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Re Integra

THE JOURNAL OF THE LAKELAND BAR ASSOCIATION

www.lakelandbarassoc.org

Join us on September 16 for "Election Insights" with Dr. Susan MacManus

Lakeland Bar Association's first lunch meeting of the year will be held on Friday, September 16th at the Club at Eaglebrooke. Distinguished Professor, Dr. Susan MacManus, will be our special guest speaker. Susan A. MacManus, who received her M.A. from the University of Michigan and Ph.D. from Florida State University, is a Distinguished University Professor at USF in the Department of Government and International Affairs. Dr. MacManus specializes in campaigns and elections, redistricting, women & minorities in politics, election reform, media and politics, public opinion polls, government budgeting & finance, Florida politics—all levels, intergenerational issues and public policies.

For the last six election cycles, she has served as political analyst for WFLA News Channel 8 (Tampa NBC affiliate). Since 2008, she has been a featured columnist on sayfiereview.com—a widely-read Florida-based political website. WFLA TV's weekly Road to the White House program on which MacManus appeared as a panelist was nominated for a Suncoast Emmy award in 2008. She has appeared on every major broadcast and cable television and radio network and been interviewed by major newspapers in Florida, the U.S., and abroad. She is Florida's most-quoted political scientist.

Call Lisa at 863.838.6691 to reserve your seat at this event.

Brian Haas, Chief Assistant State Attorney, will be our October Speaker

LBA's October 7th luncheon will feature Chief Assistant State Attorney, Brian Haas. Brian Haas is the Chief Assistant State Attorney for the Tenth Judicial Circuit of Florida. In this position, Mr. Haas is responsible for overseeing the day to day operations of the State Attorney's Office; which prosecutes all criminal cases in Polk, Highlands and Hardee Counties. He is also the spokesperson for the office. Mr. Haas reports directly to State Attorney Jerry Hill.

Brian Haas grew up in Polk County and is a 1993 graduate of Bartow High School. He received his college degree from Flagler College in St. Augustine and his law degree from the University of Florida. Upon graduation from law school, Mr. Haas returned to Polk County and began his career as a prosecutor. He prosecuted crimes ranging from Misdemeanors to Capital Felonies. He was assigned to the Special Prosecution Division; where he prosecuted defendants who committed sexual crimes against children. After serving as a prosecutor for three years, Mr. Haas entered private practice. From 2003 to 2011, he handled civil cases and also served as city attorney for the city of Frostproof.

In 2011, Mr. Haas returned to the State Attorney's Office and the Special Prosecution Division. In 2012, he became the Chief Assistant State Attorney. As a prosecutor, Mr. Haas has represented the state of Florida in many jury trials, including the prosecution of violent crimes.

2016–2017 CALENDAR OF EVENTS

September 2016	
16	Member Luncheon (MacManus)
22	After Hours Reception (Sorosis)
29	Board of Directors Meeting
October 2016	
7	Member Luncheon (Haas)
5	Journal Article deadline
27	Board of Directors Meeting
November 2016	
4	Member Luncheon *CLE* (Byrk)
17	Board of Directors Meeting
December 2016	
NO Membership Luncheon	
5	Journal Article deadline
January 2017	
6	Membership Luncheon *CLE*
19	Bench Bar Reception
26	Board of Directors Meeting
February 2017	
3	Membership Luncheon(Swope)
3	Golf Tournament
5	Journal article deadline
23	Board of Directors Meeting
March 2017	
3	Membership Luncheon (TBA)
23	Board of Directors Meeting
April 2017	
7	Membership JA Luncheon (Jacobsen)
5	Journal article deadline
27	Board of Directors Meeting
May 2017	
5	Law day luncheon (Schifino)

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A MESSAGE FROM THE PRESIDENT

Welcome back for another awesome year!

"*Let's Make Lakeland Great Again*" is this year's official slogan. Actually, that was my first attempt at humor within our organization and we don't have a slogan, but I wanted to get everyone's attention. I would like to personally thank all of you for having trust in me to serve as your President for this coming year. It is both an honor and a privilege to take part in this wonderful organization in such an important role. I will do my best to meet the standards set by all of the great Presidents that have served before me.

I'd also like to thank our wonderfully awesome Immediate Past President Jean Henne for a great 2015-2016 year. Jean, your hard work, thoughtfulness and dedication to this organization sets the bar very high for this coming year. I sincerely appreciate all of your guidance and leadership over this past year and will be looking forward to working with you and seeking your input throughout the year to come. I also want to thank the members of the board and our very own (superbusy mom dynamo), Lisa Oliver, for all of her continued help and support in making this our Circuit's largest and most active bar organization.

