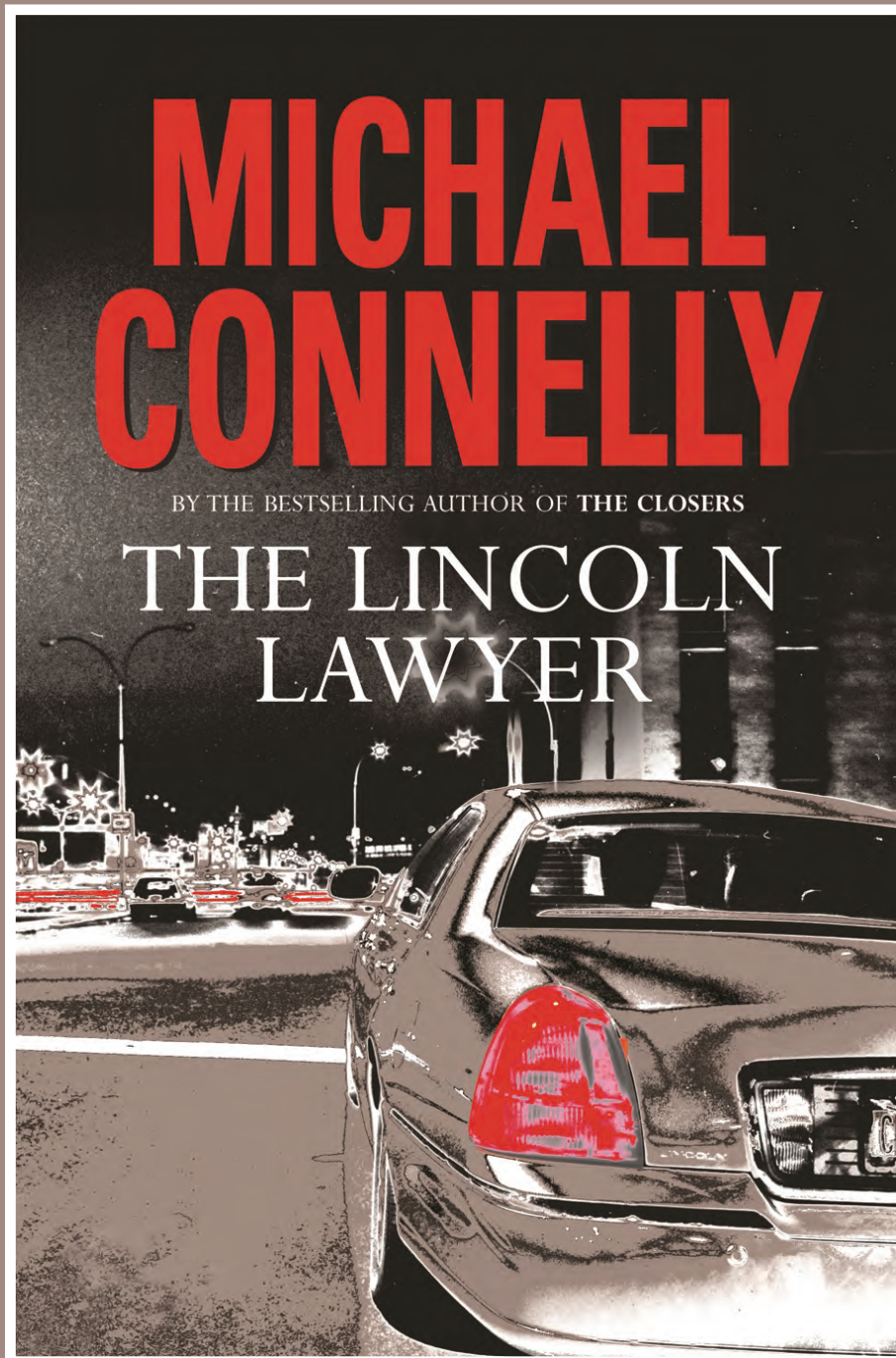


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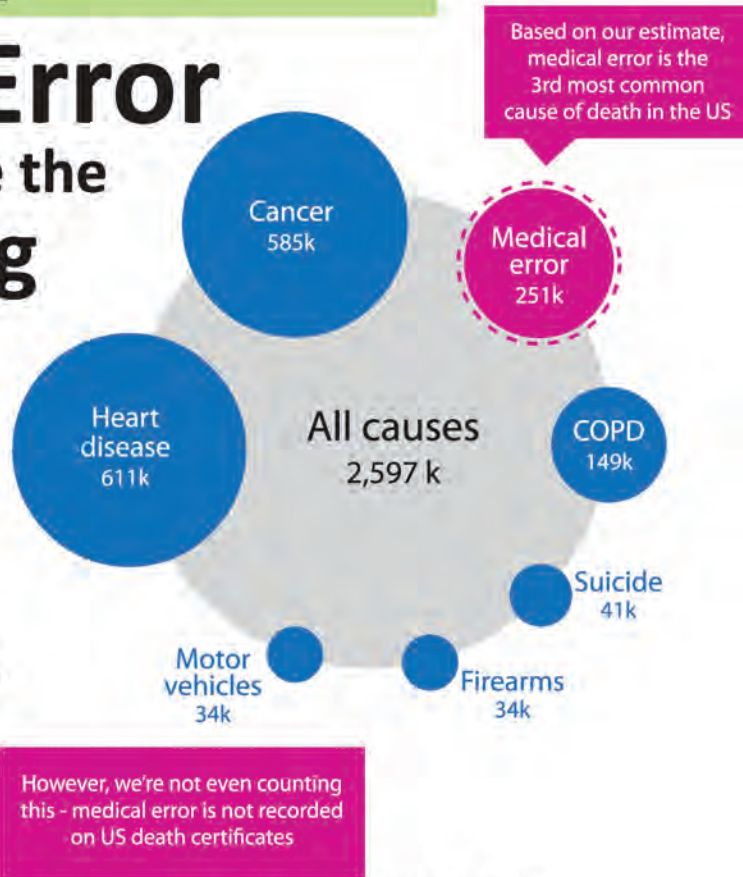


Fig 1 Most common causes of death in the United States, 2013²

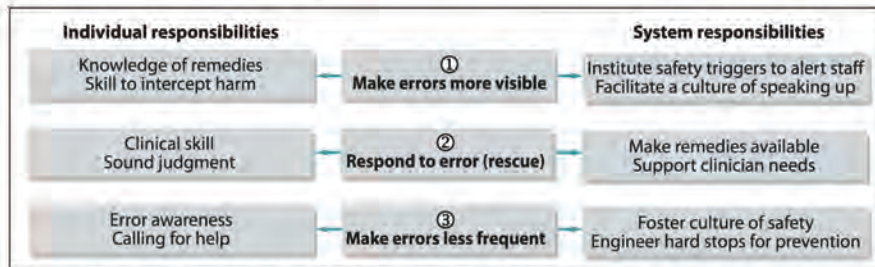


Fig 2 Model for reducing patient harm from individual and system errors in healthcare

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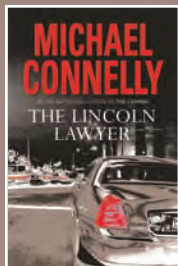
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ABOUT THE COVER

Continuing with our theme of highlighting famous legal literary works, this issue we are featuring the cover of Michael Connelly's number #1 best-selling novel "The Lincoln Lawyer." Published in 2005, the story follows the story of Mickey Haller, who is a Lincoln Lawyer, a criminal defense attorney who operates out of the backseat of his Lincoln Town Car in Los Angeles. "The Lincoln Lawyer" was released as a feature film in March 2011, starring Matthew McConaughey. Connelly is a local resident, splitting his time between Tampa and California.

Cover image is from "The Lincoln Lawyer," by Michael Connelly, The Orion Publishing Group, London. Copyright 2005.

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The Way Things Used to Be

Reading this issue of the *Lawyer* made me appreciate the impact David Rowland and others like him have on our Bar.

Well, I think I have officially become an old man. No, I haven't started hitting the "Early Bird" special at the local buffet for dinner. And I haven't started telling my daughters about how I used to walk to school uphill in the snow *both ways* (although I will tell them that once they are old enough to appreciate it). But the other day, during a conversation with a colleague, I uttered the words, "That's not the way things were when we were growing up..." I was thinking about that as I sat down to edit this issue of the *Lawyer*.

On page 10 is a touching tribute to Dallas Albritton, who passed away in October. I hope you'll read it. I didn't know Mr. Albritton personally, but his life story is a fascinating one. As the tribute makes clear, Mr. Albritton's life was one dedicated to the service of others. But one thing that stood out to me, other than Mr. Albritton's commitment to pro bono service, was the emphasis he placed on mentoring. In particular, I was struck by how Mr. Albritton became, in the tribute's words, "father confessor to the Bar," going to lunch with, befriending, and providing hard truths to troubled lawyers — without judging them. Reading the tribute, I couldn't help but get that "things aren't the way they used to be feeling," although that surely wasn't the point of the tribute (and I'm not quite Mr. Albritton's generation).

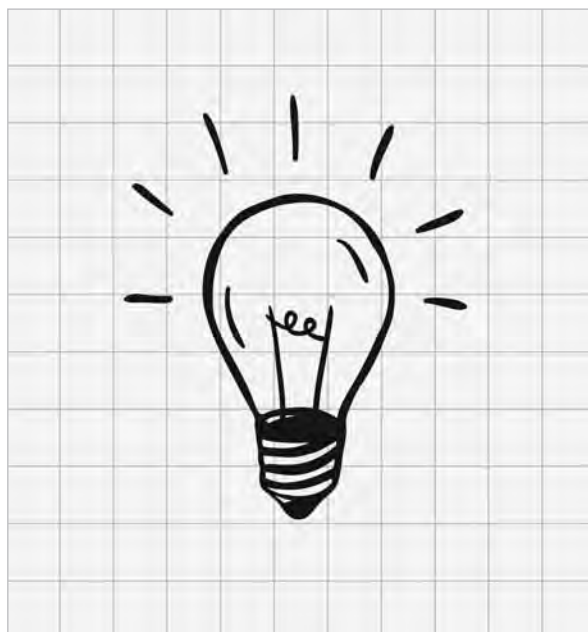
But as I read further, I came across Judge Frances Perrone's article on page 54 commending David

Rowland, general counsel at the Thirteenth Judicial Circuit, for receiving the Thirteenth Judicial Circuit's third annual professionalism award. In extolling the virtues that led to Mr. Rowland receiving the award, which recognizes consistent honesty, integrity, fairness, courtesy, and an abiding sense of responsibility to comply with the standards and rules of professionalism in the practice of law, Judge Perrone noted that Mr.

Rowland has served as a mentor to dozens of new lawyers. Perhaps more importantly, Judge Perrone noted that Mr. Rowland possesses traits young lawyers would do well to emulate: he's knowledgeable, thorough, a hard worker, humble, diplomatic, and has a kind manner. Colleen O'Brien, a staff attorney at the Thirteenth Judicial Circuit, commented that Mr. Rowland's counsel is "sought out as the gold standard."

Reading the tribute to Mr. Albritton and Judge Perrone's article got me to thinking about the "that's not the way things used to be"

mindset. I've always thought that people who think that way, myself included, tend to idealize the past. But it occurred to me that maybe the issue isn't idealizing the past, but failing to appreciate the present. I have no doubt Dallas Albritton was one of a kind. But there is David Rowland and others committed to public service and mentoring their colleagues. Reading this issue of the *Lawyer* made me appreciate the impact Mr. Rowland and others like him have on our Bar today. Perhaps things are the way they used to be.





All Rise, To Defend the Judiciary

Having highly qualified and experienced judges is essential to a well-functioning justice system.



One of the best parts of serving as president of the HCBA is the opportunity to participate in the investiture ceremonies of our newly appointed or elected judges. Since taking office, I have had the privilege of speaking at the investitures of a Second District Court of Appeal judge, a federal magistrate judge, and a county court judge. The coming months will be equally busy as our two newest circuit judges and a county judge formally take the bench. It is always inspiring to watch as colleagues, friends, and families have the opportunity to fete the new judge's accomplishments. Without exception, I have been very impressed with both the legal accomplishments and quality of character of these judges. I am also thankful that these highly accomplished individuals are willing to give up successful, and often lucrative,

practices to answer the call of public service. This fact makes recent efforts by certain state legislators to impose term limits on the judiciary all the more disconcerting.

In a recent speech to the Florida House of Representatives, newly elected speaker, Richard Corcoran, who happens to be a lawyer, made it clear that imposing term limits on our judges was very high on his priority list. Using incendiary language that our judges put "power over principle" and fail to "respect the constitution and separation of powers," Speaker Corcoran received a

standing ovation from most of the room. As a trial lawyer, I have had the pleasure of representing clients all over Florida, and I can say without equivocation that Speaker Corcoran's assessment of our judges is completely off base, especially here in Hillsborough County. While arguments can be made in favor of term limits for our legislators, those same



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arguments simply do not translate to the judiciary because the judiciary is not a representative body, but a group of highly trained professionals tasked with aiding our citizens in dispute resolution. Having highly qualified and experienced judges is essential to a well-functioning justice system.

I had the opportunity to discuss this issue with Chris Altenbernd, recently retired from the Second DCA. Altenbernd is regarded as one of the most respected legal minds in Florida, and I found his thoughts particularly illuminating, especially with regard to the appellate bench. He said, "Appellate courts need to attract a diverse group of our best and brightest legal minds. At least a third of the new judges need to be highly qualified lawyers in their mid-40s who commit to becoming experienced professional judges who can provide continuity and depth to the judicial system. The refusal of the legislature to assure reasonable pay increases to judges over the last decade has already reduced the pool of these applicants. A system that forced them to retire

in their mid-to-late 50s would guarantee that the pool would dry up."

Ask yourself, what qualified candidate for the bench would leave their practice knowing that in 12 years they will have to return and start all over? I suggest that the answer would be "not many."

Judges' hands are often tied by the Code of Judicial Conduct when it comes to advocating for themselves. Therefore, it is incumbent on us as lawyers to stand up for the judiciary. It is imperative that we educate our friends and neighbors about the importance of an autonomous judicial branch. It is critical that we let our legislators know that this is a solution in search of a problem, and that the plan will have a terrible impact on our citizens who need our court system to be well-funded and our judges to be well-qualified.

You may recall several years ago that heavily funded, out-of-state interests were actively trying to interfere with our independent judiciary by influencing the outcome of the merit retention votes of three Supreme Court Justices. The HCBA and our members were at the forefront of that fight. This issue is no less important. All rise.

