

# *Friendly Passages*

Supporting Equal Access to Law in Florida

January/February  
2015

A Publication of The Friends of the

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**Friendly** Supporting Equal Access to Law in Florida  
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## **On The Cover**

"Shells", Pastel on Paper. By Paul Nucci  
To see more of Paul's work, visit his web site:  
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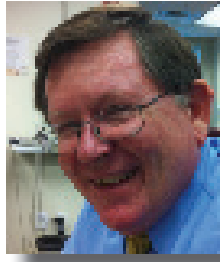
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## On Behalf of the Publisher

By James T. Walker  
President, Friends of the  
Rupert J. Smith Law Library



*"It is necessary, then, to cultivate the habit of being grateful for every good thing that comes to you, and to give thanks continuously. And because all things have contributed to your advancement, you should include all things in your gratitude." -- Wallace Wattles*

It's the beginning of a new year. It's a time when we look back, look forward, take stock on where we've been and where we're going. It's a time to say aloud the thought that always comes to mind whenever the latest issue of **Friendly Passages** rolls off the presses: how fortunate is **Friends** for its friends, those unpaid souls who sustain this little volunteer publication with great staff work, graphics, editing, and writing! I think of them often. They are busy people, with personal and professional lives like everyone else, yet they somehow find the time to give life to our magazine. Ben Franklin's two-hundred and fifty year old adage is as true now as it was when he penned it: "If you want something done, ask a busy person." But, really, isn't that the mark of a successful person? These are the people who, through hard, persevering work manage to come through to do what needs to get accomplished. I wish you the reader could meet each one personally. These are special individuals. It is a pleasure, a great privilege, to associate with such people. And we thank them over and over, each and every one.

Allow me to introduce you to some of them. There is Paul Nucci, a polymorphic talent, businessman, musician, painter, writer, graphics expert. There are three gallery showings of his art set for next month and he is scheduled to conduct the St. Petersburg Opera Orchestra in support of a charity fundraiser. Mr. Nucci takes our completed copy, works up the graphics, adding artwork and photos, finishes the layout and sends the whole thing off to the printer. He is kind enough to allow use of his paintings on the cover. Meet Jim Wilder, a Trustee for the law library, usually off somewhere getting wet as a dive instructor. His underwater photography appears in various dive magazines, and when an underwater theme for the cover is needed, we turn to Mr. Wilder. Then there is Adam Nucci, cartoonist extraordinaire. His cartoons appear under "The Lighter Side of the Law". The creative artistry there is as good as will be found anywhere and gives us all a much needed opportunity to laugh at ourselves. The glue that holds everything together, makes it all work somehow, is Nora Everlove, the Editor, also law librarian, and President/CEO of the largest corporate provider of legal library services in the state, Everlove and Associates. She is another one of those multi-talented

individuals. She works directly with each of the writers, plans out and oversees content, puts together those puzzles we see, writes supplemental material, adds filler, and farms everything out to our Assistant Editors and proofreaders who submit the articles to a final vetting. They include Kim Cunzo, Heather Smith, Ashley Walker, Katie Everlove Stone, and Wanda Barrett. Every once in a great interval, a typo is spotted, just often enough to serve as reminder that they're on the job, stopping most all the other goofs from getting through. Until we find someone to serve as Business Manager, Ms. Everlove does that job, too.

But the best staff in the world is nothing more than a set of idle hands without content to work with, the contributions of our word craftsmen. Our writers earn undivided respect for what they produce. It isn't easy, or as Nathaniel Hawthorne once said, "Easy reading is damn hard writing." Or as one Gene Fowler put it, "Writing is easy: All you do is sit staring at a blank sheet of paper until drops of blood form on your forehead." It's an intensely personal thing, a gift of self to strangers. We know that, and we're grateful.

One wishes that each writer who ever contributed could, here, be specifically identified and thanked. Absent that, we'll single out the writers in our last preceding issue for November/December, 2014. In so doing, it's understood that they are taking a bow not only for themselves, but for all of their predecessors as well. There is a lot of overlap. Most have contributed before and for that we are doubly grateful. Since they're all fine writers, we're happy to welcome them back.

There were ten who filled the pages of the last issue. The Hon. F. Shields McManus, Circuit Court Judge for the Nineteenth Judicial Circuit, wrote "Reflections on Changes in Family Practice: Can family law practice change for the better?" Life is about change. Nothing remains the same. Law is no more immune than anything else and Judge McManus walks his readers through some of the changes in family court. It is an eye-opener for anyone not experiencing these things on a daily basis and we are indebted to Judge McManus for his ruminations about what they mean and how the legal professional needs to adapt. Once again, he performs a valuable public service, this time by creating awareness of these trends. Thank you, Your Honor. Professor Leonard Pertnoy, Professor of Law at St. Thomas University School of Law, contributed a first installment of "Slander of Title: The Challenges of Lis Pendens as a Lien on Real Property". This is his second appearance in **Passages** and it is an honor to serve as a host for his scholarly treatment of this little-appreciated cause of action. Property lawyers (and property owners) will find this of particular interest. Thank you, Professor Pertnoy. Adrienne Naumann, specialist in IP law and nationally recognized lecturer and writer on intellectual property issues gives us "Nice While It Lasted: Demise of Business Method Patents". She explores an esoteric, little known area of the law in the course of discussing the effect of a recent SCOTUS ruling on computer implemented business methods.

## On Behalf of the Publisher

This was her first appearance in *Passages* and we hope to continue hosting her work for a long time to come. Many thanks, Ms. Naumann. Then there is our friend, Robert Brammer, once on the RJS library staff but who is now a legal reference specialist at the Law Library of Congress, in Washington, D.C. who wrote “The Scottish Independence Referendum”. After a vacation spent in Scotland, he thought of us and wrote out a very interesting piece sharing his observations about the Scottish campaign to secede from the United Kingdom. He has previously supplied articles of interest to readers wanting to research Federal law and legislative history. So many thanks, Mr. Brammer. A successful collaboration about mediations carries forward in another article, this time with “Cook Up A Great DEAL in No Time Flat: Pre-suit Mediation”, written by Robert Hamilton, President of Legal Consulting Services, Inc., and Edmund J. Sikorski, Jr., a mediator certified in the areas of Circuit Civil and Appellate Law, and who is President of Treasure Coast Mediation Services. Increasingly cases are won any more in mediation, not trial. And these two men help us to understand that a desirable outcome there cannot be taken for granted but must be carefully planned for. These experts show how that gets done and earn warmest gratitude for educating the Bar and consumers of legal services about that important process. Thank you, Mr. Hamilton and Mr. Sikorski. Dr. Richard Wires, PhD., reminds us, again, of those words from Justice Oliver Wendell Holmes, Jr., that “It is perfectly proper to regard and study the law simply as a great anthropological document.” Dr. Wires, professional author as well as being Professor Emeritus of History at Ball State University, has blessed this publication with extraordinarily interesting, diverse material in every single issue from the fourth such all the way to the present, including his piece in the November/December issue entitled “Trying Lizzie Borden: Murder Not Proven”. He gives us a fascinating look at a shadowy bit of American legal history which all readers will find compelling. We can’t replace this sort of thing. Dr. Wires, thank you. Huge Eighmie II, area attorney specializing in personal injury, former President of the St. Lucie County Bar Association and former Judge Advocate General, shares his experience in “The Art and Science of a Deposition”. New attorneys particularly will find this to be a useful introduction to an essential legal skill. Mr. Eighmie is kind enough to discharge an important professional obligation by passing his knowledge along to the next generation of practitioners. Thank you, Mr. Eighmie. Daniel Raab, specializing in commercial and transportation law, provides “Pursuing and Responding to A Claim Involving an International Ocean/Intermodal Carrier”, where he discusses liability pitfalls involving international shipment of goods by ocean carriers. Few know much about this topic, so his educational remarks there are especially appreciated. It is worth noting that the RJS Law Library houses his text, *Transportation Terms and Conditions*. Thank you, Mr. Raab. Katie Everlove-Stone gives us “The Fee Tail in Modern Entertainment”. William Faulkner once said “The past is never dead. It’s

not even past.” Ms. Everlove-Stone reminds us of that enduring truth in her discussion of the ancient entailment doctrine, a holdover from the Middle Ages, that finds continued legal force in several states around the country. Though in this instance she exhibits a flair for legal history, she specializes in tax law and practices in Tampa. Many thanks, Ms. Everlove-Stone. Then there is Mr. Paul Dunbar, our poet who comments on the adversarial nature of the legal system in “The Lawyer’s Ways”, and who passed away in 1906, at the age of thirty-three. He was always a personal favorite after there was read his “Little Brown Baby”. Most poets, such as Robert Frost and Langston Hughes, only hit their stride in their later years. We are left to wonder at what Mr. Dunbar might have accomplished had he lived. May you find peace, Mr. Dunbar. Amen.

Again, thank you and thank you to all who help put together each issue of *Friendly Passages* while we additionally remember to include you, the reader, in our gratitude, knowing that just as each conversation requires a speaker, so also does it require a listener and knowing, further, that both parties to that conversation learn from the other. We all benefit. Many thanks for your support. /JimW

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### 2015 LIVE CLE programs at the Law Library!

We are very pleased to announce the 2015 Rupert J. Smith Law Library Live CLE schedule of presentations. Mark your calendars and reserve your spot with the library. Each session is presented on a Friday at noon. Bring your lunch with you if you like. Each program will be accredited for one or one-and-a-half hours of CLE credit depending on the length. These programs are free. We want to thank our speakers for helping to create a vibrant schedule as well as Jim Walker who works so hard to recruit and organize the program.