All of you should have received a Membership Packet by now. This signals the official start of our 2016-2017 membership drive! Please return your Membership Application & Membership Renewal Form and membership fee to Lisa Oliver as soon as possible. If any of you have a colleague or friend that might enjoy our organization's CLE credits, networking or just participating in community outreach please reach out to them with an invitation to join! In fact, invite them to our first luncheon as a guest to hear our speaker Dr. Susan MacManus on September 16 or to join all of us at our upcoming Past President's reception from 5:30 -7:00 September 22 at the Sorosis building in Lakeland.

There is going to be much to look forward to this coming year from the LBA! Please make note on your calendars now for all of our upcoming luncheons and social events. It is going to be a great year!

Sincerely,

Kevin Humphries

Kevin Humphries
President

Res Integra

"A whole thing; a new or unopened thing. The term is applied to those points of law which have not been decided, which are untouched by dictum or decision.

3 Mer. 269

Editorial Committee

Rick Nail, Editor....284-2280
Lisa Oliver, Layout / Graphic Design....619-7160
Sara Reyes **Hon. Susan Roberts**

The Res Integra supports participation of the membership in production of the publications. We encourage you to submit articles and letters. However, we reserve the right to edit any submission and to publish only those articles that we, in our sole discretion, deem appropriate.

Note: The comments, messages, statements, and opinions, legal or otherwise, expressed in the articles herein are exclusively those of the author and shall not be considered to be those of the Lakeland Bar Association, its officers, directors, agents, this publication, its editors or staff. Additionally, the comments, statements and articles contained herein are general in nature and should not be relied upon as a basis for any legal opinion, action or conclusion on the part of the reader with respect to any particular set of facts or circumstances.

The Lakeland Bar Association

2016-2017 Lakeland Bar Association Officers and Board of Governors

President - Kevin Humphries
Vice President - Kyle Jensen
Treasurer - Art Fulmer Jr.
Secretary - Ariana Gonzalez
Past President - Jean Henne
Rhett Barker
Cory Chastang
Don Conway
Tim Kiley
Shirley Pellarchy
Amanda Salcido
Tony Stevens
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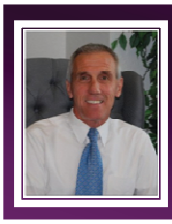


COURTHOUSE SECURITY SET TO TAKE CENTER STAGE

BY NICK SUDZINA
Court Administrator

In light of recent violence nationwide and because of several high profile security incidents that have taken place in Florida's courts, Chief Justice Jorge Labarga is set to appoint a Trial Courthouse Security Workgroup to review existing trial court security protocols and provide recommendations for improvements. By the time this is printed, the Supreme Court will have issued a press release announcing this workgroup, its membership, and its charge. Indeed, one of the goals in the Supreme Court's Long Range Strategic Plan relating to court facilities is to "Protect all judges, court personnel, court users, and facilities through effective security, emergency preparedness, and continuity of operations plans."

When the Polk County Courthouse opened in 1987, the cost at that time was considered excessive ($37M) with unnecessary features and cosmetic design. The Polk County Commission at the time was not about to embark on a spending spree to install courthouse security "because we don't have security incidents here", as one commissioner put it. Then, when a judge in the Fourteenth Judicial Circuit was shot and killed by a litigant in a domestic dispute shortly thereafter, courthouse security rose to the forefront of important court issues in the state and counties came around to begin to listen about the need for a safe and secure environment for defendants, witnesses, plaintiffs, respondents and citizens. Subsequently, the chief judge, sheriff and county commission chair in Polk County brokered a deal by which the sheriff would be given funding to implement courthouse security at some minimal level. Statutory authority for courthouse security has always been the responsibility of the counties and either the local sheriff or a contractor provides this service.

In the Tenth Circuit, each sheriff and his/her personnel have been highly proactive in their respective security plan for each courthouse location. Whereas there is no absolute certainty that a severe security incident will not occur here, it is believed that the likelihood of this is significantly lower here than in most or all other jurisdictions. Communication is constant between the court and personnel responsible for security and this office and office of the chief judge are kept constantly informed of security incidents that occur (mostly minor) and the ones that have been averted because of due diligence on the part of security personnel. It is a sad commentary when we have to wait until a high profile shooting occurs or a murder suspect is running loose because a corrections officer was negligent in their duty and enabled his escape, but such is the day and time we live in.

The Tenth Circuit is fortunate that the courts have an effective security plan in place in each county and that no intervention is needed by anyone to take up the matter with county commissioners. Years of previous security system planning have attained the desired results and Florida's citizens can be assured that they will have a safe and sound venue for the peaceful resolution of disputes. We must remain vigilant, however, to maintain what we have achieved and not let our guard down. Security is a 24/7 proposition, not from only the keepers at the front gate, but everyone who has a defined role as a court officer, court employee or court user.

