The Principle of Party Presentation – What’s Your Point?

By Evan J. Langbein

The United States Supreme Court recently re-affirmed “the principle of party presentation.” This principle requires appellate counsel to ask as soon as possible, what is my point? Knowing the point should encourage counsel to get to the point, and to communicate the point with clarity, insuring the court gets your point.

In Greenlaw v. United States, the United States Supreme Court reversed a decision by a United States Circuit Court of Appeals increasing a criminal sentence by 15 years, on the Circuit Court’s initiative. The Government did not make the inadequate sentence an issue on appeal. The United States argued only defensively to defendant’s appeal seeking a reduced sentence. Justice Ginsburg’s majority opinion in Greenlaw began: “This case concerns the role of courts in our adversarial system.”

The Supreme Court then reminded lower appellate courts they are not at liberty to “sally forth” with court-made points on appeal, “looking for wrongs to right.” Instead, the “free-wheeling energies of counsel” “confront[ing] . . . detached [appellate] judge[s]” fashion the points on appeal advanced within the American adversarial process.

“Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.” The privilege of being relied upon as the master of the law carries with it the responsibility placed upon that same “free-wheeling” counsel of making the point(s) of law that brings her (his) client relief. When counsel fails in his or her duty, he (she) may encounter the rebuke enunciated by a Florida appellate tribunal:

This Court will not depart from its dispassionate role and become an advocate by second guessing counsel and advancing for him theories and defenses which counsel either intentionally or unintentionally has chosen not to mention. It is the duty of counsel to prepare appellate briefs so as to acquaint the Court with the material facts, the points of law involved, and the legal arguments supporting the positions of the respective parties. When points, positions, facts and supporting authorities are omitted from the brief, a court is entitled to believe that such are waived, abandoned, or deemed by counsel to be unworthy. Again, it is not the function of the Court to rebrief an appeal.

Present the Point in the Initial Brief.

It is imperative that appellate counsel discover and articulate points on appeal as
Lessons I’ve Learned from My Fifteen-Year-Old Daughter on the Practice of Appellate Law and Why Our Section Supports the AJEI Summit

by Dorothy F. Easley

I have a daughter who is an all-honors high school 15-year old. She’s also a former Florida musical theater state champion, a former Ford model and now an actress. Her first month in Los Angeles this summer, she booked a film role, then booked a co-starring role on a Criminal Minds episode, and then booked, but was later released before contract signings, a co-starring role on The Mentalist. At the end of the summer, she returned to Miami for the school year and resumed a heavy academic course load.

She wants to make all A’s in all Honors and AP courses, be in AP Calculus by the time she’s 16, be an A-list actress by the time she’s 17, attend an Ivy League school, and support environmental protection, recycling and the fight against eating disorders in teenage girls, so that she can be part of making a better world. “Whew,” I say. “Slow down! There’s plenty of time for greatness. Take time to smell the roses.” And her response is: “If I work hard, do interesting things, and pursue what I value, I have as good a chance anyone at getting what I want.” “Wow!” I think. “Did she get any of my genetic makeup?”

Watching my daughter grow up, part of me wishes for that redneck, rebellious “set the world on fire” side that I had at 16. And the other part considers that maybe, through seeing my own daily emphasis on hard work and education, my teenage daughter has learned and morphed into her own better version of that “set the world on fire” teenager. Someone far better than I ever dreamed of being. (Please don’t ask me about the time I caught the tool shed on fire while trying to smoke cigarettes without my parents finding out. ASAs it was an accident.) My 15-year old daugh-

ter has dreams that are entirely her own. And she is fearless about working hard for, supporting and doggedly pursing that which she values and that which makes her stronger and more competitive.

Our Section is filled with people cut from that same cloth: fearlessly committed to what we value—a strong appellate judiciary and the robust rule of law. And we now have another opportunity to pursue what we value. As leaders in appellate practice, you have seen for the past several months a series of articles and emails circulating about the Appellate Judges Education Institute (AJEI), the AJEI’s offerings and the AJEI-APS Welcome Reception Sponsorship opportunities. For those of you who have reviewed already committed to participate and support, the Section appreciates and thanks you for your leadership.

But if your schedule has been too harried, and you’ve glossed over the materials, promised yourself that you’ll register and you’ve instead moved on to the next deadline—as I did for some time— I am extending a personal request that each of you, as a leader in the appellate community, register for this Summit, from November 19 through 22, 2009, and, to the extent you can, also submit your AJEI-APS Welcome Reception Sponsorship.

What is the AJEI Summit? The ABA’s national 2009 AJEI Summit for Appellate Judges, Lawyers & Staff Attorneys is in conjunction with Florida’s Appellate Judges Conference, and it is being held on November 19-22, 2009 in Orlando, Florida. The AJEI is the ABA Judicial Division Appellate Judges Conference (“AJC”) non-profit educational arm. The AJEI provides high quality education programs that the appellate judges, themselves, design and produce. Our own Honorable Martha C. Warner of the Fourth District Court of Appeal is Chair of the AJC this year, which affiliates with the Spencer Grimes Seminar for Federal and State Appellate Judges (SG), the Council of Appellate Lawyers (CAL), and the Council of Appellate Staff Attorneys (CASA) to sponsor the AJEI Summit. Hundreds of appellate judges, attorneys and staff attorneys attend the AJEI Summit each year.

