Judge Nelly Khouzam Elevated to the Second District Court of Appeal

By Duane A. Daiker

The Honorable Nelly Khouzam’s enthusiasm for her new role is unmistakable. After serving many years on the circuit bench, Judge Khouzam welcomes the new challenges she faces on the appellate bench at the Second District Court of Appeal. By Judge Khouzam’s third day on the Court she sat for oral argument and became fully engrossed in the work of an appellate judge. She credits some of the ease of her transition with the time she spent with the Second District as a visiting judge. Judge Khouzam was immediately very impressed with the collegiality of the court and the accessibility of her fellow judges. Far from being isolated, she feels very much a part of a team.

The burden of her responsibility to the law, to the court system, and to the litigants is very clear to her, and she takes the role of the Second District very seriously. Judge Khouzam has a strong desire to make the right decision in every case and to make each opinion clear and unambiguous. She puts considerable time into both writing her own opinions and carefully reviewing those of her colleagues. She feels a personal sense of responsibility for the proper development of the law in the Second District.

Judge Khouzam quickly developed an appreciation for the relative quiet of her new office in Lakeland. The quiet efficiency of an appellate court was a welcome change to the faster pace of the circuit bench.

Coincidentally, Judge Khouzam is married to Second District Judge Morris Silberman. Judge Silberman, who maintains his office at the Tampa branch, has been proudly serving since 2001. Judge Khouzam and Judge Silberman have chosen not to serve on any three judge panels together, although no ethical restriction would prevent them from doing so.

Judge Khouzam’s appointment by
See “Judge Khouzam” page 7
First District Court of Appeal Takes Creative Step in Addressing Workload with Tight Budget

By Marjorie Renee Hill

Last year, under the leadership of Chief Judge Edwin B. Browning, Jr., the First District Court of Appeal voted unanimously to create a central staff unit capable of completing the initial preparation of all of the Court’s workers’ compensation cases. This decision marked a significant departure from the way the First District, and indeed most appellate courts, prepare cases for review by the Judges assigned to ultimately decide their disposition. This novel approach at case management is the result of the First District’s effort to find creative and efficient ways to address an ever-increasing appellate workload while maintaining the Court’s traditionally high standards.

Even with budget woes facing Florida, the Legislature supported the First District’s request and provided funding to create the new Workers’ Compensation Unit. This marks the first time in Florida appellate court history that an appellate court has created a central staff of attorneys to assist in the resolution of issues related to a substantive area of the law.

Many appellate courts have a central staff of attorneys dedicated to preparing cases for review by the court’s judges. However, these attorneys typically work on high-volume repetitive issue cases, such as post-conviction relief or other matters. The First District’s new Workers’ Compensation Unit is dedicated solely to workers’ compensation cases, which are generally considered to be among the most time-consuming and complex of the cases reviewed by the Court.

To accomplish its task, the First District sought experienced attorneys by advertising the positions in the Florida Bar News, sending notices to attorneys who appeared before the Court in workers’ compensation appeals, and asking the Workers’ Compensation Section of the Florida Bar to publish notice to their membership. Additionally, Deputy Chief Judge of Compensation Claims David Langham posted notices of the positions in workers’ compensation mediation rooms state-wide. This effort resulted in over 80 applicants.

The First District was able to recruit experienced workers’ compensation attorneys from across Florida to join the ranks of its Workers’ Compensation Unit. The Unit presently consists of a Director, ultimately selected from inside the Court, three attorneys each having between 14 to 20 years of experience in the practice of workers’ compensation law, an experienced court staff attorney, and a recent graduate from the Florida State University College of Law. The new Workers’ Compensation Unit became operational on July 7, 2008.

Workers’ compensation was selected as an area suitable for a central unit for several reasons.

First, the First District Court of Appeal has exclusive jurisdiction over workers’ compensation cases. Exclusive jurisdiction in one court enhances the potential benefits of a central staff preparing the cases for review. The Court believes that having a cohesive unit of attorneys working solely on workers’ compensation cases better equips it to avert potential areas of conflict and provide clarity to the practicing workers’ compensation bar.

Second, workers’ compensation law has undergone many legislative amendments over the years. The applicable law in a particular workers’ compensation case is the substantive statutory law in effect at the time of the work-related accident giving rise to the claim. Case law that addresses one version of an applicable statutory provision may not apply to another version. The statutory basis and special administrative aspects of workers’ compensation law, coupled with the need to avoid many concepts of tort or equity, convinced the Court that it would benefit from having a unit exclusively dedicated to these types of cases.

Third, the number of cases ripe for adjudication at the First District has grown to mirror the increased number of appellate filings. Since the Unit is designed to shoulder the Court’s workers’ compensation caseload, the Judges’ elbow clerks could continue to receive a complete workload absent the workers’ compensation cases. Such practice improves the Court’s disposition rate and reduces the Court’s growing number of mature cases. Additionally, a cohesive, dedicated Workers’ Compensation Unit ensures the timely resolution of workers’ compensation appeals.

The progress and efficiency of the First District Court of Appeal’s Workers’ Compensation Unit will not only be of interest to workers’ compensation practitioners, it will also be of interest to the Legislature and Florida’s other District Courts of Appeal. As appellate filings continue to increase, and courts’ budgets remain tight, the use of central staff attorneys experienced in resolving a particular area of law is perhaps one way to meet the needs of busy appellate courts and efficiently address their increased general caseloads. The First District Court of Appeal is leading the way with its innovative Workers’ Compensation Unit.

(Endnotes)
1. Marjorie Hill is the Director of the First District Court of Appeal’s Workers’ Compensation Unit.
“It’s all about relationships” was the advice I received recently from someone who had achieved hard won success in life.

As lawyers, we often forget this basic premise, but it really is fundamental. Caught up in the fray of daily life, deadlines and a myriad of commitments, we often lose touch with the relationships that matter most: our family. And, in an age of electronic communications and internet networking, we often lose the intrinsic value of spending real time with the family and friends we care about. At the end of the day, where has practicing law or winning cases gotten us, if we have neglected the relationships with our children, family and friends. And, if we obtain the result we desired at the cost of a relationship with a client, partner, or colleague, how will that affect us personally down the road?

Another gem has stuck with me, passed on from Justice Harry Anstead: “Whatever job you do, do it well.” Drawing no doubt on the wisdom of Abraham Lincoln, Justice Anstead relayed to me the story of the waitress at his favorite local diner, who always treated customers with courtesy, remembered their orders and did her job meticulously. If a job is worth doing, it is worth doing well. Courtesy means more than the golden rule to me, it is responding to that of g-d in every person, something in which I deeply believe.

New lawyers, lawyers changing their career, and lawyers interested in getting involved in the Section, often ask me for advice. It is an odd juncture for me to be at, but this is probably something so basic it should be passed on to anyone who wants to succeed. I have learned to work hard at doing whatever you do well, but work on your relationships in the process.

Recently, I found myself thinking about how much I loved my criminal procedure and constitutional law courses. I loved them because they were a study in society and the process of law, how history becomes the fabric of decisions. We are living in an era of historic change and perhaps only at a few other times have our nation’s ideals been more challenged or more important to where we are headed. And that is what I love about the law and about being a lawyer. It is the responsibility and opportunity to do the right thing in the process and result of the law and legal decision making.

Being a lawyer is a privilege. I am reminded of this when I read an article written in the Bar News by my friend Judge June C. McKinney (also a former President of the Florida Association for Women Lawyers) about the upcoming Virgil Hawkins Florida Chapter National Bar Association’s tribute to Florida’s First Black Lawyers. Being reminded of the hurdles many black and women lawyers faced reminds me not to take for granted the privilege of being admitted to the bar and to practice law in this state.

My eighteen years of being an appellate lawyer have taught me this much: The way that we treat our relationships with others, whether they are our family, friends, or colleagues is the fabric of daily life. It is how we treat others that makes us who we are.

(Endnotes)
1. Larry Magid Rock Promoter, founder of the Electric Factory.
The Florida Bar and LegalSpan Bring Online CLE to Attorneys

Since August of 2000, The Florida Bar has been offering quality CLE programs as online, on-demand seminars through their partnership with LegalSpan. The popularity of this type of education delivery method has been growing exponentially ever since.

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With the explosion of MP3 players and iPods in the market, LegalSpan developed the technology to enable The Florida Bar to introduce Downloadable Audio versions of their CLE programs. Since its inception in March of 2006, the Downloadable versions of The Florida Bar's CLE programs have become as popular a method of obtaining education as Online CLE. "We want to foster greater collaboration among members and a more vibrant educational dialogue. Attorneys learn best at their own pace, in their own way, in a comfortable environment. Our online options give members educational content when and where they want it," said Programs Division Director Terry Hill.

The Florida Bar's catalog of online and downloadable programs is robust, offering over 200 programs, covering all practice areas. Attorneys are able to enjoy the time and money savings without sacrificing content, by participating in these types of programs. The complete catalog of Florida Bar CLE courses can be viewed at www.floridabars.org/cle by accessing the LegalSpan link under Online Courses.
“Court budget cut, 299 jobs lost,” that was the headline of The Florida Bar News, May 15, 2008. In 2008, the Florida court system for the first time had to lay off employees due to a severe budget shortage. In looking at ways to save the State of Florida money and conserve resources, this author is proposing a change to the Florida Rules of Criminal Procedure regarding Rule 3.800 motions by reducing the amount of time and resources spent by Judges, Assistant State Attorneys and Assistant Attorney Generals and their staffs responding to frivolous 3.800 motions.