Assignment of Judges

June 30, 2016—January 4, 2017

Circuit Judges

Polk County

Felony

F1: Ojeda
F2: Stargel
F3: Durden (Adm. Judge)
F4: Abdoney
F5: Butz
F6: Yancey
F9: Harb (civil/felony)
VP: Shelby

Civil

04: Carpanini
07: Helms
08: Radabaugh (Adm. Judge)
15: Spoto
11: A. Smith

Family

01: Pincket
02 McDaniel
05: Sites
09: Combee
13: Selph (Adm. Judge)

Probate / Mental Health

14: Masters

Appeals / Writs

30: Jacobsen

Chief Judge

30: Jacobsen

Juvenile

J1: Roddenbery (Adm. Judge)
J2: Hofstad
J4: Smith

Circuit Judges

Highlands County

Felony

06: Estrada

Civil & Probate

10: Raiden

Family

12: Shinholser

Juvenile/ Prob/ Prose/ Family Relief/ Domv

JR : Cowden

Hardee County

03: Ezelle (Adm. Judge)

County Judges

Polk County

County Criminal

M-6: Fegers
M-4: Bennett
M-5: Kirkland
M-2: Abdoney
M-7: Franklin

County Civil

M-0: Hill

County Small Claims / Criminal

M-2: Barber

Behavioral Health Court / Self Help

M-8 Williams

Pro se and VOPs

M-9: Grode (Adm. Judge)

Lakeland

L-1: Green

Winter Haven

W-3: Griffin

Hardee County

CC/ JR: McKibben

Highlands County

CC: Ritenour

Report from
The Florida Bar Board of Governors

10th Judicial Circuit
District 1
July 2016

The Florida Bar Board of Governors met on July 29, 2016. The major actions of the Board and the reports received included:

The Florida Bar Board of Governors approved amendments to rules regulating for-profit lawyer referral services that, if approved by the Florida Supreme Court, will:

Change the terminology from "lawyer referral service" to "qualifying provider" throughout.

Subject any referral or matching service as well as any group or pooled advertising program to the rules (Voluntary Bar Lawyer Referral Services are non-profit and are covered under a different rule – Chapter 8).

Delete the requirement that participating lawyers have malpractice insurance, as most Florida Bar members are not required to carry it.

Include new explicit prohibitions against requiring or pressuring participating lawyers to make cross referrals, and additional language against stating or implying that the provider is a law firm, can practice law or directly provide legal services.

Require services to provide participating lawyers with documentation of compliance with Florida Bar rules.

Keep the following requirements: providers must comply with lawyer advertising rules, are prohibited from sharing in legal fees, must refer or match consumers only to those authorized to provide services, must respond to official bar inquiries within 15 days, and are prohibited from stating or implying Florida Bar endorsement.

Enforcement would occur through the Bar's regulation of the participating lawyers. Developed by the Board of Governors Board Review Committee on Professional Ethics and Technology Committee, the amendments: broaden the application of the rule to cover all referring and matching services to provide the rule more long-term effectiveness; make it easier for Bar members to understand when they can and cannot participate with a provider; include a take-down provision so that participating lawyers can stop participation with a noncomplying provider within 30 days of Florida Bar notice of its noncompliance without fear of sanction; and assist the public by assuring that providers that comply with Bar rules can continue to operate, thereby expanding access to justice. The amendments will be filed with the court on August 15.

The 2016-19 Florida Bar Strategic Plan was approved with specific priorities for the 2016-17 Bar year. Those include using technology to improve the availability of Bar resources and information to Bar members and the public, simplifying the rulemaking process, finding new services and benefits for Bar members, educating Bar members and the public about the upcoming Constitution Revision Commission, improving diversity on judicial nominating commissions with the goal of improving diversity on the bench, and effectively delivering the Bar's message to its members, the public, and targeted groups.

Amendments to Family Law Rules and to The Rules Regulating The Florida Bar necessary to implement a new state statute on collaborative law were approved. The statute allows divorcing parties to hire attorneys and necessary experts and engage in collaboration to resolve their case. If the collaborative effort fails, the parties would have to retain new attorneys before going to litigation. The procedural and Bar rules now go to the Supreme Court for approval. The law, HB 967, became Chap. 2016-93, Laws of Florida, and provides that parts of F.S. §§61.55-61.58 will not become effective until 30 days after the Supreme Court procedural and Bar professional conduct rules are adopted.

Changes allowing inactive lawyers, retired judges, and current or former full-time law professors to register as emeritus attorneys solely for the purpose of handling pro bono cases were approved. The amendments to Chapter 12 and conforming amendments to Rules 1-3.2 and 1-7.5 were recommended by the Florida Commission on Access to Civil Justice and could increase the number of emeritus attorneys from around 46 up to 3,500. The amendments go to the Supreme Court in October.

