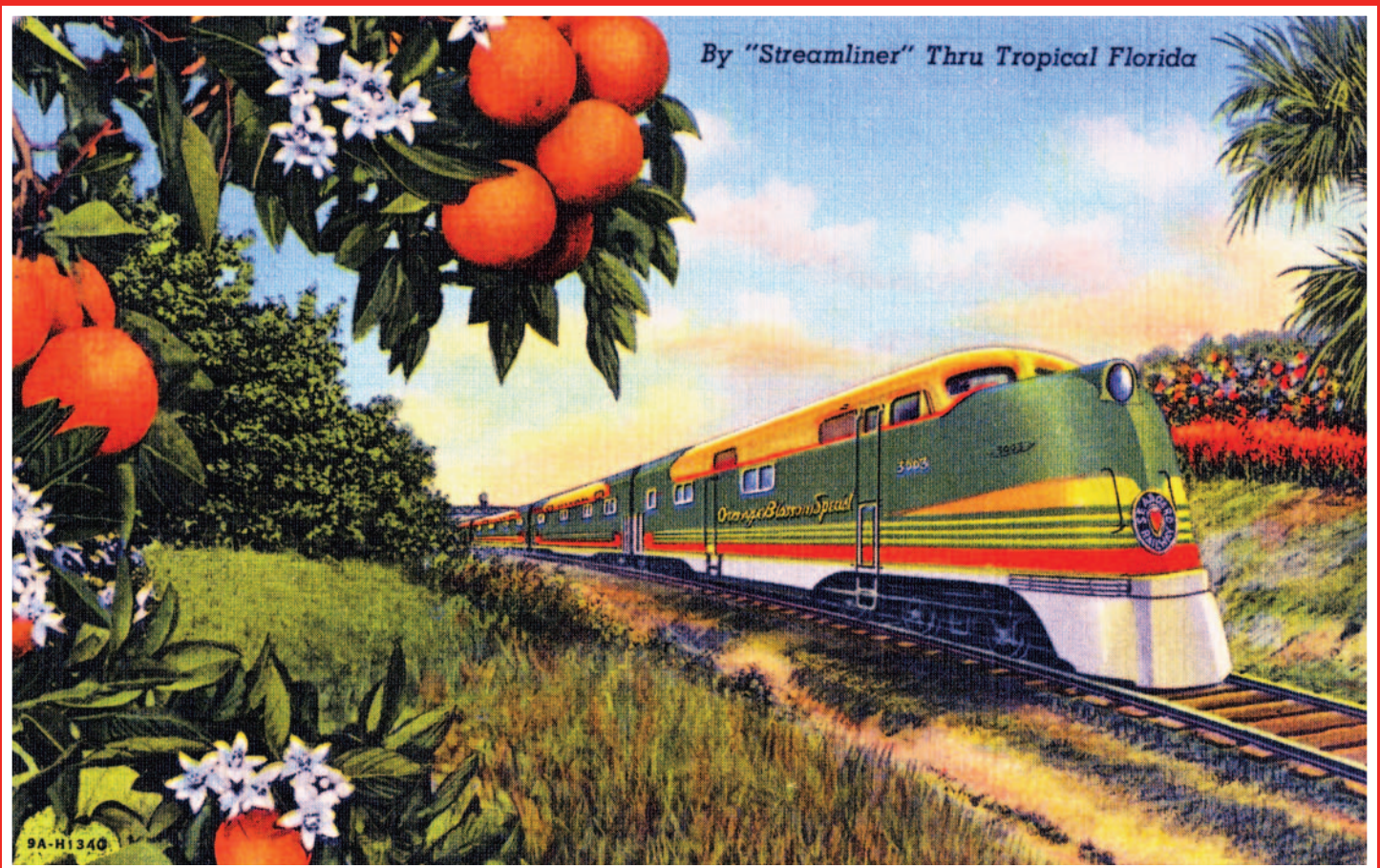


# LAWYER

THE HILLSBOROUGH COUNTY BAR ASSOCIATION  
TAMPA, FLORIDA | MAY - JUNE 2019 | VOL. 29, NO. 5





## Gunn is proud to accept referrals of medical malpractices and insurance cases.

### 2017: Medical Malpractice caps declared unconstitutional

[W]e ...hold that the caps in section 766.118 violate equal protection under the rational basis test because the arbitrary reduction of compensation without regard to the severity of the injury does not bear a rational relationship to the Legislature's stated interest in addressing the medical malpractice crisis with your clients.

*NORTH BROWARD HOSPITAL DISTRICT v.KALITAN, 219 So.3d 49 (Fla. 2017).*

### 2018: Insurer's duty to act with reasonable care and due diligence in the handling of claims reaffirmed

"Rather, the critical inquiry in a bad faith is whether the insurer diligently, and with the same haste and precision as if it were in the insured's shoes, worked on the insured's behalf to avoid an excess judgment.

*HARVEY v..GEICO GENERAL INSURANCE COMPANY, --- So. 3d ---, 2018 WL 6602094, (Fla. 2018)*



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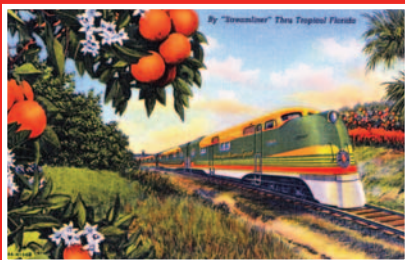
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## ABOUT THE COVER

This issue's cover image highlights two important historical industries in Florida — the agricultural industry and the railroads, which connected Florida cities and Florida to the rest of the country. This postcard image from 1939 entitled *By streamliner thru tropical Florida* shows a famous streamliner train named the Orange Blossom Special. The Orange Blossom Special was a deluxe passenger train that traveled on the Seaboard Air Line Railroad and connecting railroads between New York City and Miami, with sections that traveled to Tampa and St. Petersburg. It ran during the winter season only, with the goal of capitalizing on booming development in Florida at the time and bringing wealthy business leaders to the state.

The train travels through an orange grove in bloom on the postcard, showing an iconic image that Florida is famous for. Even today, Florida is responsible for 63 percent of the nation's total citrus production, according to the Florida Department of Agriculture and Consumer Services. We rank second in the nation for vegetable production and also are number two in the U.S. for the production of greenhouse and nursery products. The state's top crops include oranges, grapefruit, bell peppers, sugarcane, fresh market tomatoes, squash, and sweet corn.

*Cover photo used with permission from the State Archives of Florida online Florida Memory collection.*



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## Happy Mother's Day

**To all the moms out there, you are superheroes in my book.**

*“To be a superhero, you need a power that is more exceptional than any power a normal human being could possess.” — Stan Lee*

I suppose Lee, who led Marvel Comics for two decades and created the likes of Iron Man and Spider-Man, is an expert on the subject. But he's wrong.

Let me explain. Recently, I saw Captain Marvel. In the movie's opening scenes, we meet Vers, a member of Starforce, an elite unit of the Kree alien race, which is in the midst of an intergalactic battle with the Skrulls. As the story unfolds, we learn Vers is really Carol Danvers, a U.S. Air Force pilot who crashed testing an experimental jet engine designed to allow the Skrulls to escape the Kree. Because of the crash, Danvers developed the ability to absorb energy and shoot photonic blasts from her hands. Eventually, Danvers (who becomes Captain Marvel after learning her real identity) realizes she must take on the Kree, but she fears she's not strong enough to do so — even with her superpower.

Maria Rambeau, Danvers' former co-pilot in the Air Force, gives her a pep talk:

“You are Carol Danvers. You were the woman on that black box risking her life to do the right thing. My best friend. Who supported me as a mother and a pilot when no one else did. ... And you were the most powerful person I knew, way before you could shoot fire through your fists.”

The most powerful person I've ever known couldn't shoot fire through her fists either. But, in my mind, she had all the qualities of a superhero.

My mom had a tough life. She was raised by a single mom who had to work waitressing jobs just to make ends meet; had to drop out of nursing school to care for her sick grandmother; and after my dad died, was left to raise four boys (ages 14, 11, 10 & 8) alone. Armed with only a high school education, she worked every job imaginable — cleaning houses and repaving driveways in the Florida heat among others — just to get by.

Though no one would've begrudged her for doing so, not once did she complain about her lot in life. Despite seemingly having the worst luck, she was the most optimistic person I knew. Even though she never had more than a couple dollars to her name, she had the kind of class that comes from being content with who you are. She was

funny, humble, gracious, kind, and tough as nails. As I've thought about her since she passed away last July, I've realized these aren't qualities she was born with — they came from choices she made.

According to comic book historian, T. Andrew Wahl, DC Comics tried to capitalize on the feminist movement in the 1960s and 1970s by stripping Wonder Woman of her powers. As Wahl explains it, DC Comics' approach was “Super powers don't make the hero. It's the heroic choices they make that make the hero.”

Being a mom requires making heroic choices every day. I was blessed to be raised by a mom who made those heroic choices. I am also blessed to be married to a woman who makes those heroic choices, to have nieces and nephew who are raised by moms who do, and to be friends and work in a professional community with women who do. I don't care what Stan Lee says, to all the moms out there, you are superheroes in my book.





## Why We Need to Keep Talking About Diversity and Inclusion

**True diversity and inclusion in the legal profession requires more than checking off boxes.**

**I**n some respects, the legal profession appears to be growing more diverse. Three women now serve on the Supreme Court. Our former president and first lady are lawyers of color. In Florida, Attorneys General Ashley Moody and Pam Bondi serve and served as the State's top lawyer. But U.S. Bureau of Labor statistics tell a different story.

The legal profession is one of the least racially diverse professions in the nation. Almost 88 percent of lawyers are white. Other professions are faring better — 79 percent of banking and financial service professionals are white; 79 percent of physicians are white;<sup>1</sup> and 81 percent of accountants are white. Women also face significant challenges in our profession. Though women now make up a majority of U.S. law school students, they make up only 35 percent of our lawyers. In leadership positions, women account for only 22.7 percent of partners; 19 percent of equity partners; and 25 percent of managing partners.<sup>2</sup>



Lawyers serve as presidents and governors. They serve in both chambers of the United States Congress and all state governments. And of course, they serve on the bench and as prosecutors and public defenders. As society's

*Continued on page 5*

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*Continued from page 4*

leaders in all branches of government, the legal profession must be as inclusive as the society it serves.

Diversity and inclusion also serve practical purposes for our profession. A demographically diverse law firm that more accurately represents the general population will have a broader reach for clientele. Diversity and inclusion also generate innovation. Presenting ideas to a diverse group of people will likely produce more discussion, new perspectives, and different thinking than presenting ideas to a homogenous group. Finally, diversity and inclusion programs will help attract top young talent. The majority of millennial women (86 percent) and millennial men (74 percent) consider company policies on diversity and inclusion during their job search. Attention to the millennial population is critical because they now make up the largest generation in the U.S. workforce.<sup>3</sup>

True diversity and inclusion in the legal profession requires more than checking off boxes. True diversity and inclusion requires having people of diverse cultures, experiences, and backgrounds at all levels in law firms. It requires engaged leadership, candid self-awareness, and tackling biases (both express and implicit). It requires educational programs for members of the bar, such as the “Diversity Resources” available through The Florida Bar’s Standing Committee on Diversity and Inclusion,<sup>4</sup> and the Report of The Florida Bar Special Committee on Gender Bias.<sup>5</sup>

What can each of us do to move the diversity and inclusion needle forward? Some initial steps include:

1. **Joining a minority bar association, or at least attending some minority bar association events.** Men are welcome and active members of

HAWL; GEBA welcomes the participation of its white members; and the THBA is not limited to Hispanics. These and many other local affinity bar associations are doing important work, providing valuable CLEs, and offering fantastic marketing opportunities for all members of the bar.

2. **Getting involved as a mentor.** Volunteer to mentor a minority law student or young lawyer, and no matter who you mentor, make diversity and inclusion part of the discussion.

3. **Participating in bias-interruption and diversity and inclusion training.** No one is immune to bias. We need to check ourselves.

4. **Seeking out non-white and women lawyers and judges to serve on speaking panels, boards, and committees.**

There are no easy answers or quick fixes to achieving diversity and inclusion. But the journey is possible. Each of us must take responsibility for pursuing and making positive changes to our profession, and meaningful diversity and inclusion is a goal worth pursuing.

<sup>1</sup> Bureau of Labor Statistics, U.S. Department of Labor, Labor Force Statistics from the Current Population, 2018 (<https://www.bls.gov/cps/cpsaat18.htm>).

<sup>2</sup> American Bar Association, Commission on Women in the profession, A Current Glance at Women in the Law (January 2018) (<https://www.americanbar.org/content/dam/aba/administrative/women/a-current-glance-at-women-in-the-law-jan-2018.pdf>).

<sup>3</sup> <https://www.quora.com/Why-are-diversity-and-inclusion-important-to-the-success-of-Hewlett-Packard>.

<sup>4</sup> <https://www.floridabar.org/about/diversity/diversity003/>.

<sup>5</sup> <https://www-media.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>.



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## To Refer or Not to Refer? – That is the Question

**Referring a case is likely to produce more business for your firm, as you build relationships with attorneys outside of your area of practice.**

**Y**ou receive a call from a prospective client. Your opinion is that they likely have a case, but it is an area of law outside of your expertise. What do you do? Do you handle the case knowing you may not be the best option for the client? Or do you refer the case to an attorney who you know to be an expert in that area of practice?