TYPES OF APPEALS

For those unfamiliar with criminal appeals and post-conviction proceedings, there are three types of appeals for one who has been convicted of a crime. The first is the direct appeal. This appeal is made directly to the Florida Supreme Court. See Moore v. State, 820 So. 2d 199, 205 (Fla. 2002) (holding that a successive Rule 3.850 motion can be denied if there is no reason why the issue could not have been raised in a previous motion); Scrambling v. State, 919 So. 2d 671, 672 (Fla. 5th DCA 2006) (holding that Rule 3.850 motion for postconviction relief was procedurally barred as successive where the issue raised in the pending rule 3.850 motion was one that could or should have been raised in the earlier rule 3.850 motion). So in 3.850 motions there are no second bites at the apple unless an issue was not known at the time of the first 3.850 motion.

THE 3.850 MOTION

The one bite at the apple rule, however, does not apply to our third type of post-conviction motion: the 3.800 motion or motion to correct an illegal sentence.2 The pertinent parts of Florida Rules of Criminal Procedure Rule 3.800 for our discussion state the following: Rule 3.800. Correction, Reduction, and Modification of Sentences

(a) Correction. - A court may at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it in a sentencing scoresheet, or a sentence that does not grant proper credit for time served when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief, provided that a party may not file a motion to correct an illegal sentence under this subdivision during the time allowed for the filing of a motion under subdivision (b)(1) or during the pendency of a direct appeal.

(b) Motion to Correct Sentencing Error. - A motion to correct any sentencing error, including an illegal sentence, may be filed as allowed by this subdivision. ... This subdivision shall not be applicable to those cases in which the death sentence has been imposed and direct appeal jurisdiction is in the Supreme Court under article V, section 3(b)(1) of the Florida Constitution. The motion must identify the error with specificity and provide a proposed correction.

The main purpose of Rule 3.800 is to ensure that inmates’ sentences are correctly calculated according to statute or as the Court noted in Brooks v. State, 969 So. 2d 238 (Fla. 2007): “The rules were enacted out of concerns that no one should be imprisoned beyond the term that the law provides.” Brooks at 244. In State v. Callaway, 658 So. 2d 983, 988 (Fla. 1995), the Court noted the extent of that protection: “A rule 3.800 motion can be filed at any time, even decades after a sentence has been imposed...”. Id.

THE LABOR INVOLVED IN THE REVIEW OF A 3.800 MOTION

The review of a 3.800 motion is laborious to Circuit Court Judges, Assistant State Attorneys, Assistant Attorney Generals and their staffs. The work involved in the investigation of a...
The United States Supreme Court Clarifies When a Deadline to File a Notice of Appeal is “Jurisdictional.”

By Paul A. Avron

Most attorneys have worked under the assumption that the deadline to file a Notice of Appeal (“NOA”) is “jurisdictional,” that is, the filing of a late NOA means that a federal appellate court lacks jurisdiction to review a district court’s judgment. There is ample case law providing support for that working assumption; however, recent case law from the Supreme Court clarifies that not all deadlines are jurisdictional.

Bowles v. Russell, 551 U.S. 205, 127 S. Ct. 2360 (2007), holds that where the deadline to file a NOA is statute-based, it is jurisdictional, but where that deadline is rule-based, that is, a “claim-processing” rule, it may be mandatory but it does not otherwise affect the appellate court’s power to hear an appeal from a district court and can, therefore, be waived. Accord Kontrick v. Ryan, 540 U.S. 443, 454-55 (2004) (“Courts, including this Court, ... have more than occasionally used the term ‘jurisdictional’ to describe emphatic time prescriptions in rules of court.... Because Congress determines whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear them.”) (internal quotation marks omitted). Specifically, the Bowles Court recognized that filing deadlines not dictated by statute are “procedural rules adopted by the [Court] for the orderly transaction of its business” and “are not jurisdictional.” Id. (quoting Schacht v. United States, 398 U.S. 58, 64 (1970)). The term “jurisdictional” means the power of a federal court to hear a class of cases.

Prior to Bowles, the Supreme Court has recognized that its past use of the term “jurisdictional” had “been less than meticulous,” and it has “more than occasionally used the term ‘jurisdictional’ to describe emphatic time prescriptions in rules of court.” Kontrick, 540 U.S. at 454; see also, e.g., Griggs v Provident Consumer Discount Co., 459 U.S. 56, 61 (1982) (filing a NOA within the prescribed time frame is mandatory and jurisdictional) (internal quotation marks omitted); Browder v. Director, Dept. of Corrections, II, 434 U.S. 257, 264 (1978) (same); United States v Robinson, 361 U.S. 220, 224 (1960) (same).

Factually, Bowles involved an appeal from a judgment entered by a district court denying a petition for habeas corpus. The petitioner had thirty days to appeal pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A) and 28 U.S.C. § 2107(a). After the time to file a NOA ran, petitioner filed a motion pursuant to Rule 4(a)(6), seeking an extension of time within which to file a NOA. The district court granted the motion; the petitioner filed his NOA within the extended period granted by the district court (but outside the fourteen day deadline provided by Rule 4(a)(6)). The Court held that the deadline to file a NOA set forth in Rule 4(a) was jurisdictional since the Rule derived from a statute, 28 U.S.C. § 2107(a) and (c). Bowles, 127 S. Ct. at 2366; see, e.g., Ruiz-Martinez, 516 F.3d 102, 118-19 (2d Cir. 2008) (thirty day deadline set forth in 8 U.S.C. § 1252(b)(1) for review of final orders of removal by the Board of Im-

See “Deadline to File” page 21
Governor Charlie Crist in August 2008 has furthered an already distinguished career in law. Her prior appointment was to the Sixth Judicial Circuit for Pinellas County. Judge Khouzam served as a circuit judge for 14 years, rotating through the various divisions of the circuit court, and learning the intricacies of the court system. Judge Khouzam was very highly regarded on the circuit bench, and had the respect of all the lawyers who appeared before her. In 2002, she received the Florida Jurist of the Year Award. In 2006, Judge Khouzam was awarded the William Castagna Award for Judicial Excellence for displaying the highest standards of knowledge of the law, civility, professionalism and demeanor.

Judge Khouzam also enjoys sharing her knowledge and enthusiasm. Judge Khouzam has frequently written articles for various legal publications, including The Florida Bar Journal, Nova Law Review, Litigation Magazine, and the Trial Advocate Quarterly. She is a frequent lecturer at judicial conferences and a faculty member of the Florida Judicial College and the Florida College of Advanced Judicial Studies.

Prior to taking the circuit bench, Judge Khouzam was in private practice, first at Fowler, White, Gillen, Bogg, Villareal and Banker, P.A. in St. Petersburg. Judge Khouzam was the first female associate to become a shareholder after starting practice with the firm as a new associate. At Fowler, White she practiced mostly in the area of insurance defense, with some appellate representation.

Judge Khouzam left Fowler, White to join her husband in a firm known as Silberman and Khouzam, P.A. in Clearwater. At her own firm, Judge Khouzam greatly expanded the breadth of her civil practice to include a broad scope of commercial litigation and appeals.

Judge Khouzam came from a strong academic background with a Bachelor of Arts degree in History from the University of Florida in 1979, and a J.D. with Honors from the University of Florida College of Law in 1981. Following law school, she served as a law clerk to the Honorable Jack R. Schoonover of the Second DCA.

Judge Khouzam continues to live in Pinellas County, and insists that the commute to Lakeland is “not that bad.” Judge Khouzam has one daughter in elementary school.

Judge Khouzam is eagerly awaiting the Governor’s appointment to fill the newest vacancy on the Second District so that she will, after just a few months, no longer have the distinction of being the newest judge on the bench!

(Endnotes)

1. Duane A. Daiker is a board certified appellate specialist and a partner at Shumaker, Loop & Kendrick, LLP in Tampa, Florida. Mr. Daiker is AV Rated by Martindale-Hubbell and handles a variety of appeals in state and federal courts in Florida. He graduated from the University of Florida College of Law with High Honors, where he served as Editor-in-Chief of the Florida Law Review, and was inducted into the Order of the Coif.
THREE STRIKES

3.800 petition starts with the Circuit Court Judge who may rule on the motion or order the state to respond to the motion. If ordered to respond, the Assistant State Attorney will have to research the procedural history of the case (to determine if this is a new issue or if the inmate is rehashing an old claim), research the law regarding the issue claimed and draft a response to the court. The court will then investigate the state’s findings, perhaps conduct independent research and then issue a ruling. It should be noted that all of this work entails extensive labor by clerks and the staff for the Judges, Assistant State Attorneys and Assistant Attorney Generals who must look for the files, pull the documents, and research companion case files as well. If the motion is denied, the inmate can then appeal the denial of the motion to the District Court of Appeal.

Upon appeal, the case will be assigned to a panel of three District Court Judges. These judges will review the appeal and either make a decision or order the Attorney General’s Office to respond to the appeal. When ordered to respond, the Assistant Attorney General will then conduct his or her own investigation of the claim, inquiring into the procedural history of the claim (ensuring the appeal is not regarding a previously decided issue which is a procedural bar) as well as research the legal claims of the inmate regarding the nature of the error claimed resulting in the appeal of the trial court’s denial. The Assistant Attorney General will then draft a response to the District Court identifying any error made by the trial court or if no error is found argue that the decision of the trial court should be affirmed.

