his family, his friends, law enforcement men, and few others.

• • •

SINCE THEN the circle has broadened to include, among others, a Judge who, for the first time in his career, faced a convicted man and condemned him to die; a State Attorney who asked a jury for something he probably didn't really want and got it; a 12 man, all White jury who decided to a man Jackson's killer should die; and Charles Cirack who may go down in history as the first White man in the modern South to be sentenced to die for killing a Negro.

That Jackson died by violence is deplorable but the fact that Volusia County justice has shown the way for the courts of the South to wipe clean the color line is commendable.

Perhaps, hopefully, the day will come when the taking of life is no longer the way to punish those who took a life.

When that day arrives, as it surely will, the Warrens and the Meltons of this nation no longer will have to seek and pronounce the sentence of death simply because "it's the law."



Paddleboard to Wellness with the YLD

Prioritizing wellness in a critical-thinking profession such as the law is important.

HCBA YLD President Dara Cooley understands that health and wellness is a significant priority for YLD members and has encouraged YLD initiatives that serve this need. By maintaining a healthy lifestyle, which includes physical activity, attorneys of all ages are able to better balance and negotiate the numerous demands of professional and family life. Prioritizing personal wellness has numerous ripple effects and ultimately benefits not only ourselves as individuals, but the clients we serve and the community we interact with daily. Studies have shown that in addition to improving mental health and mood, regular physical activity can help keep thinking, learning, and judgment skills sharp, both on a daily basis and over time.¹ Accordingly, prioritizing wellness in a critical-thinking profession such as the law is important.

To help us reach these health and wellness goals, the YLD Member Services Committee, co-chaired by Jacob Hanson and Ashley Hayes, recently partnered with local attorney Bruce Denson to present “Paddleboard to Wellness with the YLD.” The event, held on April 30, included a two-hour program in which Mr. Denson discussed professionalism and wellness and provided instruction on the mechanics of paddleboarding. Some of the mechanical instruction and life lessons overlapped — such as the importance of finding balance, moving forward, and getting back up when we fall. Participants received an hour of CLE credit for the instruction portion of the event. Afterwards, YLD members were given the opportunity to put the life and paddleboarding lessons to practice by

setting sail on the boards near the Tampa Convention Center in Tampa Bay.

Two hours of instruction and paddleboarding in the Saturday morning sunshine with colleagues and friends may not immediately prepare a young lawyer to run a marathon or become a dietician, but we are enthusiastic that the lessons the instructor shared with the group planted seeds of wellness for those just starting out on a healthy path, and sprouted even more robust fruits for those further along.

At the conclusion of the event, we all forged new relationships over a new experience and shared challenges, worked core muscles, generated some good endorphins to kick off the weekend, and came away with a fresh outlook on the importance of health and wellness in life and to overall professionalism and the practice of law. Additionally, we hope the physical activity level of the event appealed to some of our more than 900 YLD members as a unique event beyond our more

traditional YLD luncheons and networking opportunities.

The YLD was very excited to make a splash with its inaugural “Paddleboard to Wellness with the YLD” event. Hopefully it will pave the way for many more health and wellness activities in the future!



¹ The Benefits of Physical Activity, Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity, <http://www.cdc.gov/physicalactivity/basics/pa-health/>.



Author: Colleen O'Brien – Thirteenth Judicial Circuit



Education or Incarceration?

Diversity Committee Panel Examines the “School-to-Prison Pipeline”

An 11-year-old elementary school student in Orlando is shocked with a Taser gun and charged with battery after punching a school resource officer in the face.

A 5-year-old St. Petersburg kindergartner is handcuffed and taken away by police after a violent classroom disruption.

These disturbing classroom incidents involving young students, which got widespread media attention when they occurred, are difficult to fathom.

How can something like this happen?

While these incidents involving students and law enforcement may represent extreme examples of discipline in a school setting, they also raise some far-reaching questions about what is happening in our education system today.

Are teachers and school administrators adequately trained to deal with children who create dangerous situations in the classroom? What role should a school resource officer have in disciplining children at school, particularly for minor offenses? And what are the societal consequences of an increasing number of students being introduced to the criminal justice system at a very young age?

In an effort to better understand these and other related issues, the HCBA's Diversity Committee, co-chaired by Victoria Cruz-Garcia and Jessica Goodwin Costello, brought together a distinguished legal panel this past March for a CLE entitled: “Education or Incarceration? Examining the School-to-Prison Pipeline.”

WMU Cooley Law School sponsored the event.

Nancy Abudu, the legal director for the ACLU in Florida, explained that the “school-to-prison pipeline” refers to the “funneling” of our nation’s school children, especially at-risk children, out of the classroom and into the juvenile and criminal justice system.

Abudu noted rates for school suspensions have increased dramatically in recent years — from 1.7 million in 1976 to 3.1 million in 2000 — and have impacted minority and at-risk children most of all.

The increased utilization of “zero-tolerance” policies that automatically impose severe punishment regardless of the circumstances have made the situation worse, Abudu said.

“Today, children for minor infractions are not only being sent to the principal, but they are being handcuffed, arrested, referred to law enforcement, and having the criminal justice process start a very young

age,” Abudu said.

Tampa attorney Rosemary Armstrong chairs the Thirteenth Judicial Circuit Pro Bono Committee and is the founder of Crossroads for Florida Kids, a program that trains pro bono attorneys who represent children in delinquency proceedings.

Once children enter the criminal justice system, Armstrong said, they begin to feel powerless and lose trust of anyone in authority.

However, because attorneys can work with children clients on a confidential basis, they are able to build much-needed trust and be more effective advocates for the children they represent, she said.



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Armstrong also cited recent statistics on education and poverty from the Children's Defense Fund that show school suspensions and expulsions disproportionately affect minorities and the poor.

Another panelist, Mary O'Connor, the assistant chief of operations at the Tampa Police Department (TPD), discussed the importance of law enforcement officers fostering trusting relationships with students and residents from the local community.

O'Connor said TPD officers work to act as mentors and positive role models to students, which she says helps keep children who come from a tough home environment out of trouble with the law.

Further, she said the TPD's community outreach efforts and youth programming through organizations like the Police Athletic League, the Hope Street program, and the local Resources in Community Hope (RICH) Houses are assisting at-risk youth and helping them to stay in school.

In addition, the panelists discussed how prosecutors and public defenders are handling juvenile cases presented to them, and the impact the school-to-prison pipeline issue is having on the court system.

Megan Newcomb, juvenile division chief with the State Attorney's Office in the Thirteenth Circuit, said prosecutors work closely with school resource officers and others to assess each case individually.

"We're not a rubber stamp," Newcomb said.

Newcomb also talked about various local diversion programs used for juvenile offenders.

"I think we have made a real sincere effort in Hillsborough County to look at kids as a whole, and to have good dialogue with the public defender's office, with the courts, with law enforcement officers, and with parents," Newcomb said.

From a judicial perspective, Thirteenth Circuit Court Judge Ralph Stoddard, who handles juvenile delinquency cases, stressed the importance of asking a wide range of questions about a child's background in order to get a better "snapshot" of the child before deciding on a case.

Hillsborough County Public Defender Julianne Holt discussed the disparity in school suspensions for minority students, as well as the collaborative approach taken by representatives from the Hillsborough school system, law enforcement agencies, and the legal community to address the school-to-prison pipeline issue.

Holt said she visits local schools to talk to students directly about the "realities of the criminal justice system."

The goal, Holt said, is "to keep kids in school, to keep them out of the criminal justice system, to teach them about respect, to try and teach them about consequences."

See you around the Chet.



HCBA WELCOMES NEW MEMBERS

FEBRUARY & MARCH 2016

Jack Bernstein	Dominick Maranzana
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Emily Clendenon	Brandi Meredith
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Timothy Jones	Sara Whitehead
Carmen Junquera	Joel Williams
Steven Lehner	William Williams
Ana Luna	Anthony Woodward
Benjamin Lute	



Expunctions for Human Trafficking Victims

There are times when the line between victim and defendant becomes blurred.

In 2015, the National Human Trafficking Resource Center received more than 24,000 reports of possible human trafficking incidents.¹ Florida had the third highest number of reports.² Efforts have been made at the national, state, and local level, in both the public and private sector, to combat human trafficking.

In particular, the Florida legislature enacted section 943.0583, Florida Statutes, three years ago to provide for a special expunction process for victims of human trafficking. Victims of certain types of human trafficking may be forced into criminal activity, such as prostitution, that can result in criminal convictions. Normally, the criminal charge must have been dismissed before trial or the record of the charge must have been sealed for 10 years to qualify for expunction.³ In addition, the person seeking expunction must not have a previous conviction, and a person may only obtain one court-ordered expunction.⁴ A normal court-ordered expunction frequently would not be available to a human trafficking victim based upon the victim's prior record or number of charges, or because a conviction was entered.

Section 943.0583, however, makes expunction available if the offense was committed while the person seeking expunction was a victim of human trafficking, and the offense was committed as part of that human trafficking scheme. The offense sought to be expunged cannot be any of the listed qualifying charges for habitual violent felony offender status under section 775.084(1)(b)(1), Florida Statutes.⁵ This expunction is intended for a victim who has sought services as or is no longer a human trafficking victim.⁶

In order to obtain the expunction, the victim must file a petition and serve it on both the state attorney and the

original arresting agency.⁷ The petition must include a sworn statement that there are no other pending petitions to seal or expunge and that the petitioner qualifies for the expunction.⁸ If official documentation of the petitioner's status as a victim is available, it should be included with the petition.⁹ This documentation creates a presumption that the offense was committed as a result of being a human trafficking victim.¹⁰ If there is no official documentation, the petitioner must make a showing by clear and convincing evidence.¹¹ The granting of this expunction is discretionary.¹²

There are times when the line between victim and defendant becomes blurred. As your State Attorney, I am hopeful this statute may provide relief within the court system to victims of human trafficking who are able to seek a new path in their life.

¹ *National Human Trafficking Resource Center Data Breakdown, United States Report 1/1/2015-12/31/2015*, <http://traffickingresourcecenter.org/sites/default/files/NHTRC%202015%20United%20States%20Report%20-%20USA%20-%2001.01.15%20-%2012.31.pdf> (last visited 3/12/2016).

² *Id.*

³ § 943.0585, Fla. Stat.

⁴ *Id.*

⁵ § 943.0583(3), Fla. Stat.

⁶ § 943.0583(4), Fla. Stat.

⁷ § 943.0583(7), Fla. Stat.

⁸ § 943.0583(6), Fla. Stat.

⁹ § 943.0583(6)(b), Fla. Stat.

¹⁰ § 943.0583(5), Fla. Stat.

¹¹ *Id.*

¹² § 943.0583(2), Fla. Stat.



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Legislature Fails Court Clerks Again

We cannot continue on this path much longer and maintain the high standards our customers deserve.

As you probably know by now, the Florida Legislature failed again to fully fund the state's 67 court clerks. Although we have taken immediate steps to trim our current budget, we are still facing a \$1 million shortfall next budget year. We have worked diligently to reorganize our operations in recent years so the public does not feel the effects. We have done so even as we tackled the arduous task of shifting from paper to electronic records.

In the past year, we opened a new Customer Service Center on the first floor of the Edgecomb Courthouse, consolidating work once spread across five offices in four buildings around the court's complex in downtown Tampa. Workers are being cross-trained to improve efficiency, and their work is tracked closely to increase accountability. Adjacent to the Customer Service Center, we created a new probation services section and led the transfer of those services from the Salvation Army to Sheriff David Gee's office. Now, someone sentenced to

probation can walk downstairs from the courtroom and handle all the paperwork and payments in the same building, and my staff is there to assist. The goal is to reduce the cost to probationers, so paying their debt to society does not put them into a cycle of poverty.

By the end of June, all electronic court files will be accessible to the public online, as they have been for months for attorneys of record. I encourage all members of the Bar to register at our website to view unredacted files of cases in which they are involved. For public access to online court records, we are taking extra safeguards to meet the Florida Supreme Court rules governing the release of confidential information in these documents. Meanwhile, a team of Stetson Law School students combed through the Florida Statutes and built a database of the more than 1,000 duties my office is required to perform. To help us prioritize our workload, the students also determined which duties we are no longer required to do.

Continued on page 13



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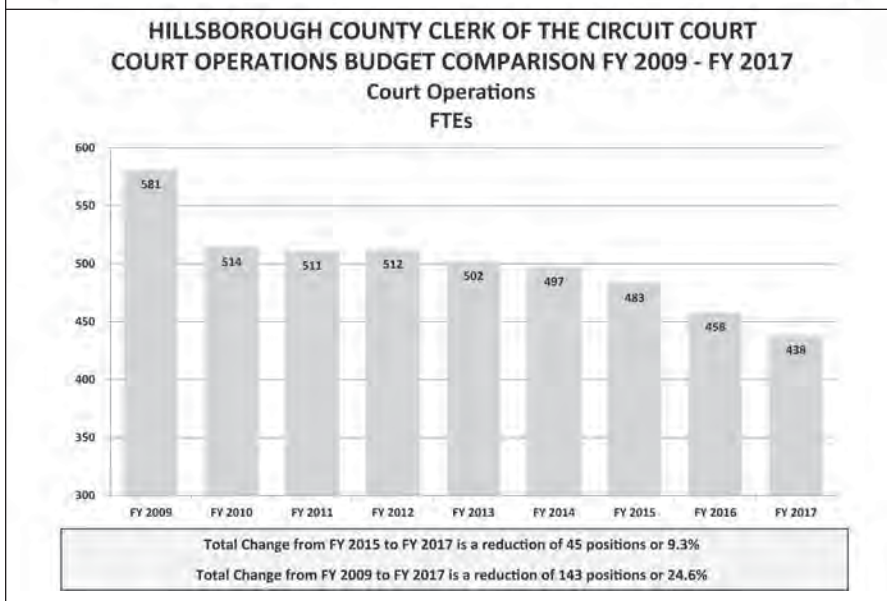
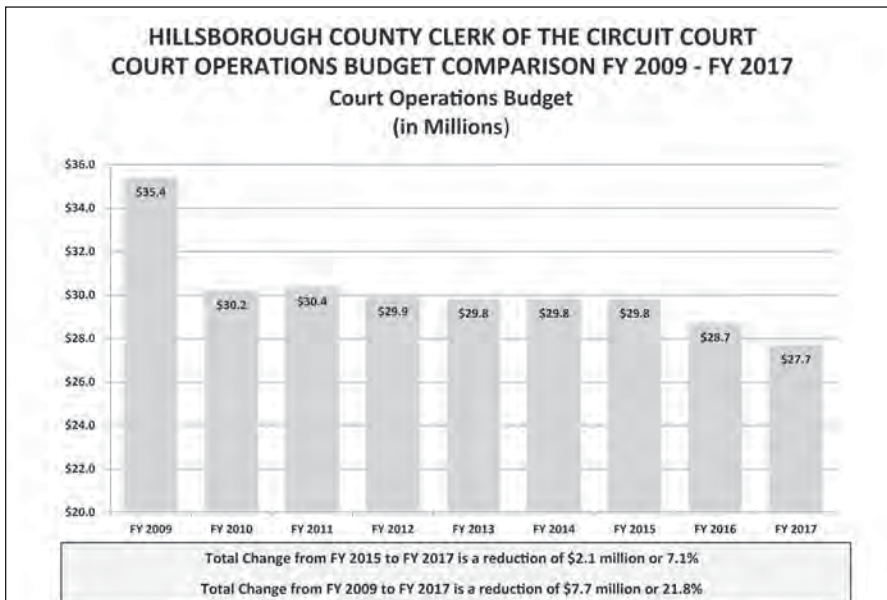


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Continued from page 12

These changes involved a major reorganization that was recently reorganized with a Florida Excellence Best Practices Award, of which I am very proud. They have allowed us to do more with less. But we cannot continue on this path much longer and maintain the high standards our customers deserve. Layoffs and furloughs were required to meet budget cuts during the economic downturn a few years ago. Such drastic measures should be a last resort, particularly during a time when the economy is growing. While we collect \$202 million each year, we keep \$26 million to fund our operations.