2/27/15 – “Juvenile Delinquency Law --Complexity Inspired Simplification—Cradle to City Jail”, by Carlos Wells

3/27/15 – “Potpourri of Elder Law or Senior Health Care Law, Recent Developments”, by Michael Fowler

4/24/15 – TBA, by Bruce Abernathy

10/9/15 – “Cross-examination Techniques for Witnesses and Experts”, by Steven Hoskins

11/13/15 – “Writing a Persuasive Brief”, by Mark Miller

12/4/15 – “The Daubert Dilemma”, by Harold Melville

## Can Parental Therapy Be Ordered In Divorce Cases?

### Fourth DCA Judges' Concurring Opinions Disagree

By The Hon. F. Shields  
McManus, Circuit Judge



A recent debate between concurring opinions by the 4<sup>th</sup> District Court of Appeal highlights opposing views on the authority of divorce courts to order psychotherapy for parents. The opinions may also give insight into the judges' individual judicial philosophies. In *Ford v. Ford*, \_\_\_\_ So.3d \_\_\_\_, 39 Fla. Law Weekly D2463, 2014 Westlaw 6674771, (Fla. 4<sup>th</sup> DCA) [Case No. 4D13-1369, November 26, 2014] the decision was that although the evidence of failure to comply with the time-sharing schedule supported a finding of contempt, the remedy of requiring the former wife to attend psychotherapy until she changed the attitude of the children was reversed as impermissibly imprecise and vague. The two concurring opinions agreed in the result but took the occasion to debate the limits of authority under Chapter 61, Florida Statutes.

The question is an important one for family court judges, magistrates, and practitioners. There are some cases where animosity toward the other parent frustrates a parent's ability to have a positive relationship with the child. Often, the parent not complying with the time-sharing schedule claims that the child is refusing to go to the other parent. These situations cause endless litigation after the final judgment and are among the hardest to adjudicate. First, the court must determine if one or the other parent is the cause of the child's refusal - a difficult task. Is one parent willfully alienating the child from the other parent, or has the other parent behaved so badly to the former spouse and/or child as to damage the relationship with the child? Next, the court must determine what to do about it.

In Chapter 61, Florida Statutes, which is the Florida code authorizing dissolution of marriage actions, the terms "custody" and "visitation" have been replaced by "parenting" and "time-sharing." "Shared parental responsibility" and equal "time-sharing" are placed into the law as the norm. Every divorce with minor children must have a "parenting plan" with a time-sharing schedule. The court's decisions must be made "in accordance with the best interest of the children." § 61.13(2), Fla. Stat. (2014). The Court is empowered to order a "Social Investigation" by a licensed psychologist or licensed clinical social worker. § 61.20, Fla. Stat. (2014). Often, these reports recommend counseling of children and/or parents by a licensed therapist. The court is charged with enforcing the parenting plan and ordering sanctions and makeup time when time-sharing is not provided according to the schedule "without proper cause." § 61.13(4)(c), Fla. Stat. (2014). (These statutes also may be applied in

cases involving parents who were never married. "The court may also make a determination of an appropriate parenting plan, including a time-sharing schedule, in accordance with chapter 61." Section 742.031, Florida Statutes (2014) Determination of Parentage.)

In *Ford v. Ford*, the trial court appointed a reunification therapist to treat the family and a psychologist to conduct a social investigation of the family before the contempt hearing. After a full hearing including testimony from the psychologist and the parties, the court found specific occurrences where the former wife interfered with the former husband's time-sharing and contributed to the hostile relationship between the children and the former husband. The court found that this was due largely to the former wife's animosity towards the former husband. The court found the mother in contempt and ordered her to commence individual therapy with a therapist of her choosing, and to "continue her therapy until she is able to convince [the two minor children] that it is her desire that they see their father and love their father and to create a loving, caring feeling toward their father in their minds." (Slip sheet, page 3.)

#### The Decision

Judge Martha Warner, writing for the court, found that there was competent substantial evidence of specific violations of the parenting plan and that the former wife had the ability to get the children to comply with the time-sharing. Thus, the finding of contempt was affirmed. The opinion says, in dictum, "[Section 61.13(5)] however, has never been interpreted to give authority to order the parents into therapy." (Slip sheet, page 5.) This was dictum because the former wife did not challenge the authority of the trial court to order counseling. The court held, rather, that the counseling provision which conditions the duration of therapy on changing the children's feelings about their father was "much too broad to be enforced." (Slip sheet, page 5.) For this reason the order for therapy was reversed. The sanction of attorney's fees and costs against the former wife without considering the former husband's financial resources was affirmed per section 61.13(4)(c)2. The court found, however, that the authority to impose "any other reasonable sanction" in section 61.13(4)(c)7 did not include ordering therapy as a "sanction."

#### The Concurring Opinion Supporting the Authority to Order Therapy

Judge Burton Conner in his concurring opinion disagrees that a trial judge under these facts did not have the authority to order counseling of the former wife. He finds in the existing divorce statutes *implicit* authority for such action. The primary statutes he cites are sections 61.001, and 61.13 (2) and (3), Florida Statutes (2012).

*continued on page 7*



## Can Parental Therapy Be Ordered In Divorce Cases?

Section 61.001 as cited by Judge Conner says:

(1) This chapter shall be liberally construed and applied.

(2) Its purposes are:

(a) To preserve the integrity of marriage and to safeguard meaningful family relationships;

.... and

(c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.

The parts of Section 61.13 (2) cited by Judge Conner are:

(2)(a) The court may approve, grant, or modify a parenting plan, ...

Judge Conner notes that section 61.13(2) (b) describes the items which “at a minimum” must be addressed in a parenting plan approved by the court, but it does not limit additional items. The listed items are: how the parents will share and be responsible for the daily tasks of parenting; the time-sharing schedule; responsibility for health care and schooling of child; and methods and technologies to communicate with the child.

Judge Conner finds that the most important statement by the legislature is:

(2)(c) *The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child ...*(Emphasis added by Judge Conner.)

Judge Conner also cites parts of sections 61.13(3) in support of the “best interest of the child” language giving implicit authority to order therapy. They are:

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent’s relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, *the best interest of the child shall be the primary consideration. ... Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not*

limited to:

(a) *The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.*

...

(c) *The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.*

...

(f)[sic] *The mental and physical health of the parents.*

...

(r) *The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.*

...

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

(Slip sheet, pages 7-9.) (Emphasis added by Judge Conner.)

Judge Conner also cites section 61.122, which limits liability of a psychologist who develops a parenting plans recommendation. He concludes that this section shows that the legislature envisioned the psychologist making recommendations which could include a recommendation for therapy or counseling to make the parenting plan successful. He says there are rare instances when no plan is going to work without one or both parents attending therapy or counseling.

Finally, Judge Conner asserts that courts of equity have inherent authority to protect children.

*“As a judge experienced in hearing divorce and paternity cases,..... I am surprised to find that I do not have the authority to order the parent to participate in therapy or counseling, or to order a parent to engage a therapist for a minor child..”*

## Can Parental Therapy Be Ordered In Divorce Cases?

### The Concurring Opinion Denying the Authority to Order Therapy

Judge Mark Klingensmith writes that regardless of how desirable or beneficial it may be, no statutory authority exists in Chapter 61 to order therapy for any parent or a child with the goal of rebuilding a relationship between a parent and a child or to correct any behavior. He points out parts of Chapter 39 - the Florida code to protect abused, abandoned and neglected children - which grant express authority to judges not found in Chapter 61. These include orders of drug counseling for an addicted parent, and long-term, intensive therapy or counseling to effect a successful parenting or time-sharing plan. He believes that the legislature intended Chapter 39 cases to reunify families and Chapter 61 cases only to divide families due to irreconcilable differences. He finds that the court's role in Chapter 61 is limited to fashioning a parenting plan and time-sharing schedule, and "not in rehabilitative schemes designed to address issues for any particular family member. §§ 61.13(2)(c)1; 61.13(3)." (Slip sheet, page 11-12.) "It is the court's obligation in a Chapter 61 proceeding only to take the parties as they are, and to fashion an appropriate parenting plan and time-sharing schedule from that information." (Slip sheet, page 12.)

Judge Klingensmith is concerned that excesses of exercise of judicial power limited only by the court's imagination are occurring. "There is a misconception among some family court judges that a court overseeing a dissolution of marriage has powers similar to those of the court in chapter 39 case, that being the power (or obligation) to emotionally "reunite" a child with a parent." (Slip sheet, page 10.) He cautions his colleague Judge Connor that approving even a rare use of this power would open a Pandora's Box. He describes Judge Connor's view as "[d]eriving such authority through penumbras formed by emanations of chapter 61..." (Slip sheet, page 12.)

#### Comment

As a judge experienced in hearing divorce and paternity cases (as are Judges Connor and Klingensmith), I am surprised to find that I do not have the authority to order the parent to participate in therapy or counseling, or to order a parent to engage a therapist for a minor child. I confess that I have done it many times in high-conflict custody cases some of which involved one parent impaired by substance abuse. Like the former wife in the *Ford* case, no parent has ever questioned my authority to do so, only my reasons for doing it. I find it inconsistent with many provisions of Chapter 61 that I have no role in enforcing the parenting plan.

Section 61.13(2)(c)1 states:

It is the public policy of this state that each minor child has frequent and continuing contact

with both parents after the parents separate or the marriage of the parties is dissolved and *to encourage parents to share the rights and responsibilities, and joys, of childrearing.* (Emphasis added.)