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It Is Not Too Late to Get Involved with the YLD

Connect with the YLD through social media and online.



Although the HCBA Bar Year is halfway through, there is still time to get involved with the Young Lawyers Division (YLD). If you have not yet made it to an event or you want to find out about the next one, please connect with us one of the following ways:

- Facebook: www.facebook.com/Hillsboroughbaryld
- Website: www.hillsbar.com/group/YLD
- Instagram: <http://instagram.com/hcbatampabayld>

Also, if you are a member of the YLD, you will receive notice of our events via e-mail. If you are interested in a specific event or committee, you also may contact the YLD Board liaisons or YLD committee chairs that are responsible for putting on certain events. The committees, their main events, and contacts are as follows:

Professionalism & Ethics Committee: Responsible for planning, coordinating, and overseeing all professionalism or ethics-related continuing education, programming, and projects sponsored by the YLD.

Projects/Events: State Court Trial Seminar and Bar Exam Proctors. *Board Liaisons:* Traci Koster (traci@nelsonlg.com) and Drew McCulloch (drew@mccullochlaw.com). *Committee Chairs:* Don Greiwe (dgreiwe@dgfirm.com) and Harold Holder (hholder@bushross.com).

Law-Related Education & Law Week Committee: Responsible for organizing and implementing various projects and events regarding law-related education and participation in Law Week activities. *Projects/Events:* Law Week (Classroom Speakers, Mock Trials and Courthouse Tours) and the Judge Robert Simms High School Mock Trial Competition. *Board Liaisons:* Maja Lacevic (mlacevic@trenam.com), Amy Nath (anath@shrinenet.org), and Alex Palermo (apalermo@burr.com). *Committee Chairs:* Stephanie Generotti (stephanie.generotti@csklegal.com) and Dane Heptner (dane@usalaw.com).

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Member Services Committee: Responsible for developing and monitoring programs to promote active membership in the YLD, and for delivering services to existing YLD members. *Projects/Events:* Judicial Pig Roast/Food Festival, Coffee at the Courthouse, mentoring programs, Paddle Boarding Wellness Event, and the Judicial Shadowing Program. *Board Liaisons:* Adam Fernandez (afernandez@clarkmartino.com) and Colleen O'Brien (obrience@fljud13.org). *Committee Chairs:* Tom Curran (tcurran@slk-law.com), Yolyvee Gordon (ygordon@bushross.com), and Lyndsey Siara (siaralk@fljud13.org).

Events Committee: Responsible for planning, coordinating, and overseeing all YLD social events, member events, sports events, and functions, including sponsorship and fundraising for these events. *Projects/Events:* Happy Hours, Quarterly Luncheons, Golf Tournament, and Cornhole for a Cause. *Board Liaisons:* Jason Whittemore (jason@wagnerlaw.com) and Jeff Wilcox (jwilcox@hwlaw.com). *Committee Chairs:* Zachary Bayne (zbayne@allendell.com) and Andrew Smith (andrew.w.smith@jpmorgan.com).

Youth Projects Committee: Responsible for planning, coordinating, and overseeing all youth-related activities and events sponsored by the YLD, including sponsorship and fundraising. *Projects/Events:* Steak & Sports Day and Holidays in the New Year. *Board Liaisons:* Brett Metcalf (brett@metcalfharden.com) and Melissa Mora (melissa.mora@ahss.org). *Committee Chairs:* Ty Lindsey (tlindsey@northstar-bank.com) and Tiffany McElheran (tmcelheran@bushross.com).

Pro Bono Committee: Responsible for coordinating and staffing pro bono projects and activities of the YLD. The committee also provides a liaison with Bay Area Legal Services. *Projects/Events:* iLawyer, Attorney ad Litem Program, Family Forms Clinic, and Wills for Heroes. *Board Liaisons:* Katelyn Desrosiers (kdesrosiers@butler.legal) and Laura Tanner (ltanner@burr.com). *Committee Chairs:* Robyn Bonivich (robyn@crlawtampa.com) and Melissa Gonzalez (mng@fllegalgroup.com).

You also may contact me personally at wmelton@bushross.com. We look forward to seeing you at an event soon.



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20th Annual Bench Bar Conference: Unique Programming, Speakers Continue to Make Event Something Special

In November 1997, head coach Tony Dungy was leading the Buccaneers to a 10-6 season and a trip to the NFL playoffs for the first time in 15 years; Dick Greco was into his third term as Tampa's mayor; and the Tampa Bay Devil Rays named Larry Rothschild as the club's first manager.

Meanwhile, for the HCBA, November 1997 marked a historical milestone as well, as that was the date of the HCBA's first Bench Bar Conference & Judicial Reception, which was attended by 200 attorneys and judges.

Fast forward 20 years to this past November, when the HCBA celebrated the 20th anniversary of what is now one of the HCBA's signature events.

This year, more than 600 HCBA members participated in the Bench Bar Conference, Membership Luncheon, and Judicial Reception, held at the downtown Hilton.

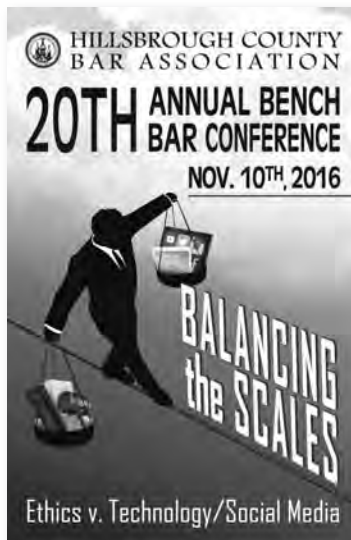
"It's great the Bench Bar Conference has continued for 20 years and has grown the way it has," said Tom Elligett, who served as HCBA president in 1997.

Elligett, with the Buell & Elligett firm, credits the foresight of his predecessor as HCBA president, Emmy Acton, and the work of Judicial Liaison Committee co-chairs, Robert Warchola and Jennie Tarr, for the success of the first Bench Bar Conference.

"For many attorneys, it was really the first time you could talk to a judge outside of the courtroom in a social setting," Warchola told me recently.

"You had the opportunity to see the judges in a different light," said Warchola, an attorney with Shumaker Loop & Kendrick.

"To this day, being able to listen to judges and to learn about their preferences in the courtroom is invaluable," he added.



Tarr, who works in the Hillsborough County Attorney's office, said, at the time, other Bar associations around the country had begun having similar conferences, and the HCBA leadership thought the time was right to have its own event.

"It was a unique opportunity to reach out to the judiciary, and we were pleased they wholeheartedly embraced it," Tarr said.

* * *

The theme of this year's Bench Bar Conference was "Balancing the Scales: Ethics v. Technology/Social Media."

Thirteenth Circuit Judge Samantha Ward was chair of the HCBA's Bench Bar Committee this year. She and the other dedicated committee members worked for months planning the conference agenda.

"We try each year to develop a theme each year that is relevant, interesting, and still unique ... while providing as much interaction between the judiciary and attorneys as possible," Ward said.

In the morning, there were three breakout sessions focusing on effective advocacy and the practical uses and challenges of social media evidence.

And there was the always popular session with Stetson law professor Michael Allen, who focused on recent U.S. Supreme Court decisions.

In the afternoon, there was a series of breakout sessions featuring a "View Towards the Bench" with more than 40 judges representing the Thirteenth Judicial Circuit, Florida Second District Court of Appeal, and various federal courts.

The sessions enabled attorneys to share their concerns with judges in order to improve communication and professionalism.

Continued on page 9

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Later, there was a well-attended session featuring a panel of past jurors who shared their experiences as jurors and offered insight about the civil and criminal jury experience.

The luncheon keynote speaker was Florida Supreme Court Justice Charles Canady.

Justice Canady told the attendees "significant changes" are coming to the Supreme Court in the next few years, as four of its seven members will reach the mandatory retirement age of 70 years old.

"[The court] will be a different institution," Justice Canady said, referring to the upcoming appointments to the court.

"Ultimately, our profession exists to benefit the public ... We give life to the rule of law, which is the greatest blessing our nation can have," Canady said.

Also at the luncheon, Thirteenth Judicial Circuit Chief Judge Ron Ficarrotta presented the circuit's Third Annual Professionalism Award to David Rowland, who has served as the circuit's general counsel for more than 20 years (see article on page 54).

At the end of the day, hundreds of HCBA members and dozens of judges gathered at the annual Judicial Reception.

Current HCBA President Kevin McLaughlin says the Bench Bar Conference has become such a success because of the support of the judiciary, as well as all the event sponsors, especially longtime Diamond Sponsor, Steve Yerrid and the Yerrid Law Firm.

"The Bench Bar Conference is one of the HCBA's signature events," McLaughlin said, "and it is truly emblematic of the unparalleled support, cooperation and camaraderie between our members and the local judiciary."

See you around the Chet.

First Annual Bench Bar Conference in 1997 (top) and 20th Annual Bench Bar Conference in 2016 (bottom)



Farewell to the Dean of the Bar

Dallas was a true public servant who dedicated a lifetime to the service of others.

Dallas Albritton, one of the great Tampa lawyers of the late 20th century, died on October 1, 2016, at his home in Tampa. He was 88. He practiced law in Tampa until he was 86. Many luminaries of the Bar defined the political force of late 20th century Tampa lawyers, but Dallas Albritton defined their political soul.

In his life, Dallas tried countless cases and counseled countless clients, drawing on a professional and personal grace, unassuming intelligence, humility, and good humor that made it all look easy. Dallas was gifted with an ability to be present and dedicated to any moment spent with another person. Dallas wore his country's uniform, he counseled his clients in their affairs, and he served his fellow lawyers until the day he died.

Early Years

Dallas was the first of three sons of Grace Pratt Albritton, a schoolteacher, and Arthur Dallas Albritton Sr., a builder. He was born in Jacksonville and spent some of his youth in Quincy until his family moved to Tallahassee. Tallahassee in the 1930s and early 1940s was a vibrant collection of




businessmen, lobbyists, and politicians, and even as a boy, Dallas was captivated with government and how it worked.

The year before Dallas entered high school, America went to war. Anticipating he would end up in combat, Dallas convinced his parents to let him prepare for it at the Sewanee Military Academy in Tennessee, where every morning began with a service for Academy graduates who had recently fallen in the war. High school boys in 1944 could reasonably believe World War II would rage into the 1950s.

Dallas' boyhood military training would impact Dallas throughout his entire life. Judge E.J. Salcines,

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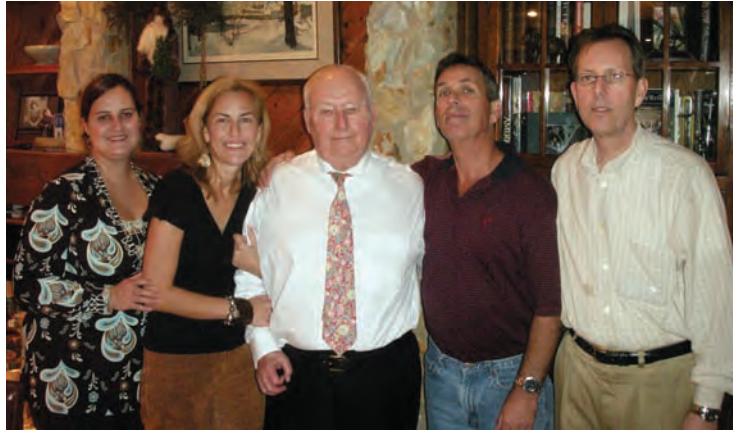
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who graduated from Riverside Military Academy in Georgia, recalls that even after both had been lawyers for years, upon meeting each other in the street, each would perform a quick military inspection of the other's military bearing and appearance. Many lawyers remember Dallas' admonition that

lawyers should look the part — suits, long-sleeved white shirts and ties, and laced-up shoes shined to a high gloss.

Of course, WWII ended in 1945, the year before Dallas graduated, and the Army had enough GIs. Rather than immediately enlisting, Dallas entered Stetson University in Deland as a freshman. A year later — 1948 — the Florida College for Women became coeducational and was renamed Florida State University. Dallas transferred from Stetson to FSU, intending to become a psychiatrist.

The atmosphere at FSU was electric. America had a strong sense of purpose, and Dallas' classmates displayed a powerful impulse to public service. At FSU, Dallas overlapped with Sandy D'Alamberte, Reubin Askew, and others who went on to lifelong public service careers. Dallas stood out for his voracious intellectual curiosity,



(L to R): Dallas and his four children – Rachel Lunsford, Laura Albritton, Dallas Albritton, Gary Albritton, Brian Albritton

he was brilliant. The fraternity needed his grade point average to raise its average. Dallas agreed to join, persuaded other smart students to join, got the fraternity off academic probation, and was elected president in his senior year.

While at FSU, Dallas saw many of his classmates — combat veterans returning from WWII — attend college under the newly enacted GI bill, which was passed to repay and assimilate returning soldiers. Dallas saw firsthand how good government could directly contribute to the greatest peacetime expansion in the country's history. As a result, Dallas abandoned his plan to become a psychiatrist and decided to take a different direction.

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During his time at FSU, Dallas had tasted politics as campaign manager for the successful student body presidential run of his classmate, future Florida Governor Askew. Feeling the strong pull of public service, Dallas decided to remain at FSU to earn his master's degree in public administration, a masters he believed would help him act on his calling to dedicate his life to the public affairs of his community.

After FSU, armed with his bachelor's and master's degrees, Dallas joined the United States Air Force, where he served as a lieutenant from 1951-53. Dallas was charged with providing logistical support for the new Air Force that was being created from the old Army Air Corps, whose bombers and fighter planes had helped win WWII. Dallas applied his two degrees to help the Air Force understand its manpower and administrative needs during this transition.

After his honorable discharge in 1953, Dallas entered Yale Law School. This was unprecedented for a small town Florida boy from Tallahassee. But Dallas' classmates at Yale recognized his first order intellect from the start. Dallas' Yale Law School class included men and women who became partners at silk-stocking Northeast law firms, titans of industry, and national politicians. The late U.S. Senator and former elected District Attorney of Philadelphia Arlen Specter counted Dallas as one of his closest friends, and they maintained that friendship over a lifetime.

Respect for All

Yale at the time was one of the few law schools to accept women. Dallas was always proud of Yale for this and was known over his lifetime as a mentor to his female colleagues at the Bar.

Tampa lawyer Lynn Cole, only the third woman hired into the United States Attorney's Office for the Middle District of Florida, often sought Dallas' counsel. Dallas encouraged Lynn to think outside the box as an Assistant United States Attorney and to expand into her community, even though at the time there were many fewer practicing women lawyers. Lynn took that advice and over the years came to rely on Dallas for his honest opinion and honest criticism.