As a former member of the Florida House and the Senate, I understand the difficult balancing act the Florida Legislature must perform. I ask that you join me in demanding that our lawmakers provide the funding we need to meet the modern-day demands of court system.



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Judge Chris Altenbernd: The Longest-Serving Second DCA Judge

“But Judge Altenbernd is perhaps most proud of his role, along with others, in helping the Court become more collegial in nature.”

The event those of us in the appellate community never thought would happen has finally come to pass. Judge Chris Altenbernd, the longest-serving judge in the history of the Second District Court of Appeal, has retired from the bench. But we get ahead of the story.

Judge Altenbernd was born in Muscatine, Iowa, in 1949, the son of a contractor and a school teacher, who later became Presbyterian missionaries. He graduated from Muscatine High School in 1967. During his teenage years, his father taught him carpentry, and he worked in that trade until he became a member of the bar.

He attended Harvard College from 1967 to 1969, at which point he left to volunteer for a year with the Delta Ministry in Greenville, Mississippi. He then finished his undergraduate career at the University of Missouri, where he became a member of Phi Beta Kappa and received a B.A. degree, with honors, in psychology in 1972.

Judge Altenbernd had considered becoming a minister, but an experience in 1969 changed the trajectory of his life. That day, he walked into a Mississippi courtroom and watched an unrepresented black man in a DUI case standing before a white judge. The judge ridiculed the man and was prepared to send him to prison as a repeat offender, based solely on the man’s familiar-sounding last name. But a young lawyer who happened to be in the courtroom stood up and suggested the man’s fingerprints be checked against the prints of the defendant in the earlier case, since he had a common name and perhaps there was some confusion. The prints did not match, and the man did not go to prison as a repeat offender. This show of courage by a white lawyer in the Deep South who sought justice for a black man so moved the young Chris Altenbernd that he decided to become a lawyer, rather than a minister.

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Shortly after this self-described “life-altering experience,” Judge Altenbernd enrolled at Harvard Law School, where he received his J.D. degree in 1975. He later rounded out his legal education with a degree in Master of Laws in Judicial Process in 1998 from the University of Virginia.

Following law school, Judge Altenbernd joined the Tampa law firm of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., where he eventually became a partner and member of the board of directors. While at Fowler White, he practiced civil litigation and frequently appeared before the Second DCA. He also was a member of the Florida Defense Lawyers Association and the International Association of Defense Counsel, and chairman of the Florida Bay Area March of Dimes.

In 1989, Governor Bob Martinez appointed Judge Altenbernd to the Second DCA where, at the age of 39,



Top photo from Judge Altenbernd's investiture in 1989, bottom photo from Judge Altenbernd's retirement reception on Feb. 25, 2016.

The people pictured, from left to right, are: Judge Altenbernd, Tom Elligett and George Vaka.

he became the second youngest person ever to sit on that Court (Judge T. Frank Hobson being the youngest) and was retained by the electorate four times. He served as chief judge from February 2003 to June 2005, and as president of the Conference of District Court of Appeal Judges in 2006 and 2007. He was named Jurist of the Year by the Florida Board of Trial Advocates (1998) and by the Florida Chapter of the American Academy of Matrimonial Lawyers (1999), and he was awarded the James C. Adkins Award from the Appellate Practice and Advocacy Section of The Florida Bar (2002). He also has served on many Florida Supreme Court committees, including the Committee on Standard Jury Instructions in

Civil Cases (1992-2004).

An important aspect of Judge Altenbernd's legal career has been the American Inns of Court movement. He is

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Continued from page 15

currently the Florida liaison for the American Inns of Court, and in 2010, the American Inns of Court awarded him the prestigious A. Sherman Christensen Award for distinguished, exceptional, and significant leadership to the American Inns of Court movement. Judge Altenbernd is a member of both the Cheatwood Inn of Court and the criminal law appellate inn that he was instrumental in establishing. The latter (originally named for Bruce Jacob, former dean of Stetson Law School who, in 1963, argued *Gideon v. Wainwright* in the U.S. Supreme Court) has decided to henceforth be known as the Bruce B. Jacob/Chris W. Altenbernd Criminal Appellate Inn of Court.

Judge Altenbernd is married and has two grown daughters. He also is an Eagle Scout who has been active in the local scouting community for decades and currently serves as assistant scoutmaster for Troop 100 at Academy Prep of Tampa. Members of Troop 100 served as color guard and led the pledge of allegiance at Judge Altenbernd's retirement reception hosted by the HCBA on February 25, 2016.

Looking back at his time on the court, Judge Altenbernd notes that although the content of briefs has not changed much, the concept of the standard of review has developed. Today, appellate courts are much more cognizant of the importance of the standard of review in developing a unified decision making process.

What has changed is the size of the Court and the caseload. In 1957, there were only nine district court of

appeal judges for the entire state. Today, there are 16 judges on the Second DCA alone. During Judge Altenbernd's tenure on the Court, the caseload skyrocketed from 3,200 cases per year to 6,200. Most of that increase has been in the area of criminal post-conviction filings. Judge Altenbernd also observes that the complexity of civil cases has increased, and the same holds true to some extent for criminal appeals, where the court sees fewer repetitive issues than it once had.

When asked what is the most memorable case to come before him at the Second DCA, Judge Altenbernd says the one people will likely remember him for is the *Terri Schiavo* case. While he does not see the *Schiavo* case as the most legally complicated he ever addressed, he feels it was important because the court needed to explain to the public how it reached the result it did.

Judge Altenbernd's opinions were always beautifully written and legally insightful. And on occasion, he allowed his understated, dry sense of humor to make an appearance. For example, in *Bolinsky v. Fritz*, 544 So. 2d 259 (Fla. 2d DCA 1989), the Court declined to extend the vicarious liability for punitive damages established in *Mercury Motors Express, Inc. v. Smith* to the marital context. Judge Altenbernd wrote, "Suffice it to say that vicarious liability under *Mercury Motors* is based upon a master-servant relationship, which is dissimilar from the marital relationship." In a concurring opinion from last year in an animal cruelty case, Judge Altenbernd described himself as "[h]aving reached an age where I

Continued on page 17

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Continued from page 16

can readily identify with an old, worn-out dog.” *Brown v. State*, 166 So. 3d 817, 822 (Fla. 2d DCA 2015). Well, that is just one man’s opinion.

Judge Altenbernd is rightfully proud of his work on the Second DCA. He explains that he never liked sanctions against clients for things lawyers had done or “traps for lawyers,” and points to his efforts to change the law regarding dismissals for lack of prosecution. He also is proud of his participation in moving the Tampa branch of the Court to the Tampa campus of Stetson Law School. But Judge Altenbernd is perhaps most proud of his role, along with others, in helping the Court become more collegial in nature.

One of the “joys of the job,” as Judge Altenbernd puts it, was working with all of the young people he mentored over the years. No doubt all of those young lawyers consider themselves very fortunate to have had such a mentor.

Judge Altenbernd leaves the Court with many fond memories. He recalls going to lunch at Valencia Gardens

with then Second DCA Judge John Sheb and Justice Stephen Grimes — men he describes as his “heroes” — just six weeks after being appointed to the Court. At the time, he was amazed that, at the young age of 39, he was able to call these judicial giants by their first names. Judge Altenbernd also recalls another special day when then former Justice Grimes actually argued a case before him. The remaining judges on the Second DCA now may look forward to the day when former Judge Altenbernd argues cases before them!



What’s next for the “retired” Judge Altenbernd? No well-deserved vacations or easy chairs are in his immediate future. He has returned to private practice with Carlton Fields, P.A. So much for being a “worn-out dog.”

Photos from Judge Altenbernd’s retirement reception are on pages 18-19.

Authors: Amy S. Fariior and Raymond T. (Tom) Elligett, Jr. - Buell & Elligett, P.A.

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Friends, family and well-wishers attended a special retirement reception on February 25 for Judge Chris Altenbernd from the Second District Court of Appeal. Thank you to our sponsors who helped make this event possible:

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CAN A CIVIL COLLABORATIVE LAW PRACTICE REALLY BE PROFITABLE?

Collaborative Law Section

Chairs: Jeremy Gluckman - Jeremy Gluckman, P.A.; and Christine Hearn - Himes & Hearn



If you have a civil litigation practice, are you familiar with what a civil collaborative law practice is all about? And are you working to build your collaborative practice? If not, here are some tips as to how you can make such a practice work, how you market it, and how it can be made profitable.

To start, consider how the collaborative approach can be used to negotiate probate disputes, and handle labor and employment matters, medical malpractice cases, business and partnership dissolutions, and other civil, non-family matters. Many recognize that the court systems are overcrowded and woefully inefficient for resolving many garden-variety legal disputes. In addition, only a small percentage of court cases actually go to trial. As a result, much time, effort, and expense of litigation goes to preparing for a trial that will not actually take place. Redirecting that energy at the start of the process toward a collaborative, non-adversarial approach often gives faster results, leaving parties less embittered and with more resources.

What's in it for the lawyer? Collaborative cases may yield less fees than a dispute that has gone

through protracted litigation, but lawyers are freed up to devote their full attention to the next collaborative case that comes along, with the potential for additional fees from another source. Successfully marketing and growing a collaborative law practice involves spreading your message about this

solution-focused dispute resolution approach to key members of the Bar. Other lawyers may then be willing to incorporate collaborative law into their practice, or to align themselves with collaborative practitioners for cross-referring cases.

Litigators also can refer those types of cases that are deemed to be appropriate for collaborative resolution. Cases that are not appropriate for the collaborative approach or that fail collaboratively can in turn get referred to litigators by collaborative lawyers who will not take the case through the litigation. Another step in successfully marketing a collaborative practice is to make in-house counsel aware of the benefits of allocating a percentage of their budgets to resolve cases through collaboration. In this age of dwindling resources, this would come as a welcome relief to their employers.

Consider how the collaborative approach can be used to negotiate non-family matters.

Growing the collaborative approach to develop a critical mass of non-family attorneys and other professionals who practice collaboratively is now an important goal of civil practice groups in Florida. So consider networking and sharing information on the collaborative

approach, and ultimately growing a collaborative practice. The Florida Civil Collaborative Practice Group, Inc. (FCCPG) was recently formed and is building its membership in the Tampa Bay area and throughout Florida. FCCPG is affiliated with the Florida Academy of Collaborative Professionals and the International Academy of Collaborative Professionals. FCCPG will soon have an Internet presence. If you have an interest in working collaboratively, contact the authors of this article for more information on becoming a member of this practice group.

*Authors:
Guilene F. Theodore
- Guilene F.
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PAYMENT TRIGGERS STATUTE OF REPOSE IN *CYPRESS FAIRWAY*

Construction Law Section

Chairs: Erik Raines - Hill Ward Henderson; and Edward J. Kuchinski - Sivyler, Barlow & Watson, P.A.



In a case decided last year, the Fifth District Court of Appeal held that the 10-year statute of repose began to run when final payment under the contract occurred, rather than the date on which the contractor completed its work. In *Cypress Fairway Condominium v. Bergeron Construction Co.*, 164 So. 3d 706 (Fla. 5th DCA 2015), the condominium association brought construction defect claims on behalf of the unit owners, as well as claims assigned to it by the general contractor.

The central issue in the case was whether the statute of repose commenced on the date the contractor completed its work and made its final application for payment or the date final payment was tendered to the contractor. In *Cypress Fairway*, the viability of the claims hinged on the answer to this question because work was completed on January 31, 2001, final payment was made on February 2, 2001, and the claims against the contractor were not filed until February 2, 2011. Thus, if the

contractor's completion of work triggered the statute of repose, the claims would be barred.

The trial court dismissed the claims as time barred and explained "the Legislature intended that the date of completion of the contract had to do with the date of completion of the construction that would have been done under the contract, *not the date of final payment.*" *Id.* at 708 (emphasis added). The Fifth DCA reviewed the language of section 95.11(3)(c), Florida Statutes, which reads in relevant part: "[T]he action must be commenced within 10 years after ... the date of completion ... of the contract."

In contrast with the trial court, the Fifth DCA held the contract was not "completed" on the date when work was finished. Rather, it held that "[c]ompletion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor." *Cypress Fairway*, 164 So. 3d at 708. Thus, the court reasoned completion of performance by the contractor failed to trigger the period of repose, because the contract was



Completion of the contract means completion of performance by both sides of the contract.

not completed until tender of final payment.

Recognizing the *Cypress Fairway* interpretation could potentially allow owners to self-determine an infinite period of repose, the Florida Legislature introduced two companion bills in the House and Senate (House Bill 297 and Senate Bill 316), both of which would

amend section 95.11(3)(c) to make clear that completion of work by the contractor triggers the period of repose. The relevant language reads: "The date of completion of the contract ... is the last day during which the ... contractor furnishes labor, services, or materials, excluding labor, services, or materials relating to the correction of deficiencies in previously performed work or materials supplied." It will be interesting to see the results of the 2016 legislative session and the impact it may (or may not)

have on this key construction issue concerning repose.