The dilemma above is one young lawyers routinely face early in their careers. The pressure of developing business and generating income can be suffocating. It can lead to an attorney handling a case that they would normally refer to more qualified counsel.

Handling a case outside of your expertise not only risks your client's interests, but it risks your reputation and practice. Referring a case not only avoids those risks but is likely to produce more business for your firm, as you build relationships with attorneys outside of your area of practice.

So how do you navigate the world of referrals? Below are several questions I believe every young lawyer should consider when referring a case to another attorney.

### **What involvement is expected of you in the case?**

In most cases, once you refer the client to another attorney, your work is done. But, you want to confirm that fact. You may have referred a personal friend or family member who expects you to stay involved. You need to have a clear understanding of your role beyond the referral, and that information needs to be communicated and approved by the client.

### **Does the attorney you are referring the case to have practice areas that are distinct from your own practice areas?**

Ideally, you will build a relationship with the attorney you refer cases to and receive referrals in return from that attorney. If you are choosing between several attorneys for a referral, it is in your interest to refer a case

to a qualified attorney whose practice areas are distinct from your own. Referrals are a primary source of business and those referral relationships can last entire careers.

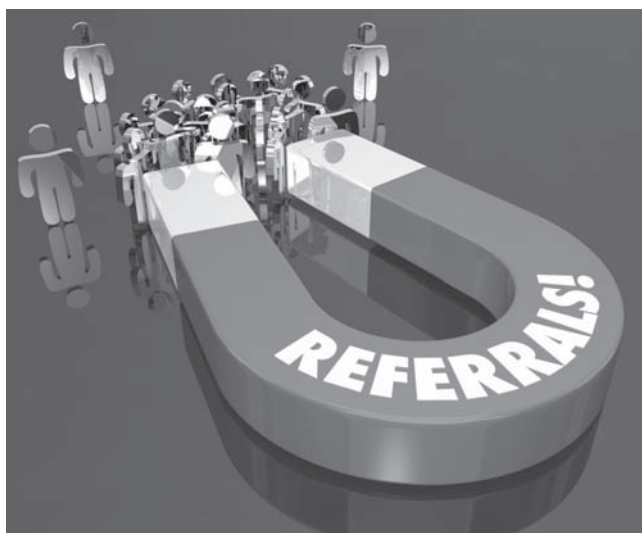
### **Does the attorney you are referring the case to have professional malpractice insurance?**

Many young lawyers do not appreciate that, as a referral attorney, you can be found responsible for the negligence of the attorney to whom you

refer a case — even if you never touched the case after referring it to another attorney. Ensuring the attorney you refer a case to has insurance is not only an added layer of protection for you and your firm, but also a layer of protection for the client. Of course, you still need your own insurance as a referral attorney, so be sure you are comfortable with your coverage as you build on your referral network.

### **Does the lawyer pay a referral fee?**

This may seem like an awkward subject to address when referring a case to another attorney, but this is



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business. Most attorneys who rely heavily on referrals expect this question — especially in cases that involve a contingency fee agreement. Don't be afraid to ask the question, and be sure to review the Florida Bar's Rules on sharing attorneys' fees before entering in to any agreement to take a referral fee.

The legal profession has always relied on referral relationships to help clients find their way to the right attorney. Following some of these suggestions will help you to confidently refer cases to other attorneys.

### UPCOMING YLD EVENTS

#### YLD Judicial Appreciation Luncheon

- May 2, 2019, at 12:00 p.m.,  
Chester H. Ferguson Law Center

#### YLD Wellness Event

- May 8, 2019, at 6:45 p.m.,  
CAMP Tampa, 3012 W. Palmira Ave, Tampa

#### YLD State Court Trial Seminar and Happy Hour

- June 14, 2019, from 1:00 - 5:00 p.m.  
(Happy Hour to Follow),  
George E. Edgecomb Courthouse



## YLD Quarterly Luncheon/CLE

The Young Lawyers Division held a fun and interactive workshop on February 28, with speaker Jennifer Strouf of Improv4Lawyers, P.A. Focusing on the topic of improvised collaboration, the group learned new ways to listen, be heard, and collaborate with others. Thank you to the luncheon's sponsor:

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## Diverse Group of Local Voluntary Bar Leaders Work to Help Members and Advance the Legal Profession

Voluntary Bar Associations are “Stronger Together.”

— HCBA President John Schifino

Over the years, people have come to recognize Tampa’s rich cultural and ethnic diversity as one of its major strengths, and not a weakness.

It’s something that makes our community unique and special. It sets Tampa apart.

In fact, former Tampa mayor Bob Buckhorn once remarked that Tampa’s population is like paella, the classic Spanish entrée served at the Columbia Restaurant.

For the uninitiated, paella is a delicious mix of seafood, pork, and chicken combined with rice and a variety of seasonings.

“[Tampa is a] paella, if you will, of a community, in all its shades and ethnicities and genders and orientations and backgrounds and languages,” Buckhorn told *Tampa Magazine* in January.

“The folks who came here from somewhere else, and the folks who have been here for generations. Like a paella, if you laid it out on a table, you’d say, ‘This will never work.’ But once you put it in a dish, it’s delicious,” Buckhorn said.

Similarly, there is broad cultural and ethnic diversity in Tampa’s legal community.

At last count, there were more than 26 local voluntary Bar associations located in the Tampa Bay area.

Some voluntary Bar associations, like the HCBA, have been around for a long time. Formed in 1896, the HCBA currently has more than 3,600 members.

Other local ethnic and specialty Bar groups only recently have formed, with some having fewer than 50 members.

*Continued on page 9*



About 20 voluntary Bar leaders gathered in Clearwater at the 4th Annual Tampa Bay Voluntary Bar Leaders Summit in March.



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No matter what their size and history, however, local voluntary Bars help advance the legal profession by providing valuable programming, promoting professionalism, and building camaraderie among their members.

For example, at the HCBA's Diversity Membership Luncheon each January, the HCBA recognizes leaders from local Bars who work with the HCBA during the year to promote diversity and inclusion in the legal community.

Some of these local Bars include: the George Edgecomb Bar Association (GEBA); the Hillsborough Association for Women Lawyers (HAWL); the Tampa Hispanic Bar Association (THBA); the Florida Association of LGBT Lawyers and Allies; the Asian Pacific American Bar Association of Tampa Bay; and the Florida Muslim Bar Association.

Also, this past March, about 20 voluntary Bar leaders gathered in Clearwater at the 4th Annual Tampa Bay Voluntary Bar Leaders Summit to network and to share ideas about how to improve their associations (pictured on previous page).

Andres Oliveros, the current president of the Tampa Hispanic Bar Association, helped organize the event.

Oliveros, in his welcoming remarks, talked about how he got involved with the THBA and how it has helped him to flourish as an attorney.

He also highlighted the many hours of pro bono service that members of voluntary Bar groups provide in the community each year.

During the roundtable discussion, the Bar leaders talked about some of the common challenges they face, such as engaging and growing their membership.

There also was agreement about the importance of collaborating with other Bar groups on future events to help enhance programs and add value for their members.

HCBA President John Schifino emphasized that voluntary Bars groups should work to support each other and collaborate on events, and that they are "stronger together."

Funding for the summit was provided by a grant from the Florida Bar's Diversity & Inclusion Committee.

Vivian Cortes Hodz, current HCBA Board member and former THBA president, talked about the upcoming 2019 Voluntary Bar Leaders Conference set for July 12-13 at the Tampa Marriott Waterside.

Hodz, one of the event co-chairs, said about 150 voluntary Bar leaders from around Florida will converge on Tampa in July for this much-anticipated event, which will feature various educational sessions and networking opportunities for attendees.

The last time this annual event was in Tampa was in 2009, so this should be a great opportunity for Bar leaders from the Tampa Bay area who are intent on learning how to make their Bar associations even better for all their members.

See you around the Chet.

## ABA President Visits Hillsborough County Bar Association

HCBA's leadership was delighted to host ABA President Bob Carlson on February 11 at the Chester Ferguson Law Center in Tampa.

Pictured with Carlson are: (l to r) Past HCBA Presidents Gordon Hill and Benjamin Hill, III, YLD Board Members Traci Koster and Linda Stanley, HCBA President John Schifino, and HCBA President-elect Grace Yang.





## Poverty Traps Undermine Public Safety, Perpetuate Vicious Cycle

**Approximately 45 percent of working families in Florida struggle to afford life's basic necessities.**

**A**pproximately 45 percent of working families in Florida struggle to afford life's basic necessities: housing, food, health care, and transportation. Our working neighbors are treading water to keep their heads above poverty, just one unforeseen expense away from a crisis. Beyond their financial struggles, the working class are also vulnerable to ending up in the criminal justice system because of "poverty traps" that effectively criminalize economic hardship. From driver's license suspensions to the imposition of excessive fines and court fees, Florida is guilty of setting poverty traps that penalize otherwise law-abiding citizens simply for being poor.

Our office is implementing policies and programs that decriminalize poverty and reduce the financial burden on families in Hillsborough County. For example, a red light ticket in Florida costs approximately \$158. That ticket bumps up to \$262 if it is not paid after the first notification — a 66 percent increase from the cost

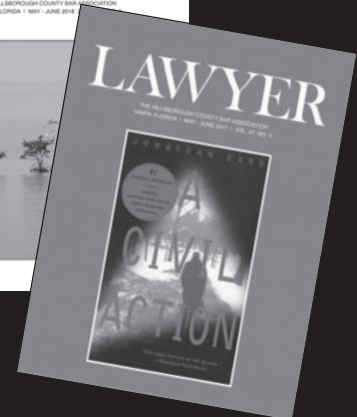
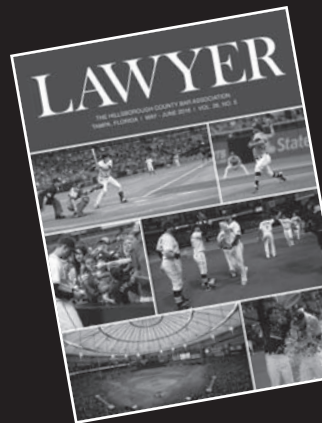


of the original ticket. One traffic violation can catapult someone into a downward spiral of exorbitant fees, criminal charges, and, in the most extreme cases,

*Continued on page 11*

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*Continued from page 10*

incarceration. Having a suspended license makes it difficult to get to work to earn the money needed to pay those fines and fees. Prosecuting someone for driving with a license that is suspended for financial reasons only worsens the problem by threatening job security and undermining public safety.

As part of our office's efforts to stop this cycle, we adopted a human-centered approach to handling Driving with License Suspended (DWLS) cases. If the original suspension resulted from financial reasons rather than a public safety issue (such as a DUI), our office works with the drivers to get their licenses reinstated. When a driver successfully regains his or her license, our office dismisses the charges. We implemented this policy in 2017, and in 2018, we dismissed approximately 2,500 DWLS cases — 32 percent of the total number of DWLS cases — because the offender successfully had his or her license reinstated. We have made our roads safer and freed up precious criminal justice resources while showing compassion toward those struggling to make ends meet.

Our office's commitment to helping those in need extends beyond those who are currently involved in the criminal justice system. In 2018, we hosted the first-ever expungement clinic in Hillsborough County, which allowed approved applicants to have one criminal record sealed or expunged for an arrest or charge that did not result in adjudication. The estimated cost of expungement or sealing often exceeds \$2,500 in application and legal fees. We were able to host the clinic at no cost to participants, because of money raised and services provided by our office and other community partners. This event helped people move beyond a single mistake in their past and pursue better employment and housing opportunities for themselves and their families.

We are committed to stopping the criminalization of poverty while prosecuting criminals and serious offenders who threaten public safety. Dismantling poverty traps means more than eliminating counter-productive and wasteful criminal justice policies. It also means giving struggling families the opportunity to achieve economic stability.



GRACE H. YANG, HCBA PRESIDENT-ELECT  
GRACIOUSLY REQUESTS THE HONOR OF YOUR PRESENCE  
AT THE  
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THURSDAY, JUNE 6 | 5 TO 7 P.M. | CEREMONY AT 5:45 P.M.  
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## Announcing the Resource Development Department

**In 2018, the Thirteenth Judicial Circuit reevaluated the needs of the Circuit, including our staff and visitors. As a result, the Resource Development Department was born.**

**I**n 2018, the Thirteenth Judicial Circuit reevaluated the needs of the Circuit, including our staff and visitors. We asked ourselves what we should be doing better or differently. We ultimately learned there were several ways in which we could enhance our services to meet the needs of our staff and strengthen community relations. As a result, the Resource Development Department (RDD) was born.

The RDD has five primary responsibilities.

**1. Maximizing Grant Opportunities:**

Although we receive funding from the State of Florida and Hillsborough County, many of our court programs are sustained via grant funding. In particular, treatment services for problem-solving court participants are both necessary and costly.

**2. Advancing Access to Staff Training:** Our employees are our most valuable resource. We appreciate the service they provide the court and want to invest in their success through training and professional development.

**3. Developing Future Leaders:** Judicial workforces are evolving and we must prepare for the retirement of our baby boomers. The development of a Junior Leadership Program will prepare those interested for increasingly responsible positions.

**4. Event Recognition:** We will focus on educating the public on the meaningful work done at the court and recognizing various community events and milestones. Think... Black History Month, Mental Health Awareness Month, Constitution Day, etc.



