

**MEETING MINUTES OF APPELLATE PRACTICE SECTION MEETING ON SEPTEMBER
14, 2006**

In attendance were:

Susan Whaley Fox, Chair

Steven L. Brannock, Chair-Elect

Siobhan Helene Shea, Vice Chair

Dorothy Frances Easley, Secretary

Matthew John Conigliaro, Treasurer

Jack Reiter, Editor-in-Chief, THE RECORD

Thomas Hall, Immediate Past Chair

Jack Aiello

Tracy S. Carlin

John G. Crabtree

Caryn Lynn Bellus, excused (Steve Brannock presented her report in her absence)

Shannon McLin Carlyle, excused (John G. Crabtree presented her report in her absence)

Angela Flowers

Betsy Gallagher

Tracy Raffles Gunn

Henry Gyden

Valeria Hendricks

Celene Humphries

Calianne Lantz

Wendy Loquasto

Roberta Mandel

John Mills

Lucretia Pitts

Judge Mark Polen

Harvey Sepler

Judge Morris Silberman

Judge Richard Suarez

Marianne Trussell

Tom Warner

I. CALL TO ORDER – SUSAN FOX, CHAIR

Chair Fox called the meeting to order.

II. INTRODUCTIONS

Chair Fox completed introductions, then recognized on behalf of the Appellate Practice Section the contributions of appellate specialist Tracy Carlin, who is retiring from appellate law and moving to Wyoming. Chair Fox recognized Carlin for advancing professionalism in the practice of appellate law and for her many contributions to the Section as a whole. Chair Fox described the Section's new letterhead, and notified members that it was being e-mailed to use for Section-related correspondence.

III. APPROVAL OF MINUTES FROM JUNE 22, 2006 (A)

The June 22, 2006 Meeting Minutes were approved.

IV. CHAIR'S REPORT

A. Today's Section Events

Fox discussed the Appellate Practice Section reception at 4:00 p.m. in the Collier Room, followed by the now-annual dinner meeting at the Brannock's home.

B. Resignation

Fox announced the resignation of Jack Shaw from the Section Executive Committee and the recommendation from the nominating committee, Chaired by Tom Hall, Immediate Past Chair, to nominate an Appellate Practice Section member to fill that vacancy.

C. Report on DCA Assessment Public Hearing

Tom Hall presented the results of the District Courts of Appeal work load meeting. Tom Hall presented his report on DCA Assessment Public Hearing. Susan Fox, Valeria Hendricks and Tom Warner attended. Tom Hall and Tom Warner also reported that DCA realignment and the addition of new DCAs was discussed. Seven members on the committee that participated, and all geographic locations were represented. The consensus was that there was no demonstrated need for an additional DCA at this time, realignment of the DCA base was not ruled out, but it was suggested that it was premature at this time. The issue was deemed really a question of service, not a question of justice, and there were some concerns over restricting the number of the pool of applicants to the DCAs and the ability of judges to travel such great distances. The Commission's consensus was that, irrespective of geographic problems, there were solutions through telecommuting, electronic/video appearances and court branches. Tom Warner commented that Representative Dudley Goodrich testified, from the Naples area, that there is no unanimity of moving the 20th Judicial Circuit to the Third District Court of Appeal, and concerns still exist over judges being able to live in the general area of their respective DCA. Tom Warner further commented that the judicial management council looked at that proposal, and further study indicates this may be archaic. Judge Suarez commented that this is an old issue that has been lingering since 1990, that there is resistance to this relocation, and commended Tom Warner, Chair Fox

and Valeria Hendricks for their participation in that hearing. Tom Hall and Tracy Carlin added that, in studies of DCA performance and accountability, these studies indicate that an increase in DCA size does reduce court collegiality. However, there is no magic number. Further, Hall commented that there are practical issues associated with telecommuting. Judge Polen added that there have been numerous requests for new DCA judges, which requests had been rejected. While increasing the number of judges on a court may affect collegiality, obtaining collegial judges offsets future concerns over increasing the sizes of the respective DCAs. Concerns were also expressed about the normal increase in intra-district conflict with the increases in the number of DCAs in the state, to which Judge Silberman agreed. Chair Fox encouraged the Appellate Practice Section to be involved in this issue, as the DCA assessment public hearing needed continued input from the Appellate Practice Section.

V. Treasurer's Report: Monthly Statement of Operations (B)

Fox discussed the Appellate Practice Section retreat and the fact that there was a net cost of \$6,000.00 with only \$4,000.00 in expenses. Matt Conigliaro, in conjunction with Austin Newberry, Section Liaison, jointly presented the Treasurer's Report reflecting that in 2005-2006 the section fund has \$60,245.00. Austin Newberry was not concerned about the lower Section membership numbers because those numbers tend to increase this time of year.

VII. OLD BUSINESS

A. Appellate Practice Board Certification Rule Changes

Angela Flowers spoke on the Appellate Practice Board Certification Rule Changes. The proposed rule changes for waiver presented a significant administrative process.