Rosemary Armstrong, attorney and executive director of Crossroads for Florida Kids, likewise recalls Dallas' willingness to consider all perspectives when she, as a young lawyer, served on the HCBA Long Term Planning Committee that Dallas chaired over thirty years ago. Even

decades ago, there was nothing chauvinistic or condescending about him. Rosemary recalls Dallas treating everyone with equal respect and dignity, regardless of who it was or where they came from.

Dallas' daughter and long-time law partner, Rachel Albritton Lunsford, herself a prominent trusts and estates lawyer, remembers her father encouraging her to dedicate herself to her clients, no matter how small their case. Rachel recalls her father treating his clients with equal love, affection, and respect, no matter their background. To this day, Rachel credits her success to the way her father taught her to treat her clients and other lawyers.

Returning Home to Florida

When Dallas graduated from Yale Law School in 1956, many of his classmates encouraged him to join them in the silk-stocking New York law firms they intended to join. His Yale classmates felt Dallas' intellect would be wasted in a backwater like Florida. But during Dallas' senior year at Yale, two Tampa lawyers, C.J.Hardy and Truett Ott, a well-known personal injury trial lawyer with whom Dallas had served at MacDill Air Force Base, asked Dallas to join them in their two-man Tampa law firm. Hardy had been an Army sergeant in World War II and Ott a colonel in the United States Air Force Reserves, who later went on to be a state senator and a Second District Court of Appeals judge. Hardy and Ott needed a utility man, and hoped Dallas would agree.

Dallas asked a law school professor what he should do. The professor, whose name is lost to this story, disagreed with Dallas' Yale classmates who thought he should stay in the Northeast. This professor told Dallas to go back home and make a difference in his community. And that is what he did.

Immediately upon joining Hardy & Ott, Dallas began to immerse himself in city and state civic activities, especially in what was then known as the Tampa Hillsborough Bar Association. Dallas also served as a part-time assistant county solicitor for the criminal court of record, prosecuting criminal cases for County Solicitor Paul B. Johnson. This was before the Florida legislature provided for full-time state attorneys. Over the years, Dallas would take on countless pro bono clients who received the same level of service as Dallas' paying clients.

Not long after Dallas joined Hardy & Ott, Terrell Sessums joined the firm as an associate, with Dallas as his principal mentor. Terrell, with Dallas' encouragement, would go on to win an election to the Florida House

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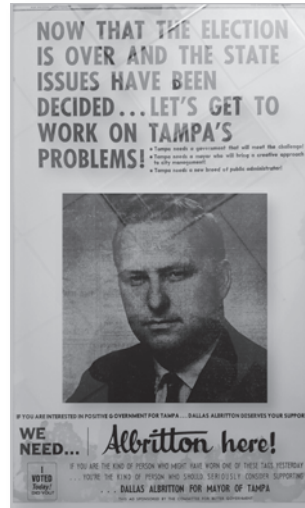
of Representatives, where he eventually became speaker of the house. This was only the first political campaign Dallas would work for in his life. He would also work for Governor Askew's gubernatorial campaign, as well as the presidential campaigns of Jimmy Carter and Bill Clinton.

Dean of the Bar

Judge Salcines recalls that during his early years at the Bar, Dallas was a driving force encouraging young lawyers to join the local bar association. Dallas was becoming one of a cadre of lawyers' lawyers who promoted the necessity of professionalism and mentoring within the Bar. Eventually, in 1965, he became president of the Hillsborough County Bar Association.

Over the years Dallas would be instrumental in the conception and execution of what came to be the Chester Ferguson Law Center. Judge Salcines recalls Dallas patiently but persistently advocating for a permanent location where lawyers could meet and socialize. As Dallas had originally conceived it, the building would not just be a place where lawyers could meet. It would also have a hotel and restaurant for out-of-town lawyers who, when they came to Tampa for a case, would have a place to stay and to eat and to socialize with other lawyers. At the time, the Tampa Hillsborough County Bar Association had no permanent office and was managed pro bono by attorney Joe Miyares, who acted as its secretary. Once a month, lawyers would go to Mr. Miyares's office and pay their dues.

During the early days of Dallas' time at the Bar, lawyers would have morning gatherings in the atrium of the "new" air-conditioned courthouse on Pierce and Madison Streets. Judge Salcines recalls that, before this courthouse was completed, judges did not wear robes for summertime cases and presided over cases tried by lawyers in short-sleeved shirts and ties. During those morning gatherings, young lawyers — you could tell who they were because they had the cleanest and most unscarred briefcases — mingled with more experienced lawyers who would share stories of trials and hearings.



These stories recounted crazy events, courtroom mistakes, and errors in judgment. Dallas had a vision throughout his professional life of a formal place where lawyers could meet and share these experiences and, he hoped, help each other avoid errors in judgment in the first instance.

Dallas often recollected that when he moved to town, there were only about 600 lawyers in Hillsborough County. One of the more senior lawyers would take a newcomer around and make introductions. Dallas believed that the slow erosion of that sort of mentoring and the anonymity of practice he observed in his later years contributed to the lack of civility among attorneys, just as he thought lawyer advertising contributed to a lack of respect for attorneys in the community at large.

A Lifetime of Law in Tampa

After a few years, Speaker Sessums and Dallas decided to leave Hardy & Ott. Along with Sessums' younger brother, Steve, the three young lawyers opened Albritton & Sessums as equal partners on January 1, 1961. Steve had graduated first in his class from the University of Florida Law School, where he was editor of the *Florida Law Review* and elected to the Order of the Coif. Steve also had been president of Florida Blue Key and, like Dallas, would ultimately go on to become president of the Tampa Hillsborough County Bar Association.

Speaker Sessums remembers starting the firm with just enough money to cover six months of expenses. They rented three adjacent rooms at the First National Bank and hired a carpenter to build them out. Speaker Sessums recalls that, until Hardy and Ott started to send them cases, they were not too busy. Dallas' son, Brian, recalls his father describing the firm as "specializing in the needs of today's clients." It was, as Speaker Sessums recalls, "a retail practice."

This was a theme that would carry throughout Dallas' life. Brian Albritton recalls his father avoiding specialization because, when a client came in with a problem, it was the lawyer's obligation to learn to solve it.

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Dallas and daughter Rachel

Dallas believed lawyers should pride themselves on learning new areas of law and applying them in the interests of the client who honored that lawyer with the request for help. He often said that “a weekend in the law library can make you an expert.” Dallas’ daughter Rachel

Albritton Lunsford remembers her father assisting the same clients repeatedly over decades with all kinds of legal issues. The lawyer’s highest calling, Dallas believed, was counseling clients, and he took pride in his clients considering him “my lawyer.”

Over time, the Albritton Sessums partnership grew to become a Tampa powerhouse. Many of its partners went on to become dedicated public servants. Second DCA Judge Harry Ryder, Speaker Sessums, Second DCA Judge Richard Frank, and County Court Judge Don Castor, among many others, were partners in the Albritton Sessums firm.

Eventually, Dallas decided his firm had grown too large and that the responsibilities of managing so many attorneys and staff on a day-to-day basis was keeping him from the client representation he so enjoyed. With his partners’ blessing, Dallas moved to an office across the hall so he could practice law his way, joined by associates from time to time.

Service to Others

Several years after forming his own firm, Dallas formed a partnership with Tripp Sebring. Tripp was moved by the attention Dallas paid to any problem a client or a fellow lawyer presented to him, no matter how small the problem seemed. Once, Tripp asked Dallas for advice on whether to buy a house. Dallas asked for time to think about it and, a few days later, presented Tripp with a five-page memo outlining his analysis.

Tripp also recalls Dallas as someone who demanded perfect ethical behavior. Dallas could not abide the

“white lie.” Client calls were not to be avoided, no matter how busy the lawyer was. He believed the client would understand a lawyer who was doing his or her best but could not answer a question yet, and believed the keystone of the lawyer-client relationship was honesty. Of course, Dallas used language very precisely, and if asked to write a letter of recommendation that he did not feel comfortable giving, might say “I cannot say enough about this candidate...”

Dallas’ daughter, Rachel, also recalls Dallas’ secretaries being fiercely loyal to him. But, of course, this was only because Rachel’s father was fiercely loyal to his secretaries, hanging photos of former secretaries on the “Wall of Fame” in his office with other lawyers and high-profile clients.

Many of the stories about Dallas’ dedication to lawyers cannot be recounted publicly. In many ways, Dallas was father confessor to the Bar. Always guided by his faith, at some point in his life, Dallas experienced a religious experience so transformative that he began to take on an even deeper role in the mentoring of lawyers who, for whatever reason, found themselves in trouble. Dallas would meet those lawyers, befriend them, and make them better. It became known throughout the Bar that lawyers in trouble should let Dallas take them to lunch and lay out their problems. Dallas was unique because he would not judge, but instead would tell that lawyer hard truths in a way that encouraged the troubled lawyer to become better. No lawyer ever left such a lunch without being a better person for it.

Dallas was a true public servant who dedicated a lifetime to the service of others. Practicing law, to Dallas, was a calling. It was never about him but, rather, about whomever Dallas was counseling at that moment, no matter who that person was.

Dallas’ son, Brian, tells this story: After graduating law school, Brian had the opportunity to interview for a clerkship with Judge Terrell Hodges, an up-and-coming brilliant jurist who some thought might even wind up on the Supreme Court. But Dallas hoped Brian would decline the interview and come work for him instead. On the morning of the interview, as Brian was getting dressed to leave the house, Dallas looked at Brian’s shoes. Dallas did not say a word. Instead, he picked up the shoes and shined them to military standards. Brian got the clerkship.



Author: Jack Fernandez - Zuckerman Spaeder LLP

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DON'T LOSE YOUR APPEAL OVER THIS PROCEDURAL TRAP

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Picture this: you were just retained by clients who represented themselves in a small claim, and a judgment is about to be entered against them. After reviewing their case, you conclude that they had valid, but unexplored, defenses and that the time for rehearing has not yet expired under Rule 1.530. Hoping to persuade the trial court to reverse itself and, failing that, to preserve your clients' appellate rights, you serve a motion for rehearing within 15 days of the final judgment. If, within 30 days after the motion is denied, you file a notice of appeal, does the appellate court have jurisdiction?

If your proceeding is governed by the Florida Rules of Civil Procedure, the answer is, of course, yes. But the foregoing illustrates a potential trap when transitioning between the informality of a small claim and the formality of an appeal: Few of the civil rules

apply to small claims,¹ while there is no similar limitation on the applicability of the appellate rules to small claims.² To invoke appellate jurisdiction, final orders must be appealed within 30 days of rendition of the judgment.³ *Rendition* occurs when a signed, written order is filed with the clerk.⁴ The rendition of a



Knowing the rules on tolling motions governing your client's proceeding will prevent having your appeal dismissed as untimely.

final judgment may be tolled, and the time to file an appeal extended, by the filing of an *authorized* and *timely* motion for new trial or rehearing.⁵

Under the Rules of *Civil* Procedure, a motion for rehearing is timely if served within 15 days of the return of the verdict in a jury action or the date the judgment in

a non-jury action is filed.⁶ An untimely motion for rehearing is considered *unauthorized* and will not toll the time to file an appeal.⁷ The trial court's consideration of the motion does not authorize an unauthorized motion for rehearing.⁸

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Warning: Even an apparently timely motion can be unauthorized if the motion is not recognized by the procedural rules governing the proceeding from which the appeal is taken.⁹ An illustration of this principle presented itself in a recent appeal of a small claim before the circuit court.¹⁰ In small claims, which are, by design, informal proceedings, only specific rules of civil procedure apply in all cases. Rule 1.530, which addresses motions for rehearing, is not one of them.¹¹ Additional rules of procedure *may* be applied upon a party's or the court's motion, or by stipulation.¹² In the subject case, neither party had filed a motion to invoke any additional Rules of Civil Procedure.

A motion for rehearing was filed within 15 days of the judgment, and an appeal was filed within 30 days of the resulting order. The appellee moved to dismiss the appeal as untimely, correctly arguing that motions for rehearing are unauthorized by the Small Claims Rules.¹³ Fortunately for the appellants, the circuit court acting in its appellate capacity denied the motion.

A court's authority to review final judgments, as opposed to interlocutory orders, is limited to the time and manner provided by rule or statute.¹⁴ Despite the absence of a stand-alone motion to invoke additional civil rules in the record of the subject case, the circuit court panel gave several reasons to support its retention of jurisdiction *in this case*. First, the rehearing motion specifically invoked Rule 1.530, and the appellee had argued the motion's merits without objecting to the

rule's application. Second, the circuit court noted that the appellee itself had filed several motions that were unauthorized by the small claims rules. Because it had done so, the panel concluded that the appellee could not then object to the application of additional rules.¹⁵ Some flexibility with regard to such jurisdictional determinations may exist, because the small claims rules give parties the *option* to proceed under additional rules of civil procedure. It is unknown, however, whether the circuit court's conclusions would stand up to further scrutiny. Nor is the option to invoke the civil rules necessarily available in other proceedings. In the subject case, the appellants may have dodged a bullet. But it's better to avoid being shot at.

The procedural trap illustrated in this article is not limited to small claims; other proceedings operating under their own rules that include rules related to rehearing, such as juvenile, probate and guardianship, and civil traffic proceedings, present similar challenges and opportunities.

¹ Fla. Sm. Cl. R. 7.020.

² Fla. Sm. Cl. R. 7.230.

³ Fla. R. App. P. 9.110(b).

⁴ Fla. R. App. P. 9.020(i).

⁵ *Id.*

⁶ Fla. R. Civ. P. 1.530(b), (g).

⁷ *Audi v. Fed. Nat'l Mortg. Ass'n*, 685 So. 2d 102, 103 (Fla. 4th DCA 1997) (construing an earlier version of Rule 1.530).

⁸ *Potucek v. Smeja*, 419 So. 2d 1192, 1194 (Fla. 2d DCA 1982); *Boehm v.*

Thomas, 963 So. 2d 984, 984 (Fla. 4th DCA 2007) (holding that court lacks authority to enlarge the time for rehearing pursuant to Fla. R. Civ. P. 1.090(b)).

⁹ *See, e.g., E-Z Marine Supply, Inc. v. Wachovia Commercial Mortg., Inc.*, 875 So. 2d 729, 730 (Fla. 4th DCA 2004) (dismissing appeal as untimely because a motion for rehearing was unauthorized from the otherwise-appealable nonfinal order, thus it did not toll the time for filing the appeal); *Arafat v. U-Haul Ctr. Margate*, 82 So. 3d 903, 905 (Fla. 4th DCA 2011).