Judge Klingensmith finds that this provision is "qualified by the requirement under section 61.13(3) that the court must make the child's best interests the primary consideration only in fashioning a parenting plan and time-sharing schedule, not in creating rehabilitative schemes designed to address issues for any particular family member. §§ 61.13(2)(c)1; 61.13(3)." (Section 61.13(3) is quoted in part above.) However, Judge Klingensmith did not include in his text the latter part of the statement of public policy, i.e., ...*"to encourage parents to share the rights and responsibilities, and joys, of childrearing."* How is a judge to *encourage* parents?

In addition to the statutes cited by Judge Connor, I would add these:

Section 61.13(3):

(l) ... *the willingness of each parent to adopt a unified front on all major issues when dealing with the child.*

(m) *Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, ...*

(q) *The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.*

(s) ... *the demonstrated capacity and disposition of each parent to meet the child's developmental needs.*

Section 61.13(4)(c):

3. *May order the parent who did not provide time-sharing or did not properly exercise time-sharing under the time-sharing schedule to attend a parenting course approved by the judicial circuit.*

...

6. *May, upon the request of the parent who did not violate the time-sharing schedule, modify the parenting plan if modification is in the best interests of the child.*

7. *May impose any other reasonable sanction as a result of noncompliance.*

(Emphasis added)

These parts of the law set out factual circumstances for



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## **Can Parental Therapy Be Ordered In Divorce Cases?**

the court to consider and remedies when the time-sharing schedule is not followed. While therapy is not specifically authorized, the issues discussed are routinely remedied in modern America by intervention by a licensed therapist. Did the legislature not intend the use of therapy in designing parenting plans and enforcing them?

If therapy is not an option, what is a court to do when a parent obstinately refuses to follow the time-sharing schedule? Subsection 6 Section 61.13(4)(c) (above) provides authority to modify the parenting plan if it is in the best interest of the child. When a court suspends a parent's time-sharing entirely because of some crises like substance abuse, the court must give the parent a way to earn back time-sharing. Often that way is in-patient or out-patient rehabilitation.

Judge Klingensmith would answer that the legislature intended Chapter 39, Dependency, to do that. I would respond that Chapter 39 has legal and practical limitations which make it unavailable for most family disputes. Chapter 39 lays out a procedure akin to criminal cases. A petition is filed – usually by the Department of Children and Families (DCF) – which alleges a child is abused, neglected, or abandoned by one or both parents. The child may be sheltered with a relative or a foster parent. There is an arraignment, adjudication by consent or trial, and disposition. A plan with goals of reunification or termination of parental rights and adoption is approved by the court and periodically reviewed. Obviously dependency court is not suitable for the typical high conflict divorce.

As a practical matter, many potential dependency cases end up in family court. A report is made to the child abuse hotline which triggers the DCF dispatching an investigator to the home. If the circumstances are found not to require removal of the child, a petition of dependency will not be filed. Rather, the parents are offered services, including therapy, which a parent may reject. The other parent often will seek a remedy in family court, even calling the DCF investigator to testify. Thus, the family court judge is presented with a real or perceived crisis. An obvious tool to deal with the family's problem is therapy. What is the judge to do?

Both Judge Connor and Judge Klingensmith would agree that this dilemma should be addressed by the legislature. But as a judge dealing with these family problems daily, I cannot wait for that and neither can the families. Meanwhile, I find that the current statutes clearly indicate a change in philosophy reacting to social change. The role of the family court is changed from dividing couples to encouraging co-parenting. And in our world the primary tools for that are education, counseling, and psychotherapy.

*Judge F. Shields McManus is a Nineteenth Judicial Circuit Court Judge appointed in 2007 and elected in 2010. Since then he has been assigned to many divisions and has a broad judicial experience. Judge McManus is a graduate of FSU and FSU College of Law. He is active in the legal community and has sat on several boards and served as president. Additionally, Judge McManus is active in educational, charitable and civic organizations in Stuart and Martin Counties.*

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## **Library Renovations**

We will be starting a renovation project in the law library soon. An area that is about 10' x 20' will be cleared of rolling stacks to make room for more study space as well as a small conference room. Four study desks with dividers will be built for long projects. The table space will be more generous than our existing carrels and it will be tucked into a corner away from the front door, the front desk and the photocopier. We hope to provide a quiet space for better concentration. The small conference room will be just big enough for two people and a table. We will put the National Reporter series into storage to make room for this reading/study/meeting area. We think most of our patrons will find it a good trade as these materials are seldom used and available on both Westlaw and Lexis.

## In the Shadow of the Law: The Detroit Mower Gang and the Reclamation of the Dorais Velodrome

By Robert Brammer

**D**etroit is often known for its post-industrial blight, a city marked by thousands of derelict homes, abandoned factories, and more recently, a municipal bankruptcy. What is often not reported is the fact that Detroit is also home to a large group of creative, dedicated citizens that are proud to call Detroit home and are committed to playing a part in helping Detroit realize a brighter future. When I first approached this interview, I believed that I would be exploring how community activists used the law to help reclaim and operate the abandoned Dorais Velodrome. What I found was that Detroit, lacking the resources to maintain many community spaces, has also left a void that has been filled by the unofficial actions of community activists acting on their own initiative and authority. This interview explores the reclamation of the Dorais Velodrome by the Detroit Mower Gang, a group in Detroit that works to improve and maintain parks and other public spaces that Detroit has been unable to maintain. I spoke with Tom Nardone, the leader and founder of the Detroit Mower Gang.

1. First, for those unfamiliar, what is a velodrome?

A velodrome is a banked bicycle racing track. Some folks may have seen such a thing on the Olympics.

2. What is the history of the Dorais Velodrome? When did it last operate?

In the late 1960's some volunteers built a velodrome at Dorais playground in Detroit. They built it after being promised the ability to host the national amateur cycling championships, which they hosted in 1969. The velodrome was abandoned around 1989 after it started to crack and was no longer useful for bicycle racing.

3. I understand you discovered the velodrome during your work with the Detroit Mower Gang. Could you tell me a little about the Detroit Mower Gang, what you all do, and how you came across the velodrome?

The Mower Gang is a group of volunteers that mows and trims the abandoned parks and playgrounds in Detroit so that kids can have a place to play. I started mowing parks in 2010 by buying a \$250 lawn tractor on Craigslist and mowing stuff. The velodrome was my first group activity.

4. So, at what point did you decide that you were going to make this a project to fix up and operate the velodrome?

I had heard the velodrome existed, so I looked for it on Google Maps. Once I used the satellite photos, it was fairly easy to find, although in a completely different part of the city than I thought it would have been. Then I went to visit it and saw that it was in rough shape. I knew that if I wanted to ever ride around it or use it for fun activities that I would need the help of other groups. I let any other group I could find know what I was going to do and I invited them to come help. I contacted RC car groups, bicycle groups, mountain bikers, and minibike clubs. I asked for volunteers and the Mower Gang was born.



The Mower Gang

5. Who owns the velodrome? Did you obtain a license or lease to repair and operate it? Have you set up some sort of legal entity to operate the velodrome?

It is in the middle of a city-owned park. I guess that the city owns it.

6. Does the velodrome have access to utilities? If not, how do you provide them?

There are no utilities at the velodrome. It doesn't even have trash bins. Anything done there has to bring

*continued on page 11*

## Cryptoquote

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## In the Shadow of the Law

everything in and everything out.

7. I imagine many people in your group are working on the velodrome. What steps did you take to minimize liability and ensure safety of the participants conducting the repairs?

I have a box of safety glasses that someone donated to us once. That's about it.

8. How did you go about researching state and municipal laws governing the repair and operation of the velodrome?

I did nothing of the sort. I just went out there and started working on it. No one cared about the place for 20 years, who would care if I started working on it?

9. I understand you now hold races at the velodrome. How did you go about managing your liability for these events? Did you have to purchase insurance? Have you encountered any legal challenges in the repair or operation of the velodrome?

I don't actually hold the races, a different group does. They do purchase insurance though. I am surprised that this is possible though. That group is called Thunderdrome.

10. Do the proceeds from the races go into repairing the I'm sure some of it does, but real repairs and restoration would take much more than the races generate. In my opinion, the bumpy track is a good chunk of the event. If the track was smooth, the event wouldn't be as fun.

11. What suggestions would you give to someone who is interested in starting a community improvement project like yours?

Don't hesitate to start.

*Robert Brammer is a senior legal reference specialist at the Law Library of Congress. The views expressed in this article are his own and do not necessarily represent those of the Law Library of Congress or the Library of Congress.*

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## The Lighter Side of the Law



## Presidents' Day 2015

The law library will be closed Monday, February 19<sup>th</sup> in observance of Presidents' Day.

Washington's Birthday, February 22, was initially celebrated as a federal holiday in the 1880's. Many states also celebrated Lincoln's Birthday on February 12 but it was never a federal holiday. In 1968 a bill entitled "The Uniform Monday Holiday Bill" passed the U.S. Congress. The intention was to give workers more three-day weekends and it moved several federal holidays to Mondays – Washington's Birthday, Memorial Day, Veteran's Day to name some. It was debated whether the new holiday should be called Presidents' Day to honor Washington and Lincoln, if not all Presidents, but Congress rejected the proposal. It officially remains "Washington's Birthday." However, when the bill went into effect in 1971 retailers referred to it as "Presidents' Day" in their sales advertisements. Thus, it is now more commonly known as Presidents' Day today. The Senate has a long standing tradition of reading Washington's Farewell Address to commemorate his birthday on February 22. The holiday, now celebrated on the third Monday of February, can never fall on his actual birthday. The third Monday can never be later than February 21. Washington's Birthday, or Presidents' Day if you prefer, will always fall between Abraham Lincoln's birthday and George Washington's birthday.

