

AGENDA

APPELLATE PRACTICE SECTION EXECUTIVE COUNCIL MEETING

Thursday, June 23, 2011
Gaylord Palm Resort, Orlando
10:30 a.m. – 12:30 p.m.

- I. Call to Order – Raoul G. Cantero, Chair
- II. Introductions
- III. Approval of Minutes (**Exhibit A**)
- IV. Chair's Report
 - A. Today's Events
 - B. Legislative events 2011
 - C. Section Videoconferencing
- V. Treasurer's Report – Caryn Bellus
 - A. Financial Statements (**Exhibit B**)
- VI. Old Business
 - A. DCA Judges' Conference September 2011 (Matt Conigliaro)
 - B. E-filing (Tom Hall)
 - C. 11th Circuit Mandatory Records on Appeal (Bryan Gowdy)
 - D. High School Moot Court Competition (Jack Aiello)
- VII. New Business
 - A. Appellate Practice Certification Committee (see Carol Vaught, **Exhibit C**)
 - B. Conference of Chief Judges in Miami Beach, Florida (Oct. 23-28, 2011) – Section will give \$2500 (R. Cantero)
 - C. Robert Orseck Moot Court Competition (R. Cantero)
 - D. Discussion with the Florida Supreme Court (R. Cantero)
 - E. APS Dessert Reception (R. Cantero)
 - F. Chair's Reception 7:00 - 9:00 p.m. (R. Cantero)
 - G. Voting of New Officers and Executive Council Members

VIII. Committee Reports

- A. Continuing Legal Education – CeCi Berman, Chair
 - modernizing CLEs
 - telephonic CLEs (Chris Carlyle)
- B. Outreach Committee – Robin Bresky, Chair
- C. Pro Bono – Bryan Gowdy, Chair
- D. Pro Se Handbook - Kimberly Jones, Editor
 - update and translation
- E. Programs – June Hoffman, Chair
- F. Public Advocacy/Legislation – Tom Warner, Chair
- G. Publications – Tracy Gunn, Chair
 - 1) The Record –Alina Alonso, Editor
 - 2) The Guide – Rebecca Creed, Editor
 - 3) Florida Bar Journal Articles – Kristin Norse
- H. Website – Jonathan Streisfeld, Chair

IX. Next Meeting: Midyear Meeting, September 23, 2011 – WDW Hilton, Orlando

X. Chair’s Thank-You to EC and Committee Chairs

XI. Adjournment

EXHIBIT A

MEETING MINUTES
APPELLATE PRACTICE SECTION
EXECUTIVE COUNCIL MEETING
THURSDAY, JANUARY 20, 2011
Via Video Conference at all District Courts of Appeal
1:00pm - 4:00pm

I. CALL TO ORDER - RAOUL CANTERO, CHAIR

Chair Raoul Cantero called the meeting to order and welcomed everyone to the section's first video conference meeting. Chair Cantero thanked all of the DCA judges who are members of the EC who offered to host this video meeting along with the marshals and clerks at the DCAs, IT people, and the Office of State Court Administrator.

II. INTRODUCTIONS

Chair Cantero introduced himself and then invited attendees to introduce themselves at each of the DCAs. The following individuals attended the meeting at each of the DCAs:

At the Third DCA:

Raoul Cantero, Chair
Dorothy Easley, Immediate Past Chair
Caryn Bellus, Secretary and Treasurer
Jack Reiter, Vice-Chair
Judge Richard Suarez

At the Second DCA:

Judge Morris Silberman
John R. Hamilton
Barbara Eagan
Robin Bresky
Chris Carlyle
Jack Aiello
Tracy Gunn
Steve Brannock
Kristin Norse
Ceci Berman
Matt Conigliaro, Chair-Elect
Hala Sandridge

At the Fourth DCA:

Jonathan Streisfeld
Siobhan Shea

June Hoffman

At the First DCA:

Rebecca Creed

Todd Sanders

Scott Makar, Solicitor General State of Florida

Wendy Loquasto

No one attended at the Fifth DCA.

III. APPROVAL OF MINUTES (EXHIBIT A)

Immediate Past Chair Easley moved to approve the September 2010 meeting minutes. Jonathan Streisfeld seconded the motion. The prior meeting minutes were unanimously approved.

IV. CHAIR'S REPORT

Chair Cantero announced that as the Florida Bar did not hold a formal mid-year bar meeting, the Section decided to meet on its own and the DCA judges offered to host this meeting via video conference. Chair Cantero commented that this arrangement shows the increasingly strong relationship between the section and the appellate judges. Again, Chair Cantero thanked the DCA judges.

A. TODAY'S EVENTS

Chair Cantero believes that if this works, then the Section can have more meetings a year, if necessary, and perhaps the Section's committees can also meet by video. If there are minimal financial commitments involved, then video meetings like this will be the most effective way for the Section to meet outside of the formal Bar meetings.

V. TREASURER'S REPORT - CARYN BELLUS

Secretary/Treasurer Caryn Bellus presented the budget report. She reported that the budget is looking great and that the Section is on track. Dues had been budgeted to take in \$56,000 and, thus far, \$53,960 in dues has come in, which means we are at 96% of the budgeted amount. While dues are on track Secretary/Treasurer Bellus comments that the Section needs to continue to work harder at attracting members. The CLE budget was estimated at \$10,000, and has brought in over \$18,000 already, 184% over budget. The Section's investments appear to be in great shape, as the Section was budgeted to have \$7,000, however, it has incurred \$13,680, at 199%. Secretary/Treasurer Bellus reported that the website expenses discussed at the September 2010 meeting were higher than anticipated due to various changes, which incurred a cost of \$11,000. For this year, a website budget of \$6,000 was expected, but thus far, the Section has only spent about

\$2,400. Net operations look great as this was budgeted to be just over \$40,000, and currently is over \$61,000.

A. FINANCIAL STATEMENTS (EXHIBIT B)

EC Member Jack Aiello questioned why the Section's differential is \$16,000+. Secretary/Treasurer Bellus believes that it is money the Florida Bar gets based on the number of section members. Chair Cantero commented he believes the Florida Bar may wait until end of fiscal year to fund, in June. Chair Elect Conigliaro believes this amount is based on a bar number and they project what will be given back by the end of the year. EC Member Bon Shea suggested that the Section ask Yvonne Sherron and Valerie Yarbrough to look into this. Secretary/Treasurer Bellus agreed to inquire of Yvonne Sherron.

Chair Cantero explains that Valerie Yarbrough is on leave of absence due to illness and that Yvonne Sherron has stepped in to help the Section. Yvonne Sherron assisted in putting together the meeting's agenda. Hopefully, Valerie Yarbrough will be back soon. EC Member Bon Shea inquired how long Valerie Yarbrough will be out. Chair Cantero stated that it is unclear how long. Immediate Past Chair Easley has a call in to Yvonne Sherron to find out how long Valerie Yarbrough will be out. The Section just learned Valerie Yarbrough will be out for an extended amount of time. EC Member Bon Shea suggested the Section sending Valerie Yarbrough a card.

Immediate Past Chair Easley inquired about where the revenue for the CLE money is coming from, the amount listed being \$18,473 versus the \$10,000 amount budgeted. She wants to know whether the CLE money is more from after sales of the recorded presentations rather than the event itself. Secretary/Treasurer Bellus suggested CLE Chair Ceci Berman would be more informed on that, but CLE Chair Berman is not aware of the numbers. Immediate Past Chair Easley says CLE Chair Berman had predicted that the Section would make more income on the after sales than the onsite sales. Immediate Past Chair Easley is curious as to whether we are starting to see that trend. CLE Chair Berman offered to investigate.