Author:
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CONSTRUCTION LAW SECTION RECEIVES AN OVERVIEW ON INSURANCE

The Construction Law Section's CLE luncheon on March 17 featured Rebecca C. Appelbaum of Butler Weihmuller Katz Craig LLP and Debbie Sines Crockett and David A. Zulian of Cheffy Passidomo, P.A. Topics discussed included insurance perspectives from general contractors, impacts on contracts, different types of insurance, and Chapter 558 notices. A special thanks for C1 Bank for sponsoring this luncheon.



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PUBLIC RECORDS ACT CHANGES PROVIDE MUCH NEEDED INSULATION TO CONTRACTORS

Corporate Counsel Section

Chairs: Michael Stein - CNA Insurance; and John Bencivenga - Helios



Section 119.0701, Florida Statutes, part of Florida's Public Records Act ("Act"), broadly defines "contractors" as any private individual, partnership, corporation, or business entity contracting with a public agency. Until section 119.0701 was amended on March 8, 2016, contractors had little protection from meritless public records requests. For instance, under the old Act, an unidentified person could walk into a contractor's office, ask a receptionist for a contract they already possessed, and then sue the contractor if the receptionist asked their name or why they wanted the contract. Such in-person requests, and similar requests via email or regular mail, spawned multiple cases under the Act. But the Act has drastically changed.

While "contractor" remains broadly defined under the amended statute, which is now titled "Contracts; Public Records; Request for Contract or Records; Civil Action," the statute now provides contractors significant insulation from meritless lawsuits.

Beginning July 1, 2016, all contracts between a contractor and a public agency must identify the agency's custodian of public records and provide their contact information. Further, all requests for public records relating to a public agency contract only can be

directed to the agency.¹ If the agency has the document, then it provides or withholds the document pursuant to the Act; if the agency does not have the document, then it notifies the contractor of the request, and the contractor must provide the records within a reasonable time.² As such, requests no longer can be directed at contractors, except through a public agency.

Another major change is that if records are not produced in response to an initial request, a potential plaintiff also must give written notice of the request for and failure to produce the document to both the agency and the contractor at least eight business days before filing any action.³ Further, an eight-day notice is compliant only if sent through one of three specified delivery mechanisms that each provides evidence of delivery.⁴ And if a contractor complies with a request either after the agency's notice or a compliant eight-day notice, then there is no viable action under the Act.⁵

Also important, if a contractor does not fulfill a compliant request, then liability under the Act only arises if a court determines that the contractor "unlawfully refused" to comply with the request.⁶ No guidance is given to what "unlawfully refused" means in this context, but by using the word "refused," it



Contractors will no longer face "gotcha" scenarios ... from requests seeking documents they already have or do not need.

seems to indicate that liability will arise only out of intentional, rather than negligent, conduct. Regardless of the standard, however, it will be a major departure from the old Act's strict liability standard.

Other changes to section 119.0701 warrant review by counsel and client.⁷ The most important takeaway, in the end, is that contractors will no longer face "gotcha" scenarios from potential

claimants looking to create liability from requests seeking documents they already have or do not need.

¹ § 119.0701(3)(a), Fla. Stat. The Act does not address the agency contact for requests concerning existing contracts or those entered before July 1, but given the other amendments to section 119.0701 discussed in this article, it does not appear that any requests from March 8 forward may be directed to a contractor.

² *Id.* Contractors must still ensure that exempt or confidential records are not disclosed.

³ § 119.0701(4)(a), Fla. Stat.

⁴ § 119.0701(4)(b), Fla. Stat.

⁵ § 119.0701(4)(c), Fla. Stat.

⁶ § 119.0701(4)(a), Fla. Stat.

⁷ Also new are a contractor's options for handling records upon completion of its contract with the public agency.



Author:
Eric E. Page - Shutts & Bowen LLP



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HURST V. FLORIDA: THE SUPREME COURT'S BLOW TO FLORIDA'S DEATH PENALTY

Criminal Law Section

Chairs: Matt Luka - Trombley & Hanes; and Justin Petredis - The Law Office of Justin Petredis, P.A.



On January 12, 2016, the United States Supreme Court, in *Hurst v. Florida*, 136 S. Ct. 616 (2016), held that section 921.141, Florida Statutes, the state's death penalty sentencing scheme, violated defendants' Sixth Amendment right to a jury trial because the statute called for judges, not jurors, to find the facts necessary for a defendant to be sentenced to death. The Court's blow initiated the Florida legislature's triage of section 921.141 as the state's death penalty remained on the ropes. It also has sent attorneys to the mat to argue which of Florida's death row inmates, if any, will get a new day in court for re-sentencing.

Before *Hurst*, the jury would render an advisory sentence by simple majority to the trial court, without any expressed factual findings, of either life imprisonment or death, which the trial court would consider before imposing a sentence of life imprisonment or death. *Hurst* came to the Court following its holdings in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002) that the Sixth Amendment requires a jury to find any fact that exposes a defendant to a greater sentence, including death, than that

permissible only by the jury's verdict as to guilt. In the same vein, the Court held in *Hurst* that Florida's sentencing scheme was unconstitutional, particularly a jury's advisory sentence without any factual findings and the ability of the trial court to find the facts necessary to impose a death sentence despite the jury's advisory sentence.

The Florida legislature quickly addressed section 921.141's constitutional defects, and on March 7, 2016, Governor Rick Scott signed into law HB 7101. HB 7101 made some of the following reforms to Florida's death penalty sentencing scheme:

- The jury must unanimously find that at least one aggravating factor was proven beyond a reasonable doubt to return a sentence of death, and the jury must submit that factual finding to the trial court.
- Ten of the 12 jurors must agree to recommend a death sentence to the trial court.
- A recommended sentence of life imprisonment by the jury is binding on the trial court.
- If the jury recommends a death sentence, the trial court may impose the death sentence or a



A recommended sentence of life imprisonment by the jury is binding on the trial court.

sentence of life imprisonment, but the trial court only can consider the aggravating factors that were unanimously found by the jury.

- If a defendant waives his or her right to a jury at sentencing, the trial court may still impose a sentence of death if it finds at least one aggravating factor was proven beyond a reasonable doubt.

While HB 7101 was effective immediately, several questions about *Hurst* still remain open. The Florida Supreme Court is expected to render several opinions that will determine what effect, if any, *Hurst* will have on the nearly 400 death row inmates in Florida. Furthermore, Florida remains one of only three states that do not require a jury's death recommendation be unanimous, an issue not addressed in *Hurst* but one heavily debated in reforming section 921.141. What is certain is that *Hurst* will not be the last

heavyweight match for Florida's death penalty.

Author:
Brandon K. Breslow
- Kynes, Markman & Felman, P.A.



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Each year, the Inns invite new members to join for varying membership terms. Members are selected based upon their length and area of practice. Discounted memberships are available for full-time law students who wish to apply. If you are interested, please apply promptly! (Please note: Current Inn members who wish to renew membership in their present Inn need not apply.)

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THURSDAY, MAY 19, 2016 6:00 PM HILTON TAMPA DOWNTOWN

THE MORAL IMPERATIVE OF BLACK HISTORY

Diversity Committee

Chairs: Jessica Costello - Office of the Attorney General; and Victoria Cruz-Garcia - Givens Givens Sparks



Not long ago, we finished celebrating Black History Month.

There are some who still recite the tired idea that we should not have a Black History Month, as it segregates history.

To me, black history is a unique part of American history. It addresses not only our nation's greatest "original sin," but how brave Americans used the tools of democracy and advocacy to — consistent with our original founding principles — bring more Americans under the blanket of protection of our Bill of Rights.

And on a personal level, black history has become connected to my son, thanks to his teacher. In February 2014, I found out that my son Luis — who was then seven years old and attending Lawton Chiles Elementary — was learning about black history. His teacher at the time, Ms. Ashley Mitchell, was making sure that her students knew about the pivotal figures.

While in a car ride, my son asked me who my favorite black history figure was. Not wanting to name someone I thought he would know, I responded with one of my personal heroes, Medgar Evers. Luis then responded by saying: "Yes, he was killed at his

house in front of his family."

And how did my son learn about that great son of Jackson, Mississippi, Medgar Evers? From his teacher Ms. Mitchell.

Ever since then — based on this interaction — my son and I have developed a tradition of learning about great African Americans every Black History Month and visiting the gravesite of Medgar Evers every summer.

No matter what month it is, take time to study black history. Get to know the amazing hero — who advocated for slavery abolition while risking capture again as a runaway slave — that was Fredrick Douglas. Get to know the Republican United States Senator from Massachusetts, Edward Brooke, who also was a Marine and decorated Korean War veteran. Know great names like Fannie Lou Hamer, Ralph Abernathy, and others who marched, bled, and were beaten for equality, all while reciting verses from the Holy Bible. And get to know those great Americans, like our friend Medgar Evers, who defended liberty overseas for Europeans at D-Day, but were denied liberty here at home.

And in our own state, there is a remarkable abundance of ignored



**Black History is
American History, and
it deserves every good
American's attention.**

history. Go to Marianna and see where, in 1934, Claude Neal was the victim of a lynching in an era when Florida had the highest per capita rate of lynchings in the Deep South. Travel to the now destroyed town of Rosewood in Levy County or to Putnam County, birthplace of A. Philips Randolph.

Learn about Floridians who were trailblazers before their time — like Virgil Hawkins, Justice Leander Shaw, Harry T. and Harriette Moore, and Vietnam War hero Robert H. Jenkins Jr. Go to the Kingsley Plantation in Jacksonville, where a cemetery holds the remains of the plantation's slaves, whose names we will never know.

Black history is American history, and it deserves every good American's attention.

And I am thankful that, thanks to a wonderful teacher from Lawton Chiles Elementary, this is a tradition that gets my young son's attention.



*Author:
Luis Viera - Ogden
& Sullivan, P.A.*

DIVERSITY COMMITTEE DISCUSSES SCHOOL TO PRISON PIPELINE

On March 10, the Diversity Committee hosted a panel discussion and CLE luncheon on issues surrounding schools, disciplinary issues and the juvenile justice system. Speakers included Judge Ralph C. Stoddard; Public Defender Julianne Holt; Assistant State Attorney Megan Newcomb, Juvenile Division Chief; Assistant Chief Mary O'Connor, Tampa Police Department; Nancy Abudu, director of Legal Operations for the ACLU; and Rosemary Armstrong, founder of Crossroads for Kids.



The Diversity Committee would like to thank the luncheon's sponsor Western Michigan University Cooley Law School.



SOLO PRACTITIONERS & SMALL FIRM CLE

The Solo Practitioners & Small Firm Section hosted a CLE Luncheon on January 26 featuring Luis Martinez-Monfort and Keith Meehan of Gardner Brewer Martinez-Monfort, P.A., who discussed fundamental judgement collection. Topics covered included judgement liens, post-judgement discovery, exemptions and garnishments. The section would like to thank the luncheon's sponsor:



DIVERSITY NETWORKING SOCIAL

Law students from across the state joined with law firms, Bar associations, and other legal organizations at the HCBA Diversity Networking Social on February 13. The event gave students a chance to network with members of the local legal community and meet with potential mentors.

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ACCOUNTABLE CARE ORGANIZATIONS: HAVE THEY ALREADY COME AND GONE?

Health Care Law Section

Chairs: T.J. Ferrante - Foley & Lardner LLP; and Sara Younger Seifried - BayCare Health Systems



With the adoption of the 2009 Patient Protection and Affordable Care Act, Public Law 111-148 (affectionately known as “Obamacare”), hundreds of new acronyms came for health care lawyers to study. While it only took up seven of the 2,400-page law, one of the most talked about provisions related to “Accountable Care Organizations,” or ACOs. ACOs were created to empower health care providers to work in a more organized fashion under one umbrella. This would allow them to provide coordinated, quality care in exchange for receiving financial incentives from Medicare (and private insurance payors and other third parties) for keeping costs down.

At the time of adoption, ACOs were applauded as the pathway for easing the burden on the Medicare program and refocusing the dialogue on care quality as opposed to quantity. Implementing these organizations, however, required careful analysis and a full appreciation of sometimes competing clinical, business, and legal objectives. The criteria surrounding ACO development included specific standards related to quality, reporting, and governing structure. In addition to complying with CMS guidelines for ACO

formation, potential participants had to navigate sticky legal issues such as fraud and abuse, antitrust, tax-exempt considerations, corporate practice of medicine, and state insurance regulations. As a result, many prospective participants postponed entering into ACO models, waiting for others to pave the way so that those on the sidelines could quantify the value in building a high-cost ACO infrastructure.

The most sophisticated entities had the option of joining the ACO Pioneer Program. The program, which began in 2012, involved the government’s recruitment of those hospitals and medical groups the government believed were best able to succeed under a shared savings model. The initiative started out small, with 32 accountable care organizations initially being invited to join. As of April 2015, however, that number had dwindled to 19 due to participants electing to withdraw from the program. Since then, an additional 10 ACOs have dropped out leaving only nine remaining participants. Pioneer ACOs participate in higher levels of savings and risk than in the traditional ACO model, and those who have left the program have cited the primary reason for their departure being the program’s “unsustainability.” Despite the fact



**There are 36 ACOs
operating in Florida...
which cover
approximately
three million lives.**

that Pioneer participants have saved the government more than \$300 million in three years, only 55 percent of participants have managed to reduce costs enough to qualify for bonus payments because of ongoing rule changes that reduced ACO budgets.

As of January 2016, Medicare reported that there were 477 ACOs participating in the Medicare program, covering 8.9 million assigned beneficiaries in 49 states, plus Washington, DC and Puerto Rico. Approximately 180,000 physicians and practitioners are now involved in Medicare ACOs. There are 36 ACOs operating in Florida, the majority of which began operations in 2012 and 2013. These Florida ACOs cover approximately three million lives.

So while the Pioneer ACO Program as first conceived by CMS may be on its last leg, the future of ACOs nationally and here in Florida generally seems bright. Stay tuned as we enter the “next generation” of value-based healthcare in America.



*Author:
Radha V. Bachman -
Carlton Fields*



HEALTH CARE LAW SECTION DISCUSSES FRAUD ENFORCEMENT

Trends in federal civil healthcare fraud enforcement were the topics discussed at the Health Care Section Luncheon/CLE on January 27. Civil Assistant United States Attorneys Randy Harwell and Jason Mehta both spoke at the luncheon. Thanks to everyone who attended and NorthStar Bank for sponsoring.