The new members of the Resource Development Department:  
(L-R): Kim Carlton, Monica Martinez and Jill Ibell

**5. Developing Court Ambassador Program:**

Our visitors are often at the court on some of the worst days of their lives. They arrive confused, lost and unfamiliar with the space and resources available to them. Our staff are some of the best ambassadors to show people the way. We can also improve signage, wayfinding, and available document services. Ultimately, we seek to have a volunteer corps of Ambassadors who will assist visitors in finding their way.

The Resource Development Department consists of three team members: Monica Martinez, Director of Resource Development; Jill Ibell, Senior Court Operations Consultant; and Kim Carlton, Court Communications Liaison. They have much work to do, but I am confident that their experience and dedication will bring the RDD and the court many positive outcomes.





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## Meet the Judges: Judge Wesley Tibbals

**“I am just one of many captains on the team.” — Judge Tibbals**

**I**n the fourth segment of this recurring series on Thirteenth Circuit judges, I introduce Judge Wesley Tibbals.

Family. If there were only one take-away from my time with Judge Tibbals, it would be that family is his life’s epicenter. Most of our conversation focused on family: his immediate family of five (his wife and three kids pictured below), his extended family (his mother, father, brother, and grandparents), and tales of family life. The point of these features is to get to know our judiciary on a more personal level — to uncover some interesting tidbits we might not otherwise know about them. So I suppose I led him down the family path by inquiring into his familial history.



Hon. Wesley Tibbals

He spoke fondly of his hometown — Umatilla, Florida — and told stories born of warm childhood memories. Never heard of Umatilla? Me neither. Located just north of Orlando on the edge of the Ocala National Forest, Umatilla was home to fewer than 2,000 people throughout Judge Tibbals’ childhood. That number has now blossomed to approximately 4,000 residents strong, but the small hometown feel remains. In a town where “everybody knows everybody,” Judge Tibbals’ paternal grandfather was the local pharmacist. His mother was a teacher before moving into

administration. She has since retired, but substitute

*Continued on page 15*





*Continued from page 14*

teaches from time to time. Judge Tibbals' father was an engineer, working for the U.S. Geological Survey for 25 years before retiring. Judge Tibbals attended the same high school as his father and grandfather. His younger brother and parents still live in Umatilla, his parents residing in the same house he grew up in.

I later learned that Umatilla boasts itself as "Nature's Hometown," which corresponded with Judge Tibbals' stories of youthful outdoor adventures. With a large lake in the town, he recalled that almost everyone he knew had a small Jon boat with a little motor. He started driving a boat at the age of six. He and his brother loved to fish, water ski, and hunt. Many days, his school commute consisted of scooting across the lake in his boat, parking at a friend's dock, and then riding his bike the rest of the way. Characteristic of living in a small town, Judge Tibbals remembers that as a young boy, he and his brother would fill up their boat's gas cans at the local gas station on the honor system. The owner kept a

tally on the wall, and Judge Tibbals' dad would pay the bill whenever he pulled in for some fuel of his own. Although he still tries to hunt or fish once a year, there is little time for those hobbies these days.

Judge Tibbals lit up as he shared that his father's side of the family owned a gun rental business in California from the 1920s up until the late 1990s. They owned historically significant guns that production companies rented for cinematic use. "Think classic Western television like *Gunsmoke* and *Bonanza*," he explained. In the late '80s and '90s, in addition to the influx of computer-generated images and the use of dummy guns, production companies also began taking this business in-house. But most interestingly, as part of the shutdown of the gun rental business, Judge Tibbals and his brother inherited a number of the historically significant guns. To ensure others could enjoy the antiquity, their collection is currently on loan to the Cody Firearms Museum at the Buffalo Bill Center of the West in Cody, Wyoming.

*Continued on page 16*

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*Continued from page 15*

He is happiest when sitting down for a simple conversation with his wife Lara. In fact, for the past 13 years, they have had a standing weekly date night for just this reason. An attorney herself, Lara has been his sounding board for twenty years. Although they generally avoid talking about work and the law, they enjoy bouncing ideas about other topics off one another. They will celebrate their 20th wedding anniversary this year. They have three children, two boys aged 13 and 11, and an 8-year-old daughter. On the weekends, you will find Judge Tibbals shuffling his kids to their various sporting activities. If it's not baseball or football for the boys, then it's gymnastics or swimming for his daughter.

Having noticed his gator cuff links, it was no surprise to me that Judge Tibbals is a proud double Gator. He attended the University of Florida College of Law with the likes of former judge and now Florida Attorney General Ashley Moody and former judge and now Florida Secretary of State Laurel Lee. Most important, UF is where he met his future wife. After law school, he moved to Tampa where he was in private practice for over fifteen years, focusing primarily on commercial and business litigation. He was appointed to the bench in March 2015 by then Governor Rick Scott. Without opposition, he was elected to a six-year term in 2016.

Although he is the first person in his family to enter the legal field, Judge Tibbals wanted to be a judge for as long as he could remember. In fact, his maternal grandfather's job at the county clerk's office was

probably the closest anyone in his family has been to the legal field. His biggest inspiration was retired Judge T. Michael Johnson, a circuit court judge from Lake County. Judge Tibbals first met Judge Johnson while interning at the Fifth Circuit Public Defender's Office. At that time, Judge Johnson was a chief deputy public defender, and "super smart" according to Judge Tibbals. Judge Tibbals admired his mentor's ability to talk to anyone. Judge Johnson's appointment to the bench in 1995 was a milestone for Judge Tibbals; seeing his mentor become a judge really solidified his own desire to become one someday. Judge Tibbals reminds himself of the significance of that relationship when he looks at his Oath of Admission, signed by his inspiration, who administered the oath when Judge Tibbals first became a member of The Florida Bar.

What he enjoys most about being a judge is the daily opportunity to meet all kinds of people, from litigants and lawyers, to staff and the community. He also relishes the opportunities for community outreach that being a judge provides. Those opportunities come to him directly ... and indirectly. For example, his mom called him recently to relay a request from the former Public Defender for the Fifth Circuit that Judge Tibbals speak at an upcoming event in his hometown. Although Judge Tibbals has known the man his entire life and interned with him the summer before law school, the request came through his mom. He called it a "small town moment."

*Continued on page 17*

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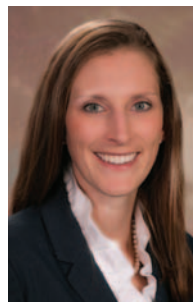
Judge Tibbals is no stranger to volunteering his time to help others. Before becoming a judge, he was heavily involved with the attorney ad litem program, which was later merged into Crossroads for Florida Kids. It was former Judge Ashley Moody that first got him involved in the program. He spent countless hours representing children in delinquency and dependency court and was recognized by the HCBA with the Jimmy Kynes Pro Bono Service Award in 2014. He says that experience prepared him for his current judicial assignment, but not necessarily in the way you may first think. Through his attorney ad litem experiences, he gained valuable perspective on kids and families. Of highest importance is recognizing that one’s own concepts of family life are not necessarily that of everyone else. Judge Tibbals believes that the foundation of patience demonstrated in his family home and growing up in a rural area in close proximity with all types of friends prepared him for a critical aspect of his job — accepting people as they appear before him, setting aside any preconceived notions of what parents or family life “should” look like.

Of course, the job comes with its challenges. As any judge would likely tell you, there are certain cases that stick with you throughout your career. Whether it was the tragedy involved, or the mental or emotional toll it took, being the decision-maker is difficult at times. This is acutely true in matters of family law and dependency. The inevitable tough days have not dampened Judge Tibbals’ enthusiasm for the Family Law Division. In fact,

he has requested to remain in the division on two prior occasions. In what you might consider a nod to his hometown inklings, Judge Tibbals recently volunteered to relocate to the Plant City Courthouse. He views the change as an exciting opportunity to meet and work with new people.

Although he will work full time in Plant City, Judge Tibbals will maintain an office in the Edgcomb Courthouse. He will also continue in his role as the Administrative Judge for the Family Law Division, a role he views as an opportunity to check in with his colleagues to make sure they have the tools and help they need. “I am just one of many captains on the team,” he observed wryly. In all sincerity though, Judge Tibbals stressed the teamwork aspect of his job; how all of his colleagues are ready at the helm to help whenever needed, even when it means answering a phone call in the middle of the night. It was a good reminder that a judge’s job is a 24-hour-a-day post. Of course there are countless hours in the courtroom, but even more spent behind the veil preparing for their time in the robe and thinking about the cases and issues before

them. Judge Tibbals is proud to be on a team where each member tries their hardest to “get it right.” He found this segued into sound advice for lawyers too — work hard and simply do your best with what you have to work with. Until next time...



*Author: Lyndsey E. Siara – Thirteenth Judicial Circuit*

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## Judicial Luncheon on the Path to the Bench

HCBA hosted an informative luncheon/CLE on February 27 on the topic of the “The Path to the Bench: An Honorable Pursuit – Appointed vs. Elected.” Moderated by Judicial Nominating Commission for the Thirteenth Judicial Circuit member and former HCBA President Carter Andersen, the panelists included Judge Cynthia Oster, Thirteenth Judicial Circuit; Judge Robin Fuson, Thirteenth Judicial Circuit; Mark Proctor, MPA Consulting Inc.; and Gil Singer, Marcadis Singer PA, vice chair of the Judicial Nominating Commission of the Thirteenth Judicial Circuit.





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**Stand Your Ground  
litigants should beware:  
criminal immunity does  
not inevitably confer  
civil immunity.**



Thanks to Florida’s Stand Your Ground law,<sup>1</sup> your client has managed to escape criminal liability for injuries he caused when some well-intentioned, college-football-related bar banter suddenly erupted into wild fisticuffs. Congratulations. But now what? Should your client just relax and enjoy his criminal immunity as yet another serendipitous benefit of Florida living? Or should he start prepping a war chest for civil litigation? The Florida Supreme Court’s decision in *Kumar v. Patel* has the answer.<sup>2</sup>

*Kumar* held a Stand Your Ground determination, that renders a criminal defendant immune from prosecution, does not automatically confer civil immunity.<sup>3</sup> That is, *Kumar* ruled one stone (Stand Your Ground determination in a criminal case) cannot kill two birds (criminal and civil liability). Importantly, it also encouraged the Legislature to fix the law, albeit indirectly. Understanding why requires some context.

Florida’s Stand Your Ground law essentially jettisons the common-law duty to retreat before using violent force in self-defense. Specifically, it allows a person to threaten or use force if he “reasonably believes that such conduct is necessary to defend” against another’s “imminent use of unlawful force.”<sup>4</sup> Sometimes,

it even permits *deadly* force when “necessary to prevent imminent death or great bodily harm.”<sup>5</sup>

The Stand Your Ground law effectuates these rights by providing both criminal and civil immunity to those who lawfully defend themselves.<sup>6</sup> But as *Kumar* observes, the Legislature never established “procedural mechanisms for invoking and determining Stand Your Ground immunity.”<sup>7</sup> Hence, the judiciary has had to develop those procedures, which now include an evidentiary hearing in both criminal and civil actions.

This lack of statutory guidance led the Second DCA in *Kumar* to conclude that since the Stand Your Ground law unequivocally grants both criminal and civil immunity, “the Legislature must have intended a procedure with one immunity determination and, therefore, unambiguously modified the” common-law collateral estoppel doctrine to effect that single determination.<sup>8</sup> The Florida Supreme Court disagreed, explaining that the collateral estoppel doctrine, which requires mutuality of parties, does not allow a criminal immunity determination to “bind a potential civil plaintiff who is not a party to the criminal proceeding.”<sup>9</sup> Accordingly, it reasoned that the Legislature’s decision not to expressly modify the collateral estoppel doctrine

signaled intent to require separate immunity determinations.

Additionally, *Kumar* criticized the Legislature for enacting a statute that “purports to grant a substantive immunity that cannot, in practice, be accomplished by *any* procedure.”<sup>10</sup> Considering the Legislature has neither abrogated *Kumar* nor established new implementation procedures, this critique appears to have fallen on deaf ears. Thus, Stand Your Ground litigants (and college football fans) should beware: criminal immunity does not inevitably confer civil immunity.

<sup>1</sup> See § 776.012, Fla. Stat. (2017).

<sup>2</sup> *Kumar v. Patel*, 227 So. 3d 557 (Fla. 2017). The author of this article works for Thomas A. Burns, the board-certified appellate attorney who developed the petitioner’s appellate strategy in *Kumar*.

<sup>3</sup> *Id.* at 561.

<sup>4</sup> § 776.012(1), Fla. Stat.

<sup>5</sup> § 776.012(2), Fla. Stat.

<sup>6</sup> § 776.032(1), (3), Fla. Stat. (2017).

<sup>7</sup> *Kumar*, 227 So. 3d at 559.

<sup>8</sup> *Id.* at 560.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* (emphasis in original).



Author:  
Arda Goker -  
Burns, P.A.





## Appellate Breakfast

The Appellate Law Section held a CLE Breakfast on February 13 to receive a State of the Second District Court of Appeal update from Chief Judge Edward LaRose and Clerk Mary Beth Kuenzel. A panel discussion also was held on the differences between state and federal appeals, with Judge John Badalamenti, Judge Susan Rothstein-Youakim, and Hala Sandridge from Buchanan Ingersoll & Rooney PC. Thank you to the Second DCA judges and speakers that took time out of their busy schedules to participate in this event!