INMATES ARE ABUSING THEIR RIGHTS UNDER THE PRESENT RULE

Although the liberal nature of the rule is noble by allowing the inmate unlimited bites at the apple, it has lent itself to abuse from inmates who take advantage of the rule by filing frivolous 3.800 petitions causing unnecessary work.

There is a problem with inmates filing frivolous post-conviction motions and causing even scarcer government resources to be wasted. In Johnson v. State, 915 So. 2d 682 (Fla. 3d DCA 2005), the court noted the “not-infrequent” abuse by inmates of the post-conviction process and the waste they cause government:

We recognize that incarcerated persons should and do have a full panoply of procedural vehicles with which to challenge the lawfulness of their incarcerations. Hepburn v. State, 934 So. 2d 515, 2005 Fla. App. LEXIS 14850, No. 30 Fla. L. Weekly D2171 (Fla. 3d DCA Sept. 14, 2005). However, we also are aware of the not infrequent abuse by post-conviction litigants of this process and the concomitant misapplication and waste of limited judicial resources which might otherwise be expended on more meritorious claims and issues.

Johnson 915 So. 2d at 684.

Therefore, although the idea of unlimited 3.800 appeals is noble, there has to be some modification to the rule to deter abuses and the waste of resources. As the court noted in Hepburn, “there is no constitutional right to file a frivolous lawsuit.” Hepburn at 517-518.

PRESENT SANCTIONS ARE NOT ENOUGH

Presently, when inmates are found filing frivolous pleadings they are subject to sanctions from the dismissal of their petitions to being reported to the Department of Corrections. In Baker, the Florida Supreme Court advised the lower courts to simply dismiss such frivolous petitions. However, by that time government resources have already been spent reviewing and responding to the petition. Under Fla. Stat. 944.279 and 944.28 (2)(a), a court can also report an inmate who has filed frivolous appeals to the De-

continued, next page
department of Corrections which can then hold an administrative hearing that can ultimately subject him to loss of gain time:

§ 944.279. Disciplinary procedures applicable to prisoner for filing frivolous or malicious actions or bringing false information before court.

§ 944.279(1) At any time, and upon its own motion or on motion of a party, a court may conduct an inquiry into whether any action or appeal brought by a prisoner was brought in good faith. A prisoner who is found by a court to have brought a frivolous or malicious suit, action, claim, proceeding, or appeal in any court of this state or in any federal court, which is filed after June 30, 1996, or to have brought a frivolous or malicious collateral criminal proceeding, which is filed after September 30, 2004, or who knowingly or with reckless disregard for the truth brought false information or evidence before the court, is subject to disciplinary procedures pursuant to the rules of the Department of Corrections. The court shall issue a written finding and direct that a certified copy be forwarded to the appropriate institution or facility for disciplinary procedures pursuant to the rules of the department as provided in s. 944.09.

... § 944.28(2) (a): All or any part of the gain-time earned by a prisoner according to the provisions of law is subject to forfeiture if such prisoner ... is found by a court to have brought a frivolous suit, action, claim, proceeding, or appeal in any court ....

Although this statute may serve as a deterrent it is usually used as a last resort after numerous petitions have been filed and resources wasted. The Statute also has no effect on those inmates serving life or similar sentences, where the threat of losing gain time has no deterrent effect i.e. the defendant in Johnson who was sentenced to 119 years in state prison.

THE PROPOSAL

Consequently, one manner in which frivolous motions, causing the waste of limited government resources, may be curtailed is limiting the number of pro se 3.800 motions an inmate can file to three motions. This proposal will allow an inmate to file three 3.800 pro se motions following his direct appeal. Because the number of bites at the apple will be limited, the inmate will review his record carefully and ensure that good arguments are made before the motion is submitted. Since the inmate will be given three bites at the apple it will not be a situation where he is placed in an unfair situation of all or nothing. It is not unreasonable to conclude that three bites at the apple is fair as it provides the inmate sufficient opportunity to rationally review his conviction and identify and research all of those issues where the court may have erred. As with the present 3.800 rule, there will be no time limitation for these motions. Finally, even if the inmate runs through his three 3.800 motions, but discovers a new issue, he will not be precluded from filing an additional motion as long as the motion is signed by a member of the Florida Bar in good standing. See State v. Spencer, 751 So. 2d 47 (Fla. 1999) (Courts may, upon a demonstration of egregious abuse of judicial process, restrict parties from filing pro se pleadings with the court).

A restriction on the number of 3.800 motions an inmate may file would greatly free up the time the court is presently spending to reduce its backlogged caseload. Limiting the number of 3.800 motions an inmate may file would not deprive inmates of their due process rights. As the Court noted in Lewis v. Casey, 518 U.S. 343, 353 (1996), “Depriving someone of a frivolous claim... deprives him of nothing at all.” Finally, the feelings of this author are similar to the feelings of the author of the opinion in Hutchinson v. State, 979 So. 2d 3778 (Fla. 4th DCA 2008), concerning a different 3.800 issue: In this case a trial court had to review the defendant’s motion. The state attorney presented a response. This court has reviewed the appeal, and the state again was ordered to respond. ... none of this will make any difference whatsoever to his liberty interests. The amount of judicial and state attorney time, as well as expense, wasted on this case should cry out for revision of our rules of procedure on postconviction motions, particularly corrections of illegal sentences.

Hutchinson, 979 So. 2d at 378.

As the court stated in Cassady v. State, 683 So. 2d 1194 (Fla. 5th DCA 1996), “[it] appears to [us the defendant has] exhausted his post-conviction remedies and has certainly exhausted us in doing so.” Unfortunately, today’s inmates have also exhausted our resources. Thus, due to the ever back log of cases and the severe budget crunch requiring the court system to make do with fewer employees, the rule providing unlimited 3.800 motions needs to be modified as one response to this change in resources.

(Endnotes)
1. Michael C. Greenberg is an Assistant Attorney General in the Miami Office of the Attorney General and represents the State of Florida. Mr. Greenberg is responsible for handling appeals in all phases of criminal prosecution from the pre-trial appeals of excessive bonds and motions to suppress to direct appeals and the other post conviction proceedings discussed in this article.
2. Another way inmates bring an issue of error before a court is through a Petition for Writ of Habeas Corpus. Although, not an appeal traditionally it has been used by inmates to plead their case when all other appeals have failed. In Mills v. Dugger, 574 So. 2d 63, 65 (Fla. 1990), the Court noted: “As we have stated numerous times, habeas corpus is not to be used for obtaining additional appeals of issues which were raised or should have been raised, on direct appeal or which were waived at trial or which could have, should have, or have been, raised in prior postconviction filings.” The Florida Supreme Court recognized the propriety of resorting to a habeas petition in Baker v. State, 878 So. 2d 1236, 1237 (Fla. 2004), when it dismissed the petition and urged all courts to do likewise for petitions containing issues that should have been pled on direct appeal or pursuant to a 3.850 or 3.900 motion.
Florida’s Budget Crisis Does Not Provide Justification for Permitting an Illegal Criminal Sentence to Stand: Counterpoint to Three Strikes & You’re Out - A Proposal to Modify the Rule Regarding 3.800 Motions.

By Roberta G. Mandel

There is no doubt that Florida is facing a budget crisis and that legislators are looking everywhere for places to save money. Those cuts, however, should not come at the cost of denying justice to prison inmates. With regard to cuts to the state’s court system, Dan Gelber, a Democratic state senator who serves on the Legislature’s ways and means committee was recently quoted in the Daily Business Review as follows: it is really close to that critical point where it’s the equivalent of a denial of justice. He added, the saving grace is that it’s such a small piece of the budget that we might be able to fully fund it. We shouldn’t be cannibalizing it.2

In his article, Three Strikes & You’re Out the Rule Regarding 3.800 Motions, Assistant Attorney General Michael C. Greenberg proposes a limitation on the number of post conviction relief motions that a prisoner is permitted to file to challenge an illegal sentence as a way to conserve our state resources. This author respectfully submits that the proposed limitation will result in the very outcome that our state legislators are desperately trying to avoid. It is this author’s view that to preserve our state resources, the correction of illegal sentences should not come at the cost of denying justice.

An illegal sentence for purposes of Fla. R. Crim. P. 3.800, authorizing the correction of illegal sentences, is one that patently fails to comport with statutory or constitutional limitations.3 To be an illegal sentence, within the meaning of Rule 3.800, the sentence must impose a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances. If, under all the sentencing statutes, given the facts in the case, it is possible to impose a particular sentence, the sentence will not be deemed an illegal sentence, within the meaning of Rule 3.800.4

As a former Assistant Attorney General, myself, this author can certainly empathize with the frustration over handling frivolous and time-consuming 3.800 motions. Courts, however, have an obligation to correct sentences in excess of the statutory maximums; sentences that violate double jeopardy, and sentences that fail to give inmates credit for time already served. There is no justification, and certainly no economic justification, to permit an illegal sentence to stand.

Furthermore, approaching this issue by using the terms appeals and post conviction relief motions interchangeably improperly mixes apples and oranges. Although one convicted of a crime may appeal an order denying relief under Fla. R. Crim. P. 3.800(a), 3.850 or 3.853, post conviction relief motions are not in themselves, considered appeals. While a motion to correct an illegal sentence is an appropriate procedure for challenging a sentence—href is not appropriate to challenge the conviction, itself. See Morgan v. State, 888 So.2d 128 (Fla. 2004) and Couglin v. State, 932 So.2d 1224 (Fla. 2d DCA 2006)).Rule 3.800 is limited to claims that a sentence is illegal, without regard to the underlying conviction.