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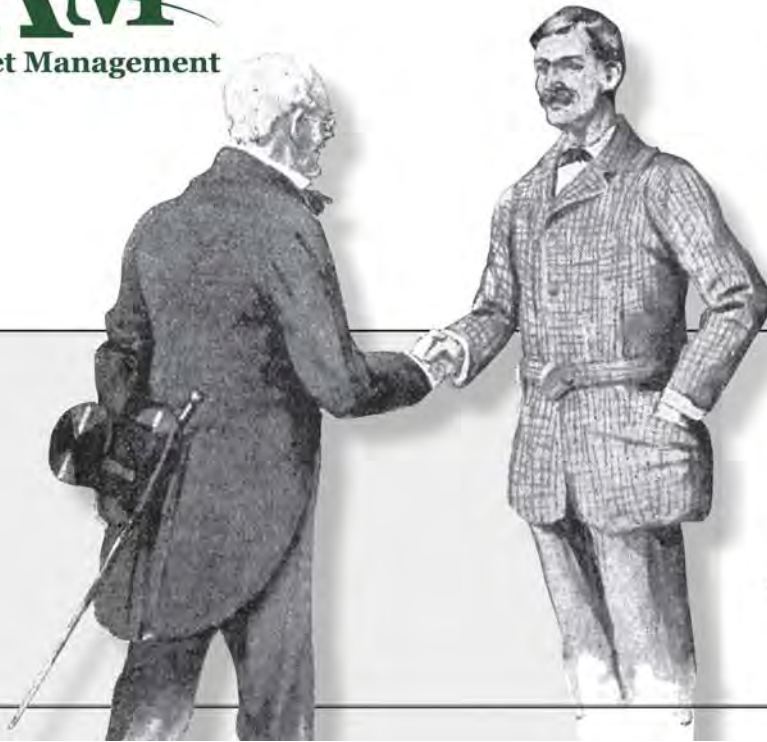


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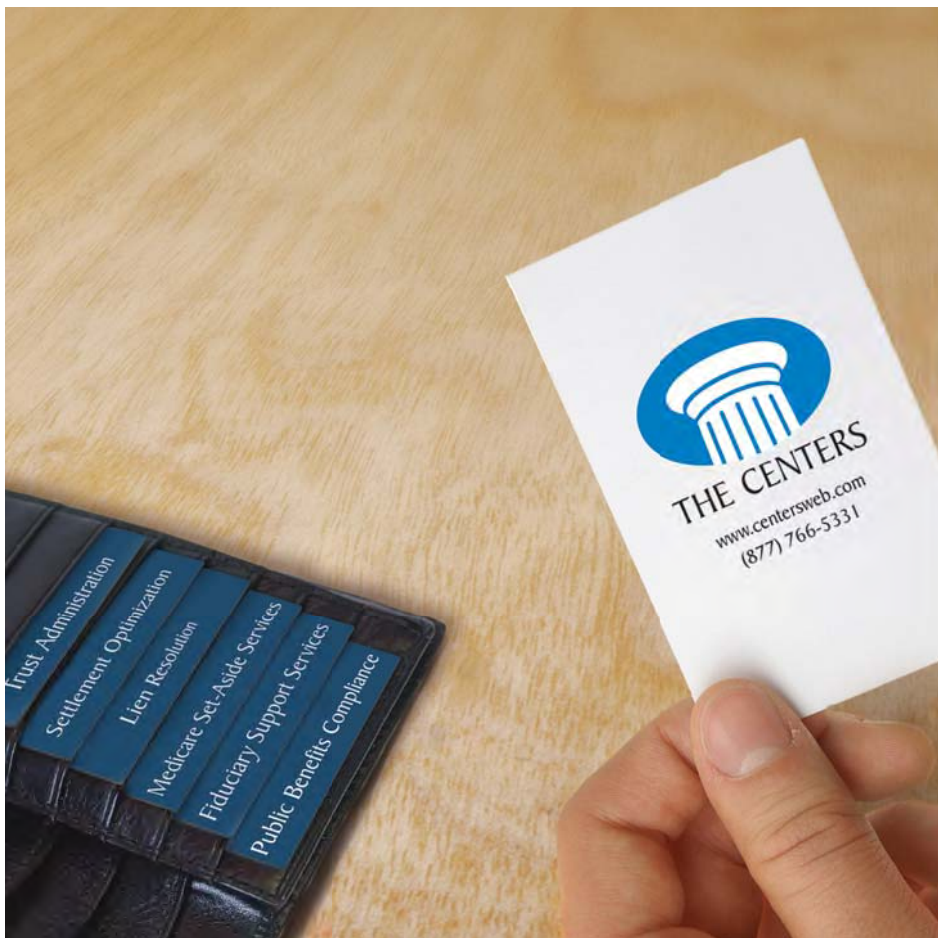


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Judicial Pig Roast/Food Festival & 5K Pro Bono River Run

Thanks to all the sponsors, attendees and participants that helped make the 13th Annual Judicial Pig Roast & 5K Race on March 5 such a success! About 500 HCBA members and their friends and family gathered for the event on the grounds of Stetson's Tampa Campus, where participants competed for best food and best décor and runners raised more than 2,800 pro bono hours in pledges. What a great event for a great cause!

Congratulations to all the winners:

PIG ROAST AWARDS

BEST PIG SLOP (for best food): Trenam Law

Runner up (tie): Hill, Ward & Henderson, P.A. and Western Michigan University Thomas M. Cooley Law School

BEST PIG STY (for most creative booth):

13th Judicial Circuit Judges

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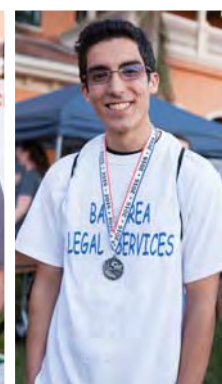
- Overall Male Winner: Matthew Livesay
- Overall Female Winner: Yova Borovska
- Fastest Male Judge: Hon. Christopher Nash
- Fastest Female Judge: Hon. Linda Allan

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EEOC ADVANCES ITS PROTECTION AGAINST SEXUAL ORIENTATION DISCRIMINATION

Labor & Employment Section

Chairs: DeeAnna Hays - Ogletree, Deakins, Nash, Smoak & Stewart, P.C.; and Jamie Marcario - Greenberg Traurig, P.A.



On March 1, 2016, the EEOC filed its first two Title VII lawsuits alleging sexual orientation discrimination in violation of Title VII's gender bias protections. Both lawsuits allege employees were subjected to unlawful harassment because of their sexual orientation.¹

Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin. The reference to "sex" refers to a class of persons delineated by gender. Since the U.S. Supreme Court's 1989 decision in *Price Waterhouse v. Hopkins*,² however, Title VII's prohibition against sex discrimination has been extended to include discrimination based on gender stereotypes.

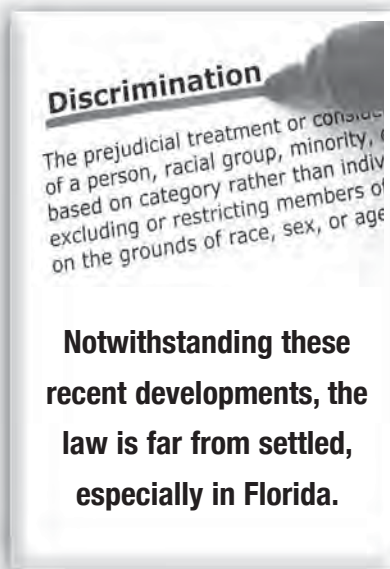
In *Price Waterhouse*, the female plaintiff alleged she was denied a promotion because she was not "feminine enough." The Court held that the employer's action based on such "sex stereotyping" was an act based on sex in violation of Title VII.³ Plaintiffs have since relied on this language in an attempt to extend Title VII's protections to sexual orientation claims, with mixed results. Many courts, including those in Florida, continue to reject gender stereotype claims based solely on sexual orientation.

For the last several years, the EEOC repeatedly insisted that

Title VII should be interpreted to protect employees from sexual orientation discrimination, stating that orientation assumes that gender is part of the consideration. In the agency's FY 2013-2016 Strategic Enforcement Plan, the EEOC committed to addressing emerging and developing issues related to coverage of lesbian, gay, bisexual, and transgender issues under Title VII.

In July 2015, the EEOC took the next step in advancing its position. In *Baldwin v. Department of Transportation*, an administrative decision, the EEOC recognized sexual orientation discrimination was prohibited by Title VII in the federal employment sector, explaining that sexual orientation discrimination was a concept that could not be understood without reference to sex as it was tied to non-compliance with sex stereotypes and gender norms.⁴ Although the ruling was not binding on private employers, it opened the door to the present lawsuits.

Notwithstanding these recent developments, the law is far from settled, especially in Florida. The Florida Civil Rights Act ("FCRA") does not prohibit employment discrimination based on sexual orientation or gender identity, although it is typically interpreted using the Title VII framework. In recent years, Florida's federal and state courts have refused to extend



the protections of Title VII and the FCRA to sexual orientation claims.

One such claim is pending before the Eleventh Circuit. In *Burrows v. The College of Central Florida*,⁵ the Middle District refused to reconsider its order granting summary judgment on the plaintiff's gender

discrimination claims under Title VII and the FCRA based on the EEOC's decision in *Baldwin*. The court found that the EEOC's decision was persuasive authority, but not controlling. The plaintiff's appeal to the Eleventh Circuit, filed on October 14, 2015, has garnered the attention and support of the EEOC, which filed an amicus brief in January 2016. Lawyers should prepare their clients for increased litigation of these claims.

¹ *EEOC v. Scott Medical Health Center, P.C.*, Case 2:16-cv-00225-CB (W.D. Pa. March 1, 2016) and *EEOC v. Pallet Companies*, Case 1:16-cv-00595-RDB (D. Md. March 1, 2016).

² 490 U.S. 228 (1989)

³ *Id.* at 250.

⁴ 2015 WL 4397641 (EEOC July 15, 2015).

⁵ *Burrows v. Coll. of Cent. Florida*, 2015 WL 5257135 (M.D. Fla. 2015).



Author: Caren Skversky Marlowe - Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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“Don’t sweat the small stuff.” An old axiom that has applicability for the family law practitioner.

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To our clients’ credit, they can work through complicated issues without getting hung up on the small stuff. But sometimes we do have to litigate the minutiae. “We’re a court of equity, but then the appellate court tells me I have done something contrary to the law,” a member of the judiciary once conveyed to me. Personal property and extracurricular activities are two areas that fit the equitable side of the equation — but have consequences in law.

Section 61.075(3)(b), Florida Statutes, requires that distribution of marital assets include written findings of fact as to the “[i]dentification of marital assets, including the valuation of *significant assets* and designation of which spouse will be entitled to each asset.” (Emphasis added.) This can avoid litigation over the pots and pans, but still resolve what

subjectively can be of *significance*. A practical approach to this conundrum is the A/B list. However, in *Shea v. Shea*, 572 So. 2d 558, 559 (Fla. 1st DCA 1990), a portion of the final judgment “requiring the parties to compile a list of unspecified items of personal property to be divided between them, with distribution to made by them on a ‘pick and choose’ basis” was reversed. This “method of distribution may be satisfactory for certain property, such as household goods, where the parties agree.” *Id.* at n.1. As the court stated in *Burroughs v. Burroughs*, 921 So. 2d 802, 804 (Fla. 1st DCA 2006), “the lower court erred in directing the parties to divide their furniture and household items, despite the wife’s request for the trial court to make such division in its judgment of dissolution.”

The “coin flip” may not be coming back in vogue for personal property (that approach created a reversal in *Carlton v. Carlton*, 599 So. 2d 213, 214 (Fla. 1st DCA 1992)) — if you anticipate these items reaching the level of significance without resolution, remember the trial court’s requirements for proper findings



Sometimes it is important to sweat the small stuff.

of facts as to this small stuff.

Extracurricular activities are certainly not minutiae. Extracurricular activities are usually more about who chooses and who pays. A recent Second DCA case added a new dynamic: What if the child does not want to

participate in a particular activity. That seems equitable, but the trial court cannot let that decision fall in the hands of the child. “The law does not gratify the wishes of the children at the expense of the rights of a parent. Were it otherwise, the law would encourage manipulation by both children and parents and foster a breakdown in discipline, neither of which is in the best interests of children.” *Loebs v. Loebs*, 185 So. 3d 721 (Fla. 2d DCA Feb. 19, 2016).

While the trial court’s heart may have been in the right place on a seemingly small issue, the small stuff can lead to a larger breakdown. Sometimes it is

important to sweat the small stuff.



Author:
Matthew W. Wilson, Esq. - Anton Castro Law

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Judge Catherine McEwen of the U.S. Bankruptcy Court led our Bar Leadership Institute members on a tour of the Sam M. Gibbons Federal Courthouse on March 7. The HCBA would like to thank this year's BLI sponsor:



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Given the decision by the USF Health Professions Conferencing Corporation (HPCC) and the USF Center for Advanced Medical Learning and Simulation (CAMLs) to redirect the focus of its programs to fully support efforts toward the relocation of the USF College of Medicine to downtown Tampa, USF HPCC will be terminating the USF Conflict Resolution Collaborative effective May 31, 2016. USF HPCC is grateful to more than twenty years of service by Dr. Gregory Firestone and the Conflict Resolution Collaborative faculty and staff to promote and teach mediation and alternative dispute resolution at USF. Those wishing to contact Dr. Firestone after May 31st may email him at firestoneg@myfloridamediatrix.com.

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ARBITRATION – HERE, THERE AND EVERYWHERE

Mediation & Arbitration Section

Chairs: Benjamin S. Jilek - Bush Ross, P.A.; and Amy Mahan Tamargo - Tamargo Mediation, PLLC



Alternative Dispute Resolution has taken center stage in litigation for many years. More recently arbitration has become a factor in many, if not all, facets of mainstream civil practice. Previously, arbitration played a much lesser role for most practitioners and a major role only for specialty practices. Now, a requirement to arbitrate disputes finds its way into most commerce.

The Revised Florida Arbitration Code, Chapter 682, Florida Statutes, which was enacted in 2013, serves as the guide for most Florida disputes subject to arbitration, with the Federal Arbitration Act governing the balance. The Revised Code significantly updates and revises the prior 1957 version of the code, bringing it into line with the Federal Arbitration Act. Of particular note, *after July 1, 2016, the Revised Code applies to all arbitration agreements, regardless of the date of agreement.*¹

The enforceability of a contractual arbitration provision has long been the subject of litigation. The Revised Code now makes it clear that enforceability of such a term is a matter for courts to decide. Whether the contract as a whole is enforceable is a matter for the

arbitrator to decide. Section 682.02 differentiates the issues explicitly.