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**It has been fascinating to learn about how attorneys have helped each organization overcome obstacles and have contributed to their success, truly serving as leaders within their respective organizations.**

**T**hroughout the past few months, the HCBA Bar Leadership Institute Class of 2018-2019 has had the opportunity to explore so much of what Tampa has to offer, including visits with legal representatives of MacDill Air Force Base, Amalie Arena, and Strategic Property Partners. What other city offers us the ability to walk around a Boeing KC-135 Stratotanker used for aerial refueling missions and an air control tower one month, admire Zambonis up close and touch NHL ice the next month, and then walk around downtown to get an inside look at the development in progress and transforming skyline the month after that? We have had the opportunity to learn about the

business and legal strategies of so many successful organizations here in Tampa. It has been fascinating to learn about how attorneys have helped each organization overcome obstacles and how they have contributed to their success, truly serving as leaders within their respective organizations.

While it has been enlightening to learn about this intersection of law and business, what is perhaps most striking is that everyone we have spoken with has also displayed leadership in bettering our community. We have had the pleasure of attending monthly learning modules with very different organizations, but it is clear that they all have one thing in common: their love for Tampa Bay and its residents.

For instance, not only does MacDill Air Force Base contribute to the community by protecting its citizens, but it also contributes to local charities and causes, leads environmental protection efforts, and plays a significant role in hurricane relief. The Lightning Foundation recognizes community heroes and contributes \$2 million to charities of their choice during the regular hockey season. It also donates money to hundreds of other local charities. Meanwhile, Strategic Property Partners is focusing on contributing to the Tampa Bay community through its development, which is aimed at making Tampa an even better place to live. Not only did the

*Continued on page 25*



(Left to right): The BLI visited MacDill Air Force Base and met with Strategic Property Partners to learn more about the Water Street project.





BLI visiting Amalie Arena (top) and touring a KC-135 Stratotanker at MacDill AFB (below).

*Continued from page 24*

company donate land to USF to build its medical school, thus encouraging the advancement of education and the sciences, but its Water Street district will be the first WELL-certified neighborhood, a building standard centered exclusively on human health and wellness.

Listening to these leaders of industry speak so passionately about their organizations' commitment to the community reinforces the importance of making such a commitment a priority. Perhaps it is these organizations' and individuals' success that makes them want to contribute to the success of others, or perhaps it is this service-oriented mentality that drives them to work hard and become so successful.

Regardless of what the reasons may be, our class' learning modules at these various organizations have taught us the significance of community commitment. I anticipate that the members of our class will go on to show our love of Tampa Bay by becoming leaders not only in our profession, but also in our local community. I cannot be more thrilled to amongst such a group of ambitious and motivated individuals.



*Author: Natasha Khoyi – FordHarrison*

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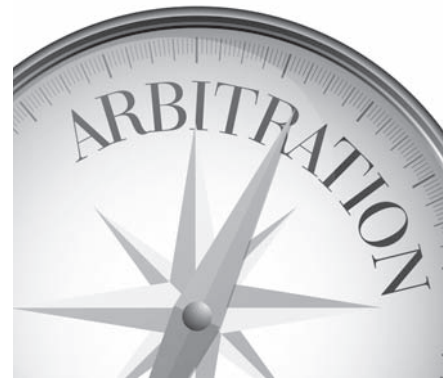
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**The arbitration process can be a useful tool in the collaborative divorce process and is a great alternative to litigation when the collaborative divorce process is unsuccessful.**



A family law case generally concludes through the collaborative divorce process, or if the process is unsuccessful, the parties proceed to litigation. One of the big advantages of the collaborative process is confidentiality. There are minimal court filings, so clients' financial records and personal lives are kept private.

A comparison between the collaborative process and litigation is stark. The collaborative process provides a confidential and client-centered focus where parties and a team of professionals customize solutions to fit the needs of the family; family law litigation is adversarial, uniform, and costly, something no sane person desires.

But, what happens when there is a stalemate in the collaborative process and the process ends? Clients have already been informed of the pitfalls of litigation and now expect the worst. Clients should not be presented with a binary choice of the collaborative process or litigation. There is an alternative — arbitration. Arbitration is a form of private dispute resolution that clients, before beginning the collaborative process, may want to elect as an alternative to litigation if the process is unsuccessful.

In many civil contracts, there is a clause that requires arbitration in lieu of litigation. Your retainer agreement or engagement letter may contain a provision requiring you and your clients to submit certain disputes to arbitration.

Why not have a similar provision in all collaborative participation agreements? The agreement could require the parties to attend binding arbitration, in lieu of litigation, if a stalemate occurs or the process ends. Provisions for the arbitration, including confidentiality and other terms, can be agreed to at the beginning of the process when clients want privacy and wish to avoid the time, costs, and negative byproducts of litigation.

Arbitration is sanctioned by Chapter 44, Florida Statutes, as an alternative to judicial action. Chapter 682, Florida Statutes, sets forth an arbitration code for commercial matters. Confidentiality is a hallmark of arbitration. The only restriction in Florida for arbitration in family law cases is that the proceeding cannot involve a minor child, even if matters involving the child are not at issue, including in post judgment matters. Arbitration can and should be used

when the process fails or for issues where the clients cannot agree.

For example, consider a matter where the clients have no minor children and are in the collaborative process, but cannot agree to the value of a business. The business valuation can be arbitrated, a decision rendered by an arbitrator (who could be a lawyer, accountant, or even a business valuator), and then the matter sent back to the collaborative process to finalize the divorce with the established business valuation.

There are numerous other examples of how the arbitration process can assist clients and complement the collaborative divorce process. As counselors, we should be mindful of harms that follow litigation and counsel our clients regarding out-of-court alternatives, including creative

and customized uses of the arbitration process.



*Author:*  
*Alex Caballero –*  
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## Collaborative Section Holds Conversation with Judiciary

On February 1, the Collaborative Law Section held a discussion between the Thirteenth Judicial Circuit family law judges and collaborative practitioners regarding the judicial perspective on collaborative practice. Thank you to the panelists and speakers that participated: Judge Wesley Tibbals; Judge Darren D. Farfante; Judge Christine A. Marlewski; Judge Denise Pompanio; Judge Anne-Leigh Gaylord Moe; Kristin DiMeo, CPA, ABV; and the co-chairs Ellie Probasco and Alice Boulosa, LMFT.

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## COSTS OF REPAIR – KEYSTONE AIRPARK v. PIPELINE

Construction Law Section

Chairs: J. Derek Kantaskas – TMD Companies, LLC & Gregg E. Hutt – Trenam Law



**Repair damages sustained by an owner — stemming from an engineering firm’s failure to inspect and monitor construction work — are consequential damages.**



In a case of first impression, the First District Court of Appeals recently clarified its ruling that repair damages sustained by an owner — stemming from an engineering firm’s failure to inspect and monitor construction work — are consequential damages, and thus precluded from recovery under the terms of the parties’ contract. *Keystone Airpark Authority v. Pipeline Contractors, Inc., et al*, 2019 WL 323775 (1st DCA Jan. 25, 2019) (The opinion has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal.)

Separate from its agreement with the contractor to construct airplane hangars and taxiways, Keystone Airpark Authority entered into a contract with Passero Associates, LLC to provide engineering services that included resident engineering and inspection, and material testing. The First DCA noted that the contract “expressly required Passero to inspect, observe and monitor the construction work and to determine the suitability of materials used by the contractor.”

Bringing suit against both the contractor and Passero, Keystone alleged that the contractor used substandard material for stabilization underneath the structures, which Passero failed to detect, causing the concrete

hangar slabs and asphalt taxiways to prematurely deteriorate. Keystone sought to recover from defendants the costs to remove, repair, and replace the hangars, taxiways, and underlying subgrade.

The trial court held that Keystone’s alleged damages were consequential damages, which were excluded by the parties’ contract. Keystone argued that the repair costs constitute general damages and not consequential damages because those damages were foreseeable from Passero’s failure to supervise the contractor’s work. On appeal, the First DCA affirmed the trial court, holding that the costs of the engineering services provided by Passero to Keystone were the only direct or general damages available.

Analyzing the definition of general, special, and consequential damages and how the question of foreseeability affects the nature of the damages (going back to *Hadley v. Baxendale*), the First DCA determined that while the repair costs were “reasonably foreseeable,” they were “not the direct or necessary consequence of Passero’s alleged failure to properly inspect, observe, monitor, and report problems with the construction work.” The need for

repair instead flowed from loss incurred by Keystone in its dealings with the contractor (*e.g.*, “[t]he contractor could have completed the job correctly without Passero performing its contractual duties”). Accordingly, Keystone’s damages were consequential and not general or direct damages.

Upholding partial summary judgment in favor of Passero, the First DCA nevertheless certified a question of great public importance: “Where a contract expressly requires a party to inspect, monitor, and observe construction work and to determine the suitability of materials used in the construction, but the party fails to do so and inferior materials are used, are the costs to repair damage caused by the use of the improper materials general, special, or consequential damages?” If the Supreme Court accepts certiorari, owners, contractors, design professionals, and their counsel alike will be interested in the answer.



*Author:*  
Catherine M.  
DiPaolo –  
Trenam Law





## Construction Law Section Luncheon

The Construction Law Section held a timely luncheon/CLE on February 14 on the topic of recently completed and future construction projects at the Tampa Airport as part of its Master Plan. The two speakers at the luncheon were Jeff Siddle, the vice president of planning and development for the Hillsborough County Aviation Authority, and Michael Kamprath, assistant general counsel for the Hillsborough County Aviation Authority/Tampa International Airport.



Thank you also to the luncheon's sponsor, Orange Legal.



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# TOWARDS A NATIONAL PRIVACY LAW

Corporate Counsel Section

Chairs: Michael Stein - American Integrity Insurance & Chris Casper, Caspers Company



**Businesses that collect and use individuals' personal information should keep abreast of future privacy law developments.**



Unless you have been sleeping under a rock, you have probably noticed that Congress seems unable to agree on virtually anything these days, with party partisanship frequently inhibiting Congress's ability to reach agreement on pending legislation. But, while Republicans and Democrats might differ on the

specifics, both parties agree that there is a critical need for a comprehensive national privacy law. The impetus for federal privacy legislation appears to be a bipartisan desire to provide more extensive and uniform protection for individuals' sensitive personal information. Currently, a patchwork of federal and state laws exists to protect personal information and to address

the consequences of data breaches compromising such information. For instance, at the federal level, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) contains data privacy and security provisions for safeguarding medical information. Additionally, every state has now enacted some form

*Continued on page 31*



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*Continued from page 30*

of legislation detailing the steps that must be taken following a data breach. But, no uniformity exists among existing federal and state data breach laws. So, a business whose data has been breached must potentially navigate through fifty different state laws, as well as federal legislation like HIPAA, in responding to a data breach.

The European Union was perhaps the first organization to comprehensively address the privacy of personal information, adopting a broad General Data Protection Regulation (known as GDPR) that took effect in May 2018. The following month, California enacted a consumer privacy law that is modeled to some extent on the European Union regulation. Although amendments recently were proposed to the California law (poised to become effective January 1, 2020), it generally expands consumers' rights regarding their personal information, imposes additional obligations on covered

businesses that collect personal information from California residents, and creates an express private right of action for consumers if their personal information is compromised. To date, at least nine other states have proposed similar, although not identical, data protection laws.

To address the countless data breaches that seemingly occur almost daily now, and the complex, confusing, and conflicting patchwork of state and federal laws that currently exist, several proposals have been introduced recently in Congress for the creation of a uniform and comprehensive federal privacy law. For instance, earlier this year, Florida Senator Marco Rubio proposed the American Data Dissemination Act which would require the Federal Trade Commission to promulgate data privacy rules, permit Congress to make changes to the proposed rules, task the FTC with enforcement responsibilities, and supersede state laws. As one would expect, other legislative proposals


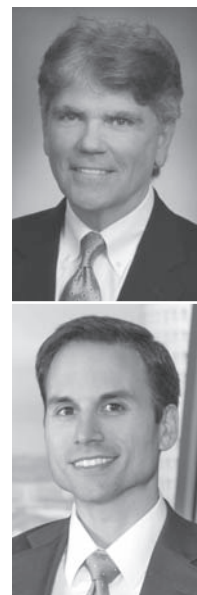
offered to date provide different suggestions for protecting sensitive data and responding to data breaches compromising such data.

Senate and House of Representatives committees held hearings in late February regarding privacy and data protection issues. Significantly, committee members in both chambers expressed bipartisan support for establishing a national data protection standard, although differing on precisely what that standard should be and whether federal legislation should preempt state laws. Given the divergent views that exist regarding the scope and content of a national privacy law, it is unclear whether Congress will follow the lead of the European Union, California, and other states that have proposed privacy legislation, or adopt some other approach to protecting personal information in any legislation it enacts.

Because of the pending legislative efforts to address privacy issues and the apparent momentum that exists for such legislation, the privacy landscape very likely will change in the coming months,

at least to some extent. Businesses that collect and use individuals' personal information should keep abreast of future privacy law developments.

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## HCBA Night at the Lightning

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**Human trafficking is a form of modern-day slavery and victims may be young children, teenagers, or adults.**



**H**uman trafficking is a form of modern-day slavery. Section 787.06(2)(d), Florida Statutes, defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

Victims of trafficking — which includes young children, teenagers, or adults — are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work. Each year, thousands of victims are trafficked across international borders and within the state of Florida.

Traffickers use various techniques to instill fear in victims and keep them enslaved: physically confining victims; isolating victims from the public and family; confiscating passports, visas, or other identification documents; using or threatening to use violence toward victims or their families; telling victims that they will be imprisoned or deported for immigration violations if they contact authorities; and controlling victims’ money.