A proposed new Chapter 21 to Bar rules that would allow lawyer spouses of military personnel stationed in Florida to practice in Florida was discussed. The Florida Bar Military Affairs Committee has outlined in the proposal that those spouses would have to be licensed in another U.S. jurisdiction, take required Basic Skills Courses, and have a clear disciplinary record in other jurisdictions where they are licensed, among other requirements. For more information, check the Aug. 15 Florida Bar News.

The Board Disciplinary Procedures Committee approved unanimously an amendment to Bar Rule 5-1.1 that would allow lawyers to hold IOTA trust accounts in federally insured credit unions, if approved by the Florida Supreme Court. Current rules regulating trust accounts are posted here.

A new committee is looking at developing free automatic trust accounting software for Bar members to help them avoid technical violations of trust accounting rules and resulting disciplinary action. The committee is aiming to have a solution by June 2017. At present, trust accounting and monthly reconciliation forms using Microsoft Excel are available free from The Florida Bar Practice Resource Institute as well as the required compliance notice, FAQS and forms to open IOTA accounts.

A Special Committee on Gender Bias/Diversity has been appointed to make recommendations for strategies to meet the challenges highlighted in the recent Young Lawyers Division Women in the Legal Profession survey. The committee includes board and non-board members and will hear from educators and other experts on the issue and plans to make recommendations to Board of Governors.

The Diversity and Inclusion Committee and the Rules of Judicial Administration Committee have been asked to form a special task force to look at the issue of granting extensions in court cases for parental leave. The Diversity and Inclusion Committee passed a resolution saying extensions should be granted unless there are exceptional circumstances, but the Rules of Judicial Administration Committee has twice voted to refer the issue to the circuit and county court judicial conferences to be addressed as a policy rather than a rule.

IMPORTANT LINKS

Follow the progress of The Wm. Reece Smith, Jr. Leadership Academy's 2016-17 Fellows at www.floridabar.org/leadershipacademy

The Practice Resource Institute (PRI) provides guidance, resources and assistance to Bar members and staff: www.floridabar.org/PRI

Receive important Florida Bar announcements and news on the profession via social media at www.floridabar.org/socialmedia

C. Richard Nail, B.C.S.
Florida Bar Board Certified Marital & Family Law
GrayRobinson, P.A.

A Word from Clerk of the Circuit Court Stacy Butterfield

County Financial Report Available

Updated information on the county's financial state is now available in the latest Popular Annual Financial Report, which is prepared by my office. The report includes financial information for the Board of County Commissioners and the five local Constitutional offices – Sheriff, Property Appraiser, Clerk & Comptroller, Supervisor of Elections, and Tax Collector. The report provides citizens with a brief analysis of where county revenues come from and how these dollars are managed.

'14-15 financial highlights:

· Property tax revenues increased by $10.3 million, or 6 percent, the second consecutive year increase.

• Investments made by the Clerk & Comptroller generated $9.4 million in investment earnings.

• There were record increases in tourist tax revenues in the last two fiscal years—an increase of $1.3 million, or 16.6 percent this year, and $0.7 million, or 10.2 percent, in the prior year.

• Governmental activities revenues increased by $16.6 million, or 3.3 percent.

• Governmental activities expenses decreased by $15.6 million, or 2.8 percent.

• The county's budget totaled $1.27 billion in 2015, an increase of 0.6 percent.

As the Clerk & Comptroller, I am committed to increasing accountability and transparency in county government. I remain committed to reviewing our county's finances each year and reporting the impacts to the community so that residents know how their tax dollars were managed.

View the report online and find out more about your county finances at polkcountyclerk.net.

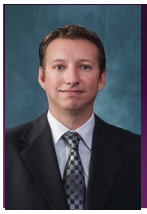
Online Record Search Tips

The transition to the new court record search system, Polk Records Online (PRO), is now complete. As with most new systems, there is a learning curve involved in becoming familiar with the system's navigation and features. I have compiled a chart below with the most frequently asked questions posed by the legal community.

User Questions	PRO Tip
Accessing files before meeting with a potential client	When meeting with a potential client, request online access to related files at least two business days prior to meeting.
Username or password is not recognized	Users now log in with their email address. Many users are trying to log in with old credentials, so make sure you are registered for the PRO system. If the wrong username is not the issue, users can navigate to the My Account tab to have their credentials emailed to them.
Password setup link has expired	If the link has expired, we need to send another link. This link must be used within 48 hours. Contact recordsreg@polk-county.net to request a new link.
Account disabled	Accounts are disabled when an incorrect password has been entered too many times. Users can reset passwords in the My Account tab.
Wheel keeps spinning when trying to view a document	If a user is unable to load a document, the user needs to confirm his or her system meets the minimum technical requirements needed to use PRO. The requirements are listed on the Help tab.
Document says it has 0 pages and has no icon	If no icon is displayed next to a docket line, this means an image is not available online. For some cases, Judgments and Orders are available through the Official Records online search at polkcountyclerk.net/official-records-search. Other documents can be retrieved by visiting the Clerk's office. This service is available at all three locations – Bartow, Lakeland and Northeast Polk.