A discussion regarding the ability to have CLEs by video conference then takes place. Chair Cantero believes, in future, the Section may have live CLEs with video conferencing so that more people can attend and not incur the cost of travel. CLE Chair Berman agreed it is the waive of the future. Chair Cantero and CLE Chair Berman discussed the potential for AV costs and renting of rooms to show the video in other venues. CLE Chair Berman reported she is still working on these costs, but does see this as a way for less money to be spent. However, even if it will not cost less, it is still going to be the way to increase attendance by offering attendance via the web or video conference. Chair Cantero inquired about any additional costs in renting rooms and venues. He believes that AV costs are very steep. Immediate Past Chair Easley explains that she has spoken with Valerie Yarbrough regarding that AV costs for webinars. She says right now the technology just isn't there, and surprisingly it is extremely expensive. According to information she is getting from the Bar, the AV costs for the webinars is extremely expensive. CLE Chair Berman agrees that it is expensive. She explains that there is an additional cost, plus it is expensive and not feasible to record

in different locations. CLE Chair Berman suggests having everyone speaking in the same location. Chair Cantero proposes to approach the Florida Bar leadership because the Bar itself has offices in several venues with conference rooms in those offices. He suggests that when the Bar gets its video conferencing facilities, those may be good secondary venues for seminars. CLE Chair Berman agrees that this is a good idea. Chair Elect Conigliaro commented that there is a difference between having a conference where people are just meeting and having something that is professionally recorded and then later edited and made available for sale and resale. Chair Elect Conigliaro believes that recording and editing for later sale is where a lot of the costs come from. Chair Cantero believes that those costs are not going to decrease, therefore, the Section will have to continue to have the live presentations.

VI. OLD BUSINESS

Chair Cantero next asked for old business. As discussed earlier, CLEs by webinars and the modernization of CLE has arisen in last couple of years, and continues to be an issue. Thus, Chair Cantero wants to make sure the Section is making progress one way or another on it. Immediate Past Chair Easley commented that modernizing the CLEs is extremely important and that the Section will want to continue to take aggressive steps in that direction. She comments that the ABA has done a fabulous job of doing it with their emails providing sound advise and constant education through the ABA. Immediate Past Chair Easley believes there is no reason the Section can't do the same. Chair Cantero believes that the Section is promoting excellence, by way of CLEs, and professionalism in the practice of appellate law. Chair Cantero suggests that CLEs focus on the writing aspect of briefs. He would like to offer an all-day seminar on how to write briefs.

VII. NEW BUSINESS

A. 2011 APPELLATE JUDGES CONFERENCE UPDATE - Chair Elect CONIGLIARO & CECI BERMAN

Chair Elect Conigliaro recaps that for the first time last year, the Section had a role in the DCA judges' conference. The Section hosted a reception on the first evening, a Sunday, with about a dozen section members in attendance. The event went really well and the judges enjoyed it. Thereafter, Chair Cantero was approached by the judges who informed him that if the section wants to have greater participation, it would be welcomed by the judges. Chair Cantero appointed Chair Elect Conigliaro and CLE Chair Berman as liaisons who have headed up a committee which has met about once a month for the past six months concerning this year's conference. Chair Elect Conigliaro reports that the current plan is to hold it the conference September 11-13 at the Ritz Carlton on Amelia Island. Judges have welcomed the Section on the conference calls and our suggestions on what should be done at the conference have been accepted. Chair Elect Conigliaro is very grateful.

Recently, however, there has been some discussion amongst the judges as to whether the conference should be moved or held at all this year. It is highly likely that the conference will be

moved to another location, and canceling the conference is a realistic option. However, no decision has yet been made. Judges are being polled and discussions are ongoing. If it does happen, the Section will host a reception on Sunday night and we have been asked to take financial responsibility for bringing in a speaker as well. The topic for the speaker is comparative law, as the judges are interested in hearing about comparative appellate law, someone to talk about the systems of appellate decision making on a global level. Chair Elect Conigliaro and CLE Chair Berman have come up with a list of people who are potentially good speakers for this topic. They have not made arrangements with anyone as they are waiting to hear from the conference officials as to whether the conference will go forward. Chair Elect Conigliaro proposes that he and CLE Chair Berman would like to move for the EC to authorize a budget for a speaker and plans for holding the reception on Sunday evening and, in addition, to authorize them to commit the Section to a number of rooms in the hotel where this may be held. Previously discussed with the hotel, was a block of 30 rooms. The Ritz Carlton is offering a great deal to the judges, which they will extend to the Section, but, it is unknown if the location will be changed. Chair Elect Conigliaro states there are three parts to his proposal: 1. Budget for speaker, 2. Budget for the reception on Sunday evening, and 3. Authorization to execute a contract with the Ritz Carlton for 30 rooms. Chair Elect Conigliaro proposed a budget of \$6,000, and a 30-room hotel block. He invited CLE Chair Berman to make additional comments, she agreed with his proposal.

Chair Elect Conigliaro was asked how the \$6,000 differentiates between the reception and the speaker; and what the reception costs were for last year. Chair Elect Conigliaro suggests the \$6,000 to be split, \$3,000 each, for the speaker and reception. June Hoffman recollects that the actual expense for last year's reception was in the \$5,000-\$6,000 range for the reception alone, which included the hors d'oeuvres and open bar reception. Immediate Past Chair Easley adds that it was originally budgeted for \$10,000, but lowered given the actual expenses. She is not sure that the \$6,000 proposal will cover the expenses. EC Member Shea suggests that it would be more prudent to budget \$10,000 as the Section is contemplating also paying for a speaker. She suggests it is better to come in under budget. In addition, EC Member Shea is also concerned about promising 30 rooms as people may only attend the reception and speaker on Sunday evening and then leave.

Chair Elect Conigliaro and CLE Chair Berman are open to suggestions for budgets. Discussions continued about an amount of contribution. Chair Elect Conigliaro recalls that last year's budget of \$10,000 consisted of a contribution from the Section for the conference and that it was not based on the particular expense. Chair Elect Conigliaro further explained that the Section has been invited to stay for a joint educational effort on our part, and offering CLE's for lawyers. The Section will be encouraging its members, not just to attend the reception of Sunday evening, but rather, to stay for the duration of the conference until Tuesday morning. Chair Elect Conigliaro adds that the room block will first be made available to the EC, then to section members. Immediate Past Chair Easley clarifies that the original idea was for a joint CLE and the \$10,000 was to provide educational support because judges are continuing to face severe budget cuts. The idea was educational support because the Section was going to do a joint CLE, where the attorneys would also be attending, the joint educational support was going to be for speakers, and then also allocating some money for a reception. It was pulled back only to the reception as a test run first to see the

turnout. Now, she believes the Section needs to go back to the \$10,000 number for providing a speaker and a reception. Immediate Past Chair Easley agrees with EC Member Shea that the Section needs to allocate the higher amount and that it is better to come in under budget. Secretary/Treasurer Bellus agrees that we should go with the \$10,000 budget knowing that last year's reception cost \$6,000.

Vice Chair Jack Reiter inquires as to whether there will be a limitation on the number of members from the Section that will be allowed to attend the conference, like last year. Chair Cantero does not want to limit the member's attendance to just 30, however, he does not want the lawyer presence to be so large that it overwhelms the DCA judges. Especially with this being the Section's first time undertaking the joint conference. Chair Cantero suggests limiting it to 45-50 attendees from the Section. It also depends on getting the hotel to agree that 30 will be the minimum number of hotel rooms, but that we will still have a higher number of rooms available at the same rate, if they register by a specific date. Vice Chair Reiter followed-up his question regarding whether the conference will impose a limitation on the number of section members who can attend the conference. He believes that last year's attendance was limited only to Section officers. Immediate Past Chair Easley clarifies that it was for officers and EC. Chair Cantero says that it was a self-imposed limitation by the Section. He does not recall the judges giving the Section a limit. Immediate Past Chair Easley agrees with the maximum limit of 45-50 and also that attendance be on a first come first serve basis for officers, executive members, and Section members. Chair Elect Conigliaro confirms that there is no limitation of lawyers imposed by the conference. However, the topic has come up and there is a desire to limit the number of practitioners, but there was not a specific number set. Chair Elect Conigliaro believes that the numbers suggested by Chair Cantero and Immediate Past Chair Easley are less than what he believes the judges were thinking.

Chair Cantero commented that the conference will be in great demand for appellate lawyers and that he believes there will be more people than the cap who want to attend, and thus, the Section should be able to recoup some of the costs incurred in promoting and implementing the conference, in the amount that we charge the attendees. While the Section may authorize \$10,000, he does not expect that the Section will be losing a net \$10,000 because the Section will be recouping a lot of that in the fee for the seminar. Chair Elect Conigliaro confirms that the long term expectation is that there will be a charge for attendees to participate in the CLE portions and to attend the conference. It will allow the Section to recoup its expenses. EC Member Shea reminds everyone that she has a motion on the table to allocate \$10,000 towards the conference. She suggests that we should do this up front in case there are some hesitations from the judges that they see this budget on the table and it may take some of the pressure off them in this budgetary climate and show that the Section is willing to commit to the conference. Vice Chair Reiter and Immediate Past Chair Easley enthusiastically seconded the motion. Chair Cantero asks to clarify whether the motion authorizes to commit to 30 attendees for the hotel. EC Member Shea confirmed, absolutely. Chair Cantero confirmed the Section will authorize a budget of \$10,000 for speakers, program, food, drinks, flowers, etc., as well as a commitment from the Section for 30 lawyer member attendees at the conference. Chair Elect Conigliaro withdrew his motion. The motion passed unanimously.