If convicted of human trafficking, a defendant faces up to life in prison, up to life on probation, and/or up to \$10,000 in fines. Penalties may be increased if coercion was used; the human trafficking was for labor and services or commercial sexual activity; or the victim was a child, unauthorized alien, or mentally impaired person. Each instance of human trafficking may incur separate charges and punishment.

A defendant’s ignorance of a victim’s age is not a defense, even if the victim misrepresented his age or the defendant had a bona fide belief of the victim’s age. Similarly, the victim’s lack of chastity or the willingness or consent of the victim is not a defense if the victim was under 18 at the time of the offense.

A defense to human trafficking charges may include prostitution if the victim was voluntarily engaged in prostitution. Although a person who hired a prostitute might not be guilty of human trafficking, they may be guilty of solicitation of prostitution. Similarly, a person who formed a business partnership with the prostitute might not be guilty of human trafficking but may be guilty of deriving support from the proceeds of prostitution.

Florida law permits victims of human trafficking to petition a court to expunge their criminal record of criminal acts committed while a victim of human trafficking. Clearing a human trafficking victim’s record helps reduce or eliminate barriers to obtaining housing, gainful employment, education, and restoration of certain civic rights. To qualify for expungement, the offense must have been committed as part of a human trafficking scheme the person was a victim of or it must have been committed at the direction of an operator of the scheme. The expungement law applies to arrests, charges, or convictions if a person was a victim of trafficking when the crimes occurred. The law does not limit the number of arrests or convictions that may be expunged. Any request for expungement of a

criminal history record may be denied at the discretion of the court.



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# Criminal Law Section Presents Annual Marcelino “Bubba” Huerta Award

Congratulations to Mark Rankin of Shutts & Bowen for receiving the HCBA Criminal Law Section’s highest award on February 22 — the Marcelino “Bubba” Huerta III Award for Professionalism and Pro Bono Service.

Rankin is pictured with the Section’s two co-chairs, Justin Petredis and Matthew Smith; his family; Terri Kirkland, Bubba Huerta’s widow and special guest at the luncheon; and the past recipients of the award.



Thank you also to the luncheon’s sponsor:





**As the government spends more and more money on telemedicine, increased enforcement is likely.**



**T**he last few years have seen an explosive growth of telemedicine. Some estimates peg the global telemedicine technologies market, including hardware, software, and services, at nearly \$40 billion in 2018. Incredibly, this market is projected to grow by 18 percent annually over the next six years, reaching \$103 billion in 2024. Given the increased use of telemedicine, federal prosecutors and regulators are beginning to take note. Here, we chronicle some recent trends by prosecutors and offer practical advice.

### **Legal Developments**

The first development in the telemedicine enforcement space came in April 2018, when the Department of Health and Human Services, Office of Inspector General (HHS/OIG), issued a report entitled “CMS Paid Practitioners for Telehealth Services that did not

Meet Medicare Requirements.”

As its title suggests, the report took issue with telemedicine providers and noted that upwards of one-third of all telemedicine claims were improper.

On the heels of that report, the Department of Justice announced an indictment in Tennessee linked to a “billion-dollar telemedicine fraud conspiracy.” According to the indictment, the defendants set up an elaborate scheme in which a telemedicine company “fraudulently solicited insurance coverage information and prescriptions from consumers across the country.”

And finally, in December 2018, the U.S. Attorney’s Office in Utah announced a multi-million-dollar False Claims Act settlement. The United States alleged that the company violated Medicare’s prohibition against telephone solicitation of covered products to beneficiaries.

### **Best Practices**

In light of this enhanced enforcement scrutiny, providers interested in telemedicine would be well-served by erring on the side of caution as the regulatory landscape is still being developed. We outline a few practical recommendations that are best practices.

#### **Make Sure the Patient is Receiving Telemedicine Services at a Qualified Site.**

Telehealth services must be furnished to a beneficiary at an eligible originating site, which is one of the following: the office of a practitioner, a hospital, a critical access hospital (CAH), a rural health clinic, a federally qualified health center, a hospital-based or CAH-based renal dialysis center, a skilled nursing facility, or a community mental health center.

*Continued on page 39*



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Continued from page 38

Thus, before billing for telemedicine claims, make sure the patient is actually located at a facility that is eligible.

**Make Sure You are Using Approved Communications Equipment.** In general, practitioners must provide telehealth services using an interactive telecommunications system. Interactive telecommunications systems do not include telephone, fax, or email. Interactive communication systems must allow real-time communication with both audio and video between the beneficiary and the practitioner.

**Document, Document, Document (and Record)!** Most healthcare practitioners know by now that files need to be documented thoroughly to withstand audits and scrutiny. So, too, in the telemedicine context. A best practice is to invest in the recording of phone calls. This is often a telemedicine company's best line of defense in rebutting patient complaints and other allegations.

Ultimately, no precautions will inoculate a telemedicine provider from scrutiny. As the government spends more and more money on telemedicine, increased enforcement is likely to be the norm. As the old adage goes, an ounce of prevention is worth a pound of cure. Nowhere is this adage truer than in the evolving world of telemedicine.



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## Joint YLD/HAWL Coffee at the Courthouse

The HCBA Young Lawyers Division co-hosted a great “Coffee at the Courthouse & Judicial Shadowing Day” on February 5 with the Hillsborough Association for Women Lawyers. Thank you to the judges that participated and to the event’s sponsors — Bush Ross, DSK Law and The Florida Bar YLD!



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Labor & Employment Law Section

Chairs: Cynthia Sass – Law Offices of Cynthia Sass, P.A. & Jason Pill – Phelps & Dunbar, LLC



**Employers engaging temporary workers should closely assess and proactively manage both new and traditional methods of engagement.**



New technologies with names like “tilr” and “Shiftgig” are using algorithms to match people to temporary jobs in the modern gig economy, much like ride-sharing apps connect passengers with drivers. Although the technology may be new, these applications are the modern equivalent of outside staffing companies or professional employer organizations (PEOs) that provide temporary employees under detailed staffing agreements.

PEOs often are heavily regulated by a state statutory or administrative scheme. Further adding to these compliance considerations, PEOs usually are a co-employer or joint employer with their customer, and thus must comply with all employment laws. Although the use of gig employees may seem more casual or less formal, the same compliance considerations will apply if a temporary worker arrives via an app-based matching process or a traditional PEO.

As gig economy temporary staffing options emerge, here are

six areas of concern employers should consider and, where appropriate, resolve in advance of hiring or using gig employees.

### **1. Employee versus independent contractor?**

This question often looms. If the proper classification is employee, the employer has many obligations. Even if both parties agree to the characterization, it may not be legally valid under federal and state law, so the employer must evaluate each employee’s role on a case-by-case basis.

### **2. Withholding**

If a worker is an employee, the employer must withhold federal, state, and local taxes; Federal Insurance Contributions Act (FICA) taxes; Federal Unemployment Tax Act (FUTA)/state unemployment tax acts (SUTA) taxes; and more. To avoid non-payment of taxes, which may result in both companies receiving notice from the IRS, the issue of which company must withhold taxes when an algorithmic

application assigns a worker to a project must be evaluated in advance.

### **3. Workers’ compensation**

Most states have strict rules requiring workers’ compensation coverage. Some app-based temporary staffing models suggest that workers’ compensation coverage is provided. Employers should verify coverage, regardless of the staffing source used. If the hiring employer provides workers’ compensation benefits, this is an admission of employee status, and the worker should be classified as such.

### **4. Administrative Agencies**

Some states and localities have special requirements and notice obligations with respect to temporary employees. The Fair Labor Standards Act and some state laws require employers to record time worked for temporary employees. Employers must also record covered injuries for temporary employees on an OSHA log.

*Continued on page 43*

## **ARE YOU RECEIVING HCBA’S EMAILS?**

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### 5. Indemnification

The traditional staffing model typically offers some indemnification protection between the employer and temporary staffing provider. With an app-based service, indemnification protection may not be available, so the employer must analyze the parties' relationship to determine if the app-based service will be providing indemnification or otherwise allocating risk.

### 6. Trade secrets and confidential information

Temporary employees can take and use protected trade secrets, even in one day. Employers should require temporary employees to sign written restrictive covenant agreements, just like regular employees, or take other appropriate measures. This step is critical for an employer that later may have to demonstrate that it took all steps to protect the confidentiality of its information.

### Key Takeaway

Regardless of the staffing model used, there are various compliance issues impacting the gig economy, and as it happens so often, the technology has outpaced the law. For these reasons, employers must carefully evaluate their use of app-based employees, much like the use of any other temporary employees, and ensure compliance with appropriate laws.



*Author:*  
*Kevin D.*  
*Zwetsch –*  
*Ogletree Deakins*

## Community Services Committee Volunteers at Trinity Café

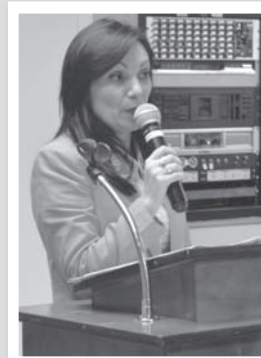
Thank you to the members of the HCBA Community Services Committee who volunteered time during the week of February 25 – March 1 as part of the annual Dining With Dignity project. Volunteers helped serve lunch and shared meal-time conversation with the patrons at the Café.



## LRIS Speaker's Bureau Presentation at Sun City Center

HCBA's Lawyer Referral Service member Valentina Wheeler of Wheeler Law Firm spoke to residents from Sun City Center on February 26 on the subject of Florida Community Association Law.

The event had a great turnout and a lively discussion. Thank you to Wheeler for taking time out of her busy schedule for this presentation!



## A LOOK-BACK AT HCBA'S LAW WEEK 2019

Law Week Committee

Chairs: Stephanie Generotti – Ogletree Deakins & Dane Heptner – Perenich Caulfield Avril & Noyes, P.A.



Of the many individual liberties we celebrate as Americans and as lawyers, two resounding freedoms usually come to mind: freedom of speech and freedom of the press. Founded during a very different era, these liberties will continue to transform as technology evolves and the manner we communicate changes. But, First Amendment protections will continue to be fundamental to the way we operate our lives and communicate in the digital age. We can only anticipate how these liberties will be interpreted by future generations. During Law

*Continued on page 45*




**More than 3,000 students benefitted in some way by the week's engaging events.**



Attorney Amy C. Ward from the State Attorney's Office giving a tour of the Edgecomb Courthouse to fifth graders from Maniscalco Elementary during Law Week. The students also attended a jury trial and received a presentation from Chief Judge Ronald Ficarrotta.

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*Continued from page 44*

Week, we invited local students into the conversation.

For the past several years, the HCBA Young Lawyers Division has hosted Law Week — one week to recognize the countless ways the rule of law impacts our lives. This year's theme for Law Week was "Free Speech, Free Press, Free Society." From March 11-15, local judges and attorneys focused on the importance of First Amendment freedoms (as well as the importance of the legal profession) by graciously volunteering their time to lead courthouse tours, speak in classrooms, and conduct mock trials in front of Hillsborough County students.

Volunteer attorneys went into local classrooms to discuss First Amendment freedoms and their profession — suitable topics for a digital age that is questioning how these freedoms will be interpreted in the future. And third-grade students has the opportunity to see first-hand how a trial of "Goldilocks and the Three Bears" could unravel. As participants, the students got to decide whether Goldilocks would be found "guilty" of bad manners. Luckily, several classes found she was not.

More than 3,000 students benefitted in some way by the week's engaging events. During one of the courthouse tours, a judge selected a fifth-grade student at random to "be the judge" and to sit at the bench. Unbeknownst to the judge, this student had aspirations of being a future judge himself. These are exactly the type of moments Law Week aims to create.

Law Week also hosted a student art contest, where 54 talented

students displayed their artwork and their own renditions of what Free Speech, Free Press, and Free Society meant to them. Contest finalists were able to display their art during the courthouse tours for all to see. On May 8, the winners of the art contest will be recognized at the HCBA Law Day Membership Luncheon at the Tampa Hilton Downtown.

Law Week events came to a close on March 15, but the lessons learned will continue to impact students and volunteers alike. On behalf of the HCBA Law Week Committee, we greatly appreciate all the teachers, volunteer judges,

and attorneys for making Law Week a success.

A very special thank you to Debra Blossom and Hillsborough County Public Schools for their continued partnership with the HCBA. We also are very grateful to our own committee chairs, Dane Heptner

and Stephanie Generotti, for their leadership. Until next year!

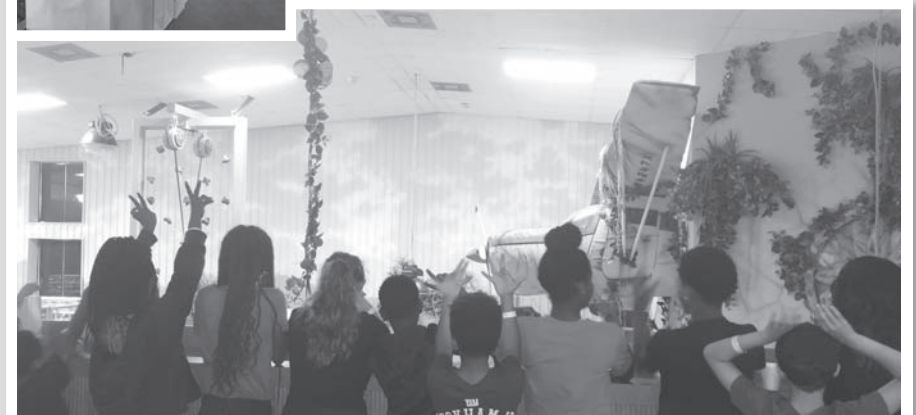


*Author:  
Christina Potter  
Bayern – Merlin  
Law Group*

## Holidays in the New Year

The Young Lawyers Division was pleased to host children from A Kid's Place on February 2 at the Xtreme Adventures Center in Lutz to celebrate the "Holidays in the New Year." Thanks to the members that participated and donated items for the

children to help them have a memorable and fun day!