# THEORY OF EVERYTHING: INTELLECTUAL PROPERTY PART ONE

By Adrienne Naumann



## Introduction

Intellectual property is best defined as subject matter that results from human mental creation such as a written work, design, functional object or even a new idea. Intellectual property protection entitles the owner to certain rights which are analogous to rights for holders of other kinds of property, such as real estate. This protection allows the owner to exclude others from activities such as but not exclusively, selling, using or duplicating particular subject matter. Intellectual property may be protected by copyright and trademark registration as well as patents; in these statutory categories there is no protection of abstract ideas *per se*. Instead, there must be a tangible subject matter, such as a logo for products, a painting for copyright and a new machine for patents. In contrast, trade secrets may be exclusively abstract ideas and are not limited to a particular category of subject matter.

For a practical understanding of intellectual property, one must understand the basics of the substantive law in the United States. The law encompasses judicial decisions, federal regulations and federal statutes as well as state law. This article is a general overview of patent and trade secret law, because patent protection often overlaps with trade secret protection in research and development as well as business entity operation.

## Patents

A patent provides an owner the right to exclude others from using, manufacturing or selling a specific invention for a limited time interval. An invention is a work of tangible subject matter not previously existing, and which is created by human independent investigation and experimentation. Inventions are a subset of innovation, wherein innovation is something newly introduced or different, but is not necessarily tangible or the result of investigation or experimentation. For example, a machine with an improved motor is an invention. However, providing a free meal to children after four o'clock p.m. at a franchised restaurant is an innovation.

### 1. Patent eligible inventions

To qualify for patent protection, an invention must lay within the scope of the four statutory categories of eligible subject matter under 35 U.S.C. § 101:

1. composition of matter;
2. machine;
3. article of manufacture; or
4. process.

The federal courts have imposed restrictions upon the statutory scope of patent eligible inventions: If the subject matter is exclusively an abstract idea, mathematical formula, law of nature or natural phenomenon, then the subject matter is not patent eligible. These exceptions have existed for a very long time and are not controversial in and of themselves. Where patent eligibility issues have arisen recently includes:

1. computer related devices and processes, and
2. Biomedical subject matter and diagnostic methods.

During the past thirty years there has been an evolution of the application of abstract ideas and mathematical formulas to computer related devices and processes. A recent U.S. Supreme Court decision has held that abstract financial ideas and mathematical formulas, although implemented by tangible computer related devices, are not patent eligible without improvements to the actual device. CLS Bank International v. Alice Corp. Pty., Ltd., 573 U.S. \_\_\_, 82 L.Ed. 296, 2014 U.S. Lexis 4304, 820 U.S.L.W. 4508 (2014). Similarly, biomedical methods cannot be patented if they are exclusively (i) ideas implemented by standard processes and equipment or (ii) discoveries of natural phenomena with are implemented with standard processes and equipment. Mayo Collaborative Services v. Prometheus Laboratories, Inc., 566 U.S. \_\_\_, 132 S. Ct. 1289 (2012); Association for Molecular Pathology et al. v. Myriad Genetics, Inc. et al., 569 U.S. 12 (2013) (extracted but unaltered human genetic material is a non-patent eligible discovery of a naturally occurring phenomenon).

### 2. Patentability qualifiers

Once an invention has survived the initial patent eligibility hurdle, its subject matter must also be

1. novel;
  2. non-obvious;
  3. operable; and
  4. useful for its intended purpose.
- 35 U.S.C. §§ 101, 102(a), 103 and 112(a).

Novelty requires that the invention be (i) new and not previously existing, or (ii) contain an improvement that is new and not previously existing. 35 U.S.C. § 102(a). However, the most prevalent reason for rejecting a patent application is that the subject matter is obvious in view of previously existing machines, composition of matter, articles of manufacture, or processes. 35 U.S.C. § 103. In other words, an obvious invention is too similar to previously existing subject matter to merit patent protection. An obviousness determination may include a patent office review of non-related technologies that solved technical and functional problems in a manner similar to that of an invention. Devices comprising new



## INTELLECTUAL PROPERTY

combinations of old components are patentable; however the U.S. Supreme Court has significantly restricted circumstances under which such combinations may obtain patent protection. KSR International Co. v. Teleflex, Inc., 550 U.S. 398 (2007).

Fortunately, despite the diverse technologies reviewed in the U.S. patent office, there are uniform responses for overcoming an obviousness rejection. Such responses include explaining how:

1. The improved invention does not operate in a predictable manner;
2. The invention is not obvious as a whole;
3. Previously existing technology includes features which encourage development of technology in a direction opposite to that of the pending invention; and
4. The invention was not ready to develop based upon features of previously existing subject matter.

Sales of the invention may also support non-obviousness if commercial success is the result of an invention's improvement and not due to factors such as marketing or distribution channels.

An invention must also be operable and useful for its intended purpose. 35 U.S.C. §§ 101, 112(a). For example, if an invention is a novel clock, but the patented versions cannot measure time intervals properly, the clock cannot be patented as being useful as a paper weight. Utility *per se* is not a frequent reason for rejecting an article of manufacture or a machine because utility is generally self-evident. However, new compositions of matter, such as pharmaceuticals, often raise this utility question, and submission of laboratory test results to establish the asserted utility may be necessary.

### 3. Utility patent applications

There are four U.S. patent application categories, but the most high profile of these categories is known as the utility patent. The utility patent application protects an invention's functional features and these features must be described in a very specific and detailed manner. This application is the choice for functional features in machines and articles of manufacture. It is also the appropriate application for industrial processes and new compositions of matter such as pharmaceuticals and genetically modified organisms.

The utility patent application text, as well as necessary illustrations, must describe the invention so that someone within the technology can reproduce the invention without undue experimentation. 35 U.S.C. § 112 (a). The application must also disclose the invention in sufficient detail to demonstrate that the inventor was aware of all its features when the application is submitted to the patent office. The utility patent application must also

disclose the best manner of carrying out the invention. *Id.* Patent office rejections based upon section 112 can be permanently fatal because the application must often be rewritten, at least in part. Unfortunately, resubmission of the rewritten application is often barred by expired non-extendable filing deadlines under these circumstances.

To comply with section 112 (b), a U.S. utility patent application must also sufficiently designate the scope and borders of the invention. See Nautilus, Inc. v. Biosig Instruments, Inc., 572 U.S. \_\_\_, 134 S. Ct. 2120, 189 L.Ed.2d 37; 2014 U.S. Lexis 3818, 82 U.S.L.W. 4433 (2014) (designation of protected subject matter must meet a higher standard than 'not insolubly ambiguous'). In sum, section 112 should be a priority with the inventor and patent practitioner when drafting the application to prevent a judicial challenge to patent validity.

### 4. Other U.S. patent formats

Machines and articles of manufacture may also include new and non-obvious ornamental features, such as a mirror with a ceramic floral border. These ornamental features may be protected by a U.S. design patent which issues from a design patent application. A design patent does not contain written text, except for required statements that describe the visual views of the mandatory ornamentation drawings. Compliance with the requirements for novelty and non-obviousness are necessary to obtain a design patent.

Another patent office grant is known as a plant patent. 35 U.S.C. § 161. A plant patent protects asexually reproduced distinct and new plant varieties.

Last but not least is the U.S. provisional patent application. A provisional patent application must meet all the requirements of 35 U.S.C. § 112 (a) and may include illustrations for this purpose. However, a provisional patent application does not require compliance with 35 U.S.C. § 112(b) to designate the boundaries and scope of the invention.

Provisional applications also differ from design patents and utility patents because provisional patent applications never mature to full-fledged patents. In fact, they are never examined in the patent office and automatically expire one year after their filing dates. Under the proper circumstances, however, provisional applications serve to extend the potential enforceable duration of later issued related patents.

Practitioners may be aware of a phenomenon known as business method patents. Business method patents became popular after State Street Bank & Trust v. Signature Financial Group, Inc., 149 F.3d 1368, 47 U.S.P.Q.2d 1596 (Fed. Cir. 1998) and AT&T Corp. v. Excel Communications, Inc., 172 F.3d 1352, 50 U.S.P.Q.2d 1447 (Fed. Cir.) *cert. denied* 528 U.S. 946

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## **INTELLECTUAL PROPERTY**

(1999). In these decisions the Federal Circuit concluded that an economic or financial concept, combined with implementing computer related devices, could qualify as patent eligible subject matter. However, several years later in *Bilski v. Kappos*, 561 U.S. 593 (2010) the U.S. Supreme Court held that economic processes related to hedge funds, but without tangible implementation, were not patent eligible because the processes were purely abstract ideas. Most recently in *CLS v. Alice Corp.*, 573 U.S. \_\_\_\_ (2014) the Court invalidated a patent that implemented an abstract financial process with generic, non-novel computer related devices. Both these Supreme Court decisions also retroactively invalidated patents which fell into these two patent-ineligible categories.

In this aftermath, it is no longer possible to protect a financial method without novel and non-obvious and useful changes to implementing apparatus. Therefore, potential business method applicants will no longer enjoy patent protection for new financial protocols and innovation if they are purely abstract or mathematical in nature.

### ***Trade Secrets***

Trade secrets are protected by federal law and state law. Trade secrets generally comprise (i) information properly maintained in secrecy, (ii) not generally known, (iii) not readily ascertainable by proper means, (iv) providing economic value, and (v) which would provide an economic benefit to other parties if known. More than one person or entity may own the same trade secret if they (i) independently developed it or (ii) otherwise acquired it by lawful means. However, if numerous persons own the same trade secret, then there is an issue of whether the information is generally known. Unlike patented inventions, there is no loss of rights if one person or entity develops the same trade secret after another and complies with legal requirements.