Chair Cantero further inquires regarding the possibility of moving or cancelling the conference and whether it might be dependent on finding another venue. Chair Elect Conigliaro understands that there are a variety of other venues looking to hold the conference, and therefore, does not believe that there is a lack of alternative locations, but rather the question is whether it should be held and/or where. Chair Elect Conigliaro and CLE Chair Berman are not involved in those discussions. Judges are being polled and are giving input to the committee. Chair Cantero further inquires regarding the Section's involvement in the program. He asked if the speaker and reception were the Section's only involvement in the conference or if there will also be both joint and independent seminars. Chair Elect Conigliaro explains that all of these options are being discussed. He clarifies that the speaker is the Section's financial obligation, a way of carving out a piece for the Section to take without having to contribute to the overall expenditures of the whole event. The educational side, he is not sure when the sessions will be held, but he believes Monday will be a joint session with the judges and the lawyers and Tuesday will be a half day joint session. There are speakers penciled in for each of those sessions. Chair Cantero expressed his hope that the Section will use the opportunity of the joint conference with the judges to add value to the fact that the Section has lawyers and judges working together. Chair Elect Conigliaro explains that there is an idea for a mock oral argument wherein the judges and lawyers will switch roles, the judges will be the lawyers and the lawyers will be the judges. If conference goes forward, he believes it will be great idea, very interactive. Chair Cantero explains that his vision for the mock oral argument is for the judges to inform the audience about what they learned in preparing for oral argument that they did not know that the lawyers go through. Also, for the lawyers to talk about what they learned that they did not know that judges went through in preparation for oral arguments. Chair Cantero asked Chair Elect Conigliaro to keep everyone updated. Immediate Past Chair Easley thanked Chair Elect Conigliaro and CLE Chair Berman on behalf of the Section for all of the work they are doing to have this come together.

B. 2011 ANNUAL MEETING

Chair Cantero stated that the annual meeting will be held at the Gaylord Palms Resort in Orlando. It is a new venue.

1) SECTION MEMBERS TO JUDGE MOOT COURT

Chair Cantero stated he is interested in having the Section be more involved in the earlier rounds of the moot court competition, not just participate in the finals. He hopes that rather than having the Young Lawyers Division call the Section at the last minute, he recommends that the Section should offer a certain number of judges for the preliminary rounds. He questioned who the Section can designate as a liaison to the Young Lawyers Division to make sure that it happens. Immediate Past Chair Easley adds that, as appellate practitioners, the Section has an obligation to take a leadership role and participate. She agrees with Chair Cantero's suggestion and that it will open the opportunity for the Section to get more involved earlier on. The Section would also get the benefit of mentoring and having a visible role in the appellate moot court competition. Immediate Past Chair Easley volunteered to participate in any way. EC Member Shea suggests that since there

are a lot of members interested in becoming judges and judges involved in our Section, if a lawyer or two can be combined with judges it would be an incentive for lawyers to be involved for the benefit of working with an appellate or circuit court judge. EC Member Chris Carlyle questioned whether the discussion is about being involved only at the Bar meeting or prior to the meeting. Chair Cantero clarifies that it should be both, however, no travel will be needed as volunteers are chosen for local law schools. EC Member Shea suggests that judges and lawyers need to be provided with a definite number of hours that will be involved in being a volunteer. Chair Cantero is looking as a committee chair/liaison, and Immediate Past Chair Easley offers to take on the job. Chair Cantero Raoul asks her to coordinate with the Young Lawyers Division. Once she makes contact with them, the Section can send out an email blast asking for volunteers.

2) DISCUSSION WITH THE COURT

Chair Cantero reminded everyone that at last year's Discussion with the Court, the format was different and was done to make sure that people did not leave sooner. Thus, the winners of the moot court competition were not announced until the end of the entire program. This was immediately effective and there were questions from people other than EC APS members. It worked well, but he is open to suggestions. Matt Conigliaro, as chair-elect, will be the chair of that discussion. Chair Elect Conigliaro thinks that the format change was good and that it was appreciated by the court. He is in favor of doing it that way again. Vice Chair Reiter agrees that it was successful as the attendance was much higher and questions were well-thought out. He is also in favor of the same format. Chair Cantero reminds everyone that questions were not only written on the cards, but rather, there were 4-5 predetermined questions that the MC asked the court and that expanded the discussion beyond the narrow issue of appellate practice to judicial administration and bar matters. EC Member Shea adds that she had requested that the format be revamped and that Chair Cantero be moderator because of his unique role as a former supreme court justice and that the Section may want to do so again in the future because of Chair Cantero's unique experience. Chair Elect Conigliaro seconds if this is a motion. Chair Cantero suggests that the court would like to see fresh faces. Vice Chair Reiter agrees with Chair Cantero and thought Chair Cantero did a great job, however, it would be great to show other leadership members. Immediate Past Chair Easley adds that in terms of the format she worked on the program and with the Florida Supreme Court for the questions to ask. She asks Chair Elect Conigliaro and Vice Chair Reiter, as chair-elect and vice-chair, to lead that discussion, and the chair, now Chair Cantero, can work out the format with the Florida Supreme Court in advance and the Chair Elect and Vice Chair could, again, be the ones asking the questions. Immediate Past Chair Easley adds that Chair Cantero does a great job and it reflects well on the Section, but that the Section needs to pass this responsibility along to others. She suggests that Chair Cantero work out the format with the Florida Supreme Court based on suggestions from the Section, and then that Matt Conigliaro, as Chair Elect, MC the program to interact with the court and that Vice Chair Reiter then ask the questions on the cards.

EC Member Shea suggested that the Section get feedback from the audience, similar to the CLEs, such as questions they would like asked. EC Member Barbara Eagan recalls that, when she wrote the article for The Record on the discussion, each year the Florida Supreme Court comments

that the people who need to hear them are not there and that the Section needs to find a way to get a broader audience. Chair Cantero adds that he sees that there is advertising for the program, but that the problem may be that there are a lot of programs going on at the same time. EC Member Eagan asks whether the Section can advertise just this program locally. Chair Cantero agrees that people may not realize that they do not have to pay to only attend the Discussion with the Court program, and that the Section could notify certain Orlando law offices and lawyers, and also suggests contacting the Orange County Bar Association. EC Member Eagan volunteers to help with this. Immediate Past Chair Easley adds that the Section advertised last year with the Young Lawyers, Business Law Section, Trial Lawyers Section and Criminal Law Section. The Section is not allowed to send out the email blast to all the sections, only their leaders. Our Section reached out to the Section leaders to send the blasts to their members. Website Chair Jonathan Streisfeld inquires if we can get an hour of ethics credit for everyone who attends. Immediate Past Chair Easley suggests that the Section could offer a free hour of ethics credit. Website Chair Jonathan Streisfeld says if the Section publicizes it right, there may be more attendees by offering an ethics credit.

EC Member Wendy Loquasto expressed concern about attending in the future. Chair Cantero commented that the purpose of the discussion, it is not for our Section, it is a service that the Section puts on for the entire Bar. It is not an educational experience for Appellate Practice Section members. In fact, the Supreme Court has expressed its frustration with discussing the same issues with the Section each year regarding issues in briefs and importance of oral argument and that they want a broader audience. Immediate Past Chair Easley asked EC Member Loquasto how it can be a better presentation. EC Member Loquasto states that if that is the purpose of the discussion, then it was met. EC Member Barbara Eagan agreed with EC Member Loquasto. She also found that if the Section was trying to help them facilitate a discussion with the entire Bar, then the Section was not meeting that purpose as only students and appellate practitioners attended. She thinks it needs to be completely revamped. Chair Cantero suggested that EC Member Eagan and EC Member Loquasto should think of questions that were not asked, and make suggestions. He asked that they email their questions to Chair Elect Conigliaro, along with anyone else that may be beneficial. EC Member Shea commented that the format was revised slightly but that the court has asked the Section to come up with a more productive opportunity to refine the format. Immediate Past Chair Easley discussed that breakout sessions were discussed with the justices, but it is not feasible with the moot court competition and other events occurring at the same time. Immediate Past Chair Easley suggested that EC Member Loquasto and EC Member Eagan assist Chair Cantero and Chair Elect Conigliaro in working on the format. EC Member Shea suggested that if the Section was going to offer CLE, then it should require more substantial questions.