Prehearing procedures also have been clarified by the Revised Code. Section 682.06 authorizes the arbitrator to conduct prehearing conferences to determine, among other things, the admissibility of evidence and whether to allow a summary determination of particular issues or the entire matter.

The Revised Code also now offers a parallel to the civil discovery rules, enabling the arbitrator to determine the ability of the parties to conduct discovery and defining discovery limits. Section 682.08 empowers the arbitrator to issue subpoenas for hearing or deposition, including the production of documents. The subpoena can be enforced in any manner permitted for civil actions, and the laws compelling compliance with a subpoena apply the same as in a civil action. All provisions of law that authorize fees for witness attendance also apply and are the same as those provided by statute or rule in a civil action. §§ 682.08(6), (8), Fla. Stat.

Additionally, the Revised Code contains provisions authorizing the arbitrator to award punitive damages and attorney's fees. Section 682.11(1), however, limits this power to assure that punitive



Arbitration has become a factor in many, if not all, facets of mainstream civil practice.

damages only can be awarded where the generally applicable evidentiary standard for such an award is met and that a punitive damages award is supported by specific findings.

One of the most significant changes incorporated in the Revised Code is contained in section 682.11(2).

Whereas, before the change, the award of attorney's fees was vested in Florida courts unless that right was waived by the parties, the Revised Code now places the power to award attorneys fees in the hands of the arbitrator, so long as an award would be allowable under applicable law or by agreement of the parties.

¹ §§682.013(4), Fla. Stat. For a comprehensive review of the history and changes to the code, see "The Revised Florida Arbitration Code,"

by Craig Lewis and Juan Ramirez, Jr., *The Florida Bar Journal*, May 2015.



Authors:
John W. Wilcox - Lash Wilcox & Grace PL and Clark Jordan-Holmes - MediationForFlorida.com

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HILLSBOROUGH COUNTY VETERANS TREATMENT COURT - LEADING THE CHARGE

Military & Veterans Affairs Committee

Chairs: Matthew F. Hall - Hill Ward Henderson; and Colleen O'Brien, Thirteenth Judicial Circuit



The Hillsborough County Veterans Treatment Court ("VTC") has come a long way since its beginning. When the HCBA's Military and Veterans Affairs Committee presented a CLE on the VTC in January 2015, the topic was Administrative Order S-2014-065, which created Criminal Division "V" and expanded the VTC to include non-violent third degree felony offenses, as well as other criminal charges the State Attorney consented to, effective February 1, 2015. At that CLE, MVAC predicted the VTC's expansion would have an immediate impact — and did it ever.

Over the past year, the VTC not only increased the number of defendants in the courtroom, but it expanded its reach throughout the

community and has gained national attention. This includes being selected for the Veterans Treatment Court Enhancement Initiative — a National Institute of Corrections and Center for Court

Innovation joint pilot program aimed at improving outcomes for justice-involved veterans, improving public safety, strengthening communities, and saving taxpayer dollars.

To quickly describe what a veterans treatment court is and what it is not: veterans treatment courts are authorized under section 948.08(7), Florida Statutes. Hillsborough County's VTC is most akin to a high-intensity, no-cost pretrial intervention program, with a whole-community approach. It



VTC Graduate David Wolf poses with Judge Gregory Holder, mentor Jim Fletcher and Marie Marino from the Public Defender's Office.

VTC is a quickly becoming a shining example for the rest of the state and country to follow.

links veterans with the programs, benefits, and services they earned through a coordinated effort among the judiciary, public defender's office, state attorney's office, law enforcement, the Veterans Administration, volunteer veteran

mentors, and veterans service organizations. More than 90 percent of VTC participants complete the program and do not become repeat offenders.

The VTC is NOT a get-out-of-jail-free card for veterans. The VTC requires regular court appearances, mandatory treatment sessions, and frequent substance abuse testing. VTC obligations often are more burdensome and

Continued on page 51

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Mr. Taldone is a certified circuit and county mediator. Admitted to practice law in Florida (1997), New York (1980), New Jersey (1983), and California (1985). Mr. Taldone is licensed in Florida as a health and life (including annuities & variable contracts) agent.

Mr. Taldone is not Florida Board Certified in any area of law.



Continued from page 50

structured than in a traditional pretrial intervention program.

The volunteer veteran mentors are the unique characteristic of the VTC and a key to its success and its outreach to the community. These volunteers offer their time, and often their personal resources, to support and assist the veterans in completing the VTC program. These mentors do not work for the court and receive no financial support, but instead are an avenue of support for the veteran defendant, serving as a shoulder to lean on — and a boot to the backside when necessary. The mentors remain constantly engaged with the veteran defendant between court appearances, and the mentors speak directly with the court at every appearance of their assigned veteran.

When the VTC expanded in early 2015, there were less than 10

mentors — currently there are more than 50 assisting the VTC. These mentors come from all points of our community, including attorneys, concerned citizens, law students, and active duty personnel from MacDill. These mentors often provide personal resources, ensuring their mentee's transportation to appointments, short-term expenses are met, and even ensuring that their mentees families are provided for during holidays. Excitingly, HCBA members recently helped create the non-profit Hillsborough County Veterans Helping Veterans, Inc. to raise and hold funds to assist and offset some of the personal expenses incurred by VTC mentors.

Furthermore, as touched on, the Veterans Treatment Court Enhancement Initiative selected our VTC as one of three courts nationwide for a 21-month pilot

program. During this period, VTC will introduce assessment tools that address the unique needs of offenders who are veterans, many of whom suffer from post-traumatic stress disorder, traumatic brain injury, depression, and substance dependence.

Despite its relative infancy, our VTC is leading the charge and is quickly becoming a shining example for the rest of the state and country to follow.

But if you really want to see the impact VTC is making, stop by Judge Holder's courtroom on a Friday morning at 8:30 when he is conducting his Division V docket in Courtroom 61. We will be there on May 13, June 10, and June 24. It is unlike any docket you have seen in this county.

Author: Matthew F. Hall - Hill, Ward & Henderson, P.A.

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On April 21, 2016, at the Ninth Annual Thirteenth Judicial Circuit Pro Bono Services Awards Ceremony, the following were honored for their outstanding contributions of pro bono legal services for the poor: attorneys Stephen Todd, Harley Herman and Traci Koster; paralegal Joyce Parrish; the law firm of Kynes, Markman & Felman; the Hillsborough County Bar Association Marital and Family Law Section; and the Western Michigan University Cooley Law School Debt Relief Clinic. The award nominations were submitted to the Thirteenth Judicial Circuit Pro Bono Committee, chaired by Rosemary Armstrong. The ceremony was hosted by the Committee, the Bay Area Legal Services' Volunteer Lawyers Program (BAVLP), and the HCBA.

Hillsborough County Bar Association's Jimmy Kynes Pro Bono Service Award

Stephen Todd is a senior assistant county attorney who has practiced law in Florida for more than 25 years. Throughout his long career, Mr. Todd has represented indigent clients, served as a Guardian ad Litem (GAL), mentored younger attorneys, and successfully encouraged his

colleagues to become pro bono attorneys. He has been described by one of his mentees as "the most compassionate person in the legal profession I've ever come across."

Mr. Todd has represented four children in foster care: a baby boy, a young teen girl, and two older teen boys. In addition to being a stalwart supporter for those children in the courtroom, he has been an advocate and consistently positive presence for them outside of the courtroom. He successfully prevented a client from being expelled from school following a school fight with bullies — a challenge for any child much less one without a support system. He provided comfort to a child whose caretaker died. He helped a client with his musical aspirations. After assisting a 17-year-old client draft his life plan, Mr. Todd beamed with pride and remarked, "What a bright future that young man has."

As a GAL, Mr. Todd has devoted an average of 15 hours per month for the last eight years in a myriad of difficult, heart-wrenching cases. In one case, he served as a GAL for seven children

Our legal system today, as in the past, depends upon the public's confidence, and that confidence depends, in turn, upon rights that exist and are enforceable generally — in practice, not just on paper. No one believes that a democracy's legal system can work effectively while reserving its benefits exclusively for those who are more affluent.

— United States Supreme Court Justice Stephen Breyer¹

Mr. Todd also has been influential in encouraging pro bono service within the Hillsborough County Attorney's Office. On his own initiative, Mr. Todd received approval for a County Attorney Intake Night at Bay Area Legal Services. He solicited volunteers to participate, arranged their training, and successfully caused a ripple effect that resulted in substantive legal results for low-income families in Hillsborough County.

in one family; in another, for four teenagers surrounded by conflict between their caretaker and their mother. He has been a calm presence with parents trying to overcome addictions and histories with domestic violence. In addition to his mentorship through the HCBA's Mentor Program, he serves as a Master Guardian ad Litem, a program in which new guardians are assigned to more experienced guardians like himself.

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When asked why he gives his time to provide pro bono legal services, Mr. Todd stated, “I firmly believe it is the obligation of every attorney to serve those who cannot through their own means hire an attorney...I have come to realize that it is the children and their families who bless me and help me to grow both as an attorney and as a person.”

Outstanding Pro Bono Service by a Lawyer

It has been said that **Harley Herman** moves mountains through humble advocacy. He practices in the areas of elder law, estate planning, landlord-tenant, and small business formations and disputes. He began providing pro bono legal services nearly 40 years ago as a law student at the University of Florida (UF) Levin School of Law. By the time he graduated, he had served more than 30 clients.

Since then, Mr. Herman has forged new paths to serve others. He served as the assistant director, and then director, of Marion County Legal Aid, Inc., and drafted the proposal to expand the office’s reach by creating the Withlacoochee Area Legal Services, Inc. He served on the Board of Greater Orlando Area Legal Services, Inc.; as the managing attorney for Legal Services of North Florida, Inc. (Panama City); and as the pro bono coordinator for Central Florida Legal Services, Inc. (Daytona Beach). Additionally, he has served in leadership roles for the Florida Bar, as the chair of the Equal Opportunity Law Section, and through his involvement in Lawyers Helping Lawyers.

Mr. Herman moved his practice to Hillsborough County in 2008 and, even before his office was set up, began volunteering for the BAVLP by assisting low-income clients in foreclosure proceedings, probate matters, real property disputes, and tort litigation. In the last two years alone, he has devoted more than 200 hours to the program.

In addition to those hours, Mr. Herman served as the 2015 president of the Plant City Bar Association; pro bono counsel for his homeowner’s association; an active member of the HCBA’s Real Property, Probate and Trust Law Section and the Diversity Committee; and a contributor to programs run by the George Edgecomb Bar Association and the Tampa Hispanic Bar Association. He has mentored younger Spanish-speaking attorneys in pro bono cases involving Spanish-speaking clients, allowing those attorneys to take on more complex cases. He also recently organized a formal event honoring the UF Levin School of Law’s Cuban Lawyers Program, in which the school assisted Cuban exiles who had been attorneys in Cuba to pass the Florida Bar.

One of Mr. Herman’s nominators noted that if there is an effort where local attorneys are working together to make a difference, Mr. Herman will be there.

Outstanding Pro Bono Service by a Young Lawyer

Traci Koster is a six-year attorney with the law firm of Bush Ross, practicing primarily in the area of civil litigation, including contract disputes, professional liability, residential and commercial

mortgage foreclosures, evictions, and collections. As a result of her pro bono service, Ms. Koster also has established a niche at her firm in handling family law matters, including dissolution of marriage, equitable distribution, child support, and adoptions.

A Stetson Law School alumna, Ms. Koster graduated with honors and received the school’s William F. Blews Pro Bono Service Award. As a lawyer in private practice, and a working mother of two, Ms. Koster has consistently donated her talents to those in need. Ms. Koster accepted one of her first pro bono cases, an adoption matter, in 2012 while she was pregnant with her first child. A stepfather wanted to adopt the little girl he had raised since birth. What began as straightforward, quickly became more complicated when the biological father, who had been absent for four years, contested the adoption. In 2015, while pregnant with her second child, Ms. Koster went to trial. In 2016, when the stepfather received his daughter’s birth certificate naming him as her father, he called Ms. Koster. “The voicemail I received from him that day,” Ms. Koster remarked, “will undoubtedly remain one of the most memorable moments of my legal career. Not only was I able to navigate an often tricky area of the law with no previous experience and prepare for and handle my first trial on my own, I was privileged to achieve a life-changing result for my client and his daughter.”

In addition to her own service, Ms. Koster is a force of nature when it comes to recruiting other pro bono attorneys. As chair of the

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HCBA Young Lawyers Division (YLD) Pro Bono Committee, Ms. Koster assists with organizing the YLD's monthly Family Forms Clinic through the BAVLP and the annual HCBA YLD Pro Bono Luncheon. As co-chair of the Circuit Pro Bono Committee's Medium and Large Law Firm Subcommittee, Ms. Koster co-founded the Tampa Bay Pro Bono Partners, a program that offers networking and business development opportunities by teaming law firm attorneys with in-house counsel to provide pro bono legal services. In its first year alone, 20 pro bono attorneys provided legal services to nonprofit organizations that served low-income residents, victims of domestic violence, children in foster care, and poor tenants in disputes with landlords.

In an article she authored in 2011, Ms. Koster reflected about one of her pro bono cases, "It was then that I realized the power of my law degree and the invaluable ability it gave me to change someone's life in an hour."

Outstanding Pro Bono Service by a Paralegal

Joyce Parrish is an in-house paralegal with Publix Super Markets, Inc. and, as a member of the Tampa Bay Paralegal Association, a devoted volunteer to the local Wills for Heroes program. The Wills for Heroes program provides free legal documents, including wills, living wills, health care directives, and powers of attorney to first responders and their families. Ms. Parrish is consistently the first to arrive to set up the quarterly

events, which are held at the HCBA's Chester H. Ferguson Law Center on a Saturday for five hours. She even brings snacks for the first responders and their families. When the clients arrive, Ms. Parrish quickly puts them at ease with her quiet and friendly demeanor. She does not conclude her day until every client's needs have been met.

Outstanding Pro Bono Service by a Law Firm

The boutique Tampa law firm of **Kynes, Markman & Felman** has long been recognized both locally and nationally for its exemplary legal skill and acumen. Founded in 1991, the firm has consistently provided pro bono legal services to the poor. Recently, under the leadership of named partner James Felman and through the tireless efforts of partner Katherine Yanes, paralegal Christina Barteaux, and law clerk Brandon Breslow, the firm has been at the forefront of Clemency Project 2014, the largest concerted legal pro bono effort in the history of the United States. The project seeks the release of non-violent, low-level federal inmates who have been imprisoned for at least ten years, have demonstrated good conduct in prison, and, if sentenced today, would serve substantially lower sentences. Some of those inmates are serving life sentences; if sentenced today, they would have already served their time and been released.