Assistant Attorney General Greenberg opines that the liberal nature of the rule [3.800] is noble. In reality, motions for post conviction relief should not be deemed as such. Indeed, the Due Process Clause of the Fourteenth Amendment requires states to make a corrective process available, whereby a defendant in a criminal proceeding can secure a determination of a claimed violation of the rights granted to the defendant under the Federal Constitution. See Hysler v. State of Florida, 315 U.S. 411 (1942). Ironically, the Due Process Clause does not require the states to afford an appeal from a criminal conviction. See Griffin v. Illinois, 329 U.S. 173 (1946).

While Greenberg recognizes that defendants who file frivolous motions are subject to sanctions, he opines that the sanctions are not enough. This author respectfully disagrees. Greenberg fails to note that defendants who file motions for post conviction relief which contain false allegations, may also be subject to prosecution for criminal contempt of court. Clearly, criminal prosecution should be deemed an adequate sanction.

Greenberg’s suggestion that an additional 3.800 motion could be permitted if signed by a member of the Florida Bar is fraught with problems. Greenberg’s proposal not only abridges a prisoner’s due process right of access to court, but also violates equal protection principles by invidiously discriminating against indigent inmates. Wealthy inmates would be given the opportunity to file an additional 3.800 motion merely because they have the financial resources to hire legal counsel. Clearly, an indigent defendant must have the same opportunity to present his claims. He or she must be given what the nonindigent defendant can procure. Over a hundred years ago, the United States Supreme Court held in Holden v. Hardy, 169 U.S. 366, 389-390(1898), that the necessity of due process and an opportunity to

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be heard are immutable principles of justice which inhere in the very idea of free government.

If the overriding goal when examining our system of justice is truly to ease the financial burdens on our judicial system, would it not be more advantageous to eliminate Florida’s time-consuming and costly death penalty? The point, however, of this Response, is not to suggest measures to help close the state’s widening budget gap. The point is merely to suggest that saving state revenue must not come at the cost of denying indigent inmates their constitutional right of meaningful access to courts and their fundamental right to challenge illegal sentences. The focus of the budget crunch and the court backlogs must, therefore, remain on preserving the integrity of our judicial system. There can be no equal justice where the number of post conviction relief motions an inmate is permitted to file depends on whether the inmate has the financial resources to hire an attorney. Invidious discrimination between persons violates our constitutional guaranties of due process and equal protection. Additionally, a defendant must be permitted to challenge an illegal sentence at any time. A prisoner must not serve a day longer than the law provides. A defendant must, therefore, be allowed to freely and collaterally challenge any sentence that is contrary to the applicable law.

(Endnotes)

1. Roberta G. Mandel is a partner and head of the appellate and litigation support department of Stephens Lynn Klein LaCava Hoffman & Puya, P.A. She has personally argued over 850 appeals in every Florida District Court of Appeal; the Florida Supreme Court; the Eleventh Circuit Court of Appeals and served as co-counsel before the United States Supreme Court. She is listed as counsel of record in more than 500 published opinions. She previously served as an Assistant Attorney General for the State of Florida for over sixteen years. She currently serves as the Assistant Editor of The Record and Vice-Chair of the Dade County Bar Association Appellate Court Committee. She was awarded a Pro Bono Award by the Dade County Bar Association in 1996.
4. See Moore v. State, 768 So.2d 1140 (Fla. 1st DCA 2000).
5. Blakley v. State, 746 So.2d 1182 (Fla. 4th DCA 1999), modified on other grounds, 756 So.2d 1080. (Fla. 4th DCA 2004)
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The Office of the Florida Solicitor General: an Appellate Lawyer’s Field of Dreams

By C.B. Upton

This article discusses the history, purpose, and current status of Florida’s Office of the Solicitor General, which celebrates its tenth anniversary in 2009. It is about as close to a “field of dreams” as appellate lawyers will find; indeed, it has been described as “the greatest job for a lawyer in Florida.”

In July 1999, former Attorney General Bob Butterworth and Florida State University President Sandy D’Alemberte established the Office of Solicitor General, modeling it, in part, after the Office of the United States Solicitor General, which conducts litigation on behalf of the United States in the Supreme Court and supervises litigation in federal appellate courts. Florida’s Solicitor General serves three primary roles: overseeing civil appeals involving the state’s interests in all state and federal appellate courts; serving as a legal policy advisor to the Attorney General; and teaching at the Florida State University College of Law.

In February 2007, Attorney General Bill McCollum appointed Scott Makar as the State’s third Solicitor General. Prior to this appointment, Solicitor Makar was chief of the appellate division for the Office of General Counsel for the consolidated City of Jacksonville. Before that, he was an equity partner with Holland & Knight. He began his career as a judicial law clerk at the United States Courts of Appeals for the Eleventh Circuit. His predecessors are Chris Kise, a partner with Foley & Lardner, and Tom Warner, the first Solicitor General, who is now with Carlton Fields.

One of the Solicitor General’s primary duties is deciding whether the State should appeal a case in the state or federal systems. This decision is done collegially in conjunction with other attorneys in the Attorney General’s Office as well as client representatives. The Solicitor General also monitors all cases in the Attorney General’s Office that involve the constitutionality of a statute; the interpretation of a constitutional provision; the functions of government; or other matters of great public interest. In a limited number of cases that will likely progress to the Florida Supreme Court, the Solicitor General provides input at the trial and intermediate appellate courts to ensure the case is in the best posture for appellate review.

The Solicitor General also coordinates the amicus activities of the State, primarily in the United States Supreme Court and Florida appellate courts. The Attorney General receives many requests for Florida to join amicus briefs in cases pending in the United States Supreme Court or other federal courts. When a request is received, it is the Solicitor General’s responsibility to review the lower court decision and research Florida and federal law to determine whether the case affects an interest of sufficient importance to the State to warrant involvement. In addition to its independent research, the Solicitor General coordinates review with assistant attorneys general who specialize in the legal issues implicated by the case, as well as the Governor’s Office, the Legislature, and the appropriate state agencies. Once it is determined that the State should join another state’s amicus brief or prepare its own, the Solicitor General discusses the issue with the Attorney General to obtain final approval. Occasionally, private attorneys will contact the Solicitor General requesting that the Attorney General file an amicus brief in a case between private litigants. The Solicitor General considers each request and independently researches the issues presented in the case to determine if the State’s interests might be implicated. At the state level, one example was when, on behalf of the Attorney General, the Solicitor General asked the Florida Supreme Court to clarify a decision that called into question one of Florida’s principal municipal bond financing methods. The Court adopted the position advocated by the Attorney General and others. Later, it went further and reversed its initial opinion.

Another task of the Solicitor General is assessing petitions for review filed in the Florida Supreme Court to determine whether a case involves an issue that warrants the State’s involvement. Based on research of the legal and policy issues and consultation with potentially affected State agencies, the Solicitor General determines whether the State should intervene in the case or appear as amicus curiae.

In addition to these duties, the Solicitor General holds the Richard W. Ervin Eminent Scholar Chair, established in honor of former Attorney General and Florida Supreme Court Chief Justice Richard Ervin. In that capacity, the Solicitor General teaches seminar courses at the Florida State University College of Law during the fall and spring semesters. Solicitor Makar, who had previously taught law courses at a number of Florida schools, established a goal of offering a different course each semester. Courses for the 2007-08 academic year included a seminar entitled “Florida, the Constitution, and the United States Supreme Court” and “Topics in Appellate Law and Policy.” The former focused on major constitutional law cases from Florida that made their way to the United States Supreme Court; the latter focused on appellate topics not covered in a general appellate advocacy course, such as appellate court structure and funding, the meaning of judicial independence, merit retention
versus election of appellate judges, judicial free speech, and so on. Prominent members of the legal community serve as guest speakers, and students are required to prepare a paper of publishable quality. Courses for the 2008-09 academic year include an “Opinion Writing” seminar (students prepare judicial biographies and opinions in cases pending in the United States or Florida Supreme Courts) and “Topics in Florida Constitutional Law” (students prepare a paper on some aspect of the Florida Constitution). Courses for the 2009-2010 academic year include an amicus brief course and a course on Famous Florida Trials.

The rest of the office is comprised of the Chief Deputy Solicitor General and four Deputy Solicitors General. The Chief Deputy, Lou Hubener, has over twenty-five years of experience in the Attorney General’s Office where he handled hundreds of high-profile cases in virtually every court, including argument in the United States Supreme Court. As one example, over the past year, Mr. Hubener provided trial and appellate arguments in an action challenging the creation of the Office of Regional Conflict Counsel. The Legislature created the five offices as a way to provide representation to indigent defendants when the Public Defender’s office has a conflict. The Florida Supreme Court upheld the statute, unanimously reversing the lower court.5

The four Deputy Solicitors, Tim Osterhaus, Craig Feiser, Courtney Brewer, and C.B. Upton, joined the office in 2007. Each served as a judicial law clerk (a job requirement) at some point in their careers, including clerkships at the Florida Supreme Court, the United States Courts of Appeals for the Sixth and Eleventh Circuits, and United States District Courts in and for the Middle and Southern Districts of Florida. Solicitor Makar has developed an office premised on a commitment to excellence in research and writing; maintenance of the highest standards of character and professionalism, a drive to serve clients and the state’s overall interests, and service to the bar and community. Each strives to comply with the Solicitor General’s office policy that no brief exceed thirty pages; a standard that has been met in all but a very few cases since February 2007. All are encouraged and given support to achieve appellate certification. Academic writing and teaching are also encouraged, both to promote professional development and for the CLE and appellate certification credits they accrue.