Trade secrets differ from patentable subject matter in that they (i) need not be tangible and (ii) may exclusively consist of abstract ideas and/or mathematical formulas. Business and technology owners should also be aware that not all confidential information and know-how qualify as trade secrets; therefore theft of confidential information may be more problematic than theft of information treated as a trade secret under the relevant law. To elevate confidential and/or proprietary information to trade secret status the owner must affirmatively comply with a state's legal requirements for trade secret status.

If legal requirements are properly maintained beginning with the creation of the information, then trade secret status may continue into perpetuity. This perpetuity differs from the finite duration of patents, and where patent duration is measured from effective filing date of

the first application for subsequent related inventions.

Many states protect explicitly trade secrets information in addition to technical and industrial subject matter. For example, trade secrets status may be attained by a customer or preferred vendor list under the proper circumstances. This is not to say that certain inventions cannot be protected as either trade secrets or patents. It is also possible that certain aspects of an invention be protected by both patents and trade secrets. However, in omitting information from a patent to protect it as a trade secret, the patentee must insure that the patent still meets section 112 requirements.

A choice of trade secret or patent protection depends upon the overall intellectual property strategy and nature of the invention. For example, a novel functional chair design is generally open to everyone's view, even in a private residence. Consequently, trade secret status is very difficult to maintain, and not very economical in terms of sales and distribution.

On the other hand new chemical formulations, as well as processes of creating proprietary creams and liquid solutions, may not be readily ascertainable from plain view. Because of this fact, the cost and expense of independently re-creating a composition or particular manufacturing process may be cost prohibitive when compared to properly acquiring the same subject matter from the trade secret owner. A popular example of trade secret status for a proprietary liquid solution is the original Coca-Cola® formula. With its on-going trade secret status, the Coca-Cola® Company can effectively deter others from misappropriating information which would otherwise provide a huge economic benefit.

Currently there are two federal criminal trade secret misappropriation statutes, although pending Congressional bills would provide remedies for private parties. 18 U.S.C. §§ 1831, 1832; S. 2267; H.R. 5233. Most state trade secret statutes originate from an interstate drafting effort that resulted in the Uniform Trade Secret Act. Nevertheless, state statutes may differ from each other in a significant substantive manner. For illustrative purposes we conclude with a discussion of Florida's trade secret statute.

Florida's Uniform Trade Secrets Act [UTSA] at Fla. Stat. §§ 688.001-688.009 was adopted in 1988. By its explicit terms, anyone who receives trade secrets and knew, or should have known, that the information was misappropriated, is financially liable for that misappropriation. Fla. Stat. § 688.002(2). For example, an individual may provide his former employer's trade secrets, such as a chemical formula, to his next employer. In subsequent litigation, the second employer may be liable if that employer knew or should have known that



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## INTELLECTUAL PROPERTY

this chemical formula was misappropriated. In sum, there is a meaningful financial remedy against an entity who benefited from the trade secret and is not judgment proof, as the individual defendant may well be.

The Florida statute defines the scope of trade secret protection as including a formula, pattern, compilation, program, device, method, technique or process. Fla. Stat. § 688.002(4). As such, the scope of protection for information is not limited to technical research and development. With this statute, Florida businesses have a stronger incentive to affirmatively create and maintain trade secret status of vendor lists, customer lists and other sensitive information such as sales and distribution data. Florida's UTSA remedies are civil in nature and include injunctions and monetary awards under the appropriate circumstances. Fla. Stat. §§ 688.003, 688.004. In particular, injunctions are available for threatened misappropriation and the injunction may continue to eliminate a commercial advantage from the misappropriation. Fla. Stat. § 688.003(1).

In addition to civil liability, a person commits a felony if that person knowingly, willfully and without authorization misappropriates (i) a trade secret or confidential information (ii) associated with computer related devices. Fla. Stat. § 815.04(4). For criminal liability a trade secret is regarded as: (i) technical and commercial information (ii) which has reasonably been kept secret (iii) for use in a business (iv) which has value and (v) provides an economic advantage over those who do not own or use it. Fla. Stat. § 812.081(1) (c). The federal law currently provides criminal penalties for trade secret theft, but there are bills pending which would provide remedies to private sector litigants. In sum, the Florida criminal statute protects confidential information which does not qualify as trade secrets, but there are no financial awards or injunctions as remedies for business owners.

*Adrienne B. Naumann has practiced intellectual property for almost twenty years in the Chicago. She graduated from Chicago-Kent College of Law with high honors. She attended the University of Chicago where she received her bachelor's degree and the University of Illinois where she received her master's degree. Ms. Naumann provides trademark, copyright and patent applications as well as supporting areas of law. <http://home.comcast.net/~adrienne.b.naumann/IP>,*

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Justice will not be served until those who are unaffected are as outraged as those who are."

— Benjamin Franklin

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# Sultana: America's Forgotten Tragedy

By Richard Wires

April 1865 saw many momentous events and unsettling headlines all across America. General Robert E. Lee surrendered his army in Virginia on 9 April, effectively ending the costly Civil War after four terrible years, and John Wilkes Booth fatally shot President Abraham Lincoln on 14 April. Lost among such happenings and their aftermath was news of the greatest maritime disaster in the nation's history. Early on 27 April the steamboat *Sultana* blew up in the Mississippi with about 1850 people lost. Nearly all of them were Union soldiers recently released from prisoner camps in the South and on their journey home. Eastern newspapers barely reported the accident amid other important stories; certainly some officials were never anxious to publicize the incident. And so today most Americans know nothing about the *Sultana* and the tragic deaths.

A large and well-appointed boat launched at Cincinnati early in 1863, 260 feet long and 42 feet wide, the 1000-ton *Sultana* was powered by four boilers and two engines. The boilers were heated by a coal-fed furnace and placed between the big side wheels. Each wheel measured 34 feet in diameter. Above the main and cabin decks was the mostly open "hurricane" deck with the so-called "texas" structure for officers' quarters and higher yet the pilot house. The upper structure was built for lightness, therefore flimsy, and could not support any great weight. Safety equipment was minimal: about six dozen cork-filled life preservers, a single metal lifeboat, and a small yawl or jolly boat. Built at a cost of about \$60,000, and intended for 76 cabin and 300 deck passengers, the steamboat needed some 80 crewmen. With its sale in March 1864 Captain J. Cass Mason became a co-owner. Under a February 1865 agreement for exchange of prisoners many Union soldiers held by the South began assembling at the transfer facility called Camp Fisk outside Vicksburg. The men sent there were mostly Midwesterners who would board Mississippi steamboats to travel north for discharge. By mid-April when the war ended the tent camp held about 4700 men. Most came from two prisoner camps, Cahaba, south of Selma, Alabama, and Andersonville, near Americus, Georgia, both known for their terrible conditions. After the war Andersonville's commandant, Henry Wirz, was hanged for so-called "war crimes." Despite their poor health from injuries, malnutrition, and disease the men traveled by crowded trains, steamboats, and foot to the holding camp. Many would die there from exhaustion, typhoid fever, and other illnesses while awaiting transport.

Sharp competition existed among steamboat services over transporting ex-prisoners. Army contracts paid steamboat owners \$5.00 per enlisted man and \$10.00 per officer for their passage. But secret deals were reportedly common

between the army quartermasters, Colonel Reuben Hatch and Captain William Kerns, and the local representatives or captains of rival steamboats. Collusion might involve bribery, kickbacks, and falsifying of records. A captain promised a full load might accept \$3.00 per soldier, for instance, allowing the army officer to keep \$2 for himself. Or passenger numbers might be inflated. Thus arose the question: why were all the men going for discharge at Jefferson Barracks in Missouri or Camp Chase in Ohio placed on one steamboat when others had been available? The big steamboats *Lady Gay* and *Pauline Carroll* left Vicksburg with no soldiers. Dividing the men among the steamboats was not considered. Instead some two thousand men were crowded onto Mason's *Sultana* where many had neither space nor proper shelter. Even the officers in charge of boarding were uncertain of their number.

While heading to New Orleans from St. Louis the *Sultana* had brought the news of Lincoln's death to Vicksburg, since telegraph connections were not working, and Mason had obtained Hatch's assurance that when the *Sultana* came back to Vicksburg it would receive special treatment. But the steamboat returned on 23 April with a very serious problem. The chief engineer had discovered a boiler was leaking between its plates and told the captain that repairs were essential at once. Because the captain feared delay would mean losing his promised load, he had only patching work done, but the experienced man handling the repairs thought they were inadequate. Neither the chief engineer nor Mason revealed the problem to the army.

The number of people traveling on the *Sultana* was 2500 or more according to careful later studies. Problems stem from the unreliability of army figures. No count or accurate record of the soldiers who boarded was kept; numbers cited soon afterward too often were adjusted to serve some purpose. Officers handling transport arrangements thought only 1300-1400 men still await transport, having cleared 400 for travel, but close examination of data

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*Artist's rendering of the burning "Sultana"*



## **Sultana: America's Forgotten Tragedy**

shows probably 2400 in the total group. Captain Frederic Speed oversaw the transfers but without tight control, giving in when pressed for quick action, and agreeing that most remaining men should board the *Sultana*. But the incorrect figures made him underestimate the number he expected to depart. Then amid activity and confusion at the docks the officer checking the actual boarding, Captain George Williams, abandoned his head count and later admitted his estimate might be off by hundreds. There were probably 2400 soldiers aboard plus nearly a hundred cabin passengers and eighty crewman or perhaps 2580 people in all. Only twenty-three were women. Despite the soldiers' poor health conditions the army placed no doctors on board; complaints about crowding and heavy weight straining the upper decks were ignored. Most of the soldiers accepted the situation, however, content to be returning home at last.