¹⁰ *Williams v. The Independent Saving Plan Co.*, Circuit Court Case No. 15-CA-10904 (Fla. 13th Jud. Cir. Aug. 10, 2016). Some details have been omitted to facilitate discussion of the issues.

¹¹ Fla. Sm. Cl. R. 7.020(a).

¹² Fla. Sm. Cl. R. 7.020(c).

¹³ Fla. Sm. Cl. R. 7.020; *Arafat*, 82 So. 3d at 905 (holding Rule 1.530 is inapplicable to small claims; treating motion as motion for new trial pursuant to Fla. Sm. Cl. R. 7.180); *E-Z Marine Supply, Inc.*, 875 So. 2d at 730.

¹⁴ *Francisco v. Victoria Marine Shipping, Inc.*, 486 So. 2d 1386, 1388-89 (Fla. 3d DCA 1986).

¹⁵ It is not recommended that practitioners consider these reliable ways to invoke the civil rules in small claims.



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It is difficult to pinpoint the most impressive feature of Port Tampa Bay. Having recently toured the Port with John T. Thorington, Jr., the Port’s vice president of government affairs and board coordination, and Charles E. Klug, the Port’s principal counsel, it is clear that top contenders for the distinction would have to include the Port’s staggering \$15 billion economic impact; its 80,000 jobs; and the fact that its 5,000 acres make it one of the largest ports in the nation. As the members of this year’s Bar Leadership Institute learned during our first module in October, the Port did not acquire this remarkable résumé overnight. To be sure, the Port’s management and development requires constant care, meticulous attention to detail, and strong leadership.

As Klug explained during the tour, a good leader must always have a strong grasp of the history of his or her subject matter. Reaching back to the origins of civilization, seaports have often played a crucial role in the development of society. Not only have they been instrumental in facilitating commerce, they have traditionally provided one of the oldest, most dependable means of human movement and interaction. Port Tampa Bay’s own rich history is no exception. In the 16th century, Spanish explorer Cabeza de Vaca

wrote that our Port “is the best in the world.” Centuries later, it would seem his words still ring true.

The establishment of the modern Port teaches another valuable lesson in leadership: cooperation builds great things. In a display of collaboration perhaps too often lacking in the current political landscape, local, state, and federal government entities worked together with private enterprise during the 19th and early 20th centuries to form the foundation for the modern Port Tampa Bay. Embracing this historical alliance, the Port’s current board of directors includes a blend of government and private interests, with its seven members — the Mayor, a County Commissioner, and five other members appointed by the Governor — two of whom must have maritime industry backgrounds.

Since the Port was established, its leaders have remained instrumental in securing its preminent status. Port Tampa Bay is presently one of the most diversified ports in the nation, handling the largest cargo by tonnage in the state of Florida, while also supporting a large shipbuilding and repair center,



Since the Port was established, its leaders have remained instrumental in securing its preminent status.

as well as a burgeoning cruise passenger business. In keeping with this diversity, great strides have recently been made to expand the Port’s container-handling capabilities to evolve with the contemporary cargo industry.

Looking to the horizon, Thorington discussed the 45 acres of port-owned Channelside land that are currently being eyed for a massive community revitalization project, as well as the opportunities created by the easing of the embargo with Cuba, including a possible ferry service from the Port to the island nation.

Whatever the most impressive feature of Port Tampa Bay may be, one thing is certain: this multi-billion dollar organization has much to teach in the way of leadership.



Author:
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Does a family law attorney have an ethical obligation to advise a client of the availability of the collaborative law process as a form of alternative dispute resolution? To decline representation in a family law matter if the attorney does not practice (or support) the collaborative law process? Does the passage of the Collaborative Law Practice Act and the anticipated adoption of proposed rules of procedure and professional responsibility consistent with the Act affect existing ethical obligations?

The essence of the attorney-client relationship is that the client makes decisions regarding the objectives of representation, and the lawyer must “reasonably consult” with the client as to the means of accomplishing those objectives.¹ Many, if not most, family law clients express the desire to reach a peaceful settlement without exacting a significant financial or emotional toll on the family. Achieving a peaceful settlement is, without question, an “objective of representation.” This goal is also the public policy of the State of Florida, as stated in the Act, which also recognizes the collaborative law process as “a unique nonadversarial process that preserves a working relationship

between the parties and reduces the emotional and financial toll of litigation.”²

If a client’s objective is to achieve a peaceful settlement, the attorney is obligated to “reasonably consult” with the client regarding all possible means of accomplishing that objective. “Consult” means to

communicate “information reasonably sufficient to permit the client to appreciate the significance of the matter in question.”³

Because the collaborative law process is not only a means to accomplish this objective, but a statutorily recognized means that promotes the public policy of the State of Florida, the attorney should take great care in consulting with the client regarding this option to ensure the client appreciates its significance. Even if the client does not expressly state the objective of a peaceful settlement, this does not excuse the attorney from reasonably consulting with the client regarding all process means, including the collaborative law process.

Attorneys who dismiss or disparage the collaborative law process when consulting with clients whose goal is a peaceful settlement



The attorney is obligated to “reasonably consult” with the client regarding all possible means to accomplish [their] objective.

violate the Florida Rules of Professional Conduct. And those who are unfamiliar with, resistant to, or downright hostile toward the collaborative law process may be incompetent to practice in this area of the law, with these kinds of clients, because they lack the “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the

representation.”⁴ These attorneys should decline representation to avoid violating the Rules of Professional Conduct.⁵

¹ R. Regulating Fla. Bar 4-1.2.

² § 61.55, Fla. Stat. (2016). This statute, though on the books, will not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility consistent with the Collaborative Law Practices Act. Ch. 2016-93, § 8, Laws of Fla.

³ Chapter 4, Rules of Professional Conduct, Preamble: A Lawyer’s Responsibilities.


⁴ R. Regulating Fla. Bar 4-1.1.

⁵ R. Regulating Fla. Bar 4-1.16.



Author: Bridget Remington - Himes & Hearn, P.A.

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POTENTIAL LANDMINES FOR CONTRACTORS ON FEDERAL PROJECTS

Construction Law Section

Co-Chairs: Edward J. Kuchiniski - Sivyer Barlow & Watson, P.A.; and Ryan Baya - Mills Paskert Divers



right? Or, your client believes the government wrongfully denied a requested change order and submits a claim higher than the amount it is owed with a goal of reaching the actual amount of the claim after negotiating with the government's contracting officer. There's nothing wrong with this typical negotiating strategy, right? Wrong.

Consider the following scenario: your client, a contractor on a federal construction project, submits a pay application requesting payment for materials not yet furnished or installed on the project. Instead, it seeks payment in advance to purchase the materials. No harm so long as your client eventually furnishes the materials,



The severe penalties under the CDA, FCA and FFCA underscore the importance of ensuring the accuracy of all claims submitted to the government.

In both instances, your client could face civil penalties under the False Claims Act (FCA) (31 U.S.C. §§ 3729-3733); the Contract Disputes Act (CDA) (41 U.S.C. §§ 7101-7109); and the Forfeiture of Fraudulent Claims Act (FFCA) (28 U.S.C. § 2514). Significantly, the

Continued on page 23



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same false claim or fraudulent conduct can even subject your client to cumulative penalties under the FCA, the CDA, and the FFCA. *Veridyne Corp. v. United States*, 758 F.3d 1371, 1382 (Fed. Cir. 2014).

For claims exceeding \$100,000, the CDA requires that a corporate official certify that “that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable.” 41 U.S.C. § 7103(b)(1). Moreover, the CDA provides that if a contractor is unable to support any part of its claim due to a misrepresentation of fact or fraud on its part, “then the contractor is liable to the Federal Government for an amount equal to the unsupported part of the claim plus all of the Federal Government’s costs attributable to reviewing the unsupported part of the claim.” 41 U.S.C.A. § 7103(c)(2). Congress enacted the fraud provision of the CDA “out of concern that the submission of

baseless claims contribute[s] to the so-called horse-trading theory, where an amount beyond that which can be legitimately claimed is submitted merely as a negotiating tactic.” *Daewoo Eng’g & Const. Co., Ltd. v. United States*, 557 F.3d 1332, 1340 (Fed. Cir. 2009) (quoting S. Rep. No. 95-1118, at 20 (1978)). Like the CDA, the FCA provides that “any person...who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval... is liable for a civil penalty plus three times the amount of damages which the government sustains.” 31 U.S.C. § 3729(a)(1).

Under both the CDA and the FCA, the government must establish the fraudulent conduct, intent, and its damages by a preponderance of the evidence. 31 U.S.C.A. § 3731(d); *Veridyne* at 1380-81. Innocent mistakes and negligence are insufficient to trigger the penalties under the FCA and CDA. *Ulysses, Inc. v. United States*, 110 Fed. Cl. 618, 642 (Fed. Cl. 2013). The FFCA, by contrast,

requires the government to establish that the contractor knew its claim was false and that it intended to defraud the government by submitting the claim, by clear and convincing evidence. *Daewoo*, 557 F.3d at 1341. While this is a high standard, if the government establishes that even one claim a contractor submits is fraudulent, that is sufficient to forfeit all of that contractor’s claims on the project. *Veridyne*, 758 F.3d at 1377-78 (finding that contractor had forfeited even its equitable claims through its submission of a fraudulent claim).

The severity of penalties under the CDA, FCA, and FFCA underscores the importance of making certain your clients understand these laws and ensure the truth

and accuracy of all claims they submit for payment to the government.

Author:
Matthew G. Davis -
Mills Paskert Divers



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FOR THE BIRDS: UNTANGLING A REGULATORY TAKINGS MESS

Eminent Domain Section

Co-Chairs: Blake Gaylord - Gaylord, Merlin, Ludovic & Diaz; and Gregory S. Rix - Moore Bowman & Rix, P.A.



Florida's Third District Court of Appeal, in *Ganson v. City of Marathon*,¹ recently denied a landowner's requests for rehearing and rehearing en banc from the court's 2013 opinion.² The original opinion affirmed a summary judgment rejecting the landowner's claim that the gradual downzoning of island property from "general use" to "bird rookery" was an unconstitutional taking.³ A detailed and colorful dissent from the rehearing denial by three members of the court described the original opinion as a "tortured and confused" attempt at a regulatory takings analysis that "floundered" in its "struggle for coherence."⁴ This brief article will highlight just one aspect of the dissent: the distinction between the "type" and "nature" of the takings claim.

Types of Takings Claims

Writing for the dissent, Judge Frank A. Shepherd correctly outlined the three main types of regulatory takings challenges.⁵ The first two types occur as the result of either a physical occupation by government,⁶ or when a regulation deprives a property of substantially all beneficial use.⁷ These types of takings "impose such a severe burden on property rights that they are deemed *per se* (or categorical)

takings."⁸ Government action that falls short of these categorical claims (commonly referred to as a partial regulatory takings claim) is analyzed under the ad-hoc balancing test first articulated in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).

While the Court has been unwilling to develop a "set formula" to determine when "justice and fairness require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons," it has identified three general areas of inquiry: 1) economic impact on the claimant; 2) reasonable investment-backed expectations; and 3) character of the government action.⁹

Nature of the Takings Claim

One source of the majority's confusion was from the conflation of the *types* of takings (*per se* or partial) with the *nature* of how the claim is brought (facial or as applied). As Judge Shepherd noted, the panel was under the "mistaken belief that a *per se*/categorical taking was the equivalent of a facial taking."¹⁰ The dissent attempted to straighten out the confusion, noting that facial takings "allege that the



The decision of this Court that the Beyers have no taking claim against the City ... is, well, for the birds.

mere enactment of a regulation" effects a taking.¹¹ By contrast, an "as applied" takings claim results from the specific application of a regulation to the property, usually in the context of a denial of a permit or other type of government approval.¹² Irrespective of the type of

taking, the nature of the claim may be as either a "facial" or "as applied," depending on the circumstances.

Conclusion

As Judge Shepherd noted, regulatory takings jurisprudence has historically been somewhat "cryptic and convoluted." Yet his cogent analysis was crafted almost exclusively using Supreme Court precedent fashioned in the 40 years since *Penn Central*. With these foundational cases, and the even more recent guidance offered in opinions such as *Arkansas Game & Fish Commission v. United States* and *Koontz v. St. Johns River Water Management District*,¹³ Florida courts may soon be able to embrace "a less turbid, and more constitutionally sound, regulatory taking framework."¹⁴

Continued on page 27

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¹ 2016 WL 5404070 (Fla. 3d DCA Sep. 14, 2016).

² *Beyer v. City of Marathon*, 197 So. 3d 563 (Fla. 3d DCA 2013); see also *Beyer v. City of Marathon*, 37 So. 3d 932 (Fla. 3d DCA 2010).

³ *Ganson*, 2016 WL 5404070, at *1.

⁴ *Id.* at 4.

⁵ See *id.* at *3-5. The dissent also identifies a fourth type of taking — taking by exaction, which is a “special application of the doctrine of unconstitutional conditions.” In a similarly challenged analysis, the Third District Court of Appeal, recently declined to recognize a fifth type of taking — condemnation blight — in *Teitelbaum v. South Florida Water Management District*, 176 So. 3d 998, 1000, 1005-06 (Fla. 3d DCA 2015).

⁶ *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

⁷ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). Judge Shepherd also offers clarity to this issue, noting that Florida has added the “substantially all” language to the per se takings test, suggesting a “slightly less demanding standard in Florida” than the federal counterpart, which requires a total loss of all beneficial use.

⁸ *Ganson*, 2016 WL 5404070, at *3-5.

⁹ *Id.* at 6-7 (citing *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001)).

¹⁰ *Id.* at *3.

¹¹ See *id.* at *4.

¹² See *id.* at *3-4.

¹³ *Arkansas Game & Fish Comm’n v. United States*, 133 S. Ct. 511 (2012); *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013).

¹⁴ *Ganson*, 2016 WL 5404070, at *3.

Author: Gregory S. Rix - Moore
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SIGNIFICANT CHANGES TO MEDICARE REIMBURSEMENT UNDERWAY

Health Care Law Section

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



Much is still unknown about the impact of the election on healthcare. But one thing is certain: As health care costs continue to rise and the baby boomer generation ages, the government will keep pursuing innovative payment arrangements to encourage delivery of the highest-quality, lowest-cost care.