Although the current team has worked together for a short time, it has already handled many interesting cases on behalf of the State. Each attorney had one or more oral arguments in 2008. Notably, in a six-month window, Solicitor Makar argued cases in the United States Supreme Court, the Eleventh Circuit, the Florida Supreme Court, the First District Court of Appeal, and the Second Circuit in and for Leon County. In the United States Supreme Court, the office prevailed on behalf of the Florida Department of Revenue in a 7-2 decision that upheld the State’s right to collect documentary stamp taxes on asset transfers in a bankruptcy action.6 In the Eleventh Circuit, the office successfully defended the constitutionality of Florida’s Pledge of Allegiance statute.7 In the Florida Supreme Court, the office represented the Secretary of State in a case involving alleged fraud in the signature-gathering process for the placement of a citizens’ initiative on the ballot.8 In the First District, the office defended a challenge to the constitutionality of a statute permitting persons to revoke their signatures on petitions.9 Finally, in the Second Circuit, the office successfully defended at trial a challenge to recent constitutional changes to the homestead amendment.10

The Solicitor General’s Office also provides trial support in matters that affect important state interests and are likely to go up on appeal. In this capacity, the office has successfully defended a request to permanently enjoin the Florida statute that allows an employee to bring a firearm to work and leave it locked and stored in a motor vehicle11 and has obtained favorable rulings from trial courts on two class-action challenges to the Save Our Homes property tax amendment.12

With the many unique and challenging legal issues that arise throughout the year, the Office of the Florida Solicitor General is a special and rewarding place to work. It presents the opportunity and high calling to serve the people of the state while working on important and interesting cases in a collegial atmosphere for exceptional clients. Under Solicitor Makar’s oversight, the office has continued to develop a culture of serving the state’s interests with the highest degree of professionalism. He, like one of his mentors, Chesterfield Smith, has exhorted all of us to “be somebody” by pursuing professional, community service, and academic achievements that bring recognition and good standing to the office.13 It is a tremendous responsibility the office shoulders, but – as I hope this short article explains – is one of the greatest offices in which appellate lawyers may serve their state.

(Endnotes)
1. C.B. Upton is a Deputy Solicitor General in the Office of the Attorney General. From 2006-2007, he served as a law clerk to the Honorable Eugene E. Siler, Jr. of the United States Court of Appeals for the Sixth Circuit.
4. Strand v. Escambia County, 992 So. 2d 150 (Fla. 2008).
We posed a number of questions to Florida’s appellate judges. The number in parenthesis indicates how many judges selected a particular answer choice. The responses are listed in descending order of frequency. The asterisks denote the judges comments when responding “other.” Survey says . . .

What is the first step the appellant’s attorney should take in an initial review of the case?
- Contact the trial attorney to get assistance in understanding the case and identifying issues (13)
- Review the court file (13)
- Review the motion for new trial (13)
- Other (explain) (3);
  * First, should be able to ascertain whether the financial resources of the employing party would ever justify the legal effort. If justifiable, then the attorney should begin by first checking the court file
  * Review court file, contact attorney, and if timely consider filing motion for rehearing
  * Make sure a notice of appeal has been or will be timely filed

What single factor should attorneys most change in their approach to appellate courts vis-a-vis their presentation to the trial court?
- Clearly understand standard of review differences (16)
- Lose the hyperbole/drama (3)
- Remember that appeals mostly concern legal questions, not case-specific facts (3)
- More thoroughly prepare to address broader legal policy questions (1)
- Other (explain) (3);
  * All of the above
  * Focus more on good written argument
  * Focus (and limit) briefs and oral presentation, selecting the strong arguments, facts, and cases

Which of the following aspects of pre-briefing appellate practice could be most improved? (Choose up to 2)
- A reality check—honest assessment of merits of appeal (16)
- Ensuring preparation of an adequate and accurate record on appeal (15)
- Establishing that the court has jurisdiction (10)
- Preparing more drafts prior to writing the final brief (5)
- Unnecessary motions/motions purely for delay (2)

What are the most common preservation of error problems you see? (Choose up to 3)
- Failing to articulate the legal basis for an objection (17)
- Insufficient evidentiary objections (16)
- Failing to proffer excluded evidence (13)
- Not obtaining a clear and definitive ruling (7)
- Not properly preserving objections on motions for directed verdict/post-trial (3)
- Not addressing issues that arise as a result of final judgment by filing a motion for rehearing (3)
- Insufficient objections during voir dire (1)
- Failing to identify venire persons by name or number during voir dire (1)
  * Other (3);
    * I am not making the objection at all
    * All are evenly distributed
    * Failing to object to improper argument during closing

What is the maximum number of issues that normally should be raised in a brief?
- Three (10)
- Four (10)
- Five (3)
- Other (specify) (6);
  * Depends on case, but generally no more than 3 (2)
  * Depends on the case (2)
  * I would include issues within argument (making them sub-issues somehow—I would not give up on issues that don’t seem important because you never know what a judge will buy into)
  * As many as are valid

What mistakes do you see most often in appellate briefs? (Choose up to 3)
- Poor writing style; hard to understand arguments (11)
- Verbose or redundant argument (10)
- Including irrelevant facts (9)
- Failure to disclose and distinguish contrary authority (7)
- Failure to apply the law to the relevant facts (6)
- Misrepresentation of fact (5)
- Exaggeration or emotionalism (5)
- Inadequate or incorrect record citations (4)
- Failure to provide or utilize the applicable standard of review (4)
- Lack of attention to details (format, grammar, spelling, citation) (4)
- Misrepresentations of law (2)
- Attacks on the judiciary, counsel, or a party (1)
- Other (explain) (5);
  * Failure to criticize controlling precedent
  * Inadequate legal research
  * Stating facts contrary to correct standard of review
  * These are the most common mistakes; however, the lack of attention to detail is clearly less important than other mistakes that we see less often, such as improper standard of review and misstatements of the law
  * Too long, too long, too long

What part of an appellate brief is most likely to be done incorrectly or insufficiently?
- Statement of case/facts not issues-oriented, over-or under-inclusive (16)
- Standard of Review missing, incorrect, or not applied properly in argument (6)
- Argument Summary not an accurate summary or merely repeats argument headings (2)

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Unhelpful argument headings/outline structure (2)
Conclusion too long or fails to state clearly the relief requested (1)
Other (explain) (2):
  * All of the above
  * Legal research

How should lawyers respond to briefs that are unprofessional (e.g., personal attacks against counsel, trial judge, or party; extraneous issues, inflammatory language, etc.)?
  * Address objectively (19)
  * Move to strike (4)
  * Ignore, or address only if the court asks (4)
  * Other (explain) (1):
    * Ignore if you can, or address cautiously

What should counsel say at oral argument if asked about a case that he or she cannot recall?
  * Admit you can’t recall and ask for more information to job your memory (5)
  * Offer to file something after argument addressing case (1)
  * Both answers 1 & 2 (21)
  * Other (explain) (2):
    * Admit you can’t recall and ask for leave to look it up in the briefs
    * If appellant, admit you can’t recall and promise to attempt to find the case in your notes and to respond in rebuttal; if Appellee (or if appellant and can’t find it in rebuttal), admit you can’t recall and ask for leave to respond in a post-argument memo of 3 pages or less

What mistakes do you see most often in oral arguments? (Choose up to 3)
  * Not answering the questions asked (23)
  * Refusing to concede any points whatsoever (15)
  * Being unprepared; not knowing the record or law (7)
  * Misrepresenting or exaggerating facts or law (7)
  * Arguing with or talking over judges (5)
  * Making jury arguments or emotional pleas (5)
  * Failure to recognize controlling law (4)
  * Hyperbole (3)
  * Refusing to admit when you don’t know the answer (2)
  * Style/delivery issues (too quiet or loud, talking too fast, reading from a prepared text, lack of eye contact, excessive mannerisms) (2)
  * Misstating the law (2)
  * Taking shots at opposing counsel or party (2)

What statements or behaviors at oral argument are least appropriate? (Choose up to 3)
  * Ad hominem attacks on judge, counsel, or party (24)
  * Referring to matters outside the record (“That’s not in the record, but…”) (20)
  * Failure to arrive on time; disrespect for the court (9)
  * Counsel asserting an objection during other lawyer’s argument (4)

Arguing the wrong case (4)
Cell phones/other distractions (3)
Appellee asking for rebuttal (3)
Other (explain) (2):
  * An evasive answer to a direct question from the court
  * Arguing with a judge in a manner reflecting disdain for the court or anyone who might disagree with the person presenting the argument

What is the worst overused word or phrase in oral argument, which should be eliminated completely?
  * “I wasn’t the trial lawyer” (9)
  * “That’s a great question, Your Honor” (7)
  * “With all due respect…” (5)
  * “I’ll get to that later” (3)
  * “That’s not relevant, Your Honor” (2)
  * Other (specify) (4):
    * "Clearly" (2)
    * "Disingenuous"
    * Every one of these should be eliminated

What is the best way to deal with the facts of the case in oral argument?
  * Begin with the issue and work the facts into the argument as relevant (17)
  * Begin with a recital of the facts, without asking first (5)
  * Ask the court if it wants a brief recital of the facts (1)
  * Skip the facts and go into the law and analysis; if the court wants the facts, it will ask (1)
  * Other (explain) (5):
    * Honestly
    * Depends on the case
    * Identify the issue(s) before the court as an introductory matter, then describe the pertinent and controlling facts in the record below
    * No explanation for "other" selection (2)