About 9:00 p.m. on 24 April the *Sultana* left Vicksburg, stopped briefly at Memphis two evenings later, and at 1:00 a.m. on 27 April continued up the Mississippi. Soon it had passed through small islands called Paddy's Hen and Chicks where spring melting and rains had flooded the river. Proceeding in mid-river at 2:00 a.m. near Mound City, Arkansas, the *Sultana* was torn apart by a massive explosion. Three of its four boilers had blown up, fire soon engulfing the boat, and before long the weak upper decks collapsed. Amid the panic and confusion the injured and bewildered tried to save themselves. Many soldiers were too exhausted to make much effort. Meanwhile crazed animals being carried on the main deck broke loose and endangered those nearby. People not killed by the blast itself, or by scalding, falling debris, and the flames, drowned in the fast-moving river currents. Even those unable to swim jumped or begged to be pushed to escape the fire. Flooding and darkness meant that no one could see any land; in the struggles to seize anything that floated the strongest prevailed. The only lifeboat sank when too many people tried to enter or grasp it. Five crewman safe in the steamer's yawl kept all others away. But there were also acts of heroism and humanity by those still able to help.



*Capt. William Speed*



*Col. Reuben Hatch*

Assistance arrived slowly given the hour and location. First on the scene were nearby steamboats, like the *Bostonia II* going south, finding itself amid many hundreds of victims. The fire's glow was seen far away, in Memphis and Mound City, where people were awakened by the blast. Other boats set out from there and from farms. When the burning *Sultana* grounded at an island two dozen people still clung to its bow; a local Arkansas family rescued them before the wreck finally sank with many bodies still trapped. The search for victims continued for weeks, but many were never found, and most bodies could not be identified. Headstones of graves in the National Military Cemetery at Memphis simply say an "Unknown U.S. Soldier."

Figures for the numbers who died or survived are not certain. A government report later often accepted as "official" put the number killed at 1547 but did not include some 200-300 who died from injuries in hospitals. Analysts now think about 1850 the most accurate total. Early reports estimated that between 750 and 770 army personnel had been rescued. That figure seems a little high. Of the more than 160 cabin passengers and crew there were apparently 18 who lived, among them one woman, and just one member of the Samuel Spikes family of twelve which was relocating north. Surviving crewmen included the first mate, a pilot, and the engineer responsible for the boilers. The five crewmen who saved themselves in the yawl were found and placed under arrest.

Clearly the safety of everyone aboard was a responsibility shared by the steamboat's owners and crew and by the military officers in charge of the camp and transfers. Investigations began immediately. The finding that a defective boiler, never adequately repaired, caused the explosion is not questioned. It had contained too little water and when pressure mounted it blew up. Mason's greed and negligence made him primarily responsible but he died aboard the *Sultana*. The chief engineer never faced criminal charges. Nor were the steamboat's owners brought to court.

The military investigators were most concerned with the exceptional passenger load. Secretary of War Edwin Stanton ordered an inquiry by General Cadwallader Washburn, regional commander, and Surviving crewmen included the first mate, a pilot, and the engineer responsible for the boilers the so-called Washburn Commission reached its conclusions by 21 May 1865. The panel found the steamboat had not been overloaded, in capacity or weight, but that overcrowding had greatly increased the death toll. Its report blamed the quartermasters at Vicksburg and recommended that they be censured. The group's suspicion of bribery was clear. Yet in forwarding the report Washburn opposed such censure and noted Speed had been responsible for transfers. Meanwhile other officers assigned by the

## Sultana: America's Forgotten Tragedy

commander of the Department of the Mississippi, General Napoleon Jackson Tecumseh Dana, were making separate inquiries for a report expected by General William Hoffman. As the supervisor of all ex-prisoner transfers Hoffman was sent by Stanton to posts in Memphis and Vicksburg to look personally into all the circumstances. Though believing only 1866 men had been aboard, crowding which he called "unnecessary, unjustifiable, and a great outrage" to all the soldiers, he found many officers at Vicksburg at fault. While Hatch and Speed bore greatest responsibility, Kerns and Williams knew the situation, as did General Morgan Smith, who was the district commander at Vicksburg. Historians of the disaster have also questioned why Dana had not closely monitored the former prisoners' treatment.

Local army commanders were clearly uncomfortable with the probes, and doubts concerning their roles, but they realized that some official action was expected. In the end only Speed was court-martialed, somewhat of a scapegoat, his trial at Vicksburg dragging on for months. (The courtroom in the Old Court House Museum may still be visited.) The defense was frustrated by repeated delays in the proceedings and by important witnesses not being available to testify. Stanton had ordered that Hatch be court-martialed, but he had disappeared and reportedly could not be found, and Dana was now stationed in the West. Conflicting accounts of what had occurred given by Williams were accepted without their content really being explained. When Speed was found guilty of neglect of duty in June 1866, Stanton referred the matter to General Joseph Holt, the judge advocate general, and Holt's review urged Speed's conviction be voided, citing both Hatch's deal with Mason and the "indifference" of the other officers. Stanton concurred and refused to approve the action against Speed. The captain left the service with an honorable discharge three months after his trial ended. That the tragedy brought no legal actions in civil courts reflects the accepted outlook of the times. People expected to travel at their own risk, crew responsibilities toward the passengers were still unspecified, and in general people had to save themselves. The notion of *saue qui peut* prevailed for years. But the army's role and actions are more troubling. Of course there was excitement and confusion at the war's end. Yet the breakdown of order and discipline in the local command is evident, without the effective presence of those at senior levels, and with some junior officers and staff unclear or unconcerned about their duties. Thus what Holt called "indifference" was widespread. There were criminal acts and callousness as well. Why had the quartermasters been able to make lucrative deals with captains? Why were no doctors placed aboard the boat? Their care was needed given the men's injuries and health even on a normal trip. The situation is especially disturbing both because the men involved had already suffered so much and because senior commanders tried to protect those responsible.

No national monument stands near the terrible accident's site. Only a marker at Mound City in Arkansas recalls the human loss. In time Andersonville became a National Historic Site but the remains of Cahaba and Camp Fisk would soon disappear. Efforts to obtain Congress's approval for special pensions for survivors injured or chronically ill after the *Sultana* disaster always failed. In the post-Civil War nation only those directly affected by it seemed to remember the *Sultana* catastrophe.

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# Slander of Title: The Challenges of Lis Pendens as a Lien on Real Property

## Part 2 of 2

By Leonard D. Pertnoy



### Modifying Judicial Privilege: Lis Pendens and Slander of Title

Slander of title is a false or malicious statement, oral or written, made in disparagement of a person's title to real or personal property, causing him special damages.<sup>1</sup> In an action for slander of title, or disparagement of property, the plaintiff must allege the following elements:

- (1) A falsehood (2) has been published, or communicated to a third person (3) when the defendant-publisher knows or reasonably should know that it will likely result in inducing others not to deal with the plaintiff and (4) in fact, the falsehood does play a material and substantial part in inducing others not to deal with the plaintiff; and (5) special damages are proximately caused as a result of the published falsehood.<sup>2</sup>

The act of recording the document that clouds another's title to real estate gives rise to an action for slander of title when the words or conduct tend to bring into question the right or title of another to particular property.<sup>3</sup> The burden of proof rests with the claimant to establish all essential elements of the claim by a preponderance of the evidence.<sup>4</sup> General damages are not presumed to arise from slander of title, so the plaintiff must plead special damages which proximately resulted from the publication of the disparaging statement.<sup>5</sup> Such damages are generally rooted in pecuniary loss.<sup>6</sup>

Generally, where absolute judicial privilege is not extended to notices of lis pendens, wrongful and intentional filing of a notice of lis pendens will support an action for disparagement of property.<sup>7</sup> In cases where filing a Notice of Lis Pendens places a cloud on title that did not previously exist, a claim for slander of title may arise where all the elements are satisfied.<sup>8</sup> Lis pendens, indicating that a particular property is the subject of a lawsuit, has the practical effect of rendering the property unmarketable during the pendency of the underlying dispute.<sup>9</sup>

*Procacci v. Zacco* seemed to establish absolute judicial privilege with regards to lis pendens in Florida, and in

1981 the Second District Court of Appeals cited *Procacci* when affirming the privilege in the *Palmer v. Shelby Plaza Motel, Inc.* opinion.<sup>10</sup> In *Palmer v. Shelby* an action for slander of title was brought against appellants for a notice of lis pendens filed in conjunction with their foreclosure action against the appellees.<sup>11</sup> "The lis pendens described only the property covered by the mortgage which appellants were seeking to foreclose. It had no existence separate and apart from the litigation of which it gave notice."<sup>12</sup> Even though the appellees were successful in their defense against foreclosure, they could not bring an action for slander of title based on the *Procacci* precedent.