Become a Member of the 100% Club

Law firms with two or more attorneys can now be part of the LBA 100% Club. All it takes is for every attorney in the firm to be a member of LBA! 100% Club member firms will be listed in future issues of the Res Integra. Show your firm's support and pride in the Lakeland Bar by becoming a member of this club. It's easy! Just complete the application form in this journal and send it along with $140 per member to PO Box 2883, Lakeland, *FL 33806.*



CONVICTIONS UNDER STATE LAW THAT COULD HAVE IMMIGRATION CONSEQUENCES

By Jean Pierre Espinoza

In a recent decision in *Torres v. Lynch*, 136 S. Ct. 1619 (2016) the US Supreme Court held that a criminal conviction constituted an aggravated felony under section 101(a)(43) of the Immigration and Nationality Act when the State statute under which the petitioner was convicted contained all of the elements of the comparable Federal offense except for the jurisdictional element requiring a connection to interstate commerce. In *Torres v. Lynch* the petitioner was convicted of attempted arson under New York Penal Law §§ 110, 150.10. The Board of Immigration Appeals affirmed an Immigration Judge's determination that the petitioner's conviction was for an aggravated felony, as the elements of the New York statute matched those of 18 U.S.C. § 844(i) (maliciously damaging or destroying, or attempting to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce), with the exception of the Federal statute's requirement that the building or vehicle serving as the target of the arson must be used in interstate commerce. The Board held that since the Federal statute's commerce clause was jurisdictional, its absence from the State statute was not determinative. The Second Circuit affirmed the Board's decision. In its decision, the Supreme Court noted that State statutes often lack the jurisdictional element found in corresponding Federal statutes, for the simple reason that States do not need such an element to establish jurisdiction. In determining whether the lack of such jurisdictional element should be decisive, the Court looked to the language in section 101(a)(43) of the Act applying the term "aggravated felony" to offenses "described in this paragraph whether in violation of Federal or State law," as well as to foreign convictions where the term of imprisonment was completed within the past fifteen (15) years. The Court found that requiring a mirroring of the Federal jurisdictional element would eliminate State or foreign conviction (which have no need for a jurisdictional element) from aggravated felony consideration in half of the offenses listed in section 101(a)(43) of the Act, including some of the most serious offenses. The Court chose not to adopt such interpretation and also stated that "courts have often recognized—including when comparing federal and state offenses—that Congress uses substantive and jurisdictional elements for different reasons and does not expect them to receive identical pre- and post-IIRIRA convictions and he sought relief under both sections 212(c) (for the former conviction) and 240A(a) (for the latter). The Second Circuit Court of Appeals found that the holding in *Vartelas*[1] was not applicable because the petitioner had fair notice that his prior convictions would preclude him in the future from seeking cancellation of removal after the enactment of IIRIRA and that this bar was not, as the petitioner argued, a "new disability" akin to the loss of the ability to travel abroad.

Espinoza Law Offices P.A.
Immigration Law and Deportation Defense
Member of the American Immigration Lawyers Association

[1] The Supreme Court's decision in *Vartelas v. Holder*, 132 S. Ct. 1479 (2012), is a recent case to address which parts of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), can be retroactively applied in a manner consistent with an alien's due process rights.

JOIN LBA TODAY!

The Lakeland Bar Association

Lakeland Bar Association, Inc.
Membership Application / Membership Renewal Form
2016-2017
$100 for government employees less than 5 years OR
Inactive Florida Bar Attorneys
$125 for government employees 5 or more years
$140 for private attorneys
No cost to first year Florida Bar attorneys employed and practicing in the 10th Judicial Circuit

Name: _____

Email Address (for LBA correspondence only): _____

My primary area of practice in the field of law, which will appear on my nametag, is _____

☐ **My information is the same as last year (If you check this box, there is no need to complete the information requested below.)**

Firm Name/Employer: _____

Business Address: _____

City: _____ **State:** _____ **Zip:** _____

Business Phone: _____ **Business Fax:** _____

I would like the Res Integra journal sent to me (check one please)
_____ **mail only**
_____ **E-mail only**
_____ **both ways please**

I am interested in serving on the LBA board. Please check one: ❑ **yes** ❑ **no**

I am interested in serving on the following LBA Committees (Please check all that apply):
_____ **Membership (Fall '16)**
_____ **Social committee (year round)**
_____ **Law Week (April - May '17)**
_____ **Programs, Guest Speakers, CLE's (Fall' 16)**
_____ **Res Integra Journal (year round)**
_____ **Communications / Media (year round)**
_____ **Sponsors (Fall '16)**
_____ **Community Outreach (year round)**