## HIGHLIGHTS OF THE TAX REFORM AND ITS IMPACT ON DIVORCE

Marital & Family Law Section

Chair: Chris Givens - Givens Givens Sparks, PLLC



**This law brings the most significant changes to our tax code in decades.**



**T**he 2017 Tax Cuts and Job Acts (TCJA) was signed by President Trump in December 2017. This law brings the most significant changes to our tax code in decades. The effect of this overhaul is now upon us, and we are now just starting to understand its real influence.

Perhaps the biggest change for family law practitioners is the change to the beneficial tax treatment of alimony. Starting on December 31, 2018, alimony will no longer be deductible by the payor and taxable for the receiver. This is so whether the alimony was agreed to by the parties or ordered by the court. Now, alimony (or spousal support) is treated the same as child support and calculated on an after-tax basis. This can significantly change the amount paid and received because it eliminates the ability to shift income to a lower tax bracket spouse, which resulted in less total tax paid before the TCJA was enacted. This change to tax treatment may make negotiations more difficult, because less cash may be available for support, since more goes to taxes.

Of course, there are other changes as well. For instance, although filing statuses have remained the same, tax rates have

changed. In particular, the highest tax rate went from 39.6 percent down to 37 percent. On a related note, the marriage penalty was eliminated, so the tax rate for married filing separate is half of that for married couples filing jointly, except for high-income couples. The removal of the marriage penalty may be important for couples going through a divorce, because they can avoid joint liability by filing separately, while at the same time avoid higher taxes.

Taxpayers can now either opt for itemized deductions or standard deductions to reduce their taxable income. Even though total overall itemized deductions are now unlimited, the SALT (State and Local Deductions) are limited to \$10,000. High-income wage earners or those who live in states with high income taxes, including states such as New York and California, may be the most affected by this change. Furthermore, some itemized deductions were either modified (e.g. home mortgage interest is now limited to acquisition indebtedness of \$750,000) or completely removed (miscellaneous deductions such as tax preparation fees, unreimbursed employee expenses, and legal fees paid to attorneys attributable to securing spousal support).

Many taxpayers will likely elect

the standard deductions, since they have increased significantly. For instance, the standard deduction for single filers went from \$6,350 to \$12,000. For married couples filing jointly, it went from \$12,700 to \$24,000.

Personal exemptions also were eliminated, but the child tax credit was increased. In 2017, taxpayers could deduct \$4,500 from their taxable income for each dependent (typically children). This amount is now \$0. But, the child tax credit, a dollar-for-dollar reduction in the actual tax owed, was doubled from \$1,000 to \$2,000 per child. The child tax credit can only be taken if the taxpayer can claim the child as a dependent. A non-custodial parent can receive the child tax credit through Tax Form 8332, which must be prepared by the custodial parent for the non-custodial parent to claim the child as a dependent.

A few other changes include the C Corporation rate reduction and an increase in the lifetime estate tax exemption.



*Author:*  
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*CPA/ABV –*  
*Girard &*  
*Johnson LLC*

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## MEMORIAL DAY: ORIGIN AND MEANING

Military & Veterans Affairs Committee

Chairs: David Veenstra – Hunter Law, P.A & Alexandra Srsic – Bay Area Legal Services, Inc.



**Originally known as Decoration Day, Memorial Day dates back to the years following the Civil War.**

**M**any Americans came before us, or even with us, and gave all – their lives, their families, and their freedom — for our country, so that we may continue to enjoy the lives, families, and freedoms we hold dear. As Memorial Day approaches, join me in learning of its origin and, even more, contemplating its meaning and purpose through the words of HCBA members who donned a uniform and served our country, who have graciously shared their personal reflections.

Memorial Day, a federal holiday held the last Monday in May, was officially established by Congress in 1968 and took effect in 1971. Originally known as Decoration Day, Memorial Day dates back to the years following the Civil War, when citizens in towns began holding springtime ceremonies decorating the graves of soldiers and reciting prayers. The first organized Decoration Day gathering was in 1868 at Arlington National Cemetery, where General James Garfield spoke and 5,000 participants decorated 20,000 soldiers' graves. Over time, the tradition, which began primarily in the northern states to recognize fallen Civil War Soldiers, evolved to include all states and to recognize all men and women who died while serving in the U.S. military.

Each year, a national moment of remembrance is held at 3 p.m. local time on Memorial Day.

On his personal reflection of this holiday, the Honorable Michael J. Scionti, Circuit Court Judge for the Veterans Treatment Court, remarked:



**Honorable Michael J. Scionti**

“As a soldier and veteran of the wars in Iraq and Afghanistan, I often reflect upon those brave men and women, who accepted the inherent risks of military service, left the comforts of home and the warm embrace of loved ones, and gave their all so that we could have a better tomorrow. As a grateful nation, we should gather on this marked occasion, unified with the common purpose of honoring their uncommon bravery and immeasurable sacrifices, and simply say thank you.”

On what Memorial Day means to him personally, the Honorable Gregory P. Holder, Air Force veteran and Circuit Court Judge, shared:



**Honorable Gregory P. Holder**

“Memorial Day is a time to remember and honor those that have proudly served this great nation. I often think of my father as a 17-year-old

Army Air Corps Private on a ship traveling to Pearl Harbor on December 7, 1941, when they received that fateful radio message of the devastating attack. I think of my mother and her service during the Korean War as an Airman Second Class. I think of our son's service at Kandahar Air Base, Afghanistan, and the rockets and mortars landing in the compound each night. I think of Army Captain Ronnie Bush's service in Fallujah and Ramadi, Iraq, and then the Korengal Valley of Death in Afghanistan. I think of the ultimate sacrifice given by Army 1LT Dimitri Del Castillo. We honor and love these men and women each day, but we take time out on Memorial Day to thank them all for their service.”

Colonel D.J. Reyes, US Army (retired) and senior mentor/coordinator for the Veterans Treatment Court, reflected on the importance of remembrance and gratitude:



**Col. D.J. Reyes, US Army (Retired)**

“To put it into perspective: Americans need to remember that this day of honor — remembering those who died in the service of preserving this nation and its way of life — is the primary reason why we can also celebrate the joy of the end of another school year, the beginning of the

*Continued on page 49*



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summer season, the various retail store sales specials, the family barbeques, summer vacations, and just sitting on a beach and enjoying the warmth of the ocean water.”

Attorney and Army Veteran



Attorney  
Matthew F. Hall

Matthew F. Hall shared the following personal reflections and guidance: “When you have lost friends and buddies in combat, every day and any day is Memorial Day. It is important for our country and citizens who aren’t so personally affected by combat to take time to think of the sacrifices that these young men and women have made in order for us to enjoy the freedoms of our everyday life. If you want to experience something powerful, look at the ages of the people who have died in combat. They are youths giving up promising futures for total strangers. For that, we should never forget them.”

With the words of our courageous HCBA friends, colleagues, and judges as a starting point, may we all set aside some quiet moments to reflect upon what Memorial Day means — for our country and to us personally — and the ways we can ensure that the men and women

who gave all are remembered and honored, and their sacrifices upheld.

Author:  
Colleen E.  
O’Brien, Esq.



## MVAC and Senior Counsel Joint Luncheon

On January 30, the Military & Veterans Affairs Committee hosted a joint luncheon with the Senior Counsel Section to receive an interesting presentation from Vice Commander Colonel Troy Pananon with MacDill Air Force Base. As vice commander of the 6th Air Mobility Wing, he assists the wing commander in leading more than 3,000 people, overseeing base property and capital assets totaling more than \$2.8 billion, and controlling an annual budget exceeding \$249 million. Col. Pananon discussed MacDill’s refueling mission with a video of in-flight refueling and provided information on the new Boeing KC-46 tankers stationed at the base. HCBA is proud that Tampa has been home to MacDill Air Force Base and its personnel since 1939.



## HCBA MENTORING REBOOT

Professionalism & Ethics Committee

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



**Mentoring serves as  
the ultimate win-win  
relationship.**



“The life of law is the life of study.” This is a favorite saying of one of my dear mentors, Mark Ober. We study for a short three years in law school and enter practice eager to change the world or, at least, truly help individuals. Law school doesn’t teach a new assistant state attorney or assistant public defender how to manage caseloads of hundreds of files moving at a rapid pace. Law school does not teach how to quickly jump into arguing motions to suppress, or how to prepare every other week and confidently announce, “Ready for trial!” I learned those skills from my mentors at the State Attorney’s Office — Ada Carmona, Sandra Spoto, Donna Hanes, and Eric Fernandez, among others.

Law school doesn’t teach a young associate in a large firm how to bill hours, what organizations to join, or how to manage office politics. Law school surely doesn’t teach how to manage clients or manage the business side of a law practice. I learned those skills from my mentors — Ty Tison and Barry Taracks. Sometimes a mentor serves from afar, such as when we closely observe judges and learn

from what styles they prefer and what tactics cause them to take a recess. I took many mental notes in my division assignments before Judge Fuente, Judge Dominguez, Judge Barbas, and Judge Lopez.

Mentoring serves as the ultimate win-win relationship. When a successful person shares his or her experiences and helps guide a younger generation towards another successful career, both parties benefit. Often the mentor benefits by learning about advanced research methods, social media advertising, and other technological advances. In the practice of law, those advantages extend to the clients and courts who also enjoy the fruits of the inherited expertise. Though young lawyers within mid- to large-size firms or large government offices enjoy an internal network they can turn to for daily questions, often an external mentor can assist with how to address a sensitive issue or provide guidance from a different perspective.

The HCBA, in conjunction with other voluntary bar associations, plans to reinvigorate its mentoring program. I look forward to participating in this renewed effort. We encourage all

members to look for upcoming announcements and applications to serve as mentors and mentees. I would ask all seasoned attorneys to recall the assistance you received as you began your career and how you may often look back upon those lessons and continue to recall the advice in your current practice. What a treasure you maintain and how rewarding it will be for you to pay it forward and pass along the invaluable guidance.

Young lawyers, think of how much you have learned in your brief time in practice. Remember, “the life of law is the life of study.” You will continue to learn and grow throughout your career. Spending time with a skilled and experienced practitioner will help you to hone your skills and greatly enhance your own practice. I look forward to many of you taking advantage of this HCBA-led mentoring effort

and sharing skills across generations.



*Author:*  
*Hon. Frances  
Maria Perrone -  
Hillsborough  
County Court  
Judge*

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## NEW INJUNCTIVE RELIEF AVAILABLE TO PROTECT VULNERABLE FLORIDIANS

Real Property Probate & Trust Section

Chairs: Kristin Morris – Shutts & Bowen & Elaine McGinnis – Law Office of Elaine McGinnis, P.A.



**To date, the legal mechanisms for protecting vulnerable adults have been limited to pre-planning in the form of advanced directives or no planning in the form of guardianship proceedings.**



Every day, vulnerable Floridians fall victim to abuse, neglect, and exploitation. Often, the wrongdoer is in a position of trust or authority with the vulnerable adult (VA), a person whose ability to perform the normal activities of daily living or provide for her own care or protection is impaired because of a physical disability, cognitive defect, or age. See § 415.102(28), Fla. Stat. Frequently, wrongdoers exploit vulnerable adults by depriving them of their assets and using them for the wrongdoer's benefit. Entire life savings can dissipate in a matter of weeks or days, often before any meaningful court action or redress can be taken by the vulnerable adult or the vulnerable adult's family.

To date, the legal mechanisms for protecting vulnerable adults have been limited to pre-planning in the form of advanced directives or no planning in the form of guardianship proceedings. Effective July 1, 2018, a new cause of action exists to combat the abuse, neglect, and exploitation of Florida's most vulnerable population. Specifically, Section 825.1035, Florida Statutes, provides vulnerable adults, their guardians, and petitioners filing for emergency temporary guardianship, with an opportunity to obtain immediate and meaningful relief in the form of a temporary injunction

(an asset freeze) of the vulnerable adult's property, even without notice to the respondent. Modeling the framework for injunctions against domestic violence, this new law empowers citizens to proceed *pro se* in filing a verified petition for injunctive relief to protect a vulnerable adult in imminent danger of harm or who is already a victim of exploitation.

Section 825.103(1)(a)-(e) defines five categories of exploitation: (1) depriving vulnerable adults of the use, benefit or possession of their assets; (2) depriving vulnerable adults with diminished capacity of the use, benefit or possession of their assets when the person knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent; (3) breach of fiduciary duty by the vulnerable adult's guardian, trustee, or agent under a power of attorney; (4) misuse of the vulnerable adult's financial accounts; and (5) intentionally or negligently failing to provide for the vulnerable adult's necessities.

