

**MINUTES**  
**APPELLATE PRACTICE SECTION MEETING**  
**THURSDAY, JUNE 28, 2007**  
**ORLANDO WORLD CENTER MARRIOTT**

**I. CALL TO ORDER – SUSAN FOX, CHAIR**

Chair Fox called the meeting to order.

In attendance were:

Susan Whaley Fox, Chair	Michael C. Greenberg
Steven L. Brannock, Chair-Elect	Tracy Raffles Gunn
Siobhan Helene Shea, Vice Chair	Henry Gyden
Dorothy Frances Easley, Secretary	Valeria Hendricks [Excused Absence]
Matthew John Conigliaro, Treasurer	Celene Humphries
Benedict P. Kuehne, Board Liason [Absent]	Calianne Lantz
Thomas Hall, Immediate Past Chair	Wendy Loquasto
Jack Aiello	Tony Musto
Alina Alonso	Kathryn Pecko
Joe Bodiford	Judge Mark Polen
Robin Bresky	Jack Reiter, Editor-in-Chief, THE RECORD
Shannon Carlyle [Excused Absence]	James Rowlee
Caryn Lynn Bellus	Hala Sandridge
Ceci Berman	Harvey Sepler [Excused Absence]
Gwendolyn Powell Braswell	Judge Morris Silberman
Barbara Eagan	Jonathan Streisfeld
Angela Flowers	Judge Richard Suarez
Esther E. Galicia	Ken Sukhia
June M. Galkoski	Marianne Trussell
Betsy Gallagher	Tom Warner [Excused Absence]
	Judge Peter Webster

**II. INTRODUCTIONS**

Chair Fox completed introductions, welcomed the newly board certified appellate attorneys and then proceeded to business.

**III. APPROVAL OF MINUTES FROM JANUARY 18, 2007.**

The January 18, 2007 Meeting Minutes were approved.

#### **IV. CHAIR'S REPORT**

##### **A. TODAY'S SECTION EVENTS**

Chair Fox reminded the Section members of the Florida Supreme Court question and answer session, immediately following the Advanced Moot Court final competition, and applauded and encourage the Section's continued strong support and attendance.

Chair Fox would also be hosting a reception that evening at the Section hospitality suite, until 8:30 p.m.

The Section Dessert Reception would take place at 8-10:30 p.m. At the Reception, the Section would present the Adkins and Pro Bono Awards, plus a special award to a Section member. Chair Fox circulated a book on songwriting for Tracy Carlin, retiring from appellate practice to move to Wyoming. All Section members were asked to sign that songwriting book.

##### **B. OTHER**

Chair Fox reported that the Appellate Justice Conference held yesterday, June 27, 2007 was very successful and the Section reception after that Conference was very well attended.

Jack Reiter presented the plaque on behalf of the Appellate Practice Section to the Third District Court of Appeal at the celebration of the Third District's 50th anniversary, and the First District Court of Appeal anniversary celebration would take place on July 12, 2007, at which time Steve Brannock and Susan Fox would attend and present on behalf of the Section.

The Florida Bar Journal special issue in April on appellate practice was well represented, and Chair Fox wrote an introductory column for that Issue.

The Section's annual report was also published in the June Florida Bar Journal.

**V. TREASURER'S REPORT – MATT CONIGLIARO**

**A. MONTHLY STATEMENT OF OPERATIONS, CLE INCOME AND SECTION CHARTS (EXHIBIT B)**

Matt Conigliaro explained that we are currently in the last month of the 2006-07 year, which is the first year The Florida Bar has applied its new formulas for assessing sections generally and for CLE. Because the Section does not yet have the year-end financial figures, and June is a particularly heavy month for expenditures, we cannot know how the new assessment formulas will impact the section. We budgeted a deficit of approximately \$15,000 for 2006-07, and we will hopefully come closer to breaking even. We should be in a position by the September meeting to address the budgeting picture going forward.

Austin Newberry reported that it appears, at this point that there will be a \$10,000-\$13,000 refund to the section from The Florida Bar. The Bar overestimated the costs to assess. The Section is losing money on our CLE.

Matt Conigliaro state that this is a phenomenon we are looking at, and that Bar members have more opportunities than ever to obtain CLE credits. As such, we need to make a concerted effort to produce and market high quality CLE events to continue to earn money, or at least reduce the Section's losses on CLEs.

**B. OTHER**

Judge Polen questioned how we could run a deficit on a number of expense items shown on the budget. Austin Newberry explained that we have an operating budget built into the overall budget. So these items should be covered.