However, in the Fourth District where *Procacci* was decided, the 1981 case, *Atkinson v. Fundaro*, held that a notice of lis pendens filed on condominium units which were not directly involved in the lawsuit, constituted slander of title.<sup>13</sup> The court distinguished its holding from *Procacci v. Zacco*, asserting that in this case lis pendens was not privileged since it was neither a proper notice of lis pendens nor did it involve the property in litigation.<sup>14</sup> In *Atkinson* the plaintiffs brought suit against the defendant developers of a condominium complex alleging that they held contracts to purchase particular units in the development.<sup>15</sup> These units were numbered 101, 201, 202 and 203 respectively.<sup>16</sup> They filed notices of lis pendens on units numbered 301 and 310 although those units were not the subject of the litigation.<sup>17</sup> Due to notice of lis pendens the developers incurred legal expenses and suffered damages due to the clouded title, judgment for slander of title was upheld.<sup>18</sup>

In 1984, in *Bothmann v. Harrington*, the Third District Court of Appeal followed *Atkinson v. Fundaro* in asserting that a filed notice of lis pendens constituted the necessary falsehood for a disparagement of property action because it falsely indicated that the property was involved in a lawsuit.<sup>19</sup> Wrongful and intentional filing of lis pendens in a substantive (rather than in a procedural) sense will support an action for slander of title or disparagement of property because it meets the requisite falsehood element of the action.<sup>20</sup> Significantly, the courts *Atkinson* and in *Bothmann* make no mention of judicial privilege with regards to lis pendens.<sup>21</sup>

The Second District followed suit in 1985 in *Miceli v. Gilmac Developers, Inc.* where slander of title was again upheld as a cause of action where it was based on a notice of lis pendens.<sup>22</sup> The case presented the unusual factual circumstance wherein the plaintiffs who filed the notice of lis pendens had a legitimate claim to part of the property upon which the notice was filed.<sup>23</sup> The plaintiffs were owners of condominiums in Phase I of a development who brought action to quiet title and obtain declaratory relief as to their interests in Phase II of the development.<sup>24</sup> The Declaration of Condominium stated in relevant part that Phase I owners would have total ownership of the recreation area outlined in a drawing of the Phase II development plans.<sup>25</sup> Though the lis pendens attached

## **Slander of Title:**

to the entirety of the Phase II condominium, not just the recreation area, the court held that the marketability of all of the units would have been impaired and therefore the notice of lis pendens could not and did not constitute slander of title. Despite this ruling, the court stated that an intentional and wrongful filing of a notice of lis pendens could support an action for slander of title.<sup>26</sup>

In addition to exposure to claims of slander of title, the filing of an improper notice of lis pendens may open up the proponent's attorney to prosecution for ethical violations.<sup>27</sup>

### **Conclusion**

Whether or not a party can cite lis pendens in a slander of title claim exposes a conflict of two principles of common law.<sup>28</sup> Common law has consistently held that statements made within judicial proceedings are privileged, encouraging parties to speak freely without risk of persecution.<sup>29</sup> However, common law has also long held that there is a cause of action for slander of title where a party makes false statements regarding property which results in damages.<sup>30</sup> As discussed above, whether or not absolute privilege should cover lis pendens has not been conclusively established in Florida. Other jurisdictions are less ambiguous.

Illinois has retained absolute privilege for notices of lis pendens, holding that the privilege applied even if the lis pendens was filed "maliciously and without cause, with the purpose of harassing the plaintiff and to gain unfair advantage in the underlying action."<sup>31</sup> This hardline approach seems to mirror the decision of the 4<sup>th</sup> District Florida Court in *Procacci*.

Alternatively, Wisconsin courts determined that to hold all statements related to judicial proceedings privileged would render it almost impossible to prove a slander of title claim.<sup>32</sup> The court found the protection of potentially irrelevant statements unacceptable and a conditional privilege to lis pendens applicable where the person reasonably believed the statements were true and the statements reasonably related to the litigation.<sup>33</sup> The need to restrict lawsuits brought in bad faith outweighed the policy of encouraging free access to the courts under an absolute privilege.<sup>34</sup>

Indiana applies two types of privilege, absolute and qualified, depending on the underlying circumstances of the case.<sup>35</sup> Where a statement is relevant to the litigation, it cannot be the basis of a suit even if it would otherwise be actionable, as it retains absolute privilege.<sup>36</sup> With regards to judicial pleadings, statements made within pleadings are absolutely privileged only if those statements are pertinent and relevant to the litigation.<sup>37</sup>

The determination of whether statements made in judicial pleadings are pertinent and relevant is a question of fact for the court.<sup>38</sup> This applies regardless of whether the lis pendens was filed with actual malice.<sup>39</sup>

California, on the other hand, may have swung the pendulum too far in the opposite direction, granting land owners too much leeway in filing slander of title actions in cases where lis pendens may have been properly filed.<sup>40</sup> The Jennings Lis Pendens Law, provides that:

A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects title or right of possession of real property as authorized or required by law.<sup>41</sup>

As such, any lis pendens which failed to reference an action that properly involved a true real estate claim was outside the scope of the litigation privilege and may "make anyone who recorded such an unmeritorious lis pendens potentially liable for slander of title."<sup>42</sup> Whether or not there exists a "true real estate claim" is a matter for the court to determine.<sup>43</sup> A broad exception to absolute judicial privilege such as this may open up lis pendens law to a great potential for mischief from defendants in actions regarding real property the same way that carte blanche judicial privilege can be an effective weapon for plaintiffs in states like Florida or Illinois.<sup>44</sup>

Florida's current piecemeal approach to lis pendens and slander of title should be unified into a clear-cut rule. A balance must be attained between the interests of plaintiffs in maintaining the status of property during a lawsuit and defendants' need for protection from malicious filing. A codified approach allowing absolute and qualified privilege depending on the circumstances of each case, would provide attorneys and clients with the guidelines needed to make an informed decision about filing a notice of lis pendens without subjecting either to prosecution. Indiana's rule, which grants absolute privilege where lis pendens is pertinent and relevant to the litigation and qualified privilege where lis pendens is ancillary, strikes an appropriate balance. Upon a filing of notice of lis pendens, a defendant in Florida may already call for an evidentiary hearing to discharge the notice. In such a hearing courts may invalidate the notice altogether or require that a bond be provided by the proponent of the lis pendens in case the action is unsuccessful. As the court is



## Challenging Non-Final Orders in the Appellate Court, or, as Stevie Nicks Once Sang, "I Can't Wait"

By Mark Miller



I am often asked about the availability of an interlocutory appeal after a state circuit court has entered an adverse ruling in a civil case. The avenues to challenge a trial court's non-final order are surprisingly limited. Florida Rules of Appellate Procedure 9.030(b) and 9.130 set out the paths to follow if you want to take that non-final appeal, or seek review of a non-final order via a petition for extraordinary writ.

### A. Non-Final Appeals by Rule

The appellate rules set out the orders that are clearly appealable as a matter of black-letter rule. The standard non-final orders which allow for immediate appeal are appeals from orders that:

- concern venue;
- involve injunctions;
- determine the jurisdiction over the person;
- determine the right to immediate possession of property;
- determine the right to immediate monetary relief or child custody or time sharing in family law matters, or the invalidity of marital agreement altogether;
- determine the entitlement to arbitration, or to an appraisal under an insurance policy;
- determine that as a matter of law a party is not entitled to worker's compensation immunity or absolute or qualified immunity in a federal civil rights claim;
- determine that a class should be certified;
- determine that a governmental entity has taken action which burdens real property within the meaning of Section 70.001(6)(a), Florida Statutes;
- grant or deny the appointment of a receiver, or terminate or refuse to terminate a receivership; or
- determine the issue of forum non conveniens.

See Fla. R. App. P. 9.130(a)(3)(A)(3)-(5). Finally, certain non-final orders entered after final order and orders on motions for relief of judgment, are also appealable as a kind of non-final appeal. *Id.*

If the order you wish to challenge fits these discrete categories, then congratulations—you can take your appeal immediately and do not have to wait for the entry

of a final judgment.

There are a number of distinctions between appeals from non-final orders versus appeals from final orders. Perhaps the most important difference concerns the effect of motions for rehearing on the timeliness of an appeal from a non-final order.

Simply put, a timely and properly filed motion for rehearing will extend the date of rendition of the final order, which in turn extends the 30 days to appeal from the final order. In that case, the time to appeal will begin to run once the trial court rules on the timely-filed motion for rehearing.

*But such is not the case with non-final orders.* A motion for rehearing is not authorized as to non-final orders. Therefore, a motion for rehearing as to a non-final order does *not* extend the 30 days to appeal. Although missing the 30 days does not legally preclude the party from contesting the non-final order at the conclusion of the case as part of the appeal from the final order, often times a litigant or attorney may see that later appeal as impractical, depending on the passage of time and other factors.

The appellate court rules significantly accelerate the briefing schedule for appeals from non-final orders. That being said, these deadlines are not as severe as the deadlines that the attorney faces when the attorney intends to file an extraordinary writ.

### B. Extraordinary Writs

The extraordinary writs include writs of certiorari, prohibition, mandamus, *qua warranto*, habeas corpus (a civil proceeding that usually addresses criminal cases, thus omitted here), and "all writs power." Each writ has its own purpose.

Importantly, if you decide to pursue this type of relief, you must keep in mind that you have thirty days to file the petition for writ. That petition is not just a notice of appeal, or a one-page notice of intent to seek a writ (in theory it could be one-page, but that is exceedingly unlikely). Rather, the petition is akin to the merits brief filed in a full appeal, albeit with a little less pomp and circumstance in the formatting. In other words, if you seek a writ from the appellate court telling the lower court that it erred, you have to have your arguments on the merits set out and then filed as part of your petition within 30 days of the order that you intend to challenge.

That being said, let's take a look at the types of writs you may ask the court to issue.

#### 1. Petition for Writ of Certiorari

One of the most-used mechanisms to challenge a non-final order is to petition the appellate court for a writ of certiorari. See Fla. R. App. P. 9.030(b)(2)(A).