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), bipartisan legislation that replaced the flawed Sustainable Growth Rate, is the most significant change to Medicare provider reimbursement in a generation, and part of a broader strategy to deliver high-quality care at a lower cost.

Beginning January 1, 2017, Medicare Part B clinicians who bill Medicare more than \$30,000 a year and provide care for more than 100 Medicare patients annually are subject to MACRA. Clinicians subject to MACRA must choose between taking part in the Advanced Alternative Payment Models (Advanced APMs) or the Merit-based Incentive Payment System (MIPS). Both paths require clinicians to adhere to certain quality and technological standards, and take on financial risk.

Advanced APMs

Clinicians receiving 25 percent of Medicare payments or seeing

20 percent of Medicare patients through an Advanced APM need only submit their quality information to the Centers for Medicare and Medicaid Services (CMS). CMS has started announcing which alternative payment models will qualify as Advanced APMs in 2017. So far, they include:

“Comprehensive ESRD Care – Two-Sided Risk;” “Comprehensive Primary Care Plus (CPC+);” “Next Generation ACO Model;” “Shared Savings Program – Tracks 2 and 3;” and the “Oncology Care Model – Two-Sided Risk.” Clinicians participating in the Advanced APM track will earn a five percent incentive payment.

MIPS

Clinicians choosing to participate in traditional Medicare Part B, rather than an Advanced APM, will participate in MIPS, and are at risk for negative payment adjustments. MIPS-participating clinicians will be rated on a continuous 100-point scale composed of four performance categories:

1. Quality (60 percent for 2017, 50 percent for 2018);
2. Advancing Care Information (25 percent);
3. Clinical Practice Improvement Activities (15 percent); and
4. Resources Use (zero percent for 2017, 10 percent for 2018).



As health care costs continue to rise and the baby boomer generation ages, the government will keep pursuing innovative payment arrangements.

Each point below or above the threshold translates proportionally into financial impacts. Providers earning a score above an annual performance threshold set by CMS receive an incentive, whereas those scoring below the threshold are assessed a penalty. CMS will publicly report MIPS scores annually.

Due to the operational burden associated

with MACRA implementation, CMS eased 2017 MACRA requirements. As long as participating clinicians submit a minimum amount of 2017 data by March 31, 2018, they will avoid a downward payment adjustment. Financial risk is set to fully begin in 2018.

While it remains unclear how President-elect Trump and a Republican-controlled Congress will affect healthcare, there appears little incentive to repeal MACRA, as the legislation passed with significant bipartisan support. Although repealing the Affordable Care Act could affect how alternative payment models under MACRA are defined and vetted, with MACRA in place, Medicare

Part B billing providers will soon begin accepting financial risk.



*Author:
Elizabeth Scarola -
Carlton Fields*



As any seller on Amazon knows, success is largely based on “winning the Buy Box.” A Buy Box — known to customers as the “Add to Cart” box — is the white box on the right-hand side of a product page that allows a customer to purchase a product from a specific seller on Amazon. Every seller has a Buy Box, but only the seller that Amazon’s complex algorithms has ranked the highest gets to “win the

Buy Box” and have it be the only Buy Box located at the top of the page. It is akin to Consumer Reports’ recommended products, with low price being one of the most important factors in winning the Buy Box.

Every other seller’s buy box is relegated to electronic Siberia, known as the bottom of the page. The seller that wins the Buy Box makes, on average, 82 percent of all sales for that product.¹ Winning the Buy



Box can make or break a seller.

According to Amazon’s rules, all sellers of the same product are obligated to list their product under the same “ASIN,” or Amazon Standard Identification Number.² An ASIN is sort of like an electronic shelf that holds all of

the same type of product offered by competing sellers. For example, all sellers of Duracell Coppertop size D batteries in a ten-pack must

Continued on page 31

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Continued from page 30

list their offerings under the same ASIN. This allows customers to easily comparison shop, finding the best price and shipping terms.

Since sellers, not Amazon, create the ASIN, oftentimes they believe they own it. And some don't like to share it. But share they must. In fact, creating a new ASIN for a product that already has one is a violation of Amazon's rules.³

Sometimes not sharing an ASIN makes sense, such as when another seller is using the same ASIN to sell counterfeits. When a buyer leaves negative feedback on a product, it is tied to that product's ASIN, so all sellers of legitimate products are hurt. Because Amazon prohibits selling counterfeits, there are procedures in place to report and stop such tactics. Selling products that infringe trademarks or copyrights — even if not counterfeit — also is prohibited, and rights owners can report these violations and block those sellers from using an established ASIN as well.

But when the other sellers' products are legitimate and identical to the products listed under the ASIN, all sellers are required to share the ASIN. Unscrupulous sellers will sometimes try to stake off their digital ASIN territory to hinder comparison shopping and win the Buy Box by including their own brand name in the title or product description of the product page of a particular ASIN.

For example, let's assume a company called Battery Warehouse (BW) was the first seller to offer a ten-pack of AA batteries made by Duracell on Amazon. Since this company was first, it gets to create the ASIN and the product detail page. Rather than creating a product page and ASIN titled "Duracell AA Coppertop Batteries, Ten-Pack" that all sellers (and resellers) of Duracell batteries can use, BW wants an advantage. So it creates product detail pages and ASINs for "Duracell AA Batteries, Ten Pack, Sold By Battery Warehouse," and includes multiple references to its company in the product detail page, such as to its own warranty or shipping methods.

When other sellers of the same batteries try to list their products for sale under the same ASIN, BW threatens the other sellers with trademark infringement lawsuits, since they are using an ASIN that BW claims to own that has its trademark in the title and description. Because many sellers on Amazon are small, most avoid the fight and choose to create a new ASIN for their identical product, even though it violates Amazon's policy. Although these aggressive sellers have on rare occasions filed suit, there are no reported opinions as of the date of this article.

Time will tell if these trademark owners, or the consumer, will be the king of the jungle.



¹ "The Buy-Box Bible.txt," available at SellerCentral.Amazon.com.

² See Amazon's "ASIN Creation Policy," available at Amazon.com.

³ *Id.*

Author: Jim Matulis – Matulis Law & Mediation

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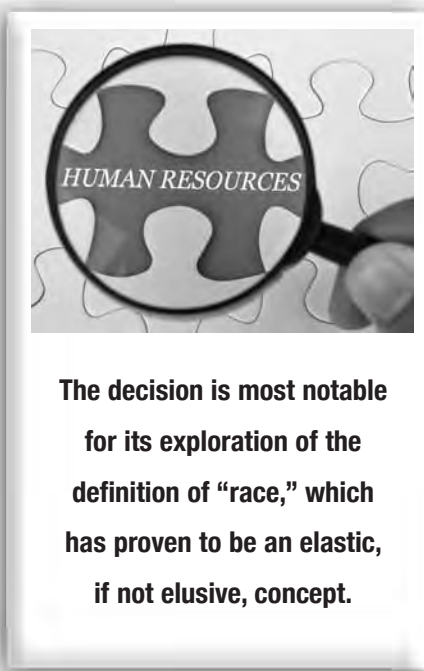


The Eleventh Circuit Court of Appeals recently provided important guidance on the difference between racial and cultural characteristics in holding that a company’s race-neutral grooming policy, which banned dreadlocks, did not constitute intentional race discrimination in violation of Title VII of the Civil Rights Act of 1964.

The case, *EEOC v. Catastrophe Management Solutions*, 2016 WL 4916851 (11th Cir. Sept. 15, 2016), involved a job applicant whose conditional offer was rescinded because she refused to comply with the company’s demand to cut her dreadlocks in order to conform with the grooming policy. The grooming policy required all personnel to be “dressed and groomed in a manner that projects a professional and businesslike image.” It further required that hairstyles “reflect a business/professional image.” The EEOC sued the employer, claiming that the policy constituted intentional race discrimination under Title VII, and ultimately appealed the dismissal of its complaint.

In affirming the district court’s decision that the grooming policy was not discriminatory, the Eleventh Circuit held that Title VII’s prohibition on intentional discrimination does not protect hairstyles culturally associated with race. In doing so, the court emphasized the distinction between mutable choices, which are not protected, and immutable traits such as race, color, or national origin, which are protected. Under this rationale, the court explained that discrimination based on black hair texture, such as a natural Afro, would violate Title VII. A prohibition on an all-braided hairstyle, however, would address a mutable choice and not implicate Title VII.

The decision is perhaps most notable for its exploration of the definition of “race,” which has proven to be an elastic, if not elusive, concept that is not defined in Title VII. Although the EEOC urged the court to rely on the EEOC Compliance Manual (which prohibits discrimination “because of cultural characteristics often linked to race or ethnicity, such as a person’s name, cultural dress and



The decision is most notable for its exploration of the definition of “race,” which has proven to be an elastic, if not elusive, concept.

grooming practices”), the court declined to give much deference or weight to this guidance because the court found it contradicted a position the EEOC took in an earlier administrative appeal. Instead, the court turned to precedent within the circuit and in other jurisdictions, as well as an

examination of the definition of “race” generally. The court acknowledged that the concept of “race” is a very broad and ever-changing concept, but it declined to expand the interpretation of Title VII by eliminating the biological conception of “race” and encompassing cultural characteristics associated with race.

The decision is relevant for all employers, especially those with employees in Florida, based on its treatment of employer grooming policies. The decision also offers important guidance on other policies that may implicate characteristics of

an individual’s race or other Title VII-protected categories that are not “immutable.”



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March 6 - 10.

In one of the most famous Supreme Court cases of the last century, *Planned Parenthood v. Casey*, the Court authored an insightful passage that encapsulates the freedoms that lie at the heart of the Fourteenth Amendment:

“These matters, involving the most intimate and personal choices a person may make in lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”

Although the Court was writing about the reproductive rights of women and the legality of certain provisions limiting those rights, this passage rings true for the entirety of the Fourteenth Amendment, which is perhaps the Constitution’s most important amendment for defining individual rights. In order to highlight the importance of this cherished amendment, as well as to educate others of its significance, the American Bar Association has announced the 2017 Law Day theme: “The 14th Amendment: Transforming

American Democracy.”

The Fourteenth Amendment, known as one of the Reconstruction Amendments, was adopted in 1868 following the Civil War. Originally drafted to craft and define the rights and liberties of emancipated slaves, the amendment has since become a cornerstone of liberty for all citizens. It established citizenship for hundreds of thousands of Americans, helped define substantive and procedural due process rights, and guaranteed equal protection under the law for all Americans. The first section of the amendment includes a number of clauses that have helped make it the most litigated Constitutional amendment: the Citizenship Clause, the Privileges and Immunities Clause, the Due Process Clause, and the Equal Protection Clause. Over the years, the Supreme Court has interpreted and defined these clauses in some of the most infamous decisions in United States history, including *Plessy v. Ferguson* (1896), *Brown v. Board of Education* (1954), *Gideon v. Wainwright* (1963), *Loving v. Virginia* (1967), *Roe v. Wade* (1973), and more recently, *Obergefell v. Hodges* (2015), regarding same-sex

marriage. This year, the Hillsborough County Bar Association joins the American Bar Association in encouraging its members to take part in Law Week, so that we might educate the local community and students about this very important amendment.

Law Week will take place this year from March 6 through March 10, 2017. For those readers unfamiliar with Law Week, it is an excellent opportunity for lawyers of all ages to escape the monotonous drone of office life in favor of interacting with local schools, students, and teachers. The HCBA Young Lawyer Division’s Law Week Committee, headed by co-chairs Dane Heptner and Stephanie Generotti, organizes three activities for attorney-volunteers to participate in: courthouse tours, classroom discussions, and mock trials.

The courthouse tours involve leading groups of students through courtrooms and other areas of the courthouse to give them a glimpse of the rule of law in action.

Continued on page 37

Continued from page 36

Classroom discussions involve traveling to a local school to lead a class or group of students in a discussion on the law and answer student questions. Finally, volunteers who participate in mock trials team up in groups of two and work with students in presenting a student-friendly case (such as *Goldilocks v. The Three Bears*). These events not only offer attorneys a chance to step out from underneath the cold luminescence of their office lights to educate students, but they also give participants an opportunity to remind themselves of all the great rights and liberties we are afforded as Americans.



If you are interested in learning more about Law Week 2017 or volunteering, please contact YLD Law Week Committee Co-Chairs Dane Heptner (Dane@USALaw.com) or Stephanie Generotti (Stephanie.Generotti@csklegal.com).

Author: Dane Heptner - Perenich Caulfield Avril & Noyes

Community Services Committee Collects Donations for Local Veterans

The Community Services Committee coordinated donations for 60 veterans as part of James A. Haley Veteran's Hospital's Homeward Bound for Those Who Served Initiative on October 22. CSC volunteers worked with the Military & Veterans Affairs Committee to adopt veterans in need of basic necessities. The HCBA appreciates all the members who participated in this great service project!



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20th Annual Bench Bar Conference, Membership Luncheon & Judicial Reception

The HCBA Bench Bar Conference, Membership Luncheon & Judicial Reception enjoyed record attendance yet again this year as 600 attorneys, judges, and other legal professionals came out for a day of great CLE programming and networking on November 10.

This year's conference theme "Balancing the Scales: Ethics v. Technology/Social Media" focused on the privacy, ethical, and practical considerations required of the legal community in today's evolving technological landscape. The conference began with a popular review of the U.S. Supreme Court's activities, followed by speakers discussing social media evidence and mediation advocacy best practices. In the afternoon, attendees chose from five "View Towards the Bench" sessions and heard from a panel of former jurors about their experience in the jury box. The conference ended with an insightful presentation on issues related to digital evidence.

Florida Supreme Court Justice Charles Canady was the keynote speaker at the Membership Luncheon, where the Hillsborough County Bar Foundation presented six local charities with checks totaling \$100,000. The Thirteenth Judicial Circuit Professionalism Committee also awarded David Rowland with the 2016 Professionalism Award during the luncheon (see page 54).

The conference ended with attorneys, judges, and friends of the legal community mingling at the Judicial Reception in the evening.

The HCBA would like to thank the members of the Bench Bar Committee for all their hard work. A special thanks also goes out to all of the events sponsors, specifically our Diamond Sponsor:



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YLD GOLF TOURNAMENT

The HCBA Young Lawyers Division had a great turnout and beautiful fall weather for their annual golf tournament on October 14. About 100 golfers came out for the YLD's signature fundraising event at the Temple Terrace Golf & Country Club. Congratulations to the winning team: Hon. James Whittemore, Don Whittemore, Preston Whittemore, and John .