Dessert reception (not on the agenda, however Chair Cantero requested it be discussed).

Chair Cantero wanted to make sure it is done as well as possible. He advises that there have been discussions about moving the time of the reception, but he believes that it is at a good time and we get good attendance. Immediate Past Chair Easley agrees and thinks that Programs Chair June Hoffman did a fabulous job last year. Secretary/Treasurer Bellus suggested that the dessert reception

be held in the Fort in the middle of the Gaylord Palms, as her firm has done in their claims conferences. Chair Cantero and Immediate Past Chair Easley think it will be a great idea.

C. 11TH CIRCUIT RECORD EXCERPTS, SECTION POSITION - BRYAN GOWDY (EXHIBIT C)

Chair Cantero announced that EC Member Bryan Gowdy could not attend because his third child was just born. Chair Elect Conigliaro will discuss this item in his absence.

Chair Elect Conigliaro explains that years ago a pilot program was started for expanded record excerpts, which is being implemented in all the federal courts, except the Southern and Middle Districts. The attorney must take every piece of record that he cites in his brief and include it as part of an appendix and supply 5-6 copies of it to the court, along with a table of contents. This has proven to be very troubling to practitioners due to time consumption and heavy costs for practitioners and clients. EC Member Gowdy has been in talks with Judge Black, of the Eleventh Circuit, who shared with him a letter from the U.S. Attorney for the Southern District of Alabama to the Florida Court discussing the extended record excerpt program. Judge Black explained that feedback from the bar is needed and helpful to the court and that they would like to hear from more organizations. Our Section was suggested as a source for comments. EC Member Gowdy suggested a committee look at this issue, survey EC members and/or send out a blast email to section members statewide, and gain commentary and feedback to see if the Section can put together a position statement to offer some sort of constructive feedback on the program. He is looking for someone to research this and ultimately draft a letter to the court on positions of Florida practitioners on this topic. Vice Chair Reiter is in favor of this on behalf of the Section. He believes that the idea of placing every document referenced in a brief into an appendix is a burden. Immediate Past Chair Easley also supports this because it is a financial and time-commitment burden on smaller appellants and sole practitioners. The Section should focus on the burden of the parties. Chair Cantero suggested that the Section send out an email blast to section members on the pilot program, forwarding them the letter, seeking comments. In the end, the Section could send a letter that instructing that we have polled our members, explaining who we are, and that our members have a lot of concerns, not only the time, but the financial burden for smaller law firms and for clients of this program. He thinks the letter should be sent by the end of March, if not before, because the Eleventh Circuit Judicial Conference is taking place in early April. The letter needs to get to them before the meeting because it is not clear what items are on their agenda, including discussions of probably expanding their pilot program. He believes the Section's position is expressed before that conference. The Guide Editor Rebecca Creed adds that she believes the conference is later in April, but agrees that this needs to be taken up sooner rather than later before it is expanded further. This will also be included at the "Hot Topics" seminar. Section members discuss that the program is being used everywhere except the Southern and Middle District of Florida. Chair Cantero asks that Website Chair Jonathan Streisfeld send out an email request for comments. Website Chair Streisfeld suggests that someone with knowledge of this that can write up a paragraph, and then he will send it out. Chair Elect Conigliaro states that EC Member Gowdy has volunteered to start writing this letter. Website Chair Streisfeld will contact EC Member Gowdy and then send something out.

D. 2010 ECAPI UPDATE - MATT CONIGLIARO

Chair Elect Conigliaro reports that the Eleventh Circuit Appellate Practice Institute was held this past fall. In the previous meeting held in September, Chair Elect Conigliaro had asked for funds to mail brochures, which was agreed to and brochures were mailed. Chair Elect Conigliaro says the mailing was a success and that there was a tremendous attendance from Florida at the conference. From the organizer's prospective, it was less of a success, as not many people from Georgia attended, although it has been held in Georgia for the past three years. Alabama and Florida had good attendance. It is looking like there is a push to move it to Florida in 2012, in Miami, if the court will agree. This conference has been off the Section's books the entire time because it has been run out of Georgia's ICLE, they have administered the conference. The first year, they made money, however they lost money from poor attendance this past year. There was a last minute programing change, as Dean Erwin Chemerensky cancelled at the last minute. Paul Clemente spoke, who is head of the appellate section at King and Spaulding. He gave a fantastic presentation, but his plane fare was unexpected. ICLE has asked if the Appellate Practice Sections of the three respective states would mind helping with his plane fare, \$173.84, from each section. Chair Elect Conigliaro moves to approve the unexpected expense. Immediate Past Chair Easley seconds the motion. Chair Cantero agrees. The motion passes unanimously.

VIII. COMMITTEE REPORTS

A. CONTINUING LEGAL EDUCATION - CECI BERMAN, CHAIR

CLE Chair Berman adds to what was previously discussed: that it will be a busy spring, with list of events including the CLE on March 18th at the Third DCA for attorneys and staff. This seminar was originally schedule for last December, but was rescheduled due to low registration. CLE Chair Berman asked attendance that Section members request that their young lawyers, staff and paralegals attend this seminar. The Guide Editor Rebecca Creed is chairing "Hot Topics. On February 4th there is a certification review in Miami. However, CLE Chair Berman reports that attendance is way down for this program so far, only 20 people. Website Chair Streisfeld suggests promoting through the Miami-Dade, Broward, and Palm Beach bars. The Section is working with the Criminal Law Section to put on an all day CLE on April 29th. They are waiting to see if Chair Cantero will commit to the ethics luncheon. Chair Cantero thinks he has recently said yes to speaking. CLE Chair Berman reminds everyone that a summer workshop with EC Member Steve Brannock and EC Member Celine Humphries is also being planned.

1) WEBINARS

This topic was previously discussed. Chair Cantero thanked CLE Chair Berman for doing a great job with the Section's CLEs. He says that it is one of the Section's signature programs is putting on CLE.

High School Moot Court (not on agenda, but Jack Aiello wanted it discussed).

Jack Aiello commented on the high school moot court program. He did not ask for this to be included in the agenda as he was waiting to get a confirmation from Annette Boyd-Pitt and whether she wanted a financial commitment from our Section. However, he just got an email from her regarding our Section's participation. She has responded that they would like graders again this year. Exams take place in March and if section members would like to grade, please contact him. He will put everyone in contact with Annette Boyd-Pitt, who will forward the materials. They also want some of the Section members to serve as judges in April in local areas. Aiello explained that the Section needs to discuss financing as the program still needs financial assistance. Outreach Committee Chair Robin Bresky added that she was on the committee for several years and it is a fantastic program. Aiello recommended that the Section make another three year commitment of, at least, \$1,000 per year to support the high school moot competition. EC Member Shea added that it was a standing budget item. She thinks it is a great outreach method and that the Section should commit. EC Member Shea continues that this item was in the budget for several years, however, she is not sure why it is not listed now or what happened along the way to have it removed. Chair Cantero is not sure if it is included in a specific item on the budget such as Item 84205 - Section Service Programs. Immediate Past Chair Easley added that the Section has always found the money to support it, and, if needed, the Section could do a budget amendment to include it. Past discussions have indicated giving more than \$1,000. However, giving the minimum of \$1,000 a year for a three year commitment can be done in the Section's budget. Unfortunately, the Section does not have Valerie Yarbrough to verify where this is placed in the budget, but Immediate Past Chair Easley recalls a sub-category and that the Section has discussed doing more. Aiello moves that the Section contribute what it has in the past, \$3,000 over the next three years, \$1,000 a year for three years. EC Member Shea seconds the motion. The motion unanimously passes.

Phone CLE's (not on agenda, but Chair Cantero wanted it discussed).

Chair Cantero asked EC Member Chris Carlyle to tell the Section about the phone CLEs. EC Member Carlyle reported that there was a little problem with the service we used with bad lines, but that has been fixed. The latest phone seminar took place last week. The Section will have four more in the upcoming Spring. EC Member Gowdy is working with The Guide Editor Rebecca Creed on an Eleventh Circuit phone CLE. The Section is working on an ethics one as well.