Through Mr. Felman's leadership as Chair of the ABA Criminal Justice Section, Clemency Project 2014 was created, funded, and administered. When the program was announced, 30,000 inmates applied for legal assistance.

To date, the firm has devoted thousands of hours to the project and handled well over 200 cases. Each case requires communicating with the federal inmates, obtaining court and Bureau of Prisons records, reviewing the factual and legal circumstances to determine eligibility, drafting an Executive Summary to the project and, if approved, drafting a lengthy Petition for Commutation. In addition to the time and effort the firm has spent on its own clemency cases, it has devoted countless hours and resources to assisting the project in prescreening cases, developing training programs, streamlining procedures, and fielding specific questions from the project's approximately 2,000 volunteer attorneys.

Outstanding Pro Bono Service by an Organization

The members of the **HCBA Marital and Family Law Section** handle pro bono cases, including adoption, divorce, and domestic violence, as a matter of course. In 2015, in collaboration with Bay Area Legal Services (BALS), it formally launched an initiative to address the growing need of pro se family law litigants in need of legal representation. The judges, lawyers, and other legal professional who make up the Marital and Family Law Section pooled their efforts in order to seek out and train pro bono attorneys. On April 10, 2015, after eight months of planning and collaborating with BALS, the Section provided a free family law training seminar in exchange for attendees' pledges to take on a pro bono family law case. In addition

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to receiving free training, materials, and CLE credit, attendees were assigned volunteer family law attorney mentors. The Section thereafter expanded its reach when a videotaped version of the training was made available on a statewide website. To date, more than 50 attorneys across the state have agreed to assist impoverished family law litigants, with the effort ongoing.

Special Recognition for Outstanding Pro Bono Service

WMU Cooley Law School Debt Relief Clinic

In 2015, the **WMU Cooley Law School Debt Relief Clinic** devoted 1,376 hours of student intern time to serving those plagued by financial difficulties. Since its inception in 2015, the clinic has contributed a total of 5,423 hours to the indigent. Notably, in recent years, the United States Bankruptcy Court for the Middle District of Florida has consistently ranked at the top of the country in terms of pro se litigants. Through the clinic, clients obtain substantive legal advice and assistance in the areas of the Florida Consumer Collections Act, the federal Fair Debt Collection Practices Act, the Florida Fair Lending Act, Florida garnishment law, and various contractual and tort claims. The clinic focuses on alternative dispute resolution and pre-litigation resolutions. In addition to the legal services it provides to the poor, the clinic teaches the students a valuable consumer skill set, while inculcating in those future lawyers the culture of pro bono service that is so important in our profession.

The Thirteenth Judicial Circuit Pro Bono Committee commends the extraordinary service of the 2016 award recipients.

Gold Letter Recipients

- Rosemary Armstrong
- Lisa M. Beggs
- Adam S. Bild
- E. Kelly Bittick
- Fredrique “Dika” B. Boire
- Nicholas A. Brown
- Robert G. Cochran
- Kamala E. “Kami” Corbett
- Lawrence J. Dougherty
- Jillian L. Estes
- James E. Felman
- Leonard H. Gilbert
- Frederick J. Grady
- Elizabeth L. Hapner
- C. David Harper
- Harley Herman
- Meghan N. Highfield
- George B. Howell, III
- David T. Knight
- Traci L. Koster
- Joseph H. Lang, Jr.
- William J. Malachowski
- Timothy C. Martin
- Kathleen S. McLeroy
- A.J. “Stan” Musial, Jr.
- Victoria Oguntoye
- Edward J. Page
- Jo Ann Palchak
- Brett Rahall
- Jennifer G. Roeper
- Michael G. Rothfeldt
- Thomas P. Scarritt, Jr.
- Isabel “Cissy” Boza Sevelin
- Ella A. Shenhav
- Patrick W. Skelton
- Michael K. Stuckey
- Stephen M. Todd
- Miriam Velez Valkenburg
- Sylvia H. Walbolt
- James M. Walls
- Dirk R. Weed
- Nicholas E. Williams
- Mamie Wise
- Katherine E. Yanes

**Lapel Pin Recipients
20-49 hrs.**

- Jolyon D. Acosta
- T. Bennett Acuff

- Michael D. Addison
- Deborah K. Adles
- Junior Ambeau
- Stephanie E. Ambros
- Michael D. Annis
- Radha V. Bachman
- Amy L. Bandow
- Bernard L. Barton, Jr.
- George C. Bedell, III
- Dane R. Blunt
- Robyn A. Bonivich
- Mark A. Brown
- Anja R. Buehner
- Karen M. Buesing
- O. Kim Byrd
- Patricia S. Calhoun
- Lauren E. Catoe
- Amanda G. Chafin
- Marina A. Choundas
- Jeanne L. Coleman
- Matthew J. Conigliaro
- Louis T. M. Conti
- Adam B. Cordover
- Chris S. Coutroulis
- G. Thomas Curran, Jr.
- Amy Denton Harris
- Wendy J. DePaul
- Katelyn M. Desrosier
- Cherelle M. Douglas
- Michelle R. Drab
- Hemal Dubal
- Nicole D. Duga
- Jarred D. Duke
- Zarra R. Elias
- Salem E. Elswick
- William Keith Fendrick
- Megan E. Flatt
- Claudette Fornuto
- Helen B. Fouse
- Jaret J. Fuente
- Laura M. Gallo
- Brannon R. Gary
- Helene Karen Gatto
- Lisa G. Gilleland
- Al Gomez
- Patricia Gomez
- Lily McCarty Gonzalez
- Christopher L. Griffin

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Matthew F. Hall
 W. Craig Hall
 Caycee D. Hampton
 Barbara A. Hart
 Marcos E. Hasbun
 Kevin Tyler Hill
 John R. Hittel
 Laura H. Howard
 Jessica L. Hoyer
 Tyler J. Hudson
 Suzanna M. Johnson
 Cathy A. Kamm
 Cristin C. Keane
 Kristin R. Kirkner
 Robert J. Kline
 Jennifer Lada
 Sara Lawson
 Edgel C. Lester, Jr.
 Jack A. Levine
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 Eliane I. Probasco
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 Sunjay D. Trehan
 Joseph H. Varner, III
 Brian V. Vavra
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 Joshua P. Welsh
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50-99 hrs.

Jacqueline Ambrose Root
 Stephen J. Bagge
 Michael R. Barnett
 Erica G. Bartimmo
 Donald R. Bly
 Noel R. Boeke
 Jason W. Brant
 Michael G. Califano
 Victoria Cruz-Garcia
 L. Carina Cutter
 Jonathan Z. DeSantis
 Fentrice D. Driskell
 Richard D. Eckhard
 Stephen L. Evans
 Scott D. Feather
 Linda L. Fleming
 Michelle Garcia Gilbert
 Rachael L. Greenstein
 Katherine L. Heckert
 Donald E. Hemke
 Benjamin H. Hill, III

Carol L. Hinds
 Stacey L. Hudon
 Joryn Jenkins
 Dominic Kouffman
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 Nathaniel M. Lacktman
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 Sarah Lahlou-Amine
 John J. Lamoureux
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 Anne C. McAdams
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 Stephanie M. Miles
 Kevin J. Napper
 Anthony J. Palermo
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 Rinky S. Parwani
 Kathryn E. Peluso
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 James R. Wiley
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¹ "The Legal Profession and Public Service," The Pierre Hotel, New York, NY (September 12, 2000).

Author: Rachel May Zysk - The Suarez Law Firm



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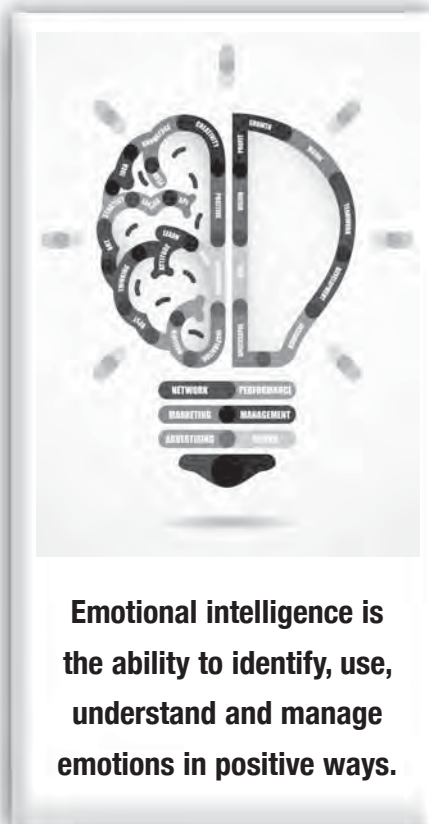
Professionalism — something we seem to hear about more and more, but experience less and less. Not just in the legal profession, but all around us. (Read: this year’s presidential debates and the commentary surrounding the debates). Professionalism should not just serve as a buzzword tossed around at seminars and meetings. Every lawyer should strive to exemplify professionalism as a cornerstone of his or her practice and career.

Because life is hectic, tempers can shorten, and we are surrounded with so many poor examples of appropriate behavior, it may be worthwhile to take a few minutes and think about your own level of professionalism. How do you connect with others? In what ways can you improve? One way to assess these matters is by evaluating your “emotional intelligence.” Emotional intelligence (also known as emotional quotient) is the ability to identify, use, understand, and manage emotions in positive ways to relieve stress, communicate effectively, empathize with others, overcome challenges, and defuse conflict.¹ The concept of emotional intelligence gained popularity in recent decades through the work of psychologist and author Daniel

Goleman, Ph.D. Statistics reflect that individuals with high emotional intelligence outperform others and excel in many areas of their life.

Emotional Intelligence divides into four quadrants. The first is self-awareness: taking stock of your weaknesses and strengths, body, emotions and health awareness. The second is self-management: taking action to manage stress, emotions, and one’s own body and mind. The third quadrant is social awareness: awareness of those around you, intuition, and, most importantly, empathy. Finally, the fourth is relationship management: one’s ability to establish empathetic and emotional connections, manage conflict, inspire, lead, and influence others. Clearly, this type of assessment and attention to your emotional intelligence could serve every member of the Bar, not only in your practice, but also in your daily life.

There are several books and online resources on the topic of emotional intelligence. The Florida Bar’s Henry Latimer Center for Professionalism hosts a web page with many resources and reference tools that promote and report



Emotional intelligence is the ability to identify, use, understand and manage emotions in positive ways.

professionalism activities throughout the state. The site includes a link to the FIU Law Library (<http://libguides.law.fiu.edu>) where you can read additional articles and take a short test to measure your emotional intelligence quotient (“What’s Your EQ? Test”).

Self-reflection generally encourages improvement. Completing this short

analysis and exploring this topic a little further may assist in your daily routine as you combat stress, resolve conflicts, counsel others, and remember to take time for your own health and peace of mind. All of these factors — self-awareness, self-management, social awareness, and relationship management — ultimately relate to one’s professionalism and, in turn, overall success.

¹ Emotional Intelligence. (2016, Feb. 5). Retrieved from <http://libguides.law.fiu.edu/c.php?g=433857&p=2958019>.



Author: Hon. Judge Frances M. Perrone - Thirteenth Judicial Circuit

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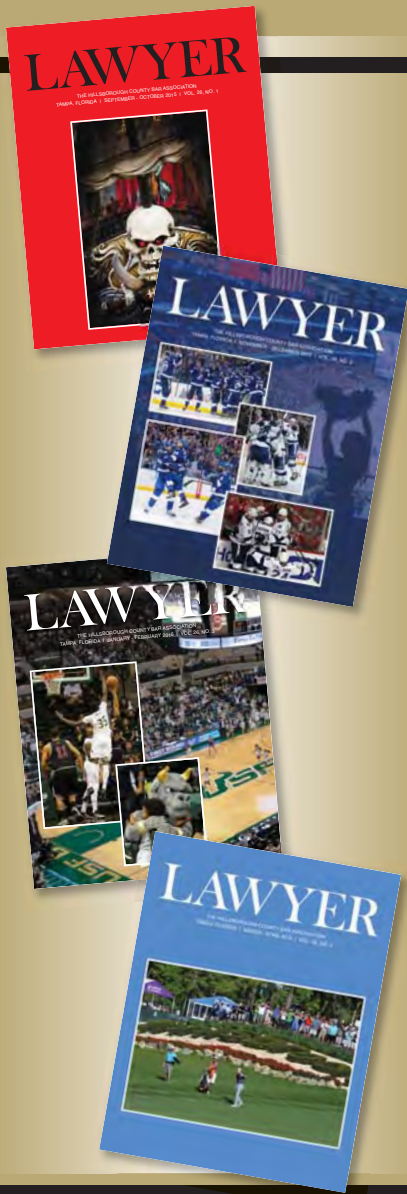
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In January, the Second District Court of Appeal, in *Robert Rauschenberg Foundation v. Grutman*, 2016 WL 56456 (Fla. 2d DCA Jan. 06, 2016), upheld an award of \$24.6 million in trustees' fees to three individual trustees who administered the estate of the artist Robert Rauschenberg. Before his death, Rauschenberg established a revocable trust whose sole remainder beneficiary was the Robert Rauschenberg Foundation. The trustees were three long-time friends and business associates. Following Rauschenberg's death on Captiva Island in 2008, the trustees managed his considerable estate. According to the Rauschenberg Foundation, the trustees were only entitled to \$375,000 in fees based on the lodestar method.

In the absence of a specific fee schedule in the trust agreement, section 736.0708(1), Florida Statutes (2007), provided that a trustee is "entitled to compensation that is reasonable under the circumstances." The Florida Supreme Court set forth 11 factors to determine reasonable trustee compensation in *West Coast Hospital Association v. Florida National Bank of Jacksonville*, 100 So. 2d 807 (Fla. 1958). However,

30 years later, in *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), the Florida Supreme Court adopted the lodestar method to establish "objectivity and uniformity in court-determined reasonable attorney fees," and subsequently applied the lodestar method to contested attorney and personal representative fees in probate actions in *In re Estate of Platt*, 586 So. 2d 328 (Fla. 1991). The lodestar method typically results in lower trustee fees for trusts with significant assets. However, the trustees argued that the *West Coast* factors should apply, which allowed the court to consider, among other factors, the amount of capital and income received and disbursed, the nature of their exceptional work, and the value they created for the estate. During their four-year tenure, the trustees more than tripled the value of the Rauschenberg collection, from \$600 million to \$2.2 billion. In affirming the \$24.6 million award and application of the *West Coast* factors, the Second District noted that the passage of the trustee compensation statute occurred 15 years after *Platt*. They also stated it relied on the legislative history of section 736.0708(1), specifically, a Senate Staff Analyses



**In the Second District,
the lodestar method
does not apply in
determining reasonable
compensation
for trustees.**

directing consideration of the *West Coast* factors.