What is the most appropriate way to end an oral argument?
  * “If there are no further questions...” then sit (8)
  * Give a brief conclusion without asking the panel if it has any further questions (8)
  * After giving a conclusion, pause for a moment to give the panel time to ask questions, then sit (7)
  * Other (explain) (5):
    * Depending on the time, first ask if the court has any questions, and then give a brief conclusion, asking for the specific relief desired
    * Thank the court and sit down
    * Very brief conclusion and concise statement of the relief sought, as well as any alternative relief
    * State relief sought
    * Say “thank you” before leaving podium

What has been the most embarrassing moment of your career as an appellate judge?
  * Forgetting who the lawyer represents or what their position is, during an oral argument (10)
  * Unexpected difficulty with a robe (2)
• Being corrected by a law clerk (2)
• Other (explain) (11):
  • Calling a lawyer by the wrong name, and it was someone I knew!
  • Asking a long-winded question and receiving answer "yes"
  • I wouldn't answer this for twice my annual salary
  • Getting a fact wrong from the record
  • Blowing nose after arguments but while still on internet
  • My cell phone once went off during oral argument
  • Sitting in a chair placed slightly to one side of the microphone for that position, with the result that the video-recorded (and internally broadcast) argument showed a missing position and only, from time to time, a disembodied hand and pen. The audio and live argument went well, at least.
  • Referring to a lawyer by name based upon the calendar provided by the clerk, when another lawyer was actually before us
  • Forgetting to put on robe
• Cell phone going off after warming participants to turn off their phones
• Unknowingly bringing cell phone into oral argument and having it go off. When I shut it off I apologized profusely. Wife who made call wondered later why I was dodging her that morning.

What qualifications and experiences are most important for a candidate for an appellate judgeship to possess? (Choose up to 3)
• Analytical ability (24)
• Ability to get along well with colleagues (19)
• Willingness to work hard (13)
• Case experience (9)
• Patience (4)
• Connections (1)
• Other (explain) (6):
  • Luck—As Napoleon once said about a candidate for general, "Is he lucky?" Then connections.
  • Varied experience in law practice
  • Integrity, willingness to listen and remain open-minded
  • A wide range of experience, exceptional work ethic, and judicial integrity
  • Integrity
  • No explanation on "other" selection (1)
Florida’s Appellate Courts Hit with Budget Cuts

James H. Wyman

Across-the-board ten percent cuts imposed by the Florida Legislature for the 2007-08 and 2008-09 fiscal years have resulted in Florida’s court system taking a hit of $44 million and laying off 280 employees. While the court system was able to avoid a quarterly four percent holdback of $17 million ordered by Governor Crist for October 1, 2008, the specter of an additional ten percent cut continues to hang over the state judiciary.

Much of the attention caused by these cuts has focused on the trial court level — notably the lawsuit in which Miami-Dade County Public Defender Bennett H. Brummer successfully claimed that an overloaded staff required that he decline acceptance of “C” class felony cases. But Florida’s appellate court system has suffered as well.

Ironically, the court system as a whole consumes only 0.7% of Florida’s $66 billion state budget, a relatively miniscule percentage when one considers that the budget for court systems in other states is more than double. Further, over half of the salary budget for the court system is earmarked for the salaries and benefits of the state’s 990 judicial constitutional officers. The balance is comprised of staff salaries and benefits — which is where any further cuts would have to come, according to Chief Justice Peggy Quince.

In December, Chief Justice Quince told the House Criminal and Civil Justice Appropriations Committee that an additional ten percent cut would reduce the state court budget by another $40.1 million. Such a cut would result in the loss of 12 staff positions at the Supreme Court and 52 staff positions at the five district courts of appeal. Staff at the courts would be required to take 23 furlough days as well.

Current staffing cuts have resulted in changes to the appellate courts ranging from minor inconveniences to a wholesale reordering of priorities. For example, at the Fourth District Court of Appeal, the clerk’s office now closes an hour earlier, at 4:00 p.m. The court has eliminated its drop box for after-hours filing. It has also discontinued using its post-office box, saving it $3,500 a year.

Fourth District Chief Judge Robert Gross said that his court has lost five of nine attorneys, and was down to three central staff attorneys and two attorneys in the clerk’s office. According to Judge Gross, central staff attorneys “do the workup” on post-conviction relief cases and petitions for extraordinary writs. “We’re now backfilling a lot of the calendar in chambers,” he said.

Judge Gross further noted that in 2006-07, 6008 post-conviction relief cases came out of the Seventeenth Judicial Circuit in Broward County alone, almost double the figure for the same period for the Eleventh Judicial Circuit in Miami-Dade County. With the court’s three recent vacancies, he said, “we’re pretty much filling our dockets.”

Judge Gross indicated that while he thought any impact had thus far been “minimal,” the budget for his court had been cut to the bone. “Any further cuts would be devastating,” he said.

According to Chief Judge Stevan Northcutt of the Second District — who is also chair of the District Court of Appeal Budget Commission — the budget cuts are “already in bone.” The Second District lost two of eight central staff attorneys as part of the budget cuts. Such attorneys “handle a tremendous amount of our work,” said Judge Northcutt. “All procedural motions go to central staff attorneys.” Like the Fourth District, much of the work that had been done by staff attorneys in the Second District is now being done in chambers.

Judge Northcutt said that in 1996, the Second District handled approximately 5300 cases per year, and that this number had now increased to approximately 6400 cases. In addition, he said, the clearance rate of cases handled in the Second District had dropped from 96% to a projected rate of 87% for 2008. “Even if a pot of gold

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dropped out of the sky today, we would still have a backlog that would plague us for years,” said Judge Northcutt.

Noting that the district courts of appeal “were not at an optimum funding level to begin with,” Judge Northcutt added that no district court has received a new judgeship since 1999, and that the Second District has not received a new judgeship since 1993.

Judge Northcutt said he believed the Legislature recognized that it had cut as far as it could in the court system. He noted that Florida courts had been “given a pass” from the October 1 four percent holdback ordered by Governor Crist.

Although he said he believed the Legislature should not distinguish between trial and appellate courts, Judge Northcutt nevertheless observed that the traffic hearing officers and the diversionary and alternative dispute resolution programs associated with circuit and county courts made easy albeit painful targets. The district courts have no such programs, he said. “Everything a DCA does goes to case disposition.”

Judge Northcutt was blunt about which appellate cases would suffer the most as a result of further cuts. “The trend is going to be toward civil appeals not progressing quickly toward disposition,” he said, noting that such appeals comprise less than a third of cases in the district courts as a whole and less than a quarter in the Second District.

Asked about what impact an additional ten percent cut would have on the appellate courts, Judge Gross was equally blunt. “We would then be getting into the core function of people involved in deciding cases,” he said.

Obviously, the impact of the current financial crisis has sent a shockwave through Florida’s judicial branch of government from which the appellate courts are not immune. While most agree that the legal system will weather the storm, the budget cuts have nonetheless placed an unprecedented strain on the district courts of appeal.

(Endnotes)
1. James H. Wyman is appellate counsel at the Fort Lauderdale office of Hinshaw & Culbertson LLP. His practice focuses on state and federal civil appeals and civil litigation support. Before entering private practice, he was law clerk to the Honorable Gerald B. Cope, Jr., at the Third District Court of Appeal from 1997 to 1998. Mr. Wyman is a 1997 graduate of the Florida State University College of Law, where he was Editor-in-Chief of the Florida State University Law Review.

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**Successful Appellate Practice Workshop 2008**

**By Duane A. Daiker**

The Appellate Practice Section of the Florida Bar sponsored its semi-annual “Successful Appellate Advocacy Workshop” from July 30 to August 1, 2008, in Jacksonville. Twenty-five lawyers from across Florida, looking to improve their appellate skills, attended the seminar. The distinguished faculty consisted primarily of judges from Florida’s District Courts of Appeal and the Eleventh Circuit Court of Appeals, backed up by a cadre of well-known and experienced Florida appellate practitioners, resulting in a faculty-student ratio of about one faculty member for every three participants.

This seminar is billed as “An Intense Skills CLE Workshop,” and certainly lives up to its name! The curriculum begins with a homework assignment—to prepare an initial brief based upon a limited record provided to all participants. The sample initial brief is submitted in advance of the seminar and is individually reviewed by the faculty. Once at the seminar, the format is a mixture of entertaining lectures and small group discussions. In the small groups, the participants get individual feedback on their writing sample and personalized suggestions for improvements.

A large portion of the seminar focuses on oral argument skills. Attendees have an opportunity to participate in two oral arguments, both “on” and “off” brief. The first oral argument is videotaped for the participants’ own review and critique prior to their final oral argument before a panel of Florida appellate judges. At each stage, the participants receive an individual critique and suggestions for improvement.

The workshop was hosted at the Florida Coastal School of Law, which provided excellent classroom and mock courtroom facilities. Florida Coastal also provided the technological support, including a website for downloading course materials, uploading sample briefs, and viewing oral argument videos. The staff and law students from Florida Coastal were extremely accommodating, and made the attendees feel very welcome.

This appellate workshop was a fantastic learning experience for all who attended—whether young lawyers or experienced appellate advocates. While the workshop requires a very significant investment of time, the learning experience is well worth the effort. How often have you wanted direct and honest feedback from an appellate judge on your advocacy skills? The Successful Appellate Advocacy Workshop delivers as much feedback as you may want while helping you become a better appellate lawyer. If you missed the workshop this year, I encourage you to seriously consider attending when it is offered again. Many thanks to all of the excellent faculty who were very generous with their time, and to the Appellate Practice Section for putting together such a unique CLE experience.
migration Appeals is jurisdictional). The Court explained that while several of its past decisions attempted “to clarify the distinction between claims-processing rules and jurisdictional rules, none of them calls into question our long-standing treatment of statutory time limits for taking an appeal as jurisdictional.” Bowles, 127 S. Ct. at 2364.