Importantly, the cause of action does not require that the vulnerable adult lack capacity. Available relief includes a temporary injunction (up to 15 days) prohibiting the wrongdoer from contacting the

vulnerable adult; awarding possession of the vulnerable adult's dwelling to the vulnerable adult; freezing lines of credit and financial accounts, even if such accounts are jointly held with the respondent; allowing necessary expenses to be paid despite the freeze; and directing law enforcement agencies to take necessary action to protect the vulnerable adult. After a hearing, the court may continue the injunction in whole or in part. In order to obtain injunctive relief, the petitioner must show that: an immediate and present danger of exploitation exists; there is a likelihood of irreparable harm and no other adequate remedy at law; the case is likely to succeed on the merits; the threatened injury to the vulnerable adult outweighs the harm to the respondent; the relief will not disserve the public interest; and the injunction provides for the vulnerable adult's physical or financial safety.

See § 825.1035 (a)(1)(a)-(f), Fla. Stat.



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*Walton, PL*



# Water, Water Everywhere and Not a Drop to Drink

The Real Property, Probate & Trust Law Section received an overview on water rights issues at their luncheon/CLE on March 14. William Boyce, Esq., First American Title, Senior Underwriting Counsel, discussed real and potential conflicts among the United States, the State of Florida, Florida residents, and private lands owners relating to submerged lands, swamp lands, filled lands, beaches, rivers, lakes, streams, and canals.



The Section thanks its luncheon sponsor: Synovus Bank.





LORI A. HEIM, CAITLYN PARSLEY, AND MARJORIE S. HENSEL

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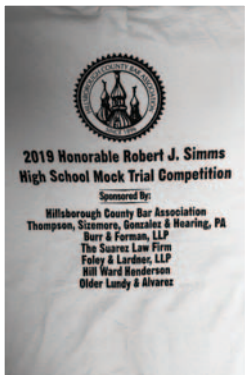
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# 2019 Hon. Robert J. Simms High School Mock Trial Competition

The HCBA Young Lawyers Division hosted another great Honorable Robert J. Simms High School Mock Trial Competition on February 16, with 10 schools participating — the most schools ever in the history of the event! Congratulations to the Bell Creek Academy team, who won and will advance to the state competition on behalf of the Thirteenth Circuit.



2019 Honorable Robert J. Simms  
High School Mock Trial Competition

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Thank you also to the committee members; the local attorneys that volunteered to serve as scoring jurors; the many judges that participated; and the event sponsors.

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**“The only thing that will redeem mankind is cooperation.”  
— Bertrand Russell**



As the baby boomers transition into retirement, we find ourselves in the midst of one of the largest transfers of wealth in history. With more and more retirees in charge of trillions of dollars in personal assets, they are becoming a natural focus for the unscrupulous. One reason the elderly are targeted is because they have those trillions of dollars in personal assets. Another reason is that as they grow older, the elderly’s ability to manage those assets diminishes. The Alzheimer’s Association projects that by 2050, 14 million Americans will be living with Alzheimer’s disease. Other forms of dementia are prevalent

as well. By preying on fear and capitalizing on those who are diminishing or diminished, scamming the elderly out of their savings has become a very lucrative business for the greedy and immoral among us.

The most often quoted figure for the cost of elder financial exploitation is \$2.9 billion per year. But that number comes from a MetLife Study that was extrapolated from newsfeed articles over only a three-month period in 2010. A 2015 study put the number at \$36.5 billion each year, and even that is now being questioned.<sup>1</sup> But, the real cost of exploitation goes far beyond just the monetary. Elder financial

exploitation has been declared a public *health* crisis<sup>2</sup>. Many of its victims become depressed and isolated, which exacerbates existing health conditions. Some experts predict that we will see a rise in elderly homelessness, and there are reports of elderly victims, faced with having lost every penny they saved, committing suicide.<sup>3</sup>

As fraudsters grow more sophisticated and turn their focus to the elderly with ever increasing intensity, the problem will only grow worse. A recent article in *The Wall Street Journal*<sup>4</sup> revealed that banks are reporting a 12 percent increase in suspected cases

*Continued on page 61*



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*Continued from page 60*

of elderly financial exploitation. This is surely partially due to an increase in actual cases — we are seeing the predictions of increased exploitation come to fruition. But, it is also likely a result of recent rules and regulations that are allowing financial institutions to report even *suspected* financial exploitation without fear of breaching privacy laws.

So what can be done? The biggest roadblock to finding an effective means of fighting back is a lack of a unified approach. Because of various legal issues, the professionals that are on the frontlines — lawyers, financial institutions, government agencies, law enforcement — are conducting their own efforts without benefit of the others' knowledge. This siloed, fragmented approach is not effective. The most obvious solution is to work to change laws that hinder the effective information sharing that is necessary to mounting a unified response. Common sense reform allowing limited exceptions in very specific situations of elder exploitation is a meaningful and necessary change. For our parents, our grandparents, our clients and friends, we must find ways to work together to end this siege on our seniors' savings.

<sup>1</sup> True Link Financial, *The True Link Report on Elder Financial Abuse 2015*, (Jan. 2015), <http://documents.truelinkfinancial.com/True-Link-Report-On-Elder-Financial-Abuse-012815.pdf>.

<sup>2</sup> Weill Cornell Medicine, *Editorial: Age-Associated Financial Vulnerability a Public Health Crisis*, (Oct. 13, 2015), <https://news.weill.cornell.edu/news/2015/10/editorial-age-associated-financial-vulnerability-a-public-health-crisis-mark-lachs>.

<sup>3</sup> Nick Leiber, *How Criminals Steal \$37 Billion a Year from America's Elderly*, (May 3, 2018), <https://www.bloomberg.com/news/features/2018-05-03/america-s-elderly-are-losing-37-billion-a-year-to-fraud>.

<sup>4</sup> Yuka Hayashi, *Scamming Grandma: Financial Abuse of Seniors Hits Records*, (Jan. 24, 2019), <https://www.wsj.com/articles/scamming-grandma-financial-abuse-of-seniors-hits-record-11548344907>.



*Author: Melissa J. Acayan - Raymond James Financial, Inc.*



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# STANDING OUT IN THE CROWD: INTERNET MARKETING TIPS FOR LAWYERS

Solo & Small Firm Section

Chairs: Matthew Crist – Crist Legal | PA & Gian-Franco Melendez – Law Office of Gian-Franco Melendez, LLC



**Internet marketing is complicated, but following best practices is a sure way to improve your internet presence, increase ranking, and get more clients.**



**S**tanding out in a crowd of lawyers online is the difference between thriving and stagnating. But learning some basic internet marketing practices can help put you ahead of the pack.

There are hundreds of best practices to improve your online presence, but there are a few key methods that will increase your likelihood of being seen by Google and other large search engines.

**Define Your Target Market and Keywords.** Consider what geographical areas you want to target and include those locations in your headers, content, and page titles. For example, if you practice personal injury law in Tampa, include keywords like “Tampa Personal Injury Lawyer” in the headers and subheaders of your homepage and practice pages. Use variations of these keywords throughout.

**Create High-Quality Content on a Regular Basis.** Blogging is an important part of ranking. Blogs allow you to provide valuable information to potential clients while adding keywords to your site. Create a schedule for writing new content and stick to it. Consistency is key.

This content should be valuable to your potential clients. It should answer their questions while being concise, insightful, and interesting.

**Understand Best Practices for Content.** Your content, both on your pages and in blog articles, should be formatted in a way that search engines understand. This means that you should use headers, internal and external links, keywords, and short paragraphs.

Once you have a decent amount of content on your site, go back and update those articles regularly. This keeps things fresh. Search engines better rank websites that are kept current.

**Promote Your Content.** Once you create content on your blog, share that content on multiple social media sites. This increases the chances that people will read it and will accelerate the rate at which search engines add these new pages to their databases.

**Make Your Website Mobile Friendly.** More people use their phones to browse the internet than other devices. Your website should be formatted for a small screen. Your content should use short paragraphs, clear headers, and

compressed images to improve a mobile user’s experience.

**Focus on Local SEO.** Now that your website is optimized to rank well, you’ll want to focus on other areas of the internet where potential clients find lawyers. The most common are Google Maps and Apple Maps. Stay active with your account and keep the information accurate. Likewise, internet directories are a simple way to add your name, address, phone number, and URL to the internet. Submit your site to legal and local directories like Avvo.com and Yelp.com. The information on these sites must be accurate and identical to each other.

Internet marketing can be complicated, but by following these best practices, you can improve your internet presence, increase ranking, and stand out in the crowd of lawyers online.



*Author:  
Jordan Monarrez  
Puckett - Dolman  
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**The Notice clarified that taxpayers generally may continue to deduct 50 percent of the food and beverage expenses associated with operating their trade or business.**



While the general rule of § 274 is clear (no deduction is allowed with respect to an activity that is of a type generally considered to constitute entertainment, amusement, or recreation...), many practitioners have been in a holding pattern regarding the deductibility of business meals since the Tax Cuts and Jobs Act (TCJA) removed the “directly-related” and “associated with” business tests (commonly referred to simply as the “business entertainment tests”) previously found in § 274.

In particular, there has been significant debate as to whether previously qualifying business meals are allowed a 50 percent deduction under the newly amended § 274. Many believed that the retention of references to “business meals” in the amended § 274 supported the continued deductibility of 50 percent of business meals. Others, however, believed the removal of the “business entertainment tests” meant that business meals were entirely nondeductible under the TCJA. The naysayers rooted their basis for nondeductibility, soundly, in the IRS and Tax Court’s long-standing position that business meals must meet one of the business entertainment tests in order to be deductible. Logically, the argument goes, the removal of

the tests under the TCJA meant the removal of the deduction.

On October 3, the IRS put this debate to rest when it issued Notice 2018-76. The Notice clarified that taxpayers generally may continue to deduct 50 percent of the food and beverage expenses associated with operating their trade or business, despite the TCJA’s changes to the meal and entertainment expense deduction under § 274. Taxpayers can rely on the guidance contained in the Notice until the IRS issues proposed regulations on the subject.

At the core of the analysis, the IRS expounds that subsection k of § 274 was not amended by the TCJA. Section 274(k) does not allow a deduction for the expense of any food or beverages unless: 1) the expense is not lavish or extravagant under the circumstances, and 2) the taxpayer (or an employee) is present when the food or beverages are furnished. Section 274(n)(1), which was amended under the TCJA, provides that the amount allowable as a deduction for any expense for food or beverages

cannot exceed 50 percent of the amount of the expense that otherwise would be allowable.

Under the Notice, taxpayers may continue to deduct 50 percent of otherwise allowable business meals if: 1) the expense is an ordinary and necessary business expense under § 162(a) paid or incurred during the tax year when carrying on any trade or business; 2) the expense is not lavish or extravagant under the circumstances; 3) the taxpayer, or any employee, is present when the food or beverages are provided; 4) the food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and 5) for food or beverages provided during or at an entertainment activity, they

must be purchased separately from the entertainment.



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## IN PRAISE OF TRIAL LAWYERS

Trial & Litigation Section

Chair: Katherine Yanes – Kynes, Markman & Felman, P.A.



**To you, the members of this Section, who give all of us a “good name”... thank you for all you do.**



**M**ichael Tigar, the highly skilled and effective trial lawyer (and law professor and author), has written that we are in danger of losing our way — to the courthouse, to justice and to principles of living that sustain us. To stay on the right path, or to find our way back, Mr. Tigar advocates for nine principles of action that are needed in litigation (whichever side you’re representing) — and also in life. Those principles are: Courage, Rapport, Healthy Skepticism, Observation, Preparation, Structure, Candor, Empowerment, and Thoughtful Presentation.

These are thoughtful principles that we can (and should) follow in our busy, stressful law practices, and in our daily lives. In our local legal community, we have an abundance of exceptional trial practitioners who clearly adhere to these principles, whether overtly or as a matter of (usually) quiet daily effective practice. We should take a moment to praise them and thank them for all that they do on a daily basis to represent their clients, while being actively involved in this Section and our Tampa Bay community.

Our public defenders, Federal Defender Donna Elm and Thirteenth Judicial Circuit Defender Julianne Holt and their respective skilled

teams of highly effective and diligent trial lawyers, protect all of our rights by defending their clients. They defend those who are not guilty, those who are guilty, and those who are, simply, just presumed guilty. They sometimes defend those who some in the community may think are undeserving of representation (because some in our community don’t fully appreciate what makes our country and legal system so unique and why our legal system is the envy of the world). They and their teams do it with skill, class, hard work, and focused determination. Daily. They are not compensated nearly well enough for it, and we should be grateful to them every day for their skill and commitment.

Likewise, our local prosecutors, United States Attorney Maria Chapa Lopez and Thirteenth Circuit State Attorney Andrew Warren, have assembled an incredible team of exceptional trial lawyers who endeavor on a daily basis to protect our community. Like our public defenders, they seek justice daily and bring a high level of skill, preparation, and ethical practice to the courtroom every time they appear. We should all be grateful for the fine work they do.

Our private criminal defense bar has many exceptionally skilled lawyers who are “in the trenches”

daily effectively advocating for their clients. Most of them have been active members of this Section and have given their time and talent to better our profession. While effectively representing their clients, they give their time to prepare for and present at seminars and CLE’s to teach younger lawyers, they mentor younger lawyers, and they, in their own quiet, effective way, lead by example. To name but a few who have led this Section while effectively representing clients you need look no further than the current chair of the Section, Katherine Yanes, who has over the past ten years taken on every important leadership role in our legal community while practicing at the highest level. Her law partner, Jim Felman, who, in addition to being a nationally recognized criminal trial lawyer and expert on federal sentencing law, has been active at the highest leadership levels in our local state and federal legal community. Also, former United States Attorney (and Phelps Dunbar partner) Brian Albritton and many others (you know who they are).