Rauschenberg Foundation, 2016 WL 56456, at *2.

In practice, corporate trustees abide by fee schedules published by their respective institutions, based on the value of assets under management or services to be provided. Individual trustees often negotiate payment equal to

or slightly less than the prevailing corporate trustee rates. In the absence of a fee agreement, trustees can seek a judicially determined fee, and any interested party may contest the reasonableness of such fee. In seeking or contesting trustee fees, practitioners should review the trial court's order in *Rauschenberg*, which provides a three-page analysis applying the *West Coast* factors. (See *In re The Estate of Rauschenberg*, No. 08-CP-2479 (Fla. Lee Cty. Cir. Ct. Aug. 1, 2014)).

In sum, despite the prevalence of the billable hour in our legal world, in the Second District, the lodestar method does not apply in

determining reasonable compensation for trustees.



Author: Lauren A. Taylor - Shutts and Bowen, LLP

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DELAWARE CHANCERY ADDRESSES SHAREHOLDER INSPECTION RIGHTS

Securities Law Section

Chairs: Dominique Heller - Wland Guerra King; and Daniel P. Dietrich - Burr & Forman



Lawyers involved in shareholder litigation should take note of a February decision of the Delaware Court of Chancery on a potential derivative action plaintiff's right to presuit discovery through a demand to inspect corporate books and records. *Amalgamated Bank v. Yahoo! Inc.*¹ says a lot about the inspection right, but litigators might want to focus on its holdings (1) requiring production of emails and other documents of outside directors and (2) conditioning production of documents on their incorporation by reference into any derivative action complaint. The decision is relevant to Delaware corporations and, because Florida often looks to Delaware corporate law, Florida corporations as well.

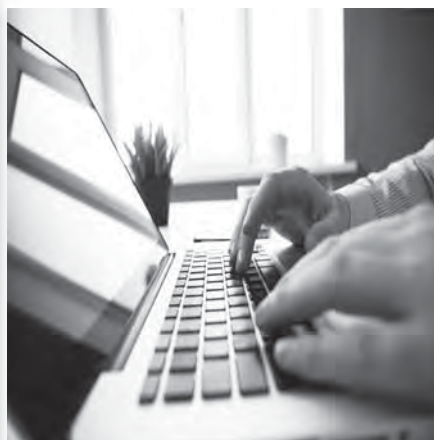
In *Amalgamated Bank*, a shareholder bothered by the rich severance paid to a short-term executive made a demand to inspect Yahoo's books and records. Delaware law, like Florida law, permits a shareholder to inspect corporate books and records upon a showing of a "proper purpose" and compliance with form and manner requirements.² The court held that the desire to ferret out breaches of fiduciary duty by Yahoo's board in the executive's hiring and firing was a proper purpose and addressed the scope of and conditions to be

imposed upon the shareholder's inspection.

Non-employee directors. Amalgamated Bank sought notes and emails created by Yahoo!'s board, including its non-employee directors. Because shareholder inspection is narrower than civil discovery, one might not

expect it to extend that far as a matter of course.³ Relying exclusively on cases involving civil discovery, however, the court declared that it "has the power to order production of corporate documents held by directors." Although the court limited the production to documents held by the members of Yahoo's compensation committee — and not the board as a whole — that was a matter of setting a reasonable scope. The implication of the court's reasoning is that documents in the personal files and email accounts of outside directors are on the table in an inspection action when related to the shareholder's proper purpose.

Incorporation. The court also imposed a first-of-its-kind condition on inspection: It required Amalgamated Bank to agree that all of Yahoo's production would be incorporated by reference in any derivative complaint it filed. It



The implication of the court's reasoning is that documents in the personal files and email accounts of outside directors are on the table.

reasoned that this would permit a court to consider the documents so incorporated on a motion to dismiss, and as a result, it would limit the shareholder's ability to mischaracterize their contents or urge unreasonable inferences from them. And requiring that *all* of Yahoo's production be incorporated would prevent

the shareholder from "cherry-picking" documents it liked without regard to context.

These two aspects of *Amalgamated Bank* are plainly important to the nuts-and-bolts of shareholder litigation. The lengthy decision covers many other matters related to the inspection right and is well worth a close read.

¹ 132 A. 3d 752 (Del. Ch. 2016).

² Compare DEL. CODE ANN. tit. 8, § 220(b)(1), (c) (2015) with § 607.1602(2) (d), (3), Fla. Stat. (2015).

³ See *In re Lululemon Athletica Inc. 220 Litig.*, 2015 WL 1957196, at *5 (Del. Ch. Apr. 30, 2015).



Author:
Judge Samuel J. Salaris, Jr. -
Second District
Court of Appeal



Recently, the Florida Supreme Court added more than one hundred Professionalism Expectations to the Standards of Professionalism governing the conduct of Florida lawyers.¹ These new Professional Expectations establish higher levels of commitment to equal justice under the law and to the public good; honest and effective communication; and an adherence to the fundamental sense of honor, integrity, and fair play. The Professionalism Expectations also call for fair and efficient administration of justice; decorum and courtesy; and respect for the time and commitments of others. Finally, these new expectations state that a lawyer is duty-bound “to exercise independent judgment in practice and while giving the client advice and counsel.”²

These Professionalism Expectations are not entirely new. They replace the extremely similar Ideals and Goals of Professionalism, which were aspirational guidelines adopted by the Florida Bar’s Board of Governors in 1990.³ In fact, these expectations resulted from a pairing of existing professionalism guides with new technological

concepts.⁴ They were approved by the Board of Governors in 2015 and adopted by the Florida Supreme Court in 2016.⁵

The background for these recent developments began in 2013 with the Florida Supreme Court opinion, *In re Resolving Professionalism Complaints*.⁶ There, Justice R. Fred Lewis, writing for the court, stated, “Members of the Florida Bar shall not engage in unprofessional conduct.” Unprofessional conduct means substantial or repeated violations of the Standards of Professionalism. These standards include the Oath of Admission to the Florida Bar, the Florida Bar Creed of Professionalism, and the Florida Bar Ideals and Goals of Professionalism, which have now been replaced by the Professional Expectations.⁷

The intentions are clear. The Florida Supreme Court means business. Even the titles of the two documents are instructive. The Ideals and Goals of Professionalism were guidelines that Florida lawyers should follow in ideal situations. Now, the Professionalism Expectations describe what is expected of Florida lawyers in all situations. The message from the



Professionalism Expectations remind Florida lawyers of their duty to adhere to a fundamental sense of honor, integrity, and fair play.

Florida Supreme Court is strong: the court will no longer tolerate unprofessional conduct.

The addition of more than 100 highly detailed Professionalism Expectations can be concerning for those in the legal profession, for they seem a large task to learn, much less follow. But the principles established in

the Professional Expectations are based, in part, on the Florida Rules of Professional Conduct.⁸ And the guidance of the Professionalism Expectations comes from both “the ethical duties established by the Florida Supreme Court in the Rules Regulating the Florida Bar and long-standing customs of fair, civil, and honorable legal practice in Florida.”⁹

This distinction is best explained in the Preamble: Where a Professionalism Expectation is based upon a lawyer’s ethical duty as found in the Florida Rules of Professional Conduct, “the expectation is stated as an imperative, cast in the terms of ‘must’ or ‘must not.’” But where

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a Professionalism Expectation is drawn from a professional custom, “the expectation is stated as a recommendation of correct action, cast in terms of ‘should’ or ‘should not.’”¹⁰

Professionalism Expectations remind Florida lawyers of their duty to adhere to a fundamental sense of honor, integrity, and fair play. They can be found at www.floridabar.org/tfb/TFBProfess.nsf.

¹ *In re: Amendments to the Code for Resolving Professionalism Complaints*, No. SC15-944 (Fla. Feb. 2, 2016).

² *The Florida Bar Professionalism Expectations* (January 30, 2015), available at [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/1ACF11084FDADAA285257DE7006B5511/\\$FILE/Professionalism%20Expectations.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/1ACF11084FDADAA285257DE7006B5511/$FILE/Professionalism%20Expectations.pdf?OpenElement) [“Professionalism Expectations”].

³ *The Florida Bar Ideals and Goals of Professionalism*, (May 16, 1990), available at [https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/F25F0275EE5AC973852571C6006F039F/\\$FILE/3IdealsAndGoals.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/F25F0275EE5AC973852571C6006F039F/$FILE/3IdealsAndGoals.pdf?OpenElement).

⁴ *Professionalism Expectations*.

⁵ *In re Amendments to the Code for Resolving Professionalism Complaints*, No. SC15-944 (Fla. Feb. 2, 2016).

⁶ *In re Code for Resolving Professionalism Complaints*, 116 So. 3d 280, 282 (Fla. 2013).

⁷ *Id.*

⁸ *Rules Regulating the Florida Bar, Chapter 4* (2013).

⁹ *Professionalism Expectations*.

¹⁰ *Id.*

Author: Thomas Newcomb Hyde - Attorney at Law



YLD QUARTERLY LUNCHEON

YLD Quarterly's Luncheon on February 24 was on a fun and informational topic: fantasy sports league gambling. Brett Metcalf, Esq. and Sam Harden, Esq. of Metcalf Harden, P.A. both spoke on the issue. The YLD would like to thank its luncheon sponsor:



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NEW ERA IN CYBERCRIME: DOJ AND CHINA REACH AGREEMENT

Trial & Litigation Section

Chair: John Schifino - Burr & Forman



The United States and China reached a preliminary agreement on guidelines for requesting assistance on cybercrime and other malicious online activities during high-level meetings in Washington in December between U.S. Attorney General Loretta Lynch, U.S. Department of Homeland Security Secretary Jeh Johnson, and Chinese Public Security Minister Guo Shengkun. The Justice Department said that in addition to the agreement, China and the U.S. will conduct exercises this spring that contemplate several scenarios designed to improve understanding of response and cooperation expectations. Additional talks are scheduled for June and follow a landmark agreement between the two countries reached in September 2015.

The agreement reached in early December is deemed significant for establishing “acceptable” cyber espionage norms. It also marks an ongoing effort to repair bilateral relations between the countries after China withdrew from a working group last year, in response to the U.S. indictment of five members

of the Chinese military on charges that they hacked U.S. companies.

China’s Ministry of Public Security said December’s agreement would have a major impact on the implementation of Internet security measures, adding that the two sides resolved to maintain “open discussion” on the issue. The Minister’s statement did not mention a report from China’s official news

agency on the hacking of sensitive personnel records of people holding U.S. security clearances at the Office of Personnel Management last year. China said that hacking was criminal and not state-sponsored. Multiple people have been arrested in that case, which compromised data of more than 22 million federal workers. Unnamed sources at the Justice Department have said publically they believed the hacking was Chinese government-sponsored.

China and the U.S. have robust economic ties that were worth \$590 billion in trade last year alone. However, cybersecurity breaches have long marred those relations.



In September 2015, the countries brokered an agreement during Chinese President Xi Jinping’s official state visit to Washington. That agreement included a pledge that neither country would knowingly conduct hacking for commercial advantage. However, the agreement also underscored the countries’ longstanding but unspoken agreement

that hacking in the pursuit of “traditional” espionage purposes is acceptable, while infiltrating *private* sector computer systems for economic gain should be prohibited.

Though experts who follow China’s commitment to limit its hacking have so far given mixed reviews, some observers have noticed a recent slowdown in hacking activity. But U.S. Counter-intelligence Chief Bill Evanina recently issued a statement in which he said he had seen no indication that China’s hacking behavior had changed. Additionally, shortly after the state visit by China’s president,

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several U.S.-based cybersecurity defense firms released reports that suggested several U.S. companies claimed attempted hacks connected to the Chinese government in the weeks following that visit.

China — plus Russia and Iran — are among the United States’ most prolific and sophisticated hacking adversaries. During the December talks between the countries, China and the United States agreed that neither government will conduct or knowingly support cyber-enabled theft of intellectual property, including trade secrets or other confidential business information, with the intent of providing competitive advantages to companies or commercial sectors. U.S. Department of Justice officials are “cautiously optimistic,” but wary of the agreement, while Chinese officials have publically stated that this “new consensus” on the issue could mean economic growth for both countries, not more contention. While it remains to be seen if Chinese hacking activity will, in fact, decrease, U.S. officials have commented off the record that the ongoing talks suggest the Chinese government is willing to address a very serious issue. They also commented they are optimistic that compromise and a real plan for both countries can be

implemented to address the issue going forward.

Author:
Kevin Napper -
Carlton Fields



REAL PROPERTY, PROBATE & TRUST LAW SECTION LUNCHEON

The RPPTL Section on March 10 hosted David Barrow who presented an interesting workshop discussing “Ferocious Probate Issues.” Thanks to Suncoast Trust & Investment Services for sponsoring this luncheon.



LONGSHORE, JONES ACT OR STATE BENEFITS, AN EXPOSURE CASE

Workers' Compensation Section

Chairs: Anthony V. Cortese - Anthony V. Cortese, Attorney at Law; and Irene M. Rodriguez - Irene M. Rodriguez, PA



In an exposure claim with unusual facts under the Longshore Act, a pro se claimant won medical and indemnity benefits due to cataracts for exposure to bright light at work. *Touunkara v. Glacier Fish*, 2012-LHC-00474 (Feb. 9, 2015).

In *Touunkara*, the claimant was hired to work on equipment that was going to be installed on the *Pacific Glacier*. Although he was not offered a contract to be part of the crew, the employer typically had its crewmembers work on the ship while it was on land or in dry-dock being repaired. In this case, the ship was in dry-dock undergoing extensive repairs.

The claimant worked from July 21, 2008 until May 19, 2009 as a welder's assistant, where part of the time he served on "fire watch" for welders. Later, he was offered a job as a crewmember working on fishing missions and in the shipyard. In February 2010, while waiting for a flight to Alaska to work on another fishing ship for the company, he was detained as an illegal immigrant for two months in an immigrant detention center. After he was released, he realized he had vision problems, so he saw

an eye doctor and was told that he had cataracts in both eyes and that the cataracts could have been caused by or contributed to by working as a welder's assistant.