On the other hand, Kontrick involved application of Federal Rule of Bankruptcy Procedure 4004(a), which provides that a complaint objecting to a debtor’s discharge pursuant to § 727(a) of the Bankruptcy Code must be filed within sixty days after the initial meeting of creditors. Rule 4004(a), as it then-existed, provided for an extension of this deadline if filed prior to expiration of the sixty-day period. After noting Bankruptcy Rule 9006(b)(3) which provides that the deadline in Rule 4004(a) could only be extended to extent provided thereunder, the Kontrick Court explained that claim-processing rules like Rule 4004 and Rule 9006 did not affect the lower court’s subject matter jurisdiction. The Court noted the difference between “a rule governing subject-matter jurisdiction and an inflexible claim-processing rule…. [A] claim-processing rule, … even if unalterable on a party’s application, can nonetheless be forfeited if the party asserting the rule waits too long to raise the point.” Kontrick, 540 U.S. at 456. See, e.g., National Ecological Foundation v. Alexander, 496 F.3d 466, 475-76 (6th Cir. 2007) (holding that Federal Rules of Civil Procedure 6(b) and 59(e) are claims-processing rules that provided for “a forfeitable affirmative defense”).

Eberheart v. United States, 546 U.S. 12 (2005), extended the rule enunciated in Kontrick. Eberheart held that Federal Rules of Criminal Procedure 33 and 45(b)(2), were claims-processing rules like those at issue in Kontrick. In short, the Eberheart Court correctly saw no functional difference between the bankruptcy rules of procedure at issue in Kontrick and the criminal rules of procedure before it.

While Bowles appears to have erased any doubt as to the distinction between statutory-based deadlines to file NOAs and rule-based deadlines, the seemingly straight-forward holding of that case has been called into question, at least according to a panel of the Seventh Circuit, by a subsequent decision of the Supreme Court. In Ross-Tousey v. Neary, 2007 WL 5234070 (7th Cir. Dec. 17, 2008), the Seventh Circuit stated that it did not believe that the Supreme Court “intended Bowles to apply to every statutory deadline, especially in light of the fact that such an interpretation would overturn huge swaths of established case law.” Making reference to the post-Bowles decision in John R. Sand & Gravel Co. v. United States, 128 S. Ct. 750 (2008), the Seventh Circuit explained that the Supreme Court “distinguished between the majority of statutes of limitations that ‘seek primarily to protect defendants against stale or unduly delayed claim,’ which are non-jurisdictional and subject to waiver…and statutes of limitation that seek to ‘achieve a broader system-related goal’ such as ‘promoting judicial efficiency,’ which are ‘more absolute’ and have been referred to as ‘jurisdictional.’” (Internal and external citations omitted).

While making that distinction, John R. Sand & Gravel (which concerned a “special” statute of limitations governing suits against the United States in the Court of Federal Claims) did not retreat, at least not explicitly, from its holding in Bowles (which concerned a statute setting a deadline for an adverse litigant to file a NOA). The John R. Sand & Gravel Court determined that 28 U.S.C. § 2501 (the statute of limitations for suits brought in the Court of Federal Claims) was of the second, “more absolute,” type, 128 S. Ct. at 753-54, and therefore it was “not susceptible to equitable tolling,” id. at 755, which makes it consistent with the holding in Bowles. See Marsoun v. United States, 2008 WL 5531754, *3-*4 (D. D.C. Dec. 23, 2008) (rejecting argument that John R. Sand & Gravel limited the holding in Arbaugh v. Y & H Corp., 546 U.S. 500, 516 (2006) that “when Congress does not rank a statutory limitation as jurisdictional, courts should treat the restriction as nonjurisdictional in character,” which, like Bowles, was cited to favorably in John R. Sand & Gravel). As such, the author submits that the holding in Bowles that statutory-based deadlines are “jurisdictional” in that failing to file a NOA within that deadline results in the appellate court lacking the power to review a district court judgment, while the failure to meet a rule-based deadline, however mandatory, does not and cannot displace the power of a federal appellate court to review such a judgment, remains intact.

(Endnotes)
1. Paul A. Avron is an attorney with the law firm of Berger Singerman, P.A. Mr. Avron’s primary practice areas are business bankruptcy law and appellate litigation in both state and federal courts. Mr. Avron has published several appellate-related articles in The Record, and is a member of the Appellate Practice Section of The Florida Bar.
2. Federal Rule of Appellate Procedure 4(a)(3)(A) provides, in part, that “[i]n a civil case...the notice of appeal required by Rule 3 must be filed by the district clerk within 30 days after the judgment or order appealed is entered.” The Court explained that Rule 4, Fed. R. App. P. “carries § 2107 into practice.” Bowles, 127 S. Ct. at 2363. Section 2107(a) provides that “[i]n cases except as otherwise provided in this section, no appeal shall bring any judgment, order, or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.” 28 U.S.C. § 2107(a).
3. Federal Rule of Appellate Procedure 4(a)(6) provides the authority for a district court to reopen, for a period of fourteen days, the time for a litigant to file a NOA after the deadline for doing so has expired. Accord 28 U.S.C. § 2107(c) (same).
4. Of note, the Bowles Court overruled prior case law providing for an equitable exception to the requirement that a NOA be timely filed—the “unique circumstances” doctrine—finding that the Court lacked the authority to create such exceptions. Bowles, 127 S. Ct. at 2366 (“Because this Court has no authority to create equitable exceptions to jurisdictional requirements, use of the ‘unique circumstances’ doctrine is illegitimate.”). The dissent strenuously took issue with this pronouncement. See id. at 2369-71.
5. Federal Rule of Bankruptcy Procedure 9006(b)-(c) provides the authority for both an enlargement and reduction of time within certain acts must be done.
6. At the time of Eberheart, Federal Rule of Criminal Procedure 33 provided that a district court could vacate a judgment and grant a new trial if the interest of justice so required, but required that a motion seeking that relief had to be filed within seven days after the verdict or finding of guilt or within such time as the court directed within that seven day period. Like Bankruptcy Rule 9006(b)(3), Rule 45(b)(2) provided that a district court could not extend the seven day deadline set forth in Rule 33(a).
14TH APPELLATE PRACTICE INSTITUTE

THE NATION’S PREMIER APPELLATE PRACTICE PROGRAM

Learn Skills and Strategies to Be a Better Oral Advocate and Brief Writer from Leading Appellate Judges and Lawyers
<table>
<thead>
<tr>
<th>LAWYERS</th>
<th>STATE JUDGES</th>
<th>FEDERAL JUDGES</th>
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<tbody>
<tr>
<td>Tim Berg</td>
<td>Hon. Rebecca Berch Arizona Supreme Court</td>
<td>Hon. Richard Clifton U.S. Court of Appeals, 9th Circuit</td>
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<td>Phoenix, Arizona</td>
<td>Hon. Jerry Cope Florida Court of Appeal</td>
<td>Hon. Ronald Gilman U.S. Court of Appeals, 6th Circuit</td>
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<td>Bennett Evan Cooper</td>
<td>Hon. Betty Ellerin New York Supreme Court, Appellate Division</td>
<td>Hon. Susan Graber U.S. Court of Appeals, 9th Circuit</td>
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<td>Phoenix, Arizona</td>
<td>Hon. John Greaney Massachusetts Supreme Judicial Court</td>
<td>Hon. Harris Hartz U.S. Court of Appeals, 10th Circuit</td>
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<td>Andrew Frey</td>
<td>Hon. Adele Hedges Texas Court of Appeals</td>
<td>Hon. Catharina Haynes U.S. Court of Appeals, 5th Circuit</td>
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<td>Washington, D.C.</td>
<td>Hon. John Irwin Nebraska Court of Appeals</td>
<td>Hon. Sandra Ikuta U.S. Court of Appeals, 9th Circuit</td>
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<td>Sharon Freytag</td>
<td>Hon. Joetta Katz Connecticut Supreme Court</td>
<td>Hon. Kent Jordan U.S. Court of Appeals, 3rd Circuit</td>
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<td>Dallas, Texas</td>
<td>Hon. Elizabeth Lacy Virginia Supreme Court</td>
<td>Hon. Kermit Lipez U.S. Court of Appeals, 1st Circuit</td>
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<td>Jerry Ganzfried</td>
<td>Hon. Virginia Linder Oregon Supreme Court</td>
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<td>Hon. William Riley U.S. Court of Appeals, 8th Circuit</td>
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<td>Michael King</td>
<td>Hon. Nathan Mihaara California Court of Appeal</td>
<td>Hon. Gerald Tjoftt U.S. Court of Appeals, 11th Circuit</td>
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<td>Seattle, Washington</td>
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<td>Hon. Diane Wood U.S. Court of Appeals, 7th Circuit</td>
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<td>Portland, Oregon</td>
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“The direct feedback from appellate judges on my written and oral advocacy in the mock appeal was invaluable.”
# Schedule of Events