B. OUTREACH COMMITTEE - ROBIN BRESKY, CHAIR

Outreach Committee Chair Robin Bresky announced that at the last meeting in September there was an idea about doing a program regarding an introduction to appellate advocacy. She would like to get people involved from all of the DC's. Outreach Committee Chair Bresky volunteers to do this. It would entail having students attend an oral argument, advising the lawyers presenting of this additional audience, and then coordinating a question and answer session with the lawyers and possibly the judges following the argument. Chair Cantero thinks it will be great if the Section can get this going. He suggested getting this setup in one of the DCAs in the near future. If it works, then maybe it can occur in each DCA as an annual event. Outreach Committee Chair Bresky will start off at the Fourth DCA.

EC Member Shea explained that when EC Member Barbara Eagen was Outreach Chair, they used to have a way to introduce new Section members to the committees when they first attended a meeting. Outreach Committee Chair Bresky liked this idea. EC Member Shea explained that Outreach Committee Chair Bresky would need some committee members to meet and greet the new members, as she did in the past, and EC Member Eagen did it as Outreach Committee Chair as well. EC Member Eagen added that they had notepads, coffee, and little goodies to give out to new members. Immediate Past Chair Easley added that at one point the Section had twenty such liaisons and that she would speak with Outreach Committee Chair Bresky after the meeting to give her the historical knowledge of what the Outreach Committee was doing last year. They were reaching out to all of the sections of the Florida Bar to increase the presence of the Section to enhance the opportunity for more joint CLEs, to get the word out on our CLEs and we also had liaisons to the Florida Law schools. Those were almost all in place around the end of the year, in time for graduation. Immediate Past Chair Easley will provide Outreach Committee Chair Bresky with the names in order to reignite those relationships to enhance the presence of the Section.

EC Member Wendy Loquasto reported on the Tallahassee luncheon CLEs. Judge Padovano was going to speak on oral argument. Scott Makar and Judge Simone Marstiller are going to speak about writing shorter briefs. EC Member Loquasto will moderate. There is a third luncheon seminar planned on Administrative appeals.

C. PRO BONO - BRYAN GOWDY, CHAIR

EC Member Bryan Gowdy was not in attendance.

D. PRO SE HANDBOOK - KIMBERLY JONES, CHAIR

EC Member Kimberly Jones was not in attendance.

E. PROGRAMS - JUNE HOFFMAN, CHAIR

Programs Chair June Hoffman already addressed the dessert reception, which is scheduled for Thursday, June 23rd, at the Gaylord Palms Resort in Orlando. Programs Chair Hoffman thanked Secretary/Treasurer Bellus for her recommendation of hosting the dessert reception in the Fort located in the Gaylord Palms. She will be following-up on that suggestion. In addition, she welcomes any other comments or suggestions for the reception. She will later advise as to the theme, food, drinks, and noted Chair Cantero's request for ice cream. She will begin coordinating the dessert reception as she just finished hosting the DCA conference. Chair Cantero asked that she stay involved, as she did last year, with the tentative DCA conference program and the reception. Programs Chair Hoffman replied that she would stay involved with that conference and will coordinate with Chair Elect Conigliaro and CLE Chair Berman. Chair Cantero thanked her for doing a great job with last year's dessert reception as it had a great turnout.

F. PUBLIC ADVOCACY / LEGISLATION - TOM WARNER, CHAIR

Public Advocacy Chair Tom Warner was not in attendance. Chair Cantero reported that he knows that there is a lot of potential legislation being discussed this year, more than usual.

Chair Elect Conigliaro welcomed Scott Makar, who just joined at the First DCA, Florida's Solicitor General. Chair Cantero asked Scott Makar if he has any thoughts regarding potential legislation that the legislature is currently considering that may affect the courts and the Section. Scott Makar adds that he has seen a number of proposals and that there is some legislation already proposed. He believes that there is going to be legislation that deals with cuts and reconfigurations of various aspects of the judiciary branches. Chair Cantero reported that he has heard of a proposal to have a court of criminal appeals similar to Texas, composed of three judges, two of which will consist of the most junior judges in the Florida Supreme Court. Those kinds of proposals are what we may encounter in this year's session.

G. PUBLICATIONS - TRACY GUNN, CHAIR

Publications Chair Tracy Gunn reported that all three publications, The Record, The Guide, and The Bar Journal, are on track, but that they all need writers. Since no committee meetings were held prior, she had an "email" meeting with the publications committee and took this as an opportunity to reach out to new people who do not usually attend the meetings in person. People have expressed interest in publications, who are not attending the meetings. She has already gotten several volunteers in response to her one email. She is going to continue to do that on behalf of the publications committee to all of the committee members, not just those that attend the meetings in person. Topics are also needed for articles. Chair Cantero suggests writing an article on the proposed expansion of record excerpts in the Federal Courts. Tracy agrees that it would be a good topic for The Bar Journal.

1) THE RECORD -ALINA ALONSO, EDITOR

The Record Editor Alina Alonso was not in attendance. However, she asked Publications Chair Tracy Gunn to report on The Record. The last edition was released on January 14th and included great articles on privacy rule concerns in state courts, along with an article by Pro Se Handbook Editor Kimberly Jones on the top 10 pet-peeves of law clerks. The next Record deadline is March 25th and July 1st. Any volunteers will be greatly appreciated.

2) THE GUIDE - REBECCA CREED, EDITOR

The Guide Editor Rebecca Creed reported that the Inside the Court article series has completed articles on the Second, Third and Fifth DCAs. The article for the First DCA is almost done and she is waiting to hear back from the court. Articles on the supreme court and Eleventh Circuit are in the works. They need writers for the Fourth DCA and the U.S. Supreme Court. In addition, The Guide Editor Creed reports that the website is working well. Publications Chair Gunn suggests Scott Makar write the U.S. Supreme Court article since he has the most experience.

3) FLORIDA BAR JOURNAL ARTICLES - KRISTEN NORSE

EC Member Kristen Norse reported that The Bar Journal submissions are in good shape. Chair Cantero's article should be in February's edition. She reports that they are currently giving out assignments with deadlines for March 1st, for anyone who wants to write. Publications Chair Gunn's email generated 3-4 volunteers interested in writing articles.

H. WEBSITE - JONATHAN STREISFELD, CHAIR

Website Chair Jonathan Streisfeld reported that people are happy with the content of the website and that he is always looking for new information for content. Specifically, latest news on issues effecting appellate courts throughout the state, such as the position statement on the appellate court record excerpts. He welcomes feedback/comments on the website. EC Member Shea suggested that it would be helpful to have links to attorney's firm websites from the officers and past chairs lists. Website Chair Streisfeld clarified that she was asking that a link be added below the person's name and email address, to offer a link to that person's firm's website.

Website Chair Streisfeld asked if anyone had any comments about the email blasts or their frequency. Chair Cantero stated that he does not believe that they are too frequent. Immediate Past Chair Easley commented that the Section appreciates how Website Chair Streisfeld "jumps" on the web blasts very quickly.

Website Chair Streisfeld added that at the last meeting in September, he was asked to look at recent billings. Last year's expenses were linked in large part to the fact that we reformatted the website. This year it has been blast emails and smaller updates on the website. He spoke with our web provider to make sure she is billing timely and in a manner consistent to how we bill our clients.

IX. NEXT MEETING (ANNUAL MEETING, JUNE 23, 2011 - GAYLORD PALMS, ORLANDO)

Chair Cantero reminded everyone that the next meeting is on June 23, 2011 at the Gaylord Palms Resort in Orlando. He, again, expressed that he felt that the video conference worked extremely well, and would be willing to hold video meetings again.

X. ADJOURNMENT

Chair Cantero adjourned the meeting and thanked everyone again for participating. He is truly grateful to the DCAs, judges, chief judges, marshals, clerks, and IT people who put this meeting together. He looks forward to seeing everyone in June.