The claimant filed a claim under the Longshore and Harbor Workers' Compensation Act, because he was originally hired to work in ship repair. The employer contended that there was inadequate proof that the injury had been caused by exposure to light as a welder's assistant. The employer also responded that he was actually a member of the crew and only entitled to Jones Act benefits, which under the circumstances were much less money and more limited medical care. Jones Act and Longshore Act coverage are mutually exclusive.

The Administrative Law Judge noted that under the Longshore Act, an injury is compensable if the employment causes, aggravates, accelerates, or contributes to the injury and found that the cataracts were caused by or contributed to by work before May 19, 2009. The Administrative Law Judge held because the claimant was originally



**Coverage is broad
in an exposure case
under the Longshore Act.**

hired as a worker on land, for a ship in dry-dock, the claimant was a Longshoreman from July 21, 2008 until May 19, 2009, which was an injurious exposure.

In many situations, the claimant would wish to pursue a Jones Act

claim, but here there was no negligence to support a third-party claim. Even though the claimant was hired to work on equipment on land, and even though he was later to become a crewmember of the ship, he was entitled to Longshore Act benefits, which under these specific circumstances were much better than the alternative.

This illustrates that coverage is broad in an exposure case under the Longshore Act. If a Longshore exposure causes or contributes to the injury, the Longshore employer could be responsible for the entire injury. Jones Act exposure or exposure elsewhere does not cut off Longshore compensability. Similar results would apply in hearing loss, chemical exposure, and repetitive trauma cases.

*Author: Anthony V. Cortese, Esq. –
Anthony V. Cortese, Attorney At Law*

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Attorneys from the Lawyer Referral & Information Service once again got up before dawn to start answering phones as part of Fox 13's Ask-A-Lawyer program. We appreciate all those who volunteered to take calls in February and March!

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Kemi Oguntebi
Patricia Palma
Rinky Parwani
Susan Renne
Lawrence Samaha
William Schwarz
Chip Waller
Robert Walton



Steven M. Berman - The law firm of **Shumaker, Loop & Kendrick, LLP** is pleased to announce that Tampa partner Steven M. Berman was a guest lecturer at the University of Florida College of Law Advanced Bankruptcy Seminar on January 28. Steve spoke about Intellectual Property Claims in Bankruptcy.

Zachary J. Chauhan - **Trenam Law** is pleased to announce that Zachary J. Chauhan joined the firm as an associate and will practice in the Real Estate and Lending Transactions group.

Ronald Cohn - Ronald Cohn of **Burr Forman, LLP** participated as a panelist at the Information Management Network's 6th Annual Bank & Financial Institutions Special Assets Forum held at the Ritz Carlton in Fort Lauderdale.

Katherine (Katie) Cole - **Hill Ward Henderson** has elected Katherine Cole as a shareholder.

Meredith S. Delcamp - **Buchanan Ingersoll & Rooney** is pleased to announce that Meredith S. Delcamp has been promoted to shareholder.

Andrew J. Fruit - **Shumaker, Loop & Kendrick, LLP**, is pleased to announce that Andrew J. Fruit has joined the firm as a partner in the Corporate Practice.

Jerry M. Gewirtz - Jerry M. Gewirtz, chief assistant city attorney for the City of Tampa, has been reappointed by the United States District Court to serve an additional term as a member of the Lawyer Advisory Committee on Rules for the Middle District of Florida.

Mike Hancock - Mike Hancock of **Hancock Injury Attorneys** has been elected president of the Carrollwood Bar Association.

John W. Heilman - John W. Heilman has been elevated from associate to shareholder at **Marshall Dennehey Warner Coleman & Goggin**.

Lauren V. Humphries - Lauren V. Humphries of **Banker Lopez Gassler, P.A.** was recently published in the *Trial Advocate Quarterly* for her article "Daimler: A Litigator's Roadmap to Personal Jurisdiction."

Maja Lacevic - **Trenam Law** is pleased to announce that Maja Lacevic joined the firm as an associate. Lacevic has experience representing a wide variety of participants in the health care industry, including insurers, physicians, and medical practices in a wide range of litigation and administrative proceedings.

Rhea F. Law - Rhea Law, chair of the Florida offices for **Buchanan Ingersoll & Rooney** and a long-time member of the Board of Directors for the Tampa Bay Partnership, has been named to the Executive and Legislative Committees of the organization.

Craig Mayfield - **Bradley Arant** is pleased to announce that R. Craig Mayfield has joined the firm's Tampa office as partner. Mayfield will practice in Bradley Arant's Litigation and Product Liability areas.

Dennis McClelland - Dennis McClelland has been named

managing partner of the **Phelps Dunbar** Tampa office.

Megan Flynn McAteer - **Buchanan Ingersoll & Rooney** is pleased to announce that Megan Flynn McAteer has been promoted to senior attorney.

Dennis M. McClelland - Dennis M. McClelland, a labor and employment partner in **Phelps Dunbar's** Tampa office, served as editor-in-chief of the newly published Third Edition of *The Fair Labor Standards Act*, a nationally recognized legal treatise published by the American Bar Association's Section of Labor and Employment Law and Bloomberg BNA.

Patrick J. McNamara - **de la Parte & Gilbert, P.A.** is pleased to announce that Patrick J. McNamara has been elected as the firm's president and managing partner.

Kimberly A. Mello - Kimberly A. Mello, a shareholder in the Appellate Practice based in the Tampa office of **Greenberg Traurig, P.A.**, has been elected vice president of the Humane Society of Tampa Bay. Mello will serve for a three-year term beginning in 2016.

Lindsay A. Moczynski - **Givens Givens Sparks** is pleased to have hired attorney Lindsay A. Moczynski to its Tampa family law team. Moczynski's concentration on advocacy in law school, combined with an aptitude for case law, has resulted in successful outcomes in countless cases.

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- Teresa P. Williams, P.A.
- Zuckerman Spaeder LLP

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Judicial Luncheon Discusses Federal & State Courts

The Judicial CLE Luncheon on March 9 featured Judge Susan C. Bucklew, Judge Charlene Edwards Honeywell, Judge James S. Moody, Jr. and Judge James D. Whittemore, who discussed the differences and similarities between our federal and state courts. Topics included case management practices, differences in summary judgment procedures, and the federal judicial hierarchy.



Continued from page 72

Patrick Mosley - Hill Ward Henderson has elected Patrick Mosley as a shareholder.

Woodrow H. "Woody" Pollack - Woodrow H. "Woody" Pollack, shareholder in **GrayRobinson's** Tampa law office and a member of the Intellectual Property & Technology Practice Group, has been appointed co-chair of the Business Law Section of the St. Petersburg Bar Association for the 2016 term.

Jerilyn Reed - Hill Ward Henderson has elected Jerilyn Reed as a shareholder.

Mindi M. Richter - The law firm of **Shumaker, Loop & Kendrick, LLP** is pleased to announce that Tampa partner Mindi M. Richter spoke to the Florida Public Relations Association (FPRA), Polk County Chapter, on media and intellectual property law issues on February 17 in Lakeland.

Reed L. Russell - Reed L. Russell, a labor and employment partner in the Tampa office of **Phelps Dunbar**, is serving on the Board of Editors of the newly published Third Edition of *The Fair Labor Standards Act*, a nationally recognized legal treatise published

by the American Bar Association's Section of Labor and Employment Law and Bloomberg BNA. Russell has served on the Board of Editors for the treatise and its annual supplements for the past 14 years and co-authored chapters on collective actions, overtime and retaliation.

Cynthia Sass - Cynthia Sass of the **Law Offices of Cynthia N. Sass, P.A.** participated in two presentations this year regarding website compliance with the Americans with Disabilities Act (ADA). This has become a hot topic in the industry due to multiple lawsuits against well-known corporations.

Bill Schifino - Tampa office managing partner of **Burr & Forman LLP** and Florida Bar president-elect Bill Schifino spoke at the Dade County Bar Association's Bench and Bar Conference in Miami on February 26.

Robert A. Shimberg - Robert A. Shimberg, a shareholder with **Hill Ward Henderson**, was recently appointed by Tampa Mayor Bob Buckhorn to serve on the Tampa Police Citizens Review Board.

Joshua S. Smith - Buchanan Ingersoll & Rooney is pleased to

announce that Joshua S. Smith has been promoted to shareholder.

Ashley E. Trehan - Ashley E. Trehan of **Buchanan Ingersoll & Rooney** has been promoted to counsel.

Tami A. Trimming - The Barnes Trial Group is pleased to announce its newest associate, attorney Tami A. Trimming. Trimming began her legal career representing insurance companies, but quickly realized her true passion was helping injured people. Since then, she has been representing victims of personal injury and wrongful death.

Robert R. Warchola - Tampa partner Robert R. Warchola of **Shumaker, Loop & Kendrick, LLP** has been elected to the Board of Governors of the St. Petersburg Area Chamber of Commerce.

Rose K. Wilson - Buchanan Ingersoll & Rooney is pleased to announce that Rose K. Wilson has been promoted to shareholder.

Gregory C. Yadley - Tampa partner Gregory C. Yadley of **Shumaker, Loop & Kendrick** served as principal chair of the 34th Annual Federal Securities Institute, held at the Four Seasons Hotel in Miami on February 4-5.



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JURY TRIAL INFORMATION

For the month of October 2015

Judge: Hon. Rex Barbas

Parties: Christina Brown v. Madison & Angela Sroufe

Attorneys: For plaintiff: Christopher Boyd, Esquire

Nature of case: Tried on Defendant's Motion to Enforce Settlement, to determine if a settlement was reached in pre-suit

Verdict: Hung jury after five hours of deliberation

For the month of November 2015

Judge: Hon. Richard A. Nielsen

Parties: Dominga Garcia v. Hillsborough Area Regional Transit Authority

Attorneys: For plaintiff: Gil Sanchez Valencia; For defendant:

Michael H. Rosen

Nature of case: Personal injury; plaintiff sought \$491,148 for injuries to back and neck

Verdict: Net verdict \$6,900 based upon finding that plaintiff was 90 percent negligent

For the month of February 2016

Judge: Hon. Mark Wolfe

Parties: Willie G. Johnson v. City of Tampa

Attorneys: For plaintiff: Frank Currie, Thomas O'Malley, and Michael Addison; For defendant: Kristin Serafin Ottinger and Toyin Aina-Hargrett

Nature of case: Bicyclist sustained trimalleolar fracture resulting in emergency ankle surgery and claimed damages, inclusive of

permanent injury, as a result of a collision with City vehicle.

Verdict: Complete defense verdict. Court reserved jurisdiction as to fees and costs.

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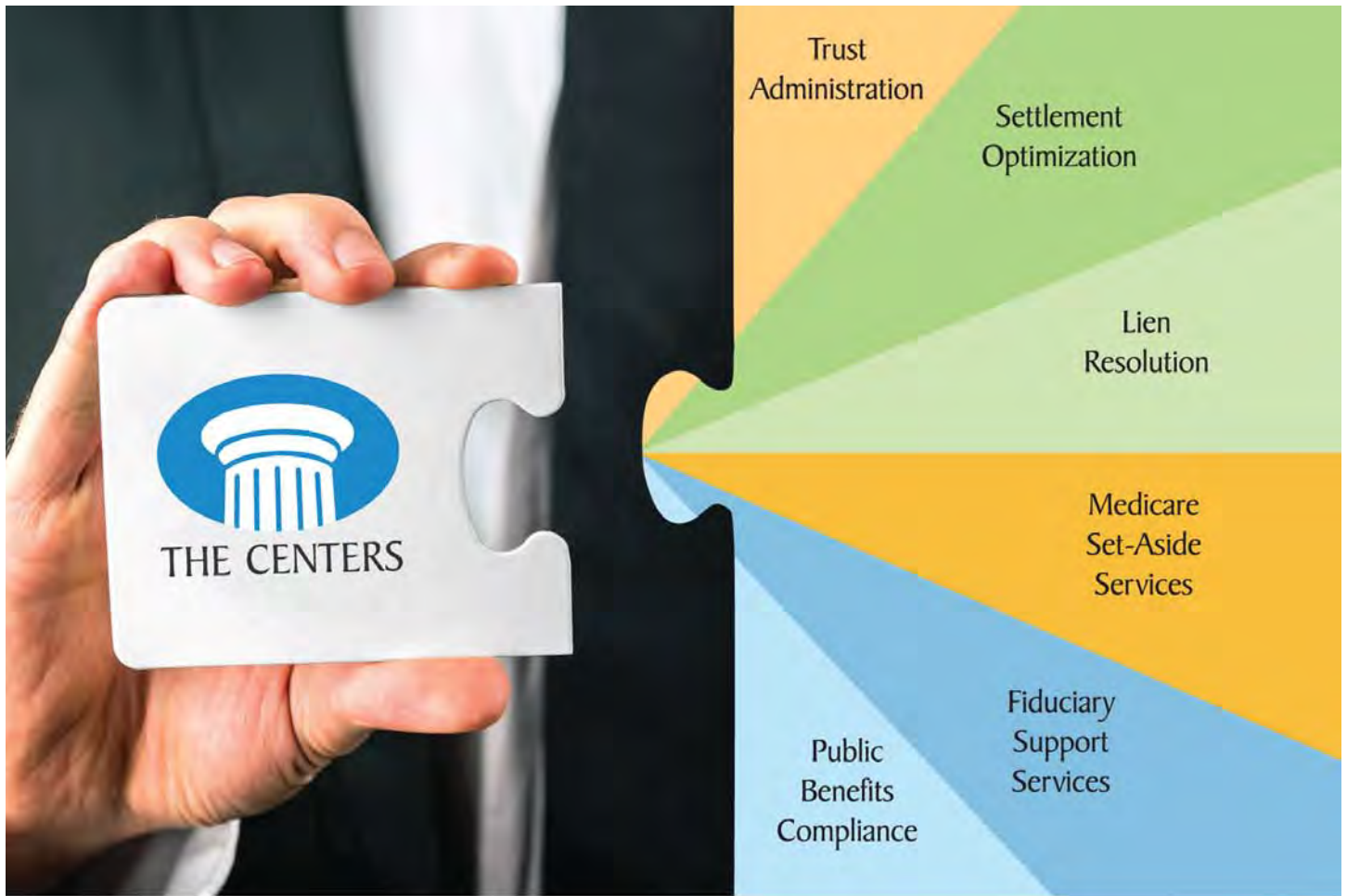
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