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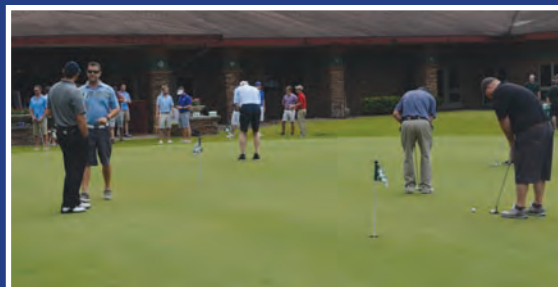
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UNKNOWNING WAIVER OF POST-DISSOLUTION DEATH BENEFITS

Marital & Family Law Section

Chair: Jill Lowe - Jill G. Lowe P.A.



It is not unusual in a marital settlement agreement for a former spouse to secure an alimony or child support obligation with a life insurance policy naming the recipient spouse as beneficiary. It is also common for an individual to designate a former spouse as the beneficiary of a marital asset, such as a pension or annuity. In such cases, it is important to be aware of Section 732.703, Florida Statutes, which states:

A designation made by or on behalf of the decedent providing for the payment or transfer at death of an interest in an asset to or for the benefit of the decedent's former spouse is void as of the time the decedent's marriage was judicially dissolved or declared invalid by court order prior to the decedent's death, if the designation was made prior to the dissolution or court order. The decedent's interest in the asset shall pass as if the decedent's former spouse predeceased the decedent.¹

This provision, which became effective on October 1, 2013, nullifies the designation of a former spouse as a beneficiary when that designation was made before the marriage was dissolved. Section 732.703 is problematic when a married couple makes a death benefit designation during their marriage and assumes the

designation survives the divorce. For example, a husband purchases a life insurance policy that names the wife as beneficiary. The marriage ends in divorce and the husband secures his alimony and/or child support obligation with the life insurance policy purchased during the marriage. Both parties assume the pre-dissolution designation effectively establishes the former wife as the beneficiary of the policy after the divorce. Under Section 732.703, this assumption is incorrect. Because the designation was made during the marriage, the statute treats the former wife as predeceasing the former husband. This legal fiction nullifies the beneficiary designation and prevents the former wife from receiving death benefits, even though this was the clear intent of the parties.

Though the statute provides limited factual exceptions, the statute can be completely avoided by executing a beneficiary designation or ratification *after the dissolution of marriage*. Therefore, in order to preserve the promise of post-dissolution death benefits, it is important to include anticipatory language in a marital settlement agreement or final judgment requiring the execution of a



Because the designation was made during the marriage, the statute treats the former wife as predeceasing the former husband.

post-dissolution beneficiary or ratification of death benefits after the entry of a final judgment. Section 732.703 is broadly drafted and applies to life insurance policies,² qualified annuities,³ tax-deferred contracts,⁴ “employee benefit plans,”⁵ payable-on-death accounts⁶ and IRAs.⁷ In addition, the statute applies to “all designations made by or on behalf of decedents dying on or after July 1, 2012, regardless of when the designation was made.”⁸ Given the scope and impact of § 732.703, the statute should be consulted whenever a death benefit designation is at issue in a dissolution matter.

¹ § 732.703(2), Fla. Stat.

² § 732.703(3)(a), (f), Fla. Stat.

³ *Id.*

⁴ *Id.*

⁵ § 732.703(3)(b), Fla. Stat.

⁶ § 732.703(3)(d), Fla. Stat.

⁷ § 732.703(3)(e), Fla. Stat.

⁸ § 732.703(3)(c), Fla. Stat.



Authors: Martin Deptula and Nancy Harris - Harris & Hunt, P.A.



Appellate Section Luncheon

The Appellate Section received an update from Judge Charles Wilson with the Eleventh Circuit Court of Appeals about the newest developments in the circuit at their luncheon on November 16.

The section would like to thank its sponsor:



Construction Law Section CLE

Amanda B. Buffinton of Shutts & Bowen LLP and Mark Smith of Carlton Fields spoke to the Construction Law Section on November 17 about defending and asserting claims against architects and engineers. Topics discussed included prerequisites for pursuing design claims; defenses unique to design professionals; insurance coverage; and the importance of scope of contract for design professionals.



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It has been a grueling mediation, but after eleven hours it looks like it is going to impasse. Your client is in a contract dispute with one of its key suppliers. Despite everyone’s best efforts, the two sides can’t agree on how to interpret an important clause. Until the dispute is resolved, the supplier is refusing to supply critical parts. Nearing exhaustion and needing to preserve the relationship with the supplier to meet its customer’s orders, your client asks you, “Can’t we just have the mediator decide who is right?”

“Interesting idea,” you think. The mediator would be a logical choice to serve as a decisionmaker, since she worked in the same industry before going to law school and has litigated many similar cases. And this client has already incurred a lot of fees — yours and the mediator’s — to educate the mediator on this dispute. Most importantly, you respect her judgment, and over the course of the mediation, she has convinced you that she is completely neutral on the key issue.

But you just aren’t sure...

Should you counsel your client to have the mediator change hats and become the decisionmaker? Can the mediator even do that ethically? Should she?

A recent decision from the Mediator Ethic Advisory Committee

(MEAC) suggests that, although the mediator *can* ethically change hats to decisionmaker mid-stream, doing so “is laden with hazards,” and the risks and implications have to be explained by the mediator — and thus understood by you and your client.¹

The MEAC opinion first noted that the Florida Rules for Certified and Court-Appointed Mediators don’t prohibit a mediator from switching hats to decisionmaker. It also noted that the parties may exercise self-determination in deciding whether to make the switch — even if the mediator has received confidential information during the mediation.

But the parties need to understand that converting the mediator into a decisionmaker “results in a change in the dispute resolution process, impacting self-determination, impartiality, confidentiality, and other ethical standards.”² The opinion recites a list of requirements that must be met before a mediator can switch hats, including that the mediator must clearly inform the parties that: (1) the switch will result in conflicts of interest arising, and confidentiality being lost, which the parties are agreeing to waive;



Converting a mediator into a decisionmaker results in a change of the dispute resolution, impacting self-determination, impartiality, confidentiality and other ethical standards.

and (2) the mediator will no longer be able to mediate the present or related matters for them. The mediator also must ensure that the parties understand that there are other methods of alternative dispute resolution available, and that ultimately it is their decision whether to exercise self-determination by voluntarily agreeing to

select this mediator as arbitrator.³

The MEAC decision included a concurrence (in part) and dissent (in part) signed by two of the three panel members, in which the panel members argued that the multiple rules⁴ and prior MEAC opinions⁵ prohibit a mediator from serving as both arbitrator and mediator in the same case, regardless of the agreement of the parties.⁶ The dissent viewed the mediator’s conflict as non-waivable, “since the decision-maker may rely upon information obtained or communications which occurred outside the adjudicatory process.”⁷

Ultimately, the decision belongs to the parties, as mediation is founded on self-determination. On the one hand, there are certainly efficiencies in time and money in having the

Continued on page 47

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mediator resolve the dispute immediately, allowing the parties to resume their relationship in time to fulfill the client's pending orders. On the other hand, given that the process is "laden with hazards"⁸ that "raise serious ethical concerns,"⁹ it may be best for you to advise your client to follow the advice of the Fifth District Court of Appeal: "mediation should be left to the mediators and judging to the judges."¹⁰

¹ Mediator Ethic Advisory Committee Opinion Number 2015-003 at 2 (Feb. 4, 2016), available at <http://www.flcourts.org/core/fileparse.php/534/urlt/MEACOpinion2015-003.pdf>. The three-person MEAC panel, however, disagreed on whether a mediator also could serve as the arbitrator in a slightly different scenario — after mediation in a court-ordered mandatory non-binding arbitration.

² *Id.* (citing Committee Note to Rule 10.310, Self Determination, Florida Rules for Certified and Court-Appointed Mediators).

³ *Id.* at 2.

⁴ MEAC Opinion 2015-003 Concurrence (in part) and Dissent (in part), at 1-2 (citing Fla. R. Civ. Med. 10.210, 10.220, 10.230, 10.300, 10.310(a), 10.370(c), and 10.420(a)).

⁵ *Id.* (citing MEAC Opinions 2009-002 and 2009-001).

⁶ *Id.* at 1.

⁷ *Id.*

⁸ MEAC Opinion 2015-003 at 3.

⁹ MEAC Opinion 2009-002 at 1 (Oct. 23, 2009).

¹⁰ *Evans v. State*, 603 So. 2d 15, 17-18 (Fla. 5th DCA 1992).



Author:
*Jim Matulis - Matulis
Law & Mediation*

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Military & Veterans Affairs Committee

Co-Chairs: Matt Hall – Hill Ward Henderson; and Colleen O’Brien – Thirteenth Judicial Circuit



In the Tampa Bay area alone, 22,367 veterans are at or below the federal poverty line.

Florida has the third largest population of veterans in the nation, with over 1.6 million military veterans who have served our country. Veterans comprise 12 percent of the state’s adult population. Our own Hillsborough County has the second largest veteran population in Florida, with over 94,000 veterans. An additional 220,973 veterans live in Pasco, Pinellas, Manatee, and Sarasota counties. In these counties alone, 22,367 veterans are at or below the federal poverty line.

While cost-free legal resources (such as Bay Area Legal Services, Inc., Stetson’s Veterans Law Institute, and WMU-Cooley Law School Debt Relief Clinic) do exist, these organizations simply do not have the resources to provide services to all of the veterans in need. The HCBA’s Military and Veteran Affairs Committee (MVAC) has made it a priority to try to fill the gap between those veterans and active-duty military personnel who realistically can afford an attorney and those who cannot. The MVAC has compiled a list of attorneys who are willing to assist the veterans and active-duty members in our community, either on a pro bono basis or for a reduced-fee, called the Veterans Legal Assistance Registry (VLAR).

The VLAR was designed to be a referral source for potential clients in 17 subject areas of legal practice.¹ Veterans can access the list through the HCBA website on the MVAC webpage, or they can access it directly by going to: www.tinyurl.com/veteranslegalregistry. On the page, they can browse the list for the type of lawyer they are seeking. Once they find the group of lawyers in the legal area of need, they can call the lawyer directly and inquire about services. It’s up to each lawyer’s office to interview the potential client and determine whether legal services will be provided on a pro bono or reduced-fee basis.

We at the MVAC know that this legal community has great admiration for the men and women who have served or are still serving in the military. Many attorneys want to help but are not sure how. The MVAC has tried to make this opportunity as flexible as possible for those who are interested in volunteering. If you’re considering it, but still aren’t sure, we offer the following testimonials from a few of your peers who have already stepped up to help by joining the VLAR:

“As a disabled veteran, it warms my heart to know that attorneys generously give back to those who served without asking anything in

return. As a family law attorney, I personally know that not every litigant can afford to hire legal representation and, but for capable and knowing assistance, a person can lose their way in our sometimes seemingly Byzantine legal process. In family law, that can have extraordinary consequences.”

— David Veenstra, Esq., SMSgt, USAF (Ret)

“One of the most difficult aspects of my transition out of the military was the loss of purpose I felt from no longer being able to support the mission and my friends and colleagues in the military. Working for veterans through VLAR has given me a way to regain some of that sense of purpose. Providing legal support to my veteran clients, whether they are active duty or prior service, lets me feel more connected to my brothers and sisters in arms.”

—Adrienne Holland, Esq.

“My experience is nothing short of amazing in meeting and working with such positive and inspirational people. I was fortunate enough to be afforded the opportunity to help our veterans through the judicial system. It did not take much time on my part, and it certainly meant a lot

Continued on page 51

THE VETERANS LEGAL ASSISTANCE REGISTRY: "WE NEED YOU!"

Military & Veterans Affairs Committee

Continued from page 50

to these veterans, and gave them one less headache to deal with."

—Joseph H. Ficarrotta, Esq.

For more information, or if you would like to volunteer for one or more of the subject categories listed below, please contact Bob Nader at rjn@naderlawfl.com or Alexandra Srsic at asrsic@bals.org.

¹ The 17 areas of law on the VLAR link include: Bankruptcy, Commercial & Civil Litigation, Mediation, Elder Law, Family Law, Guardianship, Immigration/Nationality, Labor & Employment Law, Landlord/Tenant, Consumer Protection, Mortgage Foreclosure, Non-Capital Criminal, Notary Services, Personal Injury, Social Security/Disability, Veterans Benefits/Disability, and Wills & Powers of Attorney.

Authors: Alexandra Srsic - Bay Area Legal Services, Inc. and Bob Nader - Nader Mediation Services



MVAC "Fatigues to Robes" Luncheon

In honor of Veteran's Day, the HCBA Military & Veterans Affairs Committee held a special luncheon on November 3 to recognize 11 local judges who previously served in the military: Hon. Cheryl Thomas, Hon. William Levens, Hon. William Fuente, Hon. Michael Scionti, Hon. Lawrence Lefler, Hon. Herbert Berkowitz, Hon. Lamar Battles, Hon. Gregory Holder, Hon. Ralph Stoddard, Hon. Richard Weis, and Hon. Daryl Manning. Thank you also to all of our members who have served our country in the military!



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Professionalism & Ethics Committee

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



The Thirteenth Judicial Circuit Professionalism Committee proudly presented David A. Rowland the third annual professionalism award at the Bench Bar Conference on November 10. The award recognizes consistent honesty, integrity, fairness, and courtesy, and an abiding sense of responsibility to comply with the standards and rules of professionalism in the practice of law. David Rowland personifies all of these qualities in both his practice and personal life.

Rowland has dedicated his entire professional life to improving the justice system. After graduating cum laude from Stetson University Law School in 1990, Rowland began as a staff attorney with the Thirteenth Judicial Circuit. He quickly rose through the ranks and has served as General Counsel to our circuit for more than 20 years. He has served at the pleasure of three chief judges and superbly leads a team of 21 staff attorneys

and a paralegal specialist in researching and advising all 62 judges in the Thirteenth Circuit. He works tirelessly and gracefully to wisely counsel and educate all who seek his keen advice.

Outside the George Edgecomb Courthouse, Rowland serves our entire state through his involvement with the Hillsborough County Bar Association as well as active roles on multiple Florida Bar committees, including the Judicial Administration and Evaluation, Media and Communications Law, and Rules of Judicial Administration Committees. He served on the Florida Board of Bar Examiners from 2007-2012 and continues to serve as a very active emeritus member. Rowland also has presented to judicial committees, various sections of the HCBA, and to the general counsel of every court in the state. Further, Rowland consistently encourages his ever-changing staff to maintain



Mr. Rowland works tirelessly and gracefully to wisely counsel and educate all who seek his keen advice.

intelligence, knowledge, thoroughness, work ethic, humility, diplomacy, and kind manner, among other positive traits, serve as excellent characteristics for young attorneys to emulate.