Certiorari is an extraordinary remedy available when a lower tribunal has acted in excess of its jurisdiction or

## Challenging Non-Final Orders

otherwise departed from the essential requirements of law, and no other appeal route is available. *See Belair v. Drew*, 770 So.2d 1164, 1166 (Fla. 2000)(citations omitted). A party seeking review of an interlocutory order by certiorari must demonstrate that the order is a departure from the essential requirements of the law and that the harm caused by the error cannot be corrected on appeal from the final judgment in the case. *See Martin-Johnson, Inc. v. Savage*, 509 So.2d 1097, 1099 (Fla. 1987). If you can so demonstrate, then the appellate court issues the writ—it quashes the order you have contested.

Circumstances that sometimes allow for petitions for writ of certiorari include (but are not limited to) pretrial orders compelling discovery in civil cases, failure to follow pre-suit procedures per Chapter 766, orders that grant or deny a request to dissolve a *lis pendens*, and orders which grant or deny a motion to disqualify counsel. On the other hand, certiorari is *not* available to review a pretrial order denying a request for a jury trial, because the Florida Supreme Court has decided this is an error that can be corrected on direct appeal. *See Jaye v. Royal Saxon, Inc.*, 720 So.2d 214 (Fla. 1998). At least one Florida lawyer you may know finds that decision puzzling,<sup>1</sup> but unfortunately it reflects the current state of the law.

The petition for writ of certiorari is an important, but limited, tool in the appellate practitioner's toolbox. If you are unhappy with a trial court's decision but a final judgment is not on the near horizon, and the decision is not a non-final order appealable pursuant to Rule 9.130(a) (3), review the case law to determine if the issue framed by the ruling lends itself to a challenge via an effort to convince the appellate court to quash the decision via certiorari.

### 2. Petition for Writ of Prohibition

Use the petition for writ of prohibition when the lower tribunal intends to misuse its judicial power. Generally, it is a preventive remedy—meaning the petition should be filed *before* the anticipated misuse of judicial authority. This circumstance may include a trial court acting without jurisdiction, or in excess of its jurisdiction. *See Peltz v. District Court of Appeal, Third Dist.*, 605 So.2d 865 (Fla. 1992). This extraordinary writ, however, may be used *after* the improper judicial act where the issue is one of judicial disqualification, *see City of Hollywood v. Witt*, 868 So.2d 1214 (Fla. 4<sup>th</sup> DCA 2004). This is the usual setting that gives rise to the petition for writ of prohibition—when the attorney seeks to disqualify the lower court judge.

The granting of the writ is not a matter of right, but rather a matter of judicial discretion, thus even in seemingly strong cases it may not be granted.

### 3. Petition for Writ of Mandamus

Mandamus is a common law remedy used to compel a public officer or agency to perform a duty required by law. *See Philip J. Padovano, Florida Appellate Practice* (2010) at §29.2. A party seeking issuance of this writ must show a

violation of a clear legal duty and breach of that duty, and the clear legal duty must be ministerial, not discretionary. *Id.* This writ is often sought where the petitioner seeks to compel the issuance of a license or permit, *see Alvarez v. Dep't of Professional Regulation*, 546 So.2d 726 (Fla. 1989), or where the petitioner wishes to compel the lower court to decide an issue upon which the lower court has unreasonably tarried. *See, e.g., Lakeshore Townhomes Condominium Ass'n, Inc., v. Bush*, 664 So.2d 1170 (Fla. 4<sup>th</sup> DCA 1995).

I would think long and hard about filing the petition where the concern is the lower court taking an unreasonably long time to rule. The attorney who files this petition may get the ruling that attorney seeks, but not the result he hoped for—as trial judges may not look too kindly at their delay being brought to their superior court's attention.

### 4. Other Petitions

*Quo warranto*, another common law remedy, should be used to challenge the authority of a public official exercising state-derived power improperly. *See Florida Appellate Practice* at §29.4. Petitioners most often seek this writ to challenge the right of an individual to hold public office. *See, e.g., Bruce v. Kiesling*, 632 So.2d 601 (Fla. 1994). And finally, the “all writs jurisdiction” is also known as the “constitutional writ.” The purpose of this writ is to allow the appellate court to protect the exercise of its jurisdiction.

## C. Conclusion

I have *not* covered every circumstance allowing for interlocutory appellate review; however, I have tried to provide an overview for your consideration and further research in the future. If you wish to go further in considering this topic and other appellate practice topics in Florida courts, I recommend Judge Padovano's treatise, *Florida Appellate Practice*, published by West.<sup>2</sup>

1 See Mark Miller, Florida Appellate Rules Should Allow for Interlocutory Appeal of Decisions to Deny Jury Trial, 86 Fla. B. J 30 (Nov. 2012)(arguing, as yet to no avail, for the rule change sought in the title of the article).

2 The Martin County Bar Association published a modified version of this article several years ago. I updated and expanded much of the discussion since then.

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## **Slander of Title:**

already making a determination of relevance in deciding whether or not to discharge it, the level of privilege can easily be encompassed in that ruling. Absolute privilege should remain the standard where the lis pendens is based upon a duly recorded legal instrument.

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The endnotes for this article are on page 25 of the online edition.

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## **Poet's Corner - New Year's Eve** By Mark E. Martin

We gathered around the fire  
Some standing  
Some sitting  
Some weaving through  
Headed for another beer inside  
All thankful for weather cool enough to  
Ignite the wood and not suffer its heat

Old friends and new orbited the pit  
In eccentric gyres governed not by gravity  
But by need, desire, and companionship  
Comfortable in each or driven on by something  
Unspoken or unseen

Our conversation turned on everything and nothing  
As we were wont at the moment  
Until new sounds intruded  
Our ears pricking to the rat-a-tat-tat of something  
Not quite clear enough to discern  
But clearly not what we expected

We played the "is it fireworks or gunfire?"  
Game, each with their opinion  
As to bore

Dead Christmas trees, piled for sacrifice  
To the New Year, scented the air  
Nearby and drew me toward the loppers

A snip here, a crack there and soon  
A new pile, resinous, gravid with unrealized  
Crackling flame and the rush of superheated air  
Grew around the increasingly bare  
Trunk, itself grown spiky with missing limbs

Just a few small branches  
Placed on the fire grown small  
With inattention and sufficiency  
Few and small but full of powerful intent

Slowly at first smolder  
Smoke  
Crackle  
Then burst into full bloom  
Shooting flame  
Spitting sparks  
Scintillating into the cold night air  
Driving some away while drawing others near

It carried our desires to the gods  
A deeply rooted lizard brain craving  
For heat  
And light  
And frenetic dancing  
Even though it leaves us ashes  
In the end

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1617	ELULS Annual Update	2/8/2015	19.5	8
1660C	The Tangled Web of Ethics-Advertising Websites & Social Media	3/11/2015	2.5	2.5
1632	Practice Before DOAH: Judge Cohen's Opus	4/4/2015	7	1
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1728	2013 Case Law Update: Stay Up to Date and ...	4/23/2015	2.5	0.5
1623	Annual Ethics Update 2013	4/23/2015	4	4
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1633	39th Public Employment Labor Relations Forum	4/24/2015	11.5	2.5
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## Slander of Title:

### Endnotes:

- 1 See § 2 for definition of “Slander of Title,” 103 Am.Jur. Trials 1 (originally published in 2007)
- 2 Bothmann v.Harrington 458 So. 2d 1163 at 1168 (1984)
- 3 See § 2 for definition of “Slander of Title,” 103 Am.Jur. Trials 1 (originally published in 2007)
- 4 See § 8 for elements of prima facie case; burden of proof of “Slander of Title,” 103 Am.Jur. Trials 1 (originally published in 2007)
- 5 Id.
- 6 Id.
- 7 Bothmann v.Harrington 458 So. 2d 1163 at 1168 (1984); See also § 18 for Lis pendens of “Slander of Title,” 103 Am.Jur. Trials 1 (originally published in 2007)
- 8 See DeGuzman v. Balsini, 930 So. 2d 752 at 754 (2006)
- 9 See § 18 for Lis pendens of “Slander of Title,” 103 Am.Jur. Trials 1 (originally published in 2007)
- 10 Palmer v. Shelby Plaza Motel, Inc. 443 So. 2d 285 (1983)
- 11 Id.
- 12 Id.
- 13 Atkinson v. Fundaro, 400 So.2d 1324 (1981) (Fla. 4th DCA 1981)
- 14 Id.
- 15 Id. at 1325-1326
- 16 Id. at 1326
- 17 Id.
- 18 See Id.
- 19 Bothmann v.Harrington 458 So. 2d 1163 at 1168 (1984)
- 20 Id.
- 21 See Id.
- 22 Miceli v. Gilmac Developers, Inc. 467 So. 2d 404 (1985)
- 23 Id.
- 24 Id.
- 25 Id.
- 26 Id.
- 27 See The Florida Bar v. Broida, 574 So.2d 83 (Fla. 1991)
- 28 Kensington Development Corp. v. Israel 139 Wis 2d 159 at 164 (Wis App Ct 1987)
- 29 Id.
- 30 Id.
- 31 Ringier America v. Enviro-Technics, Ltd. 284 Ill App 3d 1102 (1st D 1996)
- 32 Kensington Development Corp. v. Israel 139 Wis 2d 159 at 164 (Wis App Ct 1987)
- 33 Id. at 168-169
- 34 Id.
- 35 Trotter v. Indiana Waste Systems, Inc, 632 NE2d 1159 at 1162 (Ind Ct App 1994)

- 36 Id.
- 37 Id.
- 38 Id.
- 39 See Id.
- 40 William McGrane, Lis Pendens: Still a Lawyer’s Liability, Mcgranelaw, (October 2003)
- 41 C.C. §47(b)(4)
- 42 See McGrane
- 43 Id.
- 44 See Id.