EXHIBIT B

	May 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Appellate/Advocacy L =====				
31431 Section Dues	40	54,360	56,000	97.07
31432 Affiliate Dues	0	195	300	65.00
31433 Admin Fee to TFB	-35	-23,725	-24,500	96.84

Total Dues Income-Net	5	30,830	31,800	96.95

32191 CLE Courses	-1,840	3,691	10,000	36.91
32293 Section Differential	795	4,990	16,875	29.57
32301 Course Materials	0	0	40	0.00
35202 Sponsor Reception	0	1,000	12,500	8.00
35700 Member Service Progr	280	11,670	12,400	94.11
36991 Allowances	0	0	144	0.00
38499 Investment Allocatio	-1,161	20,716	6,853	302.29

Other Income	-1,926	42,067	58,812	71.53

Total Revenues	-1,921	72,897	90,612	80.45

36998 Credit Card Fees	6	211	176	119.89
51101 Employee Travel	0	295	1,032	28.59
71001 Telephone/Direct	98	641	745	86.04
71005 Internet Charges	78	153	0	*
84001 Postage	2	459	500	91.80
84002 Printing	0	3	60	5.00
84006 Newsletter	0	0	500	0.00
84007 Membership	0	0	100	0.00
84010 Photocopying	0	19	200	9.50
84051 Officers Travel Expe	0	0	500	0.00
84101 Committee Expenses	0	418	1,200	34.83
84201 Board Or Council Mee	0	222	0	*
84202 Annual Meeting	0	0	15,000	0.00
84204 Midyear Meeting	0	973	3,000	32.43
84205 Section Service Prog	3,609	6,917	7,000	98.81
84301 Awards	0	104	1,000	10.40
84422 Website	0	3,766	6,000	62.77
84503 Legislative Travel	0	0	200	0.00
84701 Council Of Sections	300	300	300	100.00
84998 Operating Reserve	0	0	4,556	0.00
84999 Miscellaneous	0	72	400	18.00
85081 Conf-Chief Justices	0	3,500	0	*

Total Operating Expenses	4,093	18,053	42,469	42.51

86431 Meetings Administrat	0	0	50	0.00
86543 Graphics & Art	0	1,193	7,595	15.71

Total TFB Support Services	0	1,193	7,645	15.60

	May 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Appellate/Advocacy L =====				
Total Expenses	4,093	19,246	50,114	38.40
Net Operations	-6,014	53,651	40,498	132.48
21001 Fund Balance	0	133,676	137,060	97.53
Total Current Fund Balance	-6,014	187,327	177,558	105.50

EXHIBIT C

12 **RULE 6-13.2 DEFINITIONS**

13 **(a) Appellate Practice.** "Appellate practice" is the practice of law dealing with the
14 recognition and preservation of error committed by lower tribunals, and the presentation of
15 argument concerning the presence or absence of such error to state or federal appellate courts
16 through brief writing, writ and motion practice, and oral argument. Appellate practice includes
17 evaluation and consultation regarding potential appellate issues or remedies in connection with
18 proceedings in the lower tribunal prior to the initiation of the appellate process.

19 **(b) Appellate Action.** "Appellate action" means an action filed in a state court, a federal
20 district court, a United States court of appeals, or the Supreme Court of the United States seeking
21 review of a decision of a lower tribunal.

22 **(c) Practice of Law.** The "practice of law" for this area is defined in rule 6-3.5(c)(1).

23 **(d) Appellate Practice Certification Committee.** The appellate practice certification
24 committee may include 1 member presently serving as an appellate court judge from a Florida
25 district court of appeal, the Supreme Court of Florida, a United States court of appeals, or the
26 Supreme Court of the United States. Certification in appellate practice is preferred, but shall not
27 be a requirement. Appointment shall otherwise be consistent with rule 6-3.2.

28 **(e) Primary Responsibility.** Having "primary responsibility" for filing a brief, petition, or
29 response means having the most substantial and direct participation of all the lawyers
30 contributing to that task. Only one lawyer may claim primary responsibility for any such task.
31 Where primary responsibility is used to meet a requirement, the applicant shall specifically
32 identify any other lawyer who provided substantial assistance with the task and demonstrate to

33 the satisfaction of the appellate practice certification committee that the applicant's level of
34 participation was primary.

35 **(f) Principal Briefs in Appeals.** "Principal briefs in appeals" means the primary brief on
36 the merits and excludes reply briefs, jurisdictional briefs, supplemental briefs, and amicus briefs,
37 provided that for good cause shown, the appellate practice certification committee may treat a
38 reply brief, jurisdictional brief, supplemental brief, or amicus brief as a principal brief for the
39 purpose of these rules, if the brief is substantial and reflects a level of effort and preparation
40 comparable to that required to produce a principal brief.

41 **(g) Petitions or Responses Thereto in Extraordinary Writ Cases.** "Petitions or
42 responses thereto in extraordinary writ cases" refer to a petition or response to a petition that
43 seeks a writ from an appellate court to challenge a ruling or the jurisdiction of a lower tribunal or
44 administrative agency. The term includes a petition or response to a petition for a writ of
45 certiorari filed in the Supreme Court of the United States, but does not include any other petition
46 or response to a petition that merely requests discretionary appellate review, such as a notice to
47 invoke the discretionary jurisdiction of the Supreme Court of Florida or for permission to appeal
48 to a United States Court of Appeals an order of a district court pursuant to, for example, 28
49 U.S.C. §1292(b) or Federal Rule of Civil Procedure 23(f).

50 **(h) Good Cause.** "Good cause" exceptions are intended to grant the appellate practice
51 certification committee the discretion to waive technical compliance with the relevant
52 requirement to allow the certification or recertification of an individual where the applicant's
53 proffered circumstances demonstrate that the applicant has, in the experience and judgment of
54 the appellate practice certification committee, the special knowledge, skill, and proficiency, or

55 the equivalent thereof, that technical compliance with that requirement is intended to
56 demonstrate. The appellate practice certification committee is required to consider whether good
57 cause is shown only upon the specific request of an applicant and to consider only those facts
58 specifically identified by the applicant.

59 Adopted July 1, 1993 (621 So.2d 1032). Amended April 9, 1999; August 17, 2007, by the Board of Governors of The
60 Florida Bar.

61 **RULE 6-13.3 MINIMUM STANDARDS**

62 **(a) Substantial Involvement.** The applicant shall have been engaged in the practice of law
63 for at least 5 years. During the 3-year period immediately preceding the date of application, at
64 least 30 percent of the applicant's practice shall have been spent in substantial and direct
65 involvement in appellate practice sufficient to demonstrate special competence as an appellate
66 lawyer. For good cause shown, the appellate practice certification committee may waive up to 2
67 of the 3 years' substantial involvement for individuals who have served as appellate judges or as
68 a clerk, career attorney, or staff attorney in an appellate court. In no event may substantial
69 involvement during the year immediately preceding the application be waived.

70 **(b) Appellate Actions.** During the 5-year period immediately preceding application, the
71 applicant shall have had sole or primary responsibility in at least 25 appellate actions for the
72 filing of principal briefs in appeals, or the filing of petitions or responses thereto in extraordinary
73 writ cases. ~~Where primary responsibility is used to meet this requirement, the applicant shall~~
74 ~~specifically identify any co-counsel and demonstrate to the satisfaction of the appellate practice~~
75 ~~certification committee that the applicant's level of participation was substantial and direct.~~

76 **(c) Oral Arguments.** During the 5-year period immediately preceding application, the
77 applicant shall have presented ~~had sole or primary responsibility in~~ at least 5 appellate oral
78 arguments. ~~Where primary responsibility is used to meet this requirement, the applicant shall~~
79 ~~specifically identify any co-counsel and demonstrate to the satisfaction of the appellate practice~~
80 ~~certification committee that the applicant's level of participation was substantial and direct.~~ For
81 good cause shown, the appellate practice certification committee may waive this requirement in
82 particular instances.

83 **(d) Education.** During the 3-year period immediately preceding the filing of an
84 application, the applicant shall demonstrate completion of 45 credit hours of approved
85 continuing legal education for appellate practice certification. Accreditation of educational hours
86 shall be subject to policies established by the appellate practice certification committee or the
87 board of legal specialization and education.

88 **(e) Peer Review.**

89 (1) The applicant shall submit the names and addresses of at least 4 lawyers, who are
90 neither relatives nor current associates or partners, as references to attest to the applicant's
91 substantial involvement and competence in appellate practice, as well as the applicant's
92 character, ethics, and reputation for professionalism. Such lawyers shall be involved in
93 appellate practice and familiar with the applicant's practice.