Amount Enclosed (Please check one):
_____ **($100) Government Employee less than 5 years**
_____ **($100) Retired / Inactive & a member of Florida Bar**
_____ **($125) Government Employee 5 or more years**
_____ **($140) Private Practice Attorney**
_____ **($0) First Year Florida Bar Attorney Practicing in the 10th Judicial Circuit**

TWO WAYS TO RENEW OR JOIN

Mail this completed form & your membership fee to:
Lakeland Bar Association, Inc.
c/o Lisa Oliver, Executive Director
P.O. Box 2883
Lakeland, Florida 33806-2883
OR
Visit our website at Lakelandbar.org to join and pay electronically

Did you know that your membership fee includes:
- **admission to all luncheons at no cost**
- **admission to social events at no cost**
- **annual subscription to our Res Integra Journal at no cost**
- **CLE opportunities throughout the year at no cost**
- **community outreach opportunities throughout the year**

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NOTE! All guests (or those who have not renewed their memberships by October 2015) are invited to attend our luncheons and social events for a cost of $25 per person per luncheon or event.

Florida Southern College on the move!

The Lawton Chiles Center for Florida History Florida Lecture Series

In its 18th year, the Florida Lecture Series is a forum that brings speakers to the FSC campus who explore Florida life and culture. The lecture series covers a wide range of disciplines, including history, public affairs, law, sociology, criminology, anthropology, literature and art. The overall objective of the series is to bring members of the community, the faculty and the student body together to interact with and learn from leading scholars in their fields.

All programs are held at 7:00 PM on the Florida Southern College campus in Lakeland and are free and open to the public.

2016-2017 LECTURE SERIES

September 8
Susan MacManus

(Distinguished Professor, USF)
"Florida 2016"

October 13
Gordon Harvey

(Professor of History, Jacksonville State University)
"Politics of Trust: Reubin Askew and Florida in the 1970's"

November 10
Arva Moore Parks

(Writer)
"George Merrick, Son of the South Wind: Visionary Creator of Coral Gables"

January 26
Catherine Stewart

(Professor of History, Cornell College)
"Long Past Slavery: Representing Race in Florida's Federal Writers Project"

February 16
Canter Brown

(Writer)
"Henry Bradley Plant: The Real Story of the King of Florida"

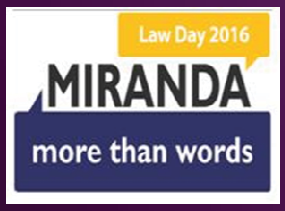
March 16
Douglas Brinkley

(Professor of History, Rice University)
"Rightful Heritage: Franklin D. Roosevelt and the Land of America"

A Look Back at Lakeland Bar Association's Law Day 2016

Lakeland Bar Association celebrated 2016's Law Day theme "Miranda, More than Words" on Friday May 7. Florida Bar President, Ramón Abadin, was our Guest Speaker.

Board of Governor, Rick Nail, thanks Florida Bar President, Ramón Abadin, for being our guest speaker.



Marion Moorman congratulates Deborah Goins, this year's Jerry DeVane recipient.

Kevin Humphries thanks outgoing President, Jean Henne, for a great year.

Thank you Jennifer Adams and Bank of Central Florida, our Law Day sponsor.

Book Review

Alexander Hamilton

Reviewer: Susan W. Roberts, Circuit Judge, Retired, FL 10th Judicial Circuit

'Ron Chernow is the author of *Alexander Hamilton*. The book was published by the Penguin Press, and in paperback by Penquin Books, New York, USA, 2004. There are 818 pages including the Author's Note, Prologue, Forty-Three Chapters, Epilogue, Acknowledgements, Notes, Bibliography, selected Books, Pamphlets, and Dissertations, selected Articles and an Index.

Mr. Alexander is quoted in 'Observations by Alexander Hamilton' as having said 'Men are rather reasoning than reasonable animals, for the most part governed by the impulse of passion.'

The subject of this book was born in the British West Indies on the island of Nevis and there are no records to substantiate this. Nevis was in the cross-path of 'a bitter maritime rivalry between European powers vying for mastery of the lucrative sugar trade.' His mother, Rachel, was the gone wife of Lavien who 'resurfaced' for revenge intending to lower her social status even further than it had become. He filed for divorce from her in 1759. He 'branded her a scarlet woman, given to a sinful life.' He failed to mention that he abandoned her with their sons leaving her, a woman of better fortune prior to meeting him, to take in laundry to support her and Alexander and his brother, James. Peter Lavien even referred to his two sons as 'whore children' as a tactic to preserve his wealth for his legitimate son Peter. According to the author, '. . . it is assumed that A. Hamilton's 'brains' came from his mother' and not from his avaricious, sexually rapacious father who deserted his two illegitimate sons when she died. Her death was of some unspecified disease that violently caused her demise. Alexander had that illness, too, and recovered. Alexander was a 'reader' and even his books were auctioned off to pay bills of his mother's estate. James Lytton had befriended the two boys and bought Alexander's books for him at auction. The legitimate son of Lavien, James, with whom Alexander shared a sperm donor, took possession of all that was left of his mother's estate.