Though Rowland's visibility remains somewhat limited, the impact he makes on our courts and our profession is boundless. Chief Judge Ron Ficarrota points out, "As Chief Judge, I rely on David's sound and reasoned advice on a daily basis. I am proud of the Thirteenth Judicial Circuit and our judiciary's well-deserved reputation

membership with our local and voluntary bar organizations and leads by example to inspire active participation in these groups.

In these aforementioned roles throughout our profession, Rowland has served as a mentor to dozens of new lawyers. His integrity,

Continued on page 55

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THANKS TO ALL OUR FOX 13 ASK-A-LAWYER VOLUNTEERS!



After a two-month hiatus due to Tropical Storm Hermine and Hurricane Matthew, the attorneys from the Lawyer Referral & Information Service were glad to be back in action, answering phones as part of Fox 13's Ask-A-Lawyer program. We appreciate all those who volunteered to take calls in November!

- Dale Appell
- David Befeler
- Michael Broadus
- Ricardo Duarte
- Marc Edelman
- James Giardina
- Lynn Hanshaw
- Dane Heptner
- Thomas Hyde
- Klodiana Hysenlika
- Nehemiah Jefferson
- Domenick Lazzara
- Jamila Little
- Rinky Parwani
- William Schwarz
- Roland "Chip" Waller

Continued from page 54

for professionalism, and I truly believe David Rowland is a keystone to that reputation." Former Chief Judge Manny Menendez, in his nomination of Rowland for this award, added: "He worked tirelessly to help organize and establish the circuit's professionalism committee, and continues to work with the bar in keeping the committee active and on task." Former Chief Judge Dennis Alvarez noted Rowland is a phenomenal person who absolutely deserves this award. Retired Judge Jim Barton also proclaimed that Rowland is "the glue that holds the Thirteenth Circuit together."

The praises of Rowland poured in for the committee's review from current and former judges, staff attorneys, neighbors, and colleagues from other agencies. Former staff attorney Jacob Hanson expressed, "Dave does not view professionalism like a cap he can put on and take off at his leisure, but views it as something much more integral to who he is. That makes him a model of professionalism, both inside and outside the legal profession." Staff attorney Colleen O'Brien declared, "Rowland's wise assessment and counsel of any situation is sought out as the gold standard." Judge Samantha Ward, who also nominated David for this award, summarized the nomination, "He epitomizes what we hope lawyers bring to our profession." Congratulations to David Rowland for this well-deserved award.



*Author:
Hon. Frances A.
Perrone – Thirteenth
Judicial Circuit*



3 Business Jury Trials So Far in 2016

3 Verdicts Awarding 100% Damages



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January 29, 2016

*Max King Realty, LLC
v. Ramar LLC, et al.*

Description:
Damage to Real Property

Damages Requested:
\$423,000

Jury Verdict:
\$423,000

May 13, 2016

*Safe American Security, Inc., et al.
v. Security Systems, Inc., et al.*

Description:
Breach of Contracts

Damages Requested:
\$782,560

Jury Verdict:
\$784,898

March 22, 2016

*Florida Outdoor Properties, Inc.
v. American Citrus Products Corp., et al.*

Description:
Real Estate Commission

Damages Requested:
\$427,800

Jury Verdict:
\$427,800

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FLORIDA'S NEW FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

Real Property Probate & Trust Section

Co-Chairs: Kristin Morris – Shutts & Bowen; and Anthony Diecidue – Genders Alvarez Diecidue



Before the Florida Fiduciary Access to Digital Assets Act went into effect on July 1, 2016, Florida did not have any laws governing the access and disposition of an individual's digital assets, such as emails, texts, financial accounts, social media accounts, online photographs, and other electronic records, during incapacity or upon death. Custodians that maintain or store digital assets denied fiduciaries access to an individual's digital assets in accordance with terms-of-service ("TOS") agreements (which can provide that all rights cease on death and that all data will be deleted) or federal privacy laws prohibiting disclosure.

The legal duties imposed on a fiduciary charged with managing tangible property, including the duties of care, loyalty, and confidentiality, also apply to the management of digital assets. Now, under the Act, personal representatives, trustees, guardians, and agents with power of attorney have legal authority to access, control, and manage digital assets and electronic communications. The Act expressly provides procedures for fiduciaries to request that custodians disclose or terminate digital assets.

To gain access to digital assets, fiduciaries must provide proof of their authority. If the custodian fails to comply with a fiduciary's request, the fiduciary may seek a court order directing compliance. Notably, the Act distinguishes between the disclosure of the *content* of electronic communications (the substance not readily accessible to the public), and the *catalog* of electronic communications (identifying each person, the time and date, and the electronic address).

For example, a custodian must disclose to the personal representative the deceased user's catalog of electronic communications and other digital assets, unless the user prohibited disclosure. But the personal representative's access to the content of electronic communications requires the deceased user's express consent or a court order. Regardless, if a user has deleted a digital asset, the custodian is not required to disclose it.

The Act provides an order of priority as to an individual's directions regarding his or her digital assets upon incapacity or death: An "online tool" (an electronic service provided by a custodian allowing the user to provide directions for disclosure



The legal duties imposed on a fiduciary charged with managing tangible property also apply to the management of digital assets.

or nondisclosure of digital assets) overrides a contrary direction in a will, trust, power of attorney, or other record, as long as the online tool allows the user to modify or delete a direction at all times. If there is no online tool, then the user may provide directions in a will, trust, power of attorney, or other record.

Finally, in the absence of any direction (e.g., an online tool, will, trust, power, of attorney, etc.), the TOS agreement controls.

Advisors may consider counseling clients on: (1) keeping up-to-date inventories of electronic data, with log-in IDs and passwords, and storing them in a secure location; (2) using online tools regarding disclosure of digital information; and (3) including provisions in wills, trust agreements, and powers of attorney dealing with access to and disposition of digital assets. Individuals can plan for the management and disposition of their digital assets, similar to their tangible property, and specify whether digital

assets should be preserved, distributed to heirs, or destroyed.



Author:
Lauren Taylor –
Shutts & Bowen LLP

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Real Property, Probate & Trust Section Luncheon

The RPPTL Section received an update on probate rules issues from J. Richard Caskey with J. Richard Caskey, P.A. on November 17 at their luncheon. Thank you to the members that attended!

The section also appreciates their luncheon sponsor:



BLI Visits Port of Tampa

The Bar Leadership Institute visited the Port of Tampa on October 20 and learned about the significant role it plays in the local economy. Learn more about the Port of Tampa on page 18.



To submit news for Around the Association or Jury Trial Information, please email Stacy@hillsbar.com.

To view additional HCBA news and events, go to www.facebook.com/HCBAatampabay.

THE BATTLE OVER THE NEW FIDUCIARY RULE

Securities Section

Co-Chairs: Dan Dietrich - Burr & Forman LLP; and Rob K. Jamieson - Wiand Guerra King



On April 6, 2016, the U.S. Department of Labor (DOL) issued its final rule expanding the definition of the “investment advice fiduciary” under the Employee Retirement Income Security Act of 1974 (ERISA) and modifying the exemptions for investment activities. The new rule, which will be phased in starting in April 2017, is anticipated to draw battles over its expansion of the circumstances under which providing investment advice could give rise to a fiduciary duty.

Specifically, by expanding the definition of a fiduciary, the rule casts a wide net in assigning fiduciary responsibilities to many investment professionals who did not previously consider themselves to be fiduciaries. As a consequence, the potential liability for large groups of investment advisors has greatly increased, which could have “catastrophic consequences” for their members, as some opponents contend.

One such battle was recently decided and came out in favor of the DOL.¹ On June 6, 2016, the National Association for Fixed Annuities (NAFA) sued the DOL in federal court in the District of Columbia, challenging the new rule and seeking a preliminary injunction to stay its implementation. NAFA’s principal arguments against

the new rule were that: (1) the DOL exceeded its authority to regulate IRAs; (2) the new rule improperly includes insurance agents as fiduciaries and creates private rights of action, which only Congress can do; and (3) the DOL’s Notice of Proposed Rulemaking failed to provide adequate notice, under the Administrative Procedures Act, that the rule would subject fixed indexed annuities (“FIAs”) to onerous compliance obligations.² NAFA contended that the new rule would have disastrous consequences, including lost jobs, fewer choices for consumers, and increased litigation.

After hearing oral argument and considering cross-motions for summary judgment by NAFA and the DOL, the district court rejected NAFA’s arguments, denied its request for a preliminary injunction, and granted summary judgment in the DOL’s favor, upholding the validity of the new rule. The court explained that the DOL acted within its statutory authority when expanding the applicability of fiduciary responsibilities under the new rule, and provided a satisfactory rulemaking and notification process. The court found that the DOL sufficiently explained how the relationship between



The rule casts a wide net in assigning fiduciary responsibilities to many investment professionals.

advisors and investors has changed and that the new rule is appropriate due to the increased complexity and variety of financial products in the marketplace.³ Further, the court found that NAFA lacked standing to complain about the rule’s potential to “sweep in some relationships

that are not appropriately regarded as fiduciary in nature,” because this likely consequence was unrelated to NAFA or its members’ sale of annuities.⁴

This was an important victory for the DOL because it is currently defending several other pending lawsuits filed by financial industry groups challenging the new rule. The rulings in these other matters will become increasingly important, as will NAFA’s anticipated appeal, since time is running out before the rule becomes effective.

¹ *Nat’l Assn’ for Fixed Annuities v. Perez*, 2016 WL 6573480 (D.D.C. Nov. 4, 2016).

² *Id.* at *2.

³ *Id.* at 20.

⁴ *Id.* at *21.



Author: Daniel P. Dietrich and Justin P. Bennett – Burr & Forman, LLP

YLD Celebrates Pro Bono

The Young Lawyers Division held a special luncheon on October 19 to raise awareness among its members of the many pro bono opportunities available with local agencies.

The event was a great success, with more than a dozen agencies in attendance.

The YLD would like to thank Westshore Financial Group for sponsoring its luncheon.



CITING WRONG BASIS WILL PRECLUDE ATTORNEY'S FEES AWARD

Solo & Small Firm Section

Chair: Amanda Uliano – Law Office of Amanda Uliano, P.A.



Because attorney's fees can easily mount, recovering them from the opposing party is important. So it's important not to let an award of attorney's fees slip through your fingers because of an improper citation. Unlike the English Rule, the American Rule is that each party bears its own attorney's fees and costs, unless the parties' contract or a statute provides otherwise. *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145, 1148 (Fla. 1985). A party seeking prevailing fees and costs under a contract or statute is required to file a motion under Rule 1.525. *Massey v. David*, 979 So. 2d 931, 951 (Fla. 2008). Rule 1.525 requires a prevailing party to file a motion for costs and attorney's fees within 30 days of the judgment or dismissal.

Like any other motion, a motion for attorney's fees and costs must comply with Rule 1.100(b), which requires motions to state their grounds with particularity. In the context of a motion under Rule 1.525, this means citing to the appropriate basis for attorney's fees and costs. *European Bank Ltd. v. Online Credit Clearing Corp.*, 969 So. 2d 450 (Fla. 4th DCA 2007). In *European Bank Ltd.*, defendants, Sami Slim and Online Credit

Clearing Corporation, prevailed on fraud, contract, and other claims when the court dismissed European Bank's claims with prejudice because its former director failed to appear for deposition.

The defendants timely filed a motion for attorney's fees based on the parties' agreement, Florida's Fraudulent Transfer Act, and section 57.105, Florida Statutes. Well after the 30-day time period under Rule 1.525, Slim filed an amended fee motion adding a proposal for settlement under section 768.79, Florida Statutes, as a basis for fees. The Florida Fraudulent Transfer Act was found not to be a valid basis for attorney's fees, so the only remaining issue was entitlement under the proposal for settlement.

The Fourth District Court of Appeal held that Slim's amended fee motion, which was the basis of its claim for fees under the proposal for settlement, could not be considered because it was not filed within 30 days of the final judgment. Only the original fee motion, which did not mention



Don't let an award of attorney's fees slip through your fingers because of an improper citation.

the proposal for settlement, was filed within the required 30 days. Because the original fee motion did not state a valid claim for attorney's fees, it did not meet the requirements of Rule 1.100(b), and as a consequence, the defendants were not entitled to attorney's fees.

The county court, in *Gillis v. Fulford*, 19 Fla. L. Weekly Supp. 411 (Fla Santa Rosa Cty. Ct. 2012), reached a similar result.

In *Gillis*, which was a landlord-tenant action, the prevailing party mistakenly cited to section 627.428(1), Florida Statutes, instead of section 83.48, Florida Statutes, as the basis for fees. Because the prevailing party failed to cite to the proper statutory basis for fees, the court ruled the prevailing party was not entitled to fees or costs.

The takeaway from *European Bank* and *Gillis* is clear: plead the proper basis for fees in your Rule 1.525 motion or watch your fee claim slip through your fingers.



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COURT RESOLVES DISTRICT SPLIT OVER OFFERS OF JUDGMENT

Trial & Litigation Section

Chair: Caroline Johnson Levine – Office of the Attorney General



Offers of judgment made under section 768.79, Florida Statutes, and Rule 1.442 of the Florida Rules of Civil Procedure may serve as a beneficial alternative to lengthy litigation. However, while offers of judgment encourage settlement, the question of an offer's validity has itself become a litigious issue.

On October 20, 2016, the Florida Supreme Court, in *Kuhajda v. Borden Dairy Co. of Alabama*, resolved a split between the First and Fourth District Courts of Appeal over whether an offer must strictly comply with Rule 1.442(c)(2)(F), even where the underlying complaint does not seek attorney's fees. No. SC15-1682, 2016 WL 6137289, at *1 (Fla. Oct. 20, 2016). Specifically, Rule 1.442(c)(2)(F) requires offers to specify whether attorney's fees are included and whether attorney's fees are part of the legal claim.

This district split stemmed from differing interpretations of the Florida Supreme Court's decision in *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362 (Fla. 2013). In *Horowitch*, the Court held that an offer was invalid for failing

to strictly comply with Rule 1.442(c)(2)(F). *Id.* at 376. Notably, however, attorney's fees were sought in the underlying complaint.