We are also fortunate to have incredibly skilled and effective trial lawyers on both the civil defense and plaintiff’s side in our

*Continued on page 67*



# IN PRAISE OF TRIAL LAWYERS

Trial & Litigation Section

*Continued from page 66*

community. These extraordinarily skilled attorneys present their cases to juries and judges for plaintiffs and defendants. They represent a far-reaching segment of the population, from the blue-collar worker to the most affluent members of our community. Their clients are construction workers and construction companies, the indigent and wealthy, the CEO and the hourly laborer. Their clients

receive their very best efforts on a daily basis. They seek justice for their clients and do it in an honest, ethical way with skill and thoughtful preparation.

Many of these lawyers have also been actively involved in the Trial Lawyer Section over the years and have never balked at giving their time, energy, and talent to teach and mentor younger lawyers. Lawyers like Joe Varner, Tony Martino, Ben Hill, Joe Kinman, Kevin McLaughlin, Chris Knopik,

Bill Hahn, Jim Clark (big and little) and so many others (you know who they are).

So to all of them, and to you, the members of this Section, who give all of us a “good name”... thank you for all you do.



*Author: Kevin J. Napper – Kevin J. Napper P.A.*



## Trial & Litigation Section Quarterly Luncheon

On March 13, the Trial & Litigation Section received a State of the Court update. The speakers – Chief Judge Elect Nelly Khouzam of the Second District Court of Appeal, Chief Judge Ronald Ficarrotta of the Thirteenth Judicial Circuit, Public Defender Julianne M. Holt, and State Attorney Andrew H. Warren – discussed the latest developments in their offices and courtrooms, and took questions from the audience.



The Section would like to thank its luncheon sponsor:



## THE NEED FOR KNOWLEDGEABLE, IMPARTIAL MEDICAL EXPERTS

Workers' Compensation Section

Chair: Anthony Cortese – Attorney at Law



**We are left with the growing problem of trying to find specialists in certain fields because of how the workers compensation system is designed and the minimum fee schedule.**



**T**wo recent cases highlight problems facing workers' compensation practitioners. In the first case, *Marine Max and Seabright Insurance v. Charles Blair*, No. 1D17-3926 (Fla. 1 DCA, March 7, 2019), Charles Blair had multiple surgeries by a hernia specialist who refused to accept the workers compensation rate for his services and insisted on higher payments. After several years of payments at higher rates, the employer changed carriers, and the new carrier refused to authorize this doctor. The First District Court of Appeals held that the doctor could not be deauthorized for refusing to agree to accept the workers compensation fee schedule. But it was a hollow victory because the First DCA also held that the Judge of Compensation Claims could not order the carrier to pay fees at a higher rate. The dissent points out the incomplete nature of the ruling. We are left with the growing problem of trying to find specialists in certain fields because of how the workers compensation system is designed and the minimum fee schedule.

The second decision is *Day v. Johns Hopkins Health System and Paul Wheeler, M.D.*, 903 F.3d 766 (4th Cir. 2018). In that case, Dr. Wheeler, working through Johns Hopkins Health System, ran an expert review service over several years in federal black lung cases. In doing so, Dr. Wheeler allegedly charged inflated fees and provided the coal industry with false and fraudulent testimony in black lung cases to support denial of federal workers' compensation benefits to miners with black lung disease. Dr. Wheeler's scheme was uncovered by a journalistic investigative series published by the Center of Public Integrity, including "Breathless and Burdened: Dying from Black Lung, Buried by Law and Medicine." Chris Hamby, et al., *Johns Hopkins Medical Unit Rarely Finds Black Lung, Helping Coal Industry Defeat Miner's Clams* (October 30, 2013, updated January 13, 2015).

The federal agency that reviews black lung cases issued a directive to "not credit Dr. Wheeler's negative readings for pneumoconiosis in the absence of persuasive evidence either challenging the CPI and ABC conclusions or otherwise

rehabilitating Dr. Wheeler's readings." U.S. Dept. of Labor, Office of Workers' Compensation Programs, *Weighing Chest X-ray Evidence that Includes a Negative Reading by Dr. Paul Wheeler*, BLBA Bulletin, No. 14-09 (June 2, 2014).

Many miners were denied benefits based on Wheeler's reports and died without receiving benefits. Even so, dismissal of the lawsuit on their behalf was affirmed by the U.S. Fourth Circuit of Appeals on the basis that witnesses are entitled to absolute immunity for their testimony. This rule has already been questioned by commentators,<sup>1</sup> but courts have yet to consider the immunity to reduce the weight of party experts who give testimony contrary to the treating physicians, even though treating physicians can be sued for medical malpractice if their opinions and treatment recommendations are wrong. 766.101 *et seq.*, Fla. Stat.

<sup>1</sup> <http://yalejreg.com/nc/day-v-johns-hopkins-hard-cases-make-bad-law-or-good-law>.

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

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## Workers' Compensation Luncheon/CLE

On February 25, the Workers' Compensation Law Section held a CLE on the subject of "Practice and Professionalism." The two speakers, Judge Mark A. Massey and Judge Rita Young with the Office of the Judges of Compensation Claims (OJCC), provided an overview of the Department of Administrative Hearings/OJCC and discussed the importance of knowing and following the 60Q Rules, ethics and professionalism in everyday practice, and timely completion of discovery.

Thank you to Judges Massey and Young for speaking to the group and to Seacoast Bank for sponsoring the luncheon.



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**Jordan D. August – Carlton Fields** is pleased to announce that Jordan D. August has been elected to shareholder. August practices in the areas of taxation, estate, and business planning.

**Steven L. Brannock – Steve Brannock of Brannock & Humphries** recently presented “Florida Writs” at The Florida Bar Basic Appellate Practice Seminar and “Original Proceedings” for The Florida Bar Appellate Practice Board Certification Boot Camp.

**Edward Carbone – Pennington, P.A.**, is pleased to announce the expansion of its Tampa office with the addition of Partner Edward Carbone. Carbone’s practice focuses on medical malpractice defense litigation, healthcare litigation, and healthcare risk management advice.

**Cristina A. Castellvi – Fee & Jeffries, PA** welcomes Cristina A. Castellvi, who has joined the firm in Tampa as an associate attorney focusing on business litigation.

**Heather DeGrave – Walters Levine & Lozano**, is pleased to announce that the firm has changed its name to **Walters Levine Lozano & DeGrave** with the addition of Heather DeGrave to its practice. DeGrave is a pivotal member of the firm’s civil litigation team, where she practices in the areas of construction, collections, creditors’ rights, and business litigation.

**Danielle Diaz – Greenberg Traurig** is pleased to announce the elevation of Tampa office attorney Danielle M. Diaz to Of Counsel. Diaz focuses her practice on complex commercial litigation in federal and state court.

**Erin Dunnivant – Danahy & Murray**, is proud to announce that trial attorney Erin Dunnivant has joined the firm. Her practice encompasses all phases of first party insurance claims, including litigation in both state and federal courts. Dunnivant represents policyholders on commercial and residential property disputes and resulting bad faith litigation.

**Austin Eason – Carlton Fields** is pleased to announce that Austin Marshall Eason has joined the firm as an associate in Tampa. He is a member of the firm’s Health Care practice.

**Scott Feather – Carlton Fields** congratulates Scott Feather, who has been elected to shareholder. Feather is a commercial litigator who defends and prosecutes a diverse range of disputes, including complex matters in both federal and state court and in arbitration.

**GrayRobinson – GrayRobinson, P.A.** announces it has acquired Washington, D.C.-based lobbying firm **Eris Group, LLC**, effective February 1. The acquisition extends GrayRobinson’s capabilities beyond Florida and expands its capacity to serve clients with federal lobbying needs.

**Carie Hall – Rumberger, Kirk & Caldwell** has named Carie Hall as partner. Hall focuses her practice in the areas of casualty and product liability litigation.

**Jourdan Haynes – Carlton Fields** is pleased to announce that Jourdan Haynes has been elected to shareholder. Haynes counsels on a wide range of complex commercial real estate matters, with an emphasis on property acquisition.

**Katherine Heckert – Carlton Fields** is pleased to announce that Katherine Heckert has been elected to shareholder. Heckert is a Florida Board-certified specialist in construction law, who advises and represents construction clients in mediation, arbitration, and litigation proceedings.

**Celene H. Humphries – Celene Humphries of Brannock & Humphries** recently presented “Appellate Considerations During Trial” at The Florida Bar Young Lawyers Division’s Basic Trial Practice Seminar.

**R. Craig Mayfield – Bradley Arant Boult Cummings LLP** has announced that R. Craig Mayfield has been named managing partner of the firm’s Tampa office.

**Andy Mayts – GrayRobinson, P.A.** congratulates attorney Andy Mayts, who has been selected as a fellow of the Construction Lawyers Society of America. The Society is an invitation-only construction law honorary society with membership limited to 1,200 practicing Fellows from the United States and around the globe.

**Thomas Palermo – Thomas Palermo of the U.S. Attorney’s Office** wrote an article on the opioid crisis from the perspective of a federal prosecutor. That article, “The Opioid Crisis,” was published in the *American Bar Association’s Criminal Justice* magazine (Winter 2019).

**Lauren Raines – Bradley Arant Boult Cummings LLP** welcomes Lauren G. Raines, who has joined the firm’s Tampa office as a partner in the Banking and Financial

*Continued on page 71*



Continued from page 70

Services and Real Estate practice groups. Raines handles commercial lending transactional matters as well as financial services litigation.

**Jacqueline Root – Pennington, P.A.**, is pleased to announce the expansion of its Tampa office with the addition of Partner Jacqueline R.A. Root. Root focuses her practice on the representation of hospitals, physicians, and other healthcare providers and facilities, defending against claims for medical malpractice at the trial and appellate levels.

**Bill Schifino – Gunster** congratulates William J. Schifino, Jr., who has been appointed to the Judicial Qualifications Commission by The Florida Bar for a six-year term.

The 15-member commission is authorized to investigate complaints against judges whose conduct demonstrates a present unfitness to hold office and recommends disciplinary action to the Supreme Court. The Florida Bar appoints two members to the commission, and the remaining members are appointed by the governor.

**Andre Sesler – Pennington, P.A.**, is pleased to announce that Andre Sesler has been elected to shareholder. Sesler will continue to focus his practice on the defense of claims involving premises liability, automobile negligence, property damage, and a variety of insurance coverage issues.

**Dennis Waggoner – Hill Ward Henderson** congratulates share-

holder Dennis Waggoner, who was recently inducted as a Fellow of the American College of Trial Lawyers. Waggoner is a shareholder in the firm’s Commercial Litigation Group.

**Wm. Cary Wright – Carlton Fields** congratulates Tampa Shareholder Wm. Cary Wright, who was named a Fellow of the American College of Construction Lawyers (ACCL). Wright serves as co-chair of the firm’s Construction industry group and Construction Litigation practice group. The ACCL is a national organization of lawyers who have demonstrated skill, experience, and high standards of professional and ethical conduct in the practice, or in the teaching, of construction law and who have demonstrated a commitment to give back to the construction industry.



**SAVE the DATE** **hcba events**

**May 2, 2019**  
Law & Liberty Dinner at the Hilton Tampa Downtown

**May 8, 2019**  
Law Day Membership Luncheon at the Hilton Tampa Downtown

**May 29, 2019**  
Mental Health/Wellness Townhall at Chester Ferguson Law Center

**June 6, 2019**  
Installation of 2019-20 Officers & Directors at Chester Ferguson Law Center

**June 7, 2019**  
ABOTA/HCBA Professionalism Seminar at Stetson University College of Law Tampa Campus

**June 14, 2019**  
YLD State Court Trial Seminar at George Edgecomb Courthouse

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**For the month of March 2019**

**Judge:** Hon. Ralph Stoddard

**Parties:** Randy Willoughby

**Attorneys:** for plaintiff: Brandon Cathey, Brent Steinberg and Daniel Greene; for defendant: Jim Thompson and Troy Holland

**Nature of case:** Personal Injury / Auto Accident

**Verdict:** \$30,101,599.00

**For the month of March 2019**

**Judge:** Hon. Lisa Herndon

**Parties:** Karen Archer v. Danny Evans and Three Rivers Xpress, Inc.

**Attorneys:** for plaintiff: Robert Blank and Sara Whitehead; for defendant: Christopher Ligori and David Rosenbaum

**Nature of case:** truck accident; rear-end collision resulting in two shoulder surgeries, neck injections, and a recommendation for a future shoulder replacement surgery (total damage request of over \$3.2 million)

**Verdict:** Defense verdict

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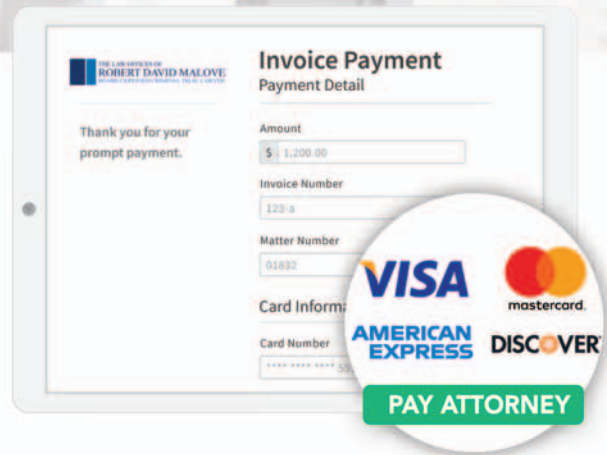
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