Needing support, James apprenticed himself to a carpenter, a job few whites took at that time in that place. Alexander began to clerk for a mercantile house and that was the first of many times his superior intelligence was recognized and rewarded. Alexander was taken in by a well-respected merchant, Thomas Stevens and wife, Ann. They had five children of their own. Edward Stevens became Alexander's closest friend. In appearance they favored each other even thirty years later. Timothy Pickering, thirty years later, discovered that Hamilton and Edward Stevens were actually brothers and sons, one 'illegitimate, of a gentleman of the name of Stevens'.

While clerking at the mercantile firm, Beekman and Cruger, Hamilton learned how to write in a beautiful hand. He had to 'mind money, chart courses for ships, keep track of freight, and compute prices in an exotic blend of currencies, including Portuguese coins, Spanish pieces of eight, British pounds, Danish ducats and Dutch stivers.' While there Hamilton met a son of one of New York's most distinguished families, Nicholas Cruger. In an early letter to Edward, Alexander professed to wish there was a war with heroism and martial glory in it for him so as to free him from the bonds of the social culture in which he lived.

The apprenticeship Hamilton chafed at did provide him many benefits. He developed an intimate knowledge of traders and smugglers that assisted him in the establishment of the US Coast Guard and Customs Service. The things he witnessed may have been the groundwork for his preference for a diversified economy of manufacturing and agriculture. He may also have learned to dread anarchy and to work for abolition. He dreaded anarchy and despotism. *To be continued...*

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GOVERNING LAW AND WHAT LAW CONTROLS

By Frank Patrick Murphy

An article in these pages last year discussed what law controls in trust and estate matters. In general, what law controls a trust or will dispute by itself cannot be answered, because different state's laws apply depending on the context. Last year's article described this conflicts of laws problem in general, and went into greater detail with respect to "validity at execution" of a Will or Trust. However, the important issue of Governing Law was only touched on briefly.

With respect to trusts, but not Wills, there is a governing law statute for trusts that specifically allows the selection of non-Florida law as the governing law of a trust, provided that there is a "nexus." See *Florida Statute* 736.0107. A "nexus" to the trust can be location of: trust settlor, trust beneficiary, trustee, or trust property. There are unanswered issues here relating to whether the nexus to the beneficiary has to be a current income beneficiary, or whether a contingent remainder beneficiary is sufficient, and issues of the size of office or presence to constitute a commercial trustee having a nexus to that state.

Even when there is a "nexus," the ability of Florida residents to select another state as the governing law is not absolute. The statute allowing choice of governing law creates an exception when doing so would be against the "strong" public policy of Florida. There are at least two cases in Florida activating this "strong" public policy language. *See Bacardi v. White*, 463 So.2d 218 (Fla. 1985) and *Berlinger v. Casselberry*, 133 So.3d 961 (Fla. 2d DCA 2013). Both cases involve the use of a trust purportedly to avoid marital obligations (alimony or child support; often by claiming the use of spendthrift provisions). In both cases the trust vehicle was unsuccessful in shielding such assets from claims by ex-spouses for alimony or child support. Actually, these cases did not primarily deal with the issue of governing law. However, both cases expressly interpret the meaning of the term "strong public policy" in a trust context, and that language is expressly in the governing law statute for trusts in *Florida Statute* 736.0107.

Your author is unaware of a significant line of cases, not involving marital rights, specifically approving a Florida trust settlor's deliberate selection of another state's laws as the governing law for their trust. One might conclude based upon *Bacardi v. White* and *Berlinger* discussed in the previous paragraph that such an attempt to deliberately select some other state's law aside from Florida would be unlikely to succeed. However, in recent years there has been a strong line of cases enforcing the selection of non-Florida law for contracts. Just one example is *Southeast Floating Docks, v. Auto-Owners*, 82 So.3d 73 (Fla. 2012). Just what is against Florida public policy, and how can we understand the difference between what is "normal" public policy, which can be deliberately bypassed in a contract or a trust by selecting a different state's law, and "strong" public policy which prevents such a choice of law? Attempting to answer this question would take us beyond the scope of this article. However, contract type cases dealing with governing law have consistently quite narrowly construed what matters are considered "strong" public policy. There is strong possibility that the Florida Supreme Court will adopt a very similar approach to governing law in trust cases as they have adopted in contract cases; this would mean rarely invalidating choice of non-Florida law in a trust on public policy grounds, excepting attempts to defeat marital rights.