Citing to *Diamond Aircraft*, the First DCA in *Borden Dairy Co. of Alabama, LLC v. Kuhajda* subsequently held that an offer was invalid for failing to strictly comply with Rule 1.442(c)(2)(F) even though the plaintiff did not seek attorney's fees in the underlying complaint. 171 So. 3d 242, 243 (Fla. 1st DCA 2015). This holding directly conflicted with the Fourth DCA's decision in *Bennett v. American Learning Systems of Boca Delray, Inc.*, which held that offers need not strictly comply with Rule 1.442(c)(2)(F) when attorney's fees are not sought in the pleadings. 857 So. 2d 986, 988 (Fla. 4th DCA 2003).

In resolving this conflict, the Florida Supreme Court in *Kuhajda* adopted the Fourth District's reasoning and declined to invalidate the plaintiff's offer of judgment solely for violating a requirement in Rule 1.442 that section 768.79 does not require. 2016 WL 6137289, at *4.



The Court concluded that the plaintiff's failure to include the attorney's fees language in the offer did not create an ambiguity.

The Court concluded that the plaintiff's failure to include the attorney's fees language in the offer did not create an ambiguity because the plaintiff never sought attorney's fees in her complaint. *Id.* On this basis, the Court held that an offer need not strictly comply with Rule 1.442(c)(2)(F)'s requirements when attorney's

fees are not sought. *Id.* at *3.

The *Kuhajda* decision simply rejects a "form over substance" bright-line rule in favor of a "substance over form" analysis. While a "substance over form" analysis may lead to more issues than a bright-line rule, the *Kuhajda* decision likely will help courts avoid rejecting otherwise compliant and unambiguous offers in the future.



Authors:
Erin G. Jackson and
Ashley A. Tinsley -
Thompson, Sizemore,
Gonzalez &
Hearing, P.A.

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Construction Law Section Hears From Judge

On October 20, the Construction Law Section received an update from Judge Mark Kiser with the Circuit Court – Foreclosure Division, who also is a Board-certified construction attorney. He additionally provided practical tips to the group on the interplay of foreclosure actions and construction liens.

The section would like to thank First Citrus Bank for sponsoring its luncheon.



Bankruptcy for Beginners Seminar

The HCBA hosted a free pro bono seminar/CLE with the Tampa Bankruptcy Bar Association, Bay Area Legal Services, and the U.S. Bankruptcy Court, Middle District of Florida, on October 20 at the Chester Ferguson Law Center. The event was a great success with a capacity crowd. Thank you to everyone that worked to make this event happen!



The HCBA Trial & Litigation Section was pleased to sponsor the 20th Annual Bench Bar Conference and Judicial Reception. To learn more about the Trial & Litigation Section and how to join this 600 member-strong group, visit hillsbar.com.




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TEMPORARY PARTIAL INDEMNITY AFTER *WESTPHAL II*

Workers' Compensation Section

Co-Chairs: Anthony V. Cortese - Attorney at Law; and Don Bennett - Banker Lopez Gassler P.A.



In *Jones v. Food Lion*, 2016 WL 6609492 (Fla. 1st DCA Nov. 10, 2016), the First District Court of Appeal considered whether the Florida Supreme Court's recent decision in *Westphal v. City of St. Petersburg*, 194 So. 3d 311, 327 (Fla. 2016) (*Westphal II*), which struck down a reduction on temporary indemnity benefits for total disability, extended to temporary indemnity benefits for partial disability. The First DCA ruled that the reasoning in *Westphal* did in fact extend to temporary *partial* indemnity benefits.

In *Westphal II*, the Florida Supreme Court ruled that certain amendments to the Florida Workers Compensation Act reducing temporary total indemnity benefits to 104 weeks were unconstitutional. As a result, a previous version of the statute allowing for 260 weeks of temporary indemnity benefits was revived. Although the *Westphal II* Court criticized other provisions in the Act, its holding was limited to temporary total indemnity benefits.

Not long after *Westphal II* was decided, various claimants asserted a right to 260 weeks of temporary partial indemnity benefits.

Although the claimant in the *Westphal II* case was only claiming temporary total indemnity benefits under section 440.15(2)(a), Florida Statutes, the language of the decision spoke in terms of temporary disability benefits, and the logic of the decision applied equally to temporary partial indemnity benefits under section 440.15(4)(e). In *Jones v. Food Lion*, 2016 WL 6609492 (Fla. 1st DCA Nov. 10, 2016), the First DCA was confronted with this question, and agreed with the claimant that he would be entitled to the same 260 weeks of temporary partial indemnity that a claimant is entitled to for temporary total indemnity. The First DCA cited the recent Florida Supreme Court decision in *Westphal II*: "Applying that reasoning here leads to the conclusion that, as of the time of the hearing below, claimant was in fact entitled to temporary partial disability benefits and remained eligible until the expiration of 260 weeks." *Id* at *2.

The *Jones* case started with a claimant pursuing permanent total disability benefits under *Westphal v*



Claimant was entitled to temporary partial disability benefits until the expiration of 260 weeks.

City of St. Petersburg, 122 So. 3d 440 (Fla. 1 DCA 2013) (*Westphal I*). The claimant asserted that under *Westphal I*, because his 104 weeks of temporary indemnity benefits had run out, he should be considered at maximum medical improvement and allowed to pursue permanent and

total disability benefits. The Judge of Compensation Claims held that the claim was premature because *Westphal I*, which allowed such a claim, only applied to temporary total indemnity and not to temporary partial, which is what Jones was pursuing. Between the judge's decision and this ruling in *Jones*, *Westphal II* was decided by the Florida Supreme Court. The First DCA accordingly affirmed the Judge of Compensation Claims' ruling in *Jones* but, on other grounds, found the claim to be premature because the claimant was entitled to 260 weeks of temporary partial indemnity benefits under the Florida Supreme Court ruling in *Westphal II*.

Author: Anthony V. Cortese - Attorney at Law

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Workers' Compensation Section Luncheon

The Workers' Compensation Section heard from Michael J. Winer, Esq. and David K. Beach, Esq. on October 4 regarding the timely subject of "Claimant's Attorney's Fees after *Castellanos* and *Miles*."

The section would like to thank Injured Workers Pharmacy for sponsoring this luncheon.



RPPTL Luncheon

The Real Property, Probate & Trust Section learned about the dangers of cyber fraud and issues related to closings and real estate transactions on October 13 from John Gonzalez with Fidelity National Title Group.

The Section also would like to thank Fidelity National Title Group for sponsoring its luncheon.



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Health & Wellness Expo

HCBA members and their staff took advantage of free flu shots, health screenings and information, and special giveaways during the Third Annual Health & Wellness Expo on October 26. About 100 members visited the 20 organizations featured at the event, including OneBlood, Passport Health, CycleBar South Tampa, American Heart Association, Massage Envy, Bella Prana Yoga Studio, Tampa YMCA, and BayCare Health. The HCBA appreciates the support of NorthStar as its event sponsor.







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Ceci C. Berman - Ceci Berman of **Brannock & Humphries** presented regarding an “Introduction to Appellate Practice” at The Florida Bar’s Basic Appellate Practice seminar.

Bradley Arant Boulton Cummings LLP - is pleased to announce that **Christina E. Blood** and **Diana N. Evans** have joined the firm’s Tampa office litigation group as associates.

Carlton Fields - Carlton Fields shareholders **Kathleen S. McLeroy** and **Gwynne A. Young** have been re-appointed by Florida Chief Justice Jorge Labarga as members of the 23-person Florida Commission on Access to Civil Justice.

Carlton Fields - has unveiled LaunchtoThrive.com, a microsite that provides legal documents, resources, and free counsel to entrepreneurs in the technology industry. The aim is to help startups in regional tech-growth markets master multiple business challenges by providing startup-specific legal services and support at no cost.

Ronald A. Christaldi - **Shumaker, Loop & Kendrick, LLP** is pleased to announce that Ronald A. Christaldi, partner in the Tampa office, is the recipient of the Lions Eye Institute for Transplant and Research 2016 Light of Sight Award.

Jessica Costello - Jessica Costello of the **Florida Attorney General’s Office** was named to the *Tampa Bay Business Journal’s* “Up and Comers” Under 40 Hall of Fame, in recognition of

contributions to the business community as a young professional.

Victoria Cruz-Garcia - Victoria Cruz-Garcia of **Givens Givens Sparks** awarded two scholarships in her name at the 10th annual Tampa Hispanic Bar Association (THBA) gala dinner and ceremony on Nov. 3. The Cruz-Garcia Scholarship is for current students in a Florida law school who have demonstrated excellence in academics, shown a strong record of service to their community, and have expressed a desire to remain in or return to the Tampa Bay area following completion of their legal studies.

James E. Felman - Kynes, Markman & Felman, P.A. is pleased to announce that The American Bar Association Criminal Justice Section honored James E. Felman with its Charles R. English Award at the Criminal Justice Section Awards Luncheon on Nov. 4 in Washington, D.C.

Celene H. Humphries - Celene H. Humphries, an appellate specialist with **Brannock & Humphries**, recently presented several seminars on a number of topics for the Florida Justice Association, including proposals for settlement, experts, and trucking law.

William Judge - Shareholder William Judge of **Hill Ward Henderson** was recently accepted for membership to the International Association of Defense Counsel.

Matthew Lastinger - Holland & Knight is pleased to announce that Matthew Lastinger has joined the firm as an associate in the Tampa office.

Ernie Marquart - The law firm of **Shumaker, Loop & Kendrick, LLP** is pleased to announce that Tampa partner Ernie Marquart has been appointed to a three-year term on the board of trustees for the Academy of the Holy Names.

Kevin J. Napper - announces the formation of **The Law Offices of Kevin J. Napper, P.A.** Napper has over 32 years of experience in criminal trial law and will continue his representation of corporate executives and public and private companies in government investigations and prosecutions. He also represents physicians and health-care executives in professional liability and regulatory matters.

Phelps Dunbar - Phelps Dunbar is pleased to welcome new associates **Valerie Assad, Sarah Gottlieb** and **Matthew Perez**. Assad and Gottlieb will practice in the firm’s Tampa office’s insurance and reinsurance group, while Perez will practice in the labor and employment group.

Maria Del Carmen Ramos - The law firm of **Shumaker, Loop & Kendrick, LLP** announces that Tampa partner Maria del Carmen Ramos spoke at the Tampa Bay Paralegal Association’s 2016 Annual Seminar entitled “Paralegal Training Camp — The Essential Skills for the Paralegal Warrior!” on Nov. 11.

Dipa Shah - Shumaker, Loop & Kendrick, LLP welcomes Dipawali “Dipa” S. Shah, who has joined the Tampa office, Of Counsel, in the healthcare, corporate and bankruptcy,

Continued on page 75

Continued from page 74

insolvency and creditors rights practice groups.

Robert Stines - Phelps Dunbar litigation attorney Robert Stines has been appointed to the Gasparilla International Film Festival’s board of directors.

Jessica S. West - Shumaker, Loop & Kendrick, LLP is pleased to announce that Jessica S. West has joined the Tampa office as an associate attorney in the health care practice group.

Ciara Willis - Dean Mead welcomes Ciara C. Willis in its

Tampa office as an associate in the litigation department.

April L. Zinober - Shumaker, Loop & Kendrick, LLP is pleased to announce that April L. Zinober has joined the Tampa office as an associate attorney in the litigation practice group.

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JURY TRIALS

For the month of August 2016
Judge: Hon. Rex Barbas
Parties: Haas & Wilkerson Insurance, Inc. v. JCJ Amusements, LLC
Attorneys: For plaintiff: Robert Stines and Jonathan Hempfling; For defendant: Kerry C. McGuinn
Nature of case: Breach of contract, negligent procurement of insurance.
Verdict: Total verdict for plaintiff/counter-defendant

For the month of October 2016
Judge: Hon. William Levens
Parties: Randall Sears v. Laser Spine Institute
Attorneys: for plaintiff: William Hahn; for defendant: Christopher Schulte
Nature of case: Medical malpractice (alleged improper spine surgery)
Verdict: For the defendant. Defendant’s motion for attorneys’ fees and costs pending.

For the month of October 2016
Judge: Hon. Paul Huey
Parties: Jessy Chaanine v. All Crane Rental of FL.
Attorneys: for plaintiff: Darrell Kropog and Brandon Scheele; for defendant: Jeff Pearson and Stephanie Valentine
Nature of case: Rear-end auto accident. Non-surgical herniated disk.
Verdict: \$447,115



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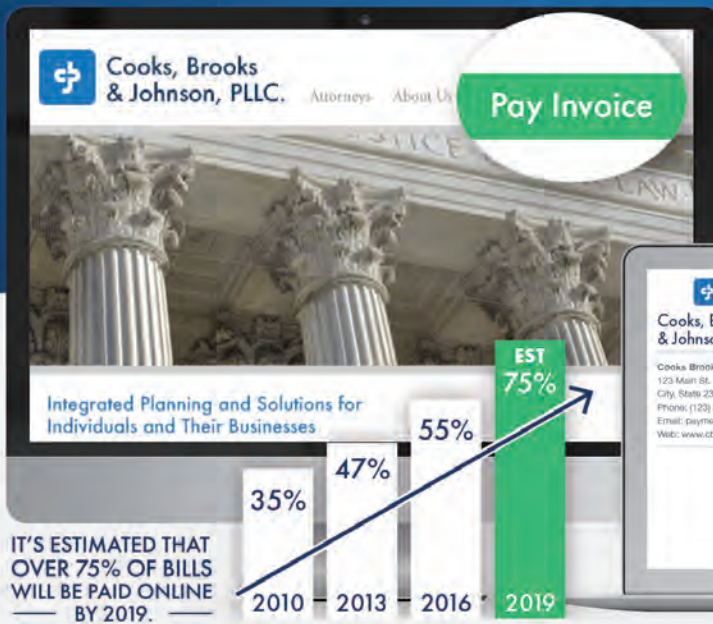


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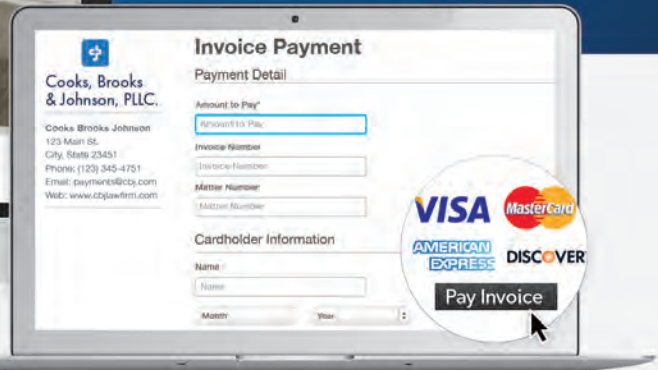
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