94 (2) The applicant shall submit the names and addresses of at least 2 judges before
95 whom the applicant has appeared on appellate matters within the last 2 years to attest to the
96 applicant's substantial involvement and competence in appellate practice, as well as the
97 applicant's character, ethics, and reputation for professionalism.

98 (3) The appellate practice certification committee may, at its option, send reference
99 forms to other attorneys and judges.

100 **(f) Examination.** Every applicant must pass an examination designed to demonstrate
101 sufficient knowledge, proficiency and experience in appellate practice – including the
102 recognition, preservation, and presentation of trial error, and knowledge and application of the

103 rules of appellate procedure applicable to state and federal appellate practice in Florida – to
104 justify the representation of special competence to the legal profession and public.

105 Adopted July 1, 1993 (621 So.2d 1032). Amended Nov. 21, 1997; April 9, 1999; August 17, 2007, by the Board of
106 Governors of The Florida Bar.

107 **RULE 6-13.4 RECERTIFICATION**

108 During the 5-year period immediately preceding application, an applicant shall satisfy the
109 following requirements for recertification:

110 **(a) Substantial Involvement.** The applicant shall demonstrate continuous and substantial
111 involvement in the practice of law, of which at least 30 percent must have been spent in actual
112 participation in appellate practice.

113 **(b) Appellate Actions.** The applicant shall have had sole or primary responsibility in at
114 least 15 appellate actions for the filing of principal briefs in appeals, or the filing of petitions or
115 responses thereto in extraordinary writ cases. ~~Where primary responsibility is used to meet this~~
116 ~~requirement, the applicant shall specifically identify any co-counsel and demonstrate to the~~
117 ~~satisfaction of the appellate practice certification committee that the applicant's level of~~
118 ~~participation was substantial and direct.~~ For good cause, the appellate practice certification
119 committee may waive this requirement for applicants who have been continuously certified for
120 14 or more years.

121 **(c) Oral Arguments.** The applicant shall have presented ~~had sole or primary responsibility~~
122 ~~in at least 5 appellate oral arguments.~~ ~~Where primary responsibility is used to meet this~~
123 ~~requirement, the applicant shall specifically identify any co-counsel and demonstrate to the~~
124 ~~satisfaction of the appellate practice certification committee that the applicant's level of~~
125 ~~participation was substantial and direct.~~ For good cause shown, the appellate practice
126 certification committee may waive this requirement in particular instances.

127 **(d) Education.** The applicant shall demonstrate completion of at least 50 credit hours of
128 approved continuing legal education for appellate practice certification. This requirement may

129 be satisfied by the applicant's participation in at least 30 hours of continuing judicial education
130 approved by the Supreme Court of Florida.

131 **(e) Peer Review.**

132 (1) The applicant shall submit the names and addresses of at least 4 lawyers, who are
133 neither relatives nor current associates or partners, as references to attest to the applicant's
134 substantial involvement and competence in appellate practice, as well as the applicant's
135 character, ethics, and reputation for professionalism. Such lawyers shall be involved in
136 appellate practice and familiar with the applicant's practice.

137 (2) The applicant shall submit the names and addresses of at least 2 judges before
138 whom the applicant has appeared on appellate matters within the last 2 years to attest to the
139 applicant's substantial involvement and competence in appellate practice, as well as the
140 applicant's character, ethics, and reputation for professionalism.

141 (3) The appellate practice certification committee may, at its option, send reference
142 forms to other attorneys and judges.

143 **(f) Judges.**

144 (1) An applicant who is serving as an appellate court judge on a Florida district court
145 of appeal, the Supreme Court of Florida, a United States court of appeals, or the United
146 States Supreme Court, and who applies for recertification while serving as a judge of such
147 court, shall be deemed to have met the requirements of subdivisions (a)-(c) of this rule, and,
148 for good cause shown, the appellate practice certification committee may waive compliance
149 with the requirements of subdivision (e) of this rule.

150 (2) For an applicant who is subject to the Code of Judicial Conduct and who performs
151 or has performed judicial functions on a full-time basis during a substantial portion of the
152 period since the last date of certification, the appellate practice certification committee may
153 waive compliance with the requirements of subdivisions (a) - (c) and (e) of this rule for good
154 cause shown provided the applicant has complied with all other requirements for
155 recertification.

156 **(g) Good Cause.** Subject to the requirements of rule 6-13.2(h), in determining good cause
157 under this rule, the appellate practice certification committee will consider, if requested, the
158 length of time the applicant has been certified; the applicant's supervisory responsibility for
159 appellate actions or oral arguments since the date of the last certification application; the nature
160 and complexity of the applicant's appellate actions since the last application for certification; the
161 number of appellate actions in the applicant's career; and any health, career, or other factors that
162 may have limited the number of appellate actions or oral arguments since the date of the last
163 application for certification.

164 Adopted July 1, 1993 (621 So.2d 1032). Amended Nov. 21, 1997; April 9, 1999; August 17, 2007, February 1, 2008
165 by the Board of Governors of The Florida Bar.

166

**Legal Specialization and Education
Certification Standards Amendments Information Sheet**

Note: Pursuant to BLSE Policy 2.02(c), Sections, Divisions and Substantive Law Committees shall be provided proposed amendments for consideration. Responses are requested within 45 days of review.

Rule(s): 6-13.2 **Subsection and Title:** (f) - Principal Briefs in Appeals

Certification Committee: Appellate Practice **Staff Liaison:** Carol Vaught

Chair: Roy D. Wasson **BLSE Liaison:** John H. Pelzer

Explanation of Proposed Amendments:

This proposed new subsection provides a definition of "principal briefs in appeals". "Principal briefs in appeals" means the primary brief on the merits and excludes reply briefs, jurisdictional briefs, supplemental briefs, and amicus briefs, provided that for good cause shown, the appellate practice certification committee may treat a reply brief, jurisdictional brief, supplemental brief, or amicus brief as a principal brief for the purpose of these rules, if the brief is substantial and reflects a level of effort and preparation comparable to that required to produce a principal brief."

Reason for Changes:

Previously there had been no definition in the subsection for "principal briefs in appeals". The Committee determined that providing a clear definition should assist applicants, reduce the likelihood of disputes, and ensure continuity in how the Committee applies the qualifications for certification or recertification from applicant to applicant and from year to year.

This entire subsection was originally considered as Rule 6-13.2(d) on 3/18/11 by the Committee, but it decided on 4/15/11 it was more appropriate to move the new definition behind the existing subsection (d) (Appellate Practice Certification Committee). No other changes were made to this subsection.

Vote Count of Certification Committee:	6 - 0 - YES 8 - 0 - YES	Date of Consideration:	3/18/11 4/15/11
Date Submitted to Sec/Div/Sub Com.:	6/3/11	Due Date of Response:	8/8/11
Certification Committee Contact:	Shannon M. Carlyle <u>or</u> John S. Mills	Date of Appearance before Sec/Div/Sub Com:	6/23/11

Section Comments:

Certification Committee Action: _____ **Vote Count:** _____

Date for BLSE Review: _____ **Date Submitted to LSE Director:** _____

Legal Specialization and Education Certification Standards Amendments Information Sheet

Note: Pursuant to BLSE Policy 2.02(c), Sections, Divisions and Substantive Law Committees shall be provided proposed amendments for consideration. Responses are requested within 45 days of review.

Rule(s): 6-13.2 **Subsection and Title:** (g) - Petitions or Responses Thereto in Extraordinary Writ Cases

Certification Committee: Appellate Practice **Staff Liaison:** Carol Vaught

Chair: Roy D. Wasson **BLSE Liaison:** John H. Pelzer

Explanation of Proposed Amendments:

This proposed new subsection provides a definition of "petitions or responses thereto in extraordinary writ cases". "Petitions or responses thereto in extraordinary writ cases" refer to a petition or response to a petition that seeks a writ from an appellate court to challenge a ruling or the jurisdiction of a lower tribunal or administrative agency. The term also includes a petition or response to a petition for a writ of certiorari filed in the Supreme Court of the United States, but does not include any other petition or response to a petition that merely requests discretionary appellate review, such as a notice to invoke the discretionary jurisdiction of the Supreme Court of Florida or for permission to appeal to a United States Court of Appeals an order of a district court pursuant to, for example, 28 U.S.C. §1292(b) or Federal Rule of Civil Procedure 23(f).