Why should I care about being a Sponsor? This year judicial budget cuts and restrictions are limiting judicial attendance. The AJEI is non-profit. As Florida’s Appellate Practice Section, we have made a commitment to support the AJEI Summit and our judiciary. We, as appellate practitioners, want to make a concerted effort to be a part of this extension of ABA appellate into our home state, and a strong supporter of our appellate judiciary. Our participation and sponsorship go directly to doing that.

I feel no reservations about urging you to register for this Summit because I know each of you cares. See “Chair’s Message,” page 29
Days are Days: Calculation of Time and Other Changes to the Federal Rules of Appellate Procedure

By Dineen Pashoukos Wasylik

If you aren’t the type to order new rule books every year, this is the year for federal practitioners to make that investment. Changes to all federal rules effective December 1, 2009, represent a major shift in the manner of computing time for deadlines. The impetus for the changes is to move away from the confusion over when and whether to count weekends and holidays in a calculation depending on the length of the deadline. Instead, the judiciary has adopted a “days are days” approach to time calculation under all federal law. In addition to this major change in time calculations, the Federal Rules of Appellate Procedure will soon have a new Rule 12.1 explaining the procedures for notifying appellate courts when a trial court believes it has lost jurisdiction due to the filing of a notice of appeal, but makes a so-called “indicative ruling” that it would rule a certain way if permitted to do so.

New Time Calculation Principles

New Federal Rule of Appellate Procedure 26 outlines this new “days are days” approach to calculating deadlines. When calculating a deadline, you still omit the day of the event that triggers the period. But now, you count every day, no matter how long the period, including intermediate Saturdays, Sundays, and legal holidays. If the last day is a Saturday, Sunday, or legal holiday, the deadline still rolls forward to the next non-weekend or non-holiday. However, the new rule also clarifies that if you are counting backwards to calculate a due date, you keep going in that direction to determine the “next day” after a weekend or holiday.

Recognizing the lengthening of days due to the advent of electronic court filing, Rule 26(a)(4) now defines the “last day” of a time period to be midnight in a district court’s or court of appeals’ principal office time zone, if there is electronic filing. The Federal Rules of Appellate Procedure also now include a method of calculating deadlines for periods stated in hours. Finally, the new rules clarify that unless a court orders otherwise, if the clerk’s office becomes inaccessible on the last day or in the last hour for filing, that the deadline is rolled forward by operation of rule to the next accessible day (or in the case of a deadline calculated by hour, the same time on the next accessible day) that is not a Saturday, Sunday, or legal holiday.

Changes to Implement These New Principles

In order to ensure that this change did not substantially shorten deadlines already in place, there are changes throughout the Federal Rules of Appellate Procedure wherever the rules referred to various time periods, so that parties would generally have the same amount of time, or more, to respond as they did under the old rules. For example, the references to “calendar days” in Rules 25(a)(2)(B)(ii), 25(c), 26, and 41 now just refer to “days.” Three and five day deadlines were generally extended to seven days. In the case of reply briefs, this had the net effect of sometimes shortening the amount of time that an appellant has to file a reply brief, if oral argument is imminent. Three deadlines that were formerly seven or eight days are now ten days. The remaining seven day deadlines were generally increased to fourteen days, in order to help prevent deadlines from falling on weekends.

Several of the changes extend what were formerly ten-day deadlines into longer deadlines of varying lengths. In Rule 4(a)(4)(A)(vi), a trial court motion for relief from final judgment made pursuant to Federal Rule of Civil Procedure 60 will toll the time for filing a notice of appeal if it is made within twenty-eight days after judgment is entered, rather than the former ten days. But later in the same rule, a motion for extension of time to file a notice of appeal or request to reopen the time for appeal in civil cases, and the effect of motions filed in criminal cases on the filing of a notice of appeal, the ten-day deadlines were replaced with fourteen-day deadlines. Indeed, in most instances, a ten-day deadline was replaced with a fourteen-day deadline, with the net actual time to respond generally being the same as they were when properly calculated under the old rule.

Notably, the time periods were generally also changed to be calculated in multiples of seven to make counting easier and avoid having deadlines fall on weekends at all. So the twenty-day time period in Rule 15(b)(2) was changed to a twenty-one-day deadline to respond to an application for enforcement. At the Rules Committee’s request, Congress also changed some statutory deadlines to comport with this change in calculation method.

Substantive Rule Changes

In addition to the big change in calculating time, there were two substantive rule changes. New Rule 12.1 is intended to resolve the quandary over trial court jurisdiction that those courts sometimes face when presented with a motion pursuant to Federal Rule of Civil Procedure 60(b) to grant relief from final judgment when an appeal is already pending. Federal Rule of Appellate Procedure 12.1 provides that if a timely motion is made to a district court that the district court lacks authority to grant because an appeal is docketed and pending, the movant must notify the court of appeals if the trial court makes an “indicative ruling” that it would grant the motion or that the motion raises a substantial issue. This gives the circuit court the opportunity to remand to the trial court to make the ruling continues, next page
it indicated. There is a new analogous Federal Rule of Civil Procedure 62.1 that describes the procedures applicable to practice in trial court. Taken together, the path should be clearer for trial courts and litigants alike when grounds for a motion for relief from judgment come to light after a notice of appeal has been filed.