## **VI. OLD BUSINESS**

### **A. APPELLATE PRACTICE BOARD CERTIFICATION RULE CHANGES (EXHIBIT C)**

Chair Fox reported that the Section subcommittee on proposed changes to the appellate recertification requirements, chaired by Dorothy Easley, had been looking at proposed changes to the appellate recertification requirements. Chair Fox presented the latest version of the proposed changes to the appellate recertification requirements, which were revisions to the proposed changes that the Section special subcommittee submitted to the Appellate Certification Committee.

Dorothy Easley expressed relief that the revisions of the proposed changes that the Section subcommittee on proposed changes to the appellate recertification requirements that the subcommittee submitted to the Appellate Certification Committee, appeared to address the concerns previously raised by the Section. Easley explained that the subcommittee looking at this was sensitive to the situation of specialists winding down their practice who might not take the lead on appeals at the level generally needed to obtain recertification.

Easley moved to approve, and Flowers seconded, the proposal, reflecting the revisions of the proposed changes submitted by the Section special subcommittee on proposed changes to the appellate recertification requirements.

John Mills vigorously opposed that motion. Mills, also a member of the Section special subcommittee on proposed changes to the appellate recertification requirements, stated that, at the meeting in January, there was much discussion and the Section's special subcommittee language was approved. The Special subcommittee's original language submitted to the recertification committee previously allowed senior lawyers who are supervising younger lawyers to obtain credit for supervising activities. Now, under what appeared to Mills to be an extremely different, new proposal, certain recertification requirements could be waived for good cause. Mills expressed his

belief that board certification should only be for active appellate lawyers, and this language allowed people who are not practicing appellate law to be recertified. Mills expressed opposition to this proposal because the new proposed language would allow health, retirement, and disability to justify recertification and, while persons in that category deserve recognition, board certification is not appropriate if they are not actually an active appellate practitioner.

Chair Fox and subcommittee chair Easley explained that this language allowed the certification committee to apply factors they deem appropriate. Mills responded that this language should not give discretion that allows people who are no longer appellate practitioners to be board certified as appellate practitioners.

Tony Musto expressed concerns about the vagueness of the language from a different perspective. If an appellate attorney was board certified twice, an appellate attorney should be recertified. One doesn't lose one's ability to be an appellate lawyer. Mills stated that we voted that down last time. Musto explained that he has done over 1000 criminal appeals and would like to be criminal appellate certified, but cannot be because he doesn't do many anymore. Musto sought clarification regarding the criteria to qualify for good cause.

Chair Fox responded that the criteria were not rigid; that part of the decision was based on the committee's experience and professional judgment as appellate lawyers and that those applying for recertification had to trust the committee. A common waiver now, for example, is oral arguments. The committee wants to encourage senior lawyers to use younger lawyers to work on writing briefs, arguing cases etc. Chair Fox also pointed out that time is short, if this isn't approved it will affect a number of people.

Marianne Trussell stated that, the fact that it affects a number of people isn't a reason to vote quickly now.

Mills wanted to know why the changes in this revision to the proposed language differed from last time the subcommittee submitted that last proposed language. Subcommittee chair Easley responded that this “settled language” was not settled at all; the problem with the discussions about the proposed changes to the rule that last time this language was presented was that that we were moving in the direction of good cause but had not gotten there. No one in this room can state with any credibility that appellate practitioners who have argued for several decades 1000s of appeals or who teach appellate practice have suddenly forgotten how to be an appellate practitioner merely because they have not supervised or worked on a fixed number of appeals over a five-year period.

Angela Flowers added that subparagraph (a) should address Mills’s concerns. The certification committee has looked at this issue from many different angles and on multiple levels, and the proposed language attempts to balance these many concerns. The certification committee is not looking to keep, as certified, those attorneys who are no longer involved in appellate practice.

Mills stated that he did not see how removing minimal criteria accomplished that objective. Active certified practitioners who stop practicing lose their edge. The supervision language previously approved should take care of this, and that’s the category that should get a break. Flowers responded that this was only one category. There are other circumstances, such as the example of Tony Musto, who has handled 1000s of appeals and is now teaching. Now, he handles 1-2 appeals per year. Appellate attorneys like Tony Musto should have the opportunity to be re-certified. Mills responded that the purpose of certification should be to communicate to public that someone is an active specialist. If a law professor no longer does appeals, then he should not be certified.

Siobhan Shea expressed her support for a rule that allows someone who has already met the rigorous criteria of board certification to remain certified, even if the become a law professor, clerk,

or go on sabbatical. Jack Reiter added that, as a member of the certification committee, this revised proposed language allows flexibility to allow for recertification despite unforeseen circumstances, for situations where it otherwise would be unfair.

A vote was taken: in favor of calling the question. The motion to approve the new proposed language passes.