Flowers explained that, because certification has not been around for very long, the Section does not have the historical base to support an automatic waiver for recertification. All other Sections leave recertification to the respective Committee's discretion. Flowers proposed a waiver of some kind provision because some members in certain geographic areas lack enough appeals in the geographic location or are winding down their practice. However, the waiver process as currently proposed presented too many complications, particularly administrative, and alternatives needed to be considered, Flowers proposed. Flowers proposed, as an alternative, recertification three times and then possible automatic recertification after that period of time, such that there would be an automatic waiver after 15 years of appellate practice.

Chair Fox, appointed a special subcommittee in the Appellate Practice Section to address these problems, and appointed Dorothy Easley to chair that subcommittee, along with John Mills and John Crabtree as subcommittee members. Chair Fox underscored that the Section wants to encourage senior lawyers to take

supervisory and mentoring roles. Easley, Mills, and Crabtree agreed to meet and follow up on this issue.

VIII. NEW BUSINESS

A. Awards Committee and Application Form

A Committee is being appointed to address this and to develop a form.

B. Request for Comment-Rule 3-5.4(C)

Chair Fox stated that the request for comments on 3-5.4(C) is open as this proposed rule will be going to the Board of Governors. Wendy Loquosto recapped that the Rule is to allow judges to fine \$100-500 for unprofessional conduct. All sections are being asked to comment on this proposed Rule in anticipation of a meeting in December followed by voting in January. The Rule was studied for 18 months, its purpose is to promote professionalism, and it is intended to serve as a middle ground for discipline. Review of the Rule is supposed to be by certiorari, the Rule does not propose any new avenue for review, and the Rule is designed to give judges a rule of procedure that makes them feel comfortable to use it. Valeria Hendricks asked whether the appellate judges were asked for their input. Jack Reiter suggested that the appeal of these types of orders may trigger the need to amend the appellate rules. Tom Hall also suggested that there may be a number of appellate issues associated with this proposed Rule. The response to these comments was that appellate judges were first consulted just before the Rule was

circulated for comment. Chair Fox appointed a subcommittee to e-mail a report on this issue, and Matt Conigliaro agreed to chair that subcommittee.

C. Election to Fill Vacancy

Barbara Eagan was elected to fill the Executive Council position of Jack Shaw, who retired from that position and will be greatly missed.

D. 2007 Appellate Justice Workshop—Celene Humphries

Fox recognized Celene Humphries and the outstanding Appellate Justice Workshop in June 2006 meeting. Fox recognized that these meetings will result in the combined efforts of two articles, one in the Record with Celene Humphries with Judge Kahn, and one in the Florida Bar Journal with Celene Humphries and Judge Webster. Judge Altenbernd expressed interest in repeating this annually, with two goals: one, to do this again, which the Florida Bar Foundation may fund through a grant and the Appellate Practice Section did fund with \$3,000.00 for food and drinks and may fund in the future; and two, to make this Appellate Justice Workshop institutionalized. Shea suggested the Appellate Practice Section continue to have some sponsorship for the Appellate Justice Workshop. John Mills agreed.

VIII. COMMITTEE REPORTS

A. Continuing Legal Education--Betsy Gallagher

Betsy Gallagher reported that the CLE is continuing with great success and John Mills has agreed to continue handling the appellate telephone seminars.

Gallagher was grateful to Conigliaro, former chair of CLE committee, for all the work that he had done the previous year. The CLE committee will host an appellate practice section workshop in the coming year as well as the appellate certification on February 2, 2007 in Miami. Ceci Berman will host a bankruptcy seminar in Miami. The preservation of error seminar will also continue. Calianne Lantz will chair the criminal program for non-capital cases in Miami.

B. Programs—Celene Humphries

Celene Humphries, chair of the programs committee, reported that the disco committee was success and that this year's program committee will be also large and successful.

C. Public Advocacy and Legislation—Tom Warner

Tom Warner reported that the committee's goals are to further the goals of the appellate practice section and the independence of the courts. Warner also believes that judicial evaluations should be on the radar screen, and the public advocacy and legislation committee should be prepared to respond to issues, educate and work with the Florida Bar. The committee is presently having e-mail and telephone meetings in addition to formal meetings. Humphries asked about the representation of appellate lawyers on the DCA JNCs. John Mills suggested that this is a very important issue, to which Warner responded that if the committee members felt that this was an important issue then the committee would be open to ideas and discuss

all issues the Appellate Practice Section felt were important. Fox encouraged the Section members to take advantage of this and expressed appreciation for Warner's background and expertise in this regard.

D. Publications-Caryn Bellus

Steve Brannock presented the report for the Publications Committee, filling in for Caryn Bellus who had a prior court-related conflict. Brannock reported on the Florida Bar Journal planning a special issue dedicated to appellate practice, and the Appellate Practice Section was currently researching that to see how it might become involved in that special issue and assist those currently putting that issue together. The consensus of the Section was that this was a tremendous opportunity. Steve Brannock and Susan Fox were going to start this process, and would report to the Section.