Reason for Changes:

Previously there had been no definition in the subsection of "petitions or responses thereto in extraordinary writ cases". The Committee determined that providing a clear definition should assist applicants, reduce the likelihood of disputes, and ensure continuity in how the Committee applies the qualifications for certification or recertification from applicant to applicant and from year to year.

This entire subsection was originally considered as Rule 6-13.2(e) on 3/18/11 by the Committee, but it decided on 4/15/11 it was more appropriate to move the new definition behind the existing subsection (d) (Appellate Practice Certification Committee). Then on 5/6/11, two commas were removed from one sentence in this proposed amendment. The commas were removed after "ruling" and jurisdiction". The sentence now reads: "Petitions or responses thereto in extraordinary writ cases" refer to a petition or response to a petition that seeks a writ from an appellate court to challenge a ruling or the jurisdiction of a lower tribunal or administrative agency." No other changes were made to this subsection.

Vote Count of Certification Committee:	6 - 0 - YES 8 - 0 - YES 8 - 0 - YES	Date of Consideration:	3/18/11 4/15/11 5/6/11
Date Submitted to Sec/Div/Sub Com.:	6/3/2011	Due Date of Response:	8/8/11
Certification Committee Contact:	Shannon M. Carlyle <u>or</u> John S. Mills	Date of Appearance before Sec/Div/Sub Com:	6/23/11

Section Comments:

Certification Committee Action: _____ **Vote Count:** _____

Date for BLSE Review: _____ **Date Submitted to LSE Director:** _____

**Legal Specialization and Education
Certification Standards Amendments Information Sheet**

Note: Pursuant to BLSE Policy 2.02(c), Sections, Divisions and Substantive Law Committees shall be provided proposed amendments for consideration. Responses are requested within 45 days of review.

Rule(s): 6-13.4 **Subsection and Title:** (b) - Appellate Actions

Certification Committee: Appellate Practice **Staff Liaison:** Carol Vaught

Chair: Roy D. Wasson **BLSE Liaison:** John H. Pelzer

Explanation of Proposed Amendments:

This subsection addresses the number of appellate actions for which an applicant for recertification must have had primary responsibility. The amendment would delete the current language addressing how "primary responsibility" is identified.

The revised subsection would read as follows: "The applicant shall have had sole or primary responsibility in at least 15 appellate actions for the filing of principal briefs in appeals, or the filing of petitions or responses thereto in extraordinary writ cases. For good cause, the appellate practice certification committee may waive this requirement for applicants who have been continuously certified for 14 or more years."

Reason for Changes:

This change is made to conform with the proposed addition in Rule 6-13.2(e), which provides a more complete and uniform definition of "primary responsibility."

Vote Count of Certification Committee:	6 - 0 - YES	Date of Consideration:	3/18/11
Date Submitted to Sec/Div/Sub Com.:	6/3/11	Due Date of Response:	8/8/11
Certification Committee Contact:	Shannon M. Carlyle <u>or</u> John S. Mills	Date of Appearance before Sec/Div/Sub Com:	6/23/11

Section Comments:

Certification Committee Action: _____ **Vote Count:** _____

Date for BLSE Review: _____ **Date Submitted to LSE Director:** _____



THE FLORIDA BAR

651 EAST JEFFERSON STREET
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

850/561-5600
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May 18, 2011

Mr. Raoul G. Cantero, III, Chair
The Florida Bar - Appellate Practice Section
Wachovia Financial Center
200 South Biscayne Blvd Ste 4900
Miami, FL 33131-2346

Re: Proposed Amendments to Rule 6-13
Rules Regulating the Florida Bar
Appellate Practice Certification Standards

Dear Mr. Cantero:

The Appellate Practice Certification Committee proposes to amend appellate practice certification standards under Rule 6-13, Rules Regulating The Florida Bar and invites comment from the Appellate Practice Section. A copy of the standards with the amendments in legislative format is enclosed for your reference.

Board of Legal Specialization (BLSE) Policy 2.02(c) governs this process; a copy is enclosed. Section review and input is required before the BLSE and the Board of Governors' Program Evaluation Committee (PEC) will consider any amendments to certification standards. Should your committee wish to make any comments or suggestions, please provide same to Ms. Carol Vaught, Appellate Practice Certification Committee Liaison, within 45 days' receipt of this letter. If your committee has no comments on the proposed amendments, please send written notification to Ms. Vaught at your earliest convenience.

The Appellate Practice Certification Committee is committed to continual review and improvement of our standards to ensure they represent the level of knowledge, skills and proficiency, as well as the character, ethics and professionalism, expected of a Board Certified Appellate law practitioner. Your section's input is invaluable as we strive to further enhance Appellate Practice Board Certification for the benefit of The Bar and the public. On behalf of the Appellate Practice Certification Committee and the BLSE, thank you for your cooperation. Should you have any questions or concerns, please do not hesitate to contact me at (305)372-5220 or by email at roy@wassonandassociates.com, or Ms. Vaught at (850)561-5738 or by email at cvaught@flabar.org.

We look forward to hearing from you.

Sincerely,

Roy D. Wasson, Chair
Appellate Practice Certification Committee

Enclosures

cc: Richard C. McCrea, Jr., Chair, BLSE
Dawna G. Bicknell, Director, LSE
John H. Pelzer, BLSE Liaison
Yvonne Sherron, Program Administrator
Carol Vaught, Certification Specialist

BLSE Policy 2.02(c)

(c) Amendments to Area Standards. Each certification committee, in accordance with the Rules Regulating The Florida Bar, has the responsibility to recommend to the BLSE criteria for certification including, but not limited to, amendments to area standards. Prior to referral to the BLSE, any amendment(s) to area standards shall first be provided to the relevant bar section, division, and substantive law committee with an invitation to comment. A 45 day response time shall be suggested; however, reasonable accommodations to extend such period shall be permitted to ensure a substantive review. Bar section, division, and substantive law committee input shall not be construed as a means to veto proposed changes, but merely to allow all those who have expertise in a given field to offer substantive comment to ensure the continued maintenance of reasonable and uniform standards concerning education, experience, proficiency, and professionalism.

DATE June 23, 2011

SECTION/COMMITTEE NAME

Appellate Practice Section

BYLAWS/POLICIES/RULES AFFECTED BY PROPOSED AMENDMENT

Rule 6-13.2 (e)(f)(g)(h), Rule 6-13.3(b)(c) and Rule 6-13.4(b)(c)(g), Rules Regulating The Florida Bar

ISSUE DISCUSSED

Proposed changes to definitions (Rule 6-13.2), minimum standards (Rule 6-13.3) and recertification (Rule 6-13.4).

RECOMMENDATION

COMMENTS

VOTE _____

Raoul G. Cantero, III

CHAIR NAME (Please Print)

CHAIR SIGNATURE

APS RESPONSE TO APC CT RULE PROPOSALS	6-13.2(e)	6-13.2(f)	6-13.2(g)	6-13.2(h)	Comments
Raoul G. Cantero, III					
Matthew John Conigliaro					
Jack Roy Reiter					
Caryn Lynn Bellus					
Thomas Edward Warner					
Dorothy Frances Easley					
Alina Alonso					
Ceci Culpepper Berman					
Gwendolyn P. Braswell					
Robin I. Bresky					
Christopher V. Carlyle					
Rebecca B. Creed					
Barbara Ann Eagan					
Bryan Scott Gowdy					
Tracy Raffles Gunn					
John Hamilton					
June Galkoski Hoffman					
Kimberly Jones					
Wendy S. Loquasto					
Kristin Norse					
Harvey Joel Sepler					
Jonathan M. Streisfield					

APS RESPONSE TO APC CT RULE PROPOSALS	6-13.3(b)	6-13.3(c)	6-13.4(b)	6-13.4(c)	6-13.4(g)	Comments
Raoul G. Cantero, III						
Matthew John Conigliaro						
Jack Roy Reiter						
Caryn Lynn Bellus						
Thomas Edward Warner						
Dorothy Frances Easley						
Alina Alonso						
Ceci Culpepper Berman						
Gwendolyn P. Braswell						
Robin I. Bresky						
Christopher V. Carlyle						
Rebecca B. Creed						
Barbara Ann Eagan						
Bryan Scott Gowdy						
Tracy Raffles Gunn						
John Hamilton						
June Galkoski Hoffman						
Kimberly Jones						
Wendy S. Loquasto						
Kristin Norse						
Harvey Joel Sepler						
Jonathan M. Streisfield						

S = SUPPORT
O = OPPOSE