## **VII. NEW BUSINESS**

### **A. REQUEST TO FUND THE ACRC ORIENTATION BREAKFAST FOR NEW MEMBERS**

Dorothy Easley, who admitted that she is the present subcommittee chair of the Appellate Court Rules Committee (“ACRC”) Orientations subcommittee, reported that the ACRC was accelerating the new ACRC members’ indoctrination into the ACRC. As soon as new members were notified in early summer, they were receiving information packets over the summer to make them working members sooner. After having received the Orientations packet and worked all summer, the ACRC felt one of the best ways to help introduce new members, subcommittee chairs and officers, was with an Orientations breakfast. Easley requested Section funding to support the ACRC Orientations breakfast for new members because the ACRC has no budget of its own, and the Appellate Practice and the ACRC have a mutually beneficial connection and affiliation. The Section would be fully recognized at the Orientations breakfast with an Appellate Practice Section banner. Easley estimated a budget of \$600-700, but felt the budget could come in well below that amount.

Chair Fox and Steve Brannock added that the ACRC does not have any money of its own and, currently, has no means to get money. The Section has typically been responsive to the ACRC needs, including microphones and coffee.

Matt Conigliaro asked if we were expecting this will be a recurring request, to which Steve Brannock responded that this is a trial and the ACRC might submit a similar request next year.

Tony Musto stated that The Bar is responsible for changing the rules for the sections and this is a Bar committee. The sections that are now getting hit should not be expected to fund the ACRC.

Mills added that the ACRC should not be punished for what The Bar does.

Steve Brannock moved to approve the motion. John Mills seconded.

Marianne Trussell stated that she was a member for 6 years and never felt slighted for not getting breakfast. Hala Sandridge asked if we ever looked at the possibility of getting law firms involved. Easley responded that we did; because we have judges that are officers and subcommittee chairs and various other members of the judiciary, our concern was that the contributions from law firms might create the appearance of impropriety. So we were forced to abandon that idea.

Barbara Eagan responded that, if we are having a severe budget crisis, \$600 is a significant amount of money, and perhaps adding \$5 to our members' costs to help support the ACRC might be the solution. Celene Humphries responded that, while she acknowledges she will be subcommittee chair of the Orientations subcommittee, we are reaping rewards.

The question was called, and the Motion passed by a majority to approve ACRC Orientations Breakfast funding up to \$700.00.

## **VIII. COMMITTEE REPORTS**

(Standing)

### **A. CONTINUING LEGAL EDUCATION – BETSY GALLAGHER**

Betsy Gallagher reported that she had a great meeting this morning with 15 persons. Matt Conigliaro suggested that each CLE have a program chair and marketing chair. Gallagher discussed the Appellate Workshop for 2008, which Celene Humphries, Tom Elligett, Judge Webster and others would be advancing. John Mills was continuing to organize the monthly telephonic seminars. The preservation of error seminar is being held this fall. The bankruptcy seminar held this past spring,

which Ceci Berman chaired, not well attended, but very well received. The Fifth District Court of Appeal seminar tentatively planned with Matt Conigliaro, Mike Giel and Chris Carlyle, as program chairs. The appellate certification review will be held February 1, 2008, which review Gwendolyn Powell Braswell will chair, Matt Conigliaro will be marketing chair, and Judge Pecko will participate in steering committee. John Mills needs speakers for the appellate telephonic seminar. The Family Law seminar would in 2008 with chairs including Allison Perry.

Tom Hall added that the Workers' Compensation section has increased its telephonic CLE cost from \$25 to \$85.

Austin Newberry clarified that the telephonic CLEs have always lost money, and more so as more people attended. In January, this Section increased the fees and it is expected that the Section will not lose money on these seminars.

**B. PROGRAMS – CELENE HUMPHRIES**

Celene Humphries reported that the Section might have completely covered the Dessert Reception costs through sponsorships. This year, the Dessert Reception will be more expensive, but the Section is sharing expenses with CABA.

**C. PUBLIC ADVOCACY/LEGISLATION – TOM WARNER**

Tom Warner was absent due to illness, and unable to report.

**D. PUBLICATIONS – CARYN BELLUS**

Caryn Bellus reported that there was excellent attendance at this morning's meeting. Valeria Hendricks was not present to speak on The Guide, but there were new volunteers for The Guide, are more were needed.

### **1. Editor's Report for The Record – Jack Reiter**

Jack Reiter reported that he was working on the summer issue for an August publication date. There was a great meeting this morning with 10 new article commitments, and most of those were from new authors.

### **2. The Guide – Valeria Hendricks**

Valeria Hendricks was absent due to a work conflict, and unable to report.