1. Editor's Report for the Record-Jack Reiter

Betsy Gallagher and Jack Reiter are co-editors of the summer issue of the Record which was presently under way. Excellent articles had been submitted, new topics and new authors were invited, and the Record has numerous articles through the spring issue, which he had discussed during the morning committee meetings.

2. The Guide-Valeria Hendricks

Valeria Hendricks confirmed that the Guide was underway, and that Sharon Duignan, Shannon Carlyle, Kirstin Norse and Elizabeth Rodriguez were assisting with updating the Guide. Hendricks has taken on the very large task of updating all of the District Courts of Appeal and the Supreme Court of Florida with their numerous additions and changes in judges and procedures.

3. Pro Se Handbook—Dorothy Easley

Dorothy Easley presented the report for the Pro Se Appellate Handbook and confirmed that many telephone meetings and e-mails since the last meeting have produced great progress over a huge project. Easley noticed the significance of involvement of Siobhan Shea, most notably, and Caryn Bellus as co-editors, and that their editing had been instrumental in getting the Handbook near completion. Easley also thanked Bob Sturgess for his contributions. Easley also announced Tom Hall had been appointed as the Committee's Liaison to the Florida Supreme Court and the Florida Bar as we shepherd this handbook through for approval, and thanked Hall and Harvey Sepler for their continued participation in and support of the Handbook through its completion.

4. Bar Journal-Tracy Gunn

Tracy Gunn reported that in June, she received two new editors, Kirstin Norse and Heather Lammers. Gunn reported that she has many new and exciting

articles, which she had discussed during the morning committee meetings, and encouraged continued Section involvement.

E. Website-Henry Gyden

Henry Gyden reported that he met with Lisa Graham, the APS webmaster, and the Appellate Practice Section website will be updated in the next two weeks. The goal, Gyden explained, is to make the website as current and useful to all members as possible. Lucretia Pitts will serve as subcommittee chair for members, which will be launched by the January meeting. Siobhan Shea suggested that the website also look at an interactive calendar to ensure meetings are placed on the website as soon as possible, as well as a searchable data base to locate appellate lawyers specializing in services for those who want to locate those lawyers.

F. Government Lawyer-Marianne Trussel

Marianne Trussel reported that the Committee now has more members and is getting more government lawyers involved with the passage of time.

G. Hospitality Committee-John Crabtree/Barbara Eagan

John Crabtree reported that the Committee will be hosting a reception in January and in June to meet new members of the Appellate Practice Section. Chair Fox recognized the effect that she is already seeing as a result of the Hospitality Committee.

H. Leadership Committee-Angela Flowers

Angela Flowers reported that there were amendments to the bylaws in the July packet that were presently before the Board of Governors and they are waiting to hear from the Board of Governors about those amendments to the bylaws.

I. Outreach Committee-Shannon Carlyle

John Crabtree reported on behalf of Shannon Carlyle, who could not be present at the meeting, that all was moving forward well with the Outreach Committee. Wendy Loquasto reported that the Tallahassee luncheon held October 24, 2006 at the Doubletree in Tallahassee was a great success. Judge Padovano, the keynote speaker, was very much appreciated. Government lawyers were being recruited, as well as lawyers and judges in the area.

Chair Fox noted that it is important to reach out to more of the appellate community, and the flyer would be widely disseminated. Loquasto commented that efforts are also being made to do similar outreach in central Florida and that Chris Carlyle was currently working on that.

Matt Conigliaro announced the 11th Circuit two-day program seminar, where Justice Clarence Thomas would be the keynote speaker. The 11th Circuit seminar would be held October 26-27 in Atlanta. All members of the Appellate Practice Section were encouraged to attend.

J. Mentor Committee-Jack Aiello

Jack Aiello reported that Matt Conigliaro had volunteered to join the committee and that it was now moving forward. New members were still actively being encouraged.

K. Pro Bono-John Mills

John Mills reported that the Pro Bono Committee desired coordinators for each DCA, that John Mills volunteered to be the coordinator for the 1st DCA, the 3d DCA had its own program and other DCA coordinators were desirable. The idea was to contact Legal Aide Services groups regarding whether there was an appellate need. Wendy Loquasto stated that the Tallahassee Bar had a mandatory pro bono requirement and believed that the Tallahassee Bar area had coverage already for pro bono services. Mills suggested soliciting more volunteers to connect appellate lawyers for those in need. He further suggested the DCAs might appoint coordinators as the 11th Circuit as the Florida Supreme Court presently does.

IX. NEXT MEETING

Chair Fox announced the next meeting will be held January 18, 2007 at the Hyatt Regency in downtown Miami. John Mills moved to adjourn the meeting and Judge Suarez seconded that motion. The meeting was so adjourned.