While there is an express governing law statute for trusts, there is no comparable statute for Wills. This may create the impression that a Florida resident cannot chose the governing law for Will, it has to be Florida. However, the same conclusion might not be applied to a "legacy" Will; a Will signed by a person in another state before that person retires and moves to Florida. There is very little case law to give certain answers to these questions.

A final important point is that even if a state other than Florida is the governing law for a trust or a Will, that does not automatically mean that Florida law does not apply to a particular issue. For example, even if Florida courts end up recognizing another state's law as the "governing law" for a particular Will or trust, there is substantial doubt that Florida would or should apply any law other than Florida for undue influence and incompetency type challenges. Generalizing this, the larger issue is the argument that "governing law" only applies to substantive rights created in the document, and perhaps Florida law should continue to apply to "administrative" matters or matters of procedure on how matters are litigated through the courts. There being very little case law in the trust context your author is unwilling to speculate further. Murky.

FRANK PATRICK MURPHY *is Board certified by the Florida Bar in Wills, Trusts and Estates.*

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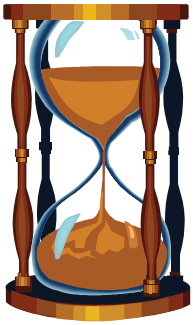
Please contact our editorial staff if you would like to share an address change or professional notice with our members.

Call Lisa at 863.838.6691 for more details.

This Complimentary issue of the Res Integra is sent to all Florida Bar members of the 10th Judicial Circuit. Please complete the enclosed membership form on page 7 to continue receiving our journal.



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The Lakeland Bar Association invites you to join. Membership fees include eight planned monthly membership luncheons with guest speakers. There will be at least two social events: the annual Judicial Reception event and the Spirit of Giving Award Reception . Get involved with our philanthropic opportunities including Habitat for Humanity.

There are two ways to join:

1. Send the enclosed application for membership by October 1, 2016 as well as your check for payment to :
   Lakeland Bar Association
   P. O. Box 2883
   Lakeland, FL 33806
2. Visit our Website at Lakelandbar.org and pay by credit card

See page 7 for dues amount

MINUTES FROM THE PAST

MINUTES OF REGULAR MEETING OF LAKELAND BAR ASSOCIATION, INC.

The regular meeting of the Lakeland Bar association was held on Friday, April 29,1977 at the Ramada Inn in a joint meeting with the Lakeland Kiwanis Club in celebration of Law Day U.S.A.

President King and Kiwanis Club President presided.

Congressman Andy Ireland was the guest speaker.

Upon the conclusion of the remarks of Mr. Ireland, there begin no further business, the meeting was adjourned.

Respectfully submitted,

/s/

W. Ray Fortner

Secretary

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April 21, 2016

Dear Community Partner:

It brings us great pleasure to report to you that the 2016 "Take Your Child to Work Day/Law Day" held at the Historic Polk County Courthouse in Bartow on April 21st was a huge success!

The committee well knows that we could not have done it without your support. It is, therefore, our honor to follow up with you and once again thank you for helping us make this event one that will be talked about for many years to come.

There were approximately 85 children that participated in this year's event, with an additional 50 staff members working behind the scenes to ensure that the day went off without a hitch! The members worked hard to provide the children with educational courses and fun activities, all the while gaining invaluable knowledge about our legal system.

We are so proud of the 10th Judicial Circuit and the overall generosity of this community.

Thank you again for your support and we look forward to working with you in the future.

Chief Judge Donald G. Jacobsen

Judge Angela Cowden

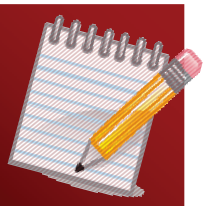
Judge Kevin Abdoney

Judge Catherine L. Combee

Judge J. Dale Durrance

Judge Kelly P. Butz

A Word from the Staff



The editorial staff would like to thank our contributing writers for their timely and informative articles. We invite any of our readers to submit an article as well.

Please contact our staff at 838-6691 or at *lakelandbarassoc@tampabay.rr.com* if you are interested in sharing an article with us. Our next deadline is October 5th.

Legal Laughs

"Must have been a messy divorce?"

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All Voluntary Bar Association Members
are invited to
"Kick Off the Year" at
LBA's Past Presidents BBQ

Wear your favorite college team colors!
Join us for food, beverages, entertainment &
an opportunity to recognize our Past Presidents.

Who: *All Voluntary Bar Association Members in 10th Judicial Circuit*
When: *Thursday, September 22*
Time: *5:30 PM*
Recognition & Photos at 6:30 PM
Where: Junior League's *Sorosis Building*
90 Lake Morton Dr.
Lakeland, FL 33801
Cost: *No charge for Bar Members*
Guest or spouse $20

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