### **3. Pro Se Appellate Handbook – Dorothy Easley**

Dorothy Easley distributed copies of the final draft of the Pro Se Appellate Handbook, which was being circulated to the Florida Bar UPL for final comments. The Handbook is 231 pages, and it is expected to be a great aid to pro se litigants and the courts. Easley read the names of all of the Handbook's contributors, listed on page 2 of the Handbook, emphasizing that many members of appellate section have contributed to this project even before Easley became chair of the Handbook committee in 2005. Easley added that Tom Hall started this project 5 years ago. Easley reported that the Pro Se Appellate Handbook committee had been editing for a 10th grade reading level, which the Handbook now achieves, and Easley believes many parts of the Handbook are at a 9th grade level.

Easley further reported that there were some sections that still required improvements and that the co-editors met this morning to circulate the Handbook once more for added checks and balances. Easley reported that the committee was also discussing chapters that needed to be added.

Easley recognized Tom Hall as the founder of this project, and also recognized Chair Fox for her strong support for the project, and Siobhan Shea, Caryn Bellus, Bob Sturgess and Harvey Sepler for their great involvement and support. Chair Fox thanked Easley and all the committee members

for their years of labor on this project and added that 1500 copies will be printed, and are expected to be available for district court clerks, libraries, on the Section website and in prison law libraries.

**4. Bar Journal – Tracy Gunn**

Tracy Gunn reported that the Florida Bar Journal was having a very successful year, and would not need articles until the fall. Heather Lammers and Kristen Norse are Florida Bar Journal co-editors, and Mike Giel has also volunteered to be a co-editor.

**E. WEBSITE – HENRY GYDEN**

Henry Gyden reported that Jack Aiello and Tony Musto have completed the history of the Section, which will be put on the Section website. Gyden recognized Jonathan Streisfeld for all of his hard work through the year with email blasts and updates. Gyden has been working with a company to update the style/look of website. Gyden reported that there is a forum board, for which 17 people signed up, but it is not well used.

(Annual)

**F. GOVERNMENT LAWYER – MARIANNE TRUSSELL**

Marianne Trussell reported that the committee helped organize outreach events in Tallahassee, and that the committee was gaining momentum.

**G. HOSPITALITY COMMITTEE – JOHN CRABTREE / BARBARA EAGAN**

Barbara Eagan reported that the committee had ordered 500 post-its with “who’s your appellate lawyer” on them and the section’s website address. Chair Fox thanked the committee for its continued efforts.

**H. MENTOR COMMITTEE – JACK AIELLO**

Jack Aiello reported that there is no report.

**I. OUTREACH COMMITTEE – SHANNON CARLYLE**

**1. Tallahassee Luncheon(s) Report – Wendy Loquasto**

Wendy Loquasto reported that another event was held with Jon Wheeler, who discussed the First District Court of Appeal relocation. Loquasto reported that there would be an outreach event held in October with Judge Padovano, and a second event in May, with Tom Hall. Chair Fox reported that new appellate bar associations have recently started in Orange County and in Sarasota.

**J PRO BONO –**

No report.

**K. FOUNDATION /FINANCIAL INDEPENDENCE**

No report.

**IX. ELECTION OF OFFICERS & COUNCIL MEMBERS**

Chair Fox announced the slate of proposed officers and Executive Council members put together by Tom Hall from the nominating committee.

Hall moved to have the slate approved and elected, John Mills seconded and the slate was so elected.

**X. REMARKS OF OUTGOING CHAIR – SUSAN FOX**

Chair Fox presented a recognition award to Celene Humphries for her outstanding dedication and service as Programs chair and the Appellate Justice Conference chair, to Jack Reiter for his service as editor-in-chief of The Record and for 3 amazing issues and agreeing to continue another year to produce more outstanding issues, to Wendy Loquasto for her excellence in organizing the Tallahassee Outreach, to Jonathan Streisfeld for his years of service compiling and reliably disseminating the Section Updates, to Dorothy Easley for her years of service as committee chair and editor-in-chief of the Pro Se Appellate Handbook, and to Marianne Trussell for her years of

service on the Section executive council. Chair Fox presented, on behalf of the Section, the songwriting book (now signed by all officers and executive council members, to Tracy Carlin.

**XI. REMARKS OF INCOMING CHAIR – STEVEN BRANNOCK**

Steve Brannock, incoming chair, thanked Susan for her hard work, the wonderful job she did as chair this past year, and presented, on behalf of the Section, Chair Fox with a plaque, and presented to Chair Fox, on behalf of the Section officers, a more personal gift, a spoonbill bird print.

Incoming Chair Brannock announced that the Third Annual Dinner at the Brannocks' would be held after the September Section meeting in Tampa.

**XII. ADJOURNMENT**

Chair Fox announced the next meeting will be held September 6, 2007, Tampa Airport Marriott. The meeting was adjourned.