## 14th Appellate Practice Institute Program

### Friday, May 29

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Panelists</th>
<th>Moderator</th>
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</thead>
<tbody>
<tr>
<td>7:30-8:30am</td>
<td>Registration</td>
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<tr>
<td>8:30-8:40am</td>
<td>Opening Remarks</td>
<td>Hon. Arthur England, Missouri, FL</td>
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<td>8:40-10:15am</td>
<td>Plenary Session on Brief Writing</td>
<td>Hon. Arthur Scotland, California Court of Appeal, San Francisco, California, Houston, Texas</td>
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<td>Hon. Arthur England, Miami, FL</td>
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<tr>
<td>10:30am-12:00pm</td>
<td>Small Group Workshops</td>
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<td>12:00-1:15pm</td>
<td>Luncheon</td>
<td>Carter Phillips, Washington, D.C.</td>
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<td>1:30-3:30pm</td>
<td>Individual Brief Critiques</td>
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<tr>
<td>3:45-5:45pm</td>
<td>Plenary Session on Oral Argument</td>
<td>Hon. Eric Hertz, U.S. Court of Appeals, 10th Circuit, Detroit, Michigan, Washington, D.C.</td>
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<td>Hon. Elizabeth Lacy, Virginia Supreme Court, Mary Massaron Russ, Nashville, Tennessee</td>
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<td>Jerry Garfinkle, Washington, D.C., Matt Lembke, Birmingham, Alabama</td>
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<td>Sharon Fruyt, Dallas, Texas</td>
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<td>6:30pm</td>
<td>Reception</td>
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### Saturday, May 30

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<tr>
<th>Time</th>
<th>Event</th>
<th>Advocates:</th>
<th>Judges:</th>
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<tr>
<td>8:00am-1:00pm</td>
<td>Individual Oral Arguments and Critiques (90 minutes each)</td>
<td>David Frederick, Washington, D.C.</td>
<td>Hon. Rebecca Berch, Arizona Supreme Court, Hon. Susan Graber, U.S. Court of Appeals, 9th Circuit</td>
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<tr>
<td>1:00-2:15pm</td>
<td>Lunch with speaker</td>
<td>David Droznina, Omaha, Nebraska</td>
<td>Hon. John Irwin, Nebraska Court of Appeals</td>
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<td>2:30-4:30pm</td>
<td>Model Oral Argument</td>
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### Sunday, May 31

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<tr>
<th>Time</th>
<th>Event</th>
<th>Faculty</th>
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<tr>
<td>8:00am-11:30am</td>
<td>Breakfast and Roundtable Discussions with Faculty Knickerbocker Hotel</td>
<td>Leslie Medford, Dallas, TX</td>
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<td>Julia Pendergraft, Dallas, TX</td>
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*All events will take place at Northwestern Law School unless otherwise noted.*

"Easily the best seminar — appellate or otherwise—that I have ever attended"
WHO SHOULD ATTEND

The Appellate Practice Institute is designed for public and private practitioners who currently appear in federal and state appellate courts, as well as for those attorneys who want to prepare themselves for appellate practice. The program will focus on appellate writing and oral advocacy skills, as well as common mistakes and pitfalls in the appellate process. The program will also provide valuable insights from experienced advocates and perspectives from the bench. Every appellate advocate can benefit from knowing how appellate judges view appellate lawyers. Experienced and novice advocates alike, as well as repeat participants, have expressed great satisfaction with the skills honed by attendance.

SPECIAL BONUS FEATURES FOR PARTICIPANTS

Model Oral Argument

A long-time favorite for participants in the Appellate Practice Institute is the model oral argument, involving nationally known appellate practitioners who argue the same case assigned to the participants. The program includes the advocates’ and judges’ insights and expectations before the argument; the actual argument; and a judges’ conference after the argument.

Social Time

In addition to the educational benefits to be gained from interaction with the distinguished faculty, there will also be numerous opportunities for the participants to interact with the faculty and other participants in a social setting. Not only will this enable participants to continue the discussions begun in the program sessions, but it will also provide participants with a great opportunity to network and develop professional camaraderie with practicing attorneys from throughout the nation.

WHAT YOU WILL EXPERIENCE

Each participant is assigned to write a brief for either an appellant or an appellee. This is not a research exercise; a short list of case authorities is provided, along with a record of proceedings below. There is a 15-page limit for briefs. A model appellant’s brief is provided for those assigned to write an appellee’s brief. All briefs are due by May 1, 2009. The pre-selected case involves a trademark infringement claim between two brothers who each operate a bar and use the family name in the bar’s name or advertising.

Each participant’s brief is sent to a faculty member for review before you arrive in Chicago. At the Appellate Practice Institute, a private critique session takes place between each participant and the faculty member who reviewed the participant’s brief.

Each participant will also present oral argument to three faculty members – a federal judge, a state judge, and a seasoned attorney. The faculty members will then provide immediate feedback and a constructive critique of the participant’s oral argument.

Every participant will also be assigned to a workshop consisting of no more than 12 participants. The workshop will be led by the three faculty members who heard the participant’s oral argument. During the workshop sessions, the faculty will discuss common pitfalls related to the briefs and arguments of the participant, as well as address areas of interest determined by the participants. The workshops are designed for direct give-and-take between each participant and members of the faculty.

You will learn:

- How to address key issues in your brief
- What judges expect from your oral arguments
- How to structure and organize your appellate advocacy

The advice is designed to be practical.

All participants will also take part in several plenary sessions led by high-profile judges and practitioners focusing on key issues in the appellate process.
PROGRAM INFORMATION

HOTEL ACCOMMODATIONS
A block of rooms has been reserved at the Knickerbocker Hotel and at the Sofitel Chicago Water Tower.

The Knickerbocker Hotel is located at 163 East Walton Place. Log on to www.milleniumhotels.com/knickerbocker. Rooms have been reserved at the rate of $289. Reservations will be made by individuals calling the Knickerbocker Hotel directly at 312.751.8100 or 800.621.8140 and referring to the ABA Judicial Division 14th Appellate Practice Institute. All room rates are subject to city occupancy and sales tax, and unclaimed rooms will be released Monday, May 4, 2009, after which the hotel will accept reservations on a space-available basis only. The Hotel shall fax or email a confirmation to each individual within five days from the date on which the reservation is made. Hotel cancellations must be made with the Hotel 48 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

The Sofitel Chicago Water Tower is located at 20 East Chestnut Street. Log on to www.sofitelchicagowattertower.com. Rooms have been reserved at the rate of $345. Reservations will be made by individuals calling the Sofitel hotel directly at 312.324.4000 or 877.813.7700 and referring to the ABA Judicial Division 14th Appellate Practice Institute. All room rates are subject to city occupancy and sales tax, and unclaimed rooms will be released Monday, April 27, 2009, after which the hotel will accept reservations on a space-available basis only. The Hotel shall fax or email a confirmation to each individual within five days from the date on which the reservation is made. Hotel cancellations must be made with the Hotel 72 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

"The finest, most worthwhile, enjoyable CLE I have ever attended"

AIRPORT & GROUND TRANSPORTATION INFORMATION
Chicago is serviced by O’Hare International Airport (ORD) and Midway International Airport (MDW). Discounted airfares are available from ABA Orbitz for Business. To book online, go to www.abanet.org/travel and click under the Orbitz for Business logo at the top of the page, then click on the appropriate link in the Self Paid Travel box.

O’Hare is approximately 18 miles northwest of downtown Chicago or approximately one-hour away from the hotels via taxicab or limousine. Cab fare one-way from O’Hare to downtown Chicago typically costs $50-55 (plus tip) depending on traffic. Midway is approx. 12 miles and 45 minutes from downtown Chicago. Cab fares one-way from Midway to downtown cost $35-$40 (plus tip) depending on traffic.

Continental Airport Express offers a more economical choice. For rates and more information, call 773-247-1200 or visit http://www.airportexpress.com.

Chicago Transit Authority (CTA) offers train service directly from both O’Hare International Airport and Midway Airport to downtown Chicago. Base fare is $2. For more information, log on to www.transitchicago.com.

CONTINUING LEGAL EDUCATION CREDIT
The requisite sponsor documents will be forwarded to states with general MCLE requirements. Certificates of Attendance will be provided onsite at the API. You may contact the ABA Service Center at 800-285-2221 or the Conference staff at 312-988-5450 for confirmation of the number of CLE credit hours requested by the ABA or approved by an individual state. To ensure that you receive proper credit, please bring your state member number to the seminar.

“It gives an inside look into the minds of appellate judges that years of practice could not give.”
REGISTRATION FORM

Registration Information
To register, go online at www.abanet.org/jd/aic/cal or complete the registration form below and return it to the ABA Judicial Division, API, 321 N. Clark Street, 19th Floor, Chicago, IL 60654 or fax it to 312-988-3709. Checks should be made payable to the American Bar Association.

Registration fees are noted below. If you are not a member of the ABA Judicial Division you can join by calling 800-285-2221 or by visiting the Judicial Division website at www.abanet.org/jd. All seminar materials and program certificates are included in the registration fee.

ABA Member ID # ________________________________

☐ $875 Private Practice Attorney, ABA Member
☐ $925 Private Practice, Non-ABA Member
☐ $725 Government Attorney, ABA Member rate
☐ $775 Government Attorney, Non-ABA Member

“On a scale of one to ten, I would rate this course a twenty.”

Financial Assistance
The Appellate Practice Institute may be able to offer a limited number of scholarships to attorneys who wish to attend. If you are interested in being considered for a scholarship, please contact ABA staff by email at raiblea@staff.abanet.org.

Please Mail this Registration Form to:
ABA Judicial Division, API
321 N. Clark Street, 19th Floor,
Chicago, IL 60654
Or Fax To:
312-988-5709

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