Eleventh Circuit Reaction to the New Rules

Thankfully, the Eleventh Circuit Court of Appeals is on top of these major changes. On July 31, 2009, the Circuit announced proposed rule changes that bring the circuit’s local rules in line with the “days are days” methods of calculation. The Eleventh Circuit also proposes to change its local rules to implement new Rule 12.1. Comment closed on the proposals on August 31, 2009. The Circuit has not yet announced whether the changes will go into effect as proposed, but it is likely that it will soon do so to coordinate with the implementation of “days are days.”

Effect on Appellate Practitioners

While this article focuses on changes to the Federal Rules of Appellate Procedure, appellate practitioners should also be aware that “days are days” has been implemented across the rules of the federal courts, effective December 1, 2009. The United States Supreme Court has ordered that the amendments apply to all cases that commence after that date, and “insofar as just and practicable, all proceedings then pending.” It remains to be seen how quickly the trial courts and attorneys and their staff will implement the new time calculation rules for existing cases. There may well be some growing pains in the form of appellate litigation over miscalculated deadlines in the wake of the changes. In the end, however, “days are days” will make practicing attorneys’ jobs easier while making life just a little more difficult for civil procedure professors writing examination questions. It will also be interesting to see if Florida follows the Federal courts in implementing a “days are days” approach.

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Endnotes:
8 See Fed. R. Civ. P. 28.6(f)(4) (time for appellee’s reply brief in cross appeal must be filed at least 7 days, rather than 3 days, before oral argument); Fed. R. Civ. P. 31(a)(1) (time for appellee’s reply brief in main appeal must be filed at least 7 days, rather than 3 days, before oral argument).
12 See Fed. R. App. P. 5(d)(1) (time for paying fees and cost bond when permission to take permissive appeal is granted); Fed. R. App. P. 6(b)(2)/B(i) (time for filing statement of the issues presented on appeal in bankruptcy appeals); Fed. R. App. P. 10(b) (time for ordering transcripts and filing statements of issues if partial transcripts are used); Fed. R. App. P. 10(c) (time for serving objections to statements of the issues); Fed. R. App. P. 12(b) (time for attorney who filed notice of appeal to file representation statement); Fed. R. App. P. 20(b)(1) (time for making record designations); Fed. R. App. P. 39(d)(2) (time for filing objections to a bill of costs).
14 See Proposed Revisions to Eleventh Circuit Rules & Internal Operating Procedures, 11th Cir. R. 10-1 (ordering the transcript), 26.1-2 (time for filing certificate of interested persons), 33-1(a) (time for filing civil appeal statement); 35-6 (time for filing motion for leave to file amicus brief in support of petition for rehearing en banc); 39-2(c) (time for objection to application for attorney’s fees); 40-6 (time for motion to file amicus brief in support of petition for panel rehearing), available at http://www.ca11.uscourts.gov/documents/pdfs/RedJUL09.pdf.
Trial Court Discretion to Reduce Supersedes Bond Amounts: The Legislature Resolves an Interdistrict Conflict

By James H. Wyman

It has long been a basic tenet of appellate practice in Florida that virtually all appellate practitioners know by rote. A party seeking to stay execution on a money judgment pending appellate review must post a supersedeas bond in the amount of the judgment plus twice the statutory rate of interest.1 Adopted by the supreme court in 1977, Florida Rule of Appellate Procedure 9.310(b)(1) established a “fixed formula for determining the amount of the bond where there is a judgment solely for money,” with the formula required to “be automatically accepted by the clerk.”2 Rule 9.310(b)(1) improved upon its predecessor, Florida Appellate Rule 5.7, which nebulously required that a supersedeas bond be conditioned to satisfy the judgment...in full, including costs, interest (if chargeable), and damages for delay.3

In a line of cases dating back to 1980, the Third District Court of Appeal has consistently held that Rule 9.310(b)(1) provides the exclusive means for obtaining a stay of execution on a money judgment pending appellate review.4 The Fourth District has agreed with this view.5 Given this long line of authority from the Third District, this ostensible exclusivity of Rule 9.310(b)(1) vis-à-vis stays of money judgments came to be accepted unhesitatingly by commentators on Florida appellate practice.6

In 2004, however, the Second District, in an opinion authored by Judge Chris W. Altenbernd, emphatically disagreed with the Third District.7 The court in Platt v. Rusek observed that while a bond in the amount provided for in Rule 9.310(b)(1) “may, as a general rule, be the appropriate condition for a stay of execution,” it was not the only condition.8 The court noted that Rule 9.310(a) governed the procedure by which a party moves for a stay of an order pending appellate review, and that Rule 9.310(b)(1) simply provided a method for obtaining an automatic stay of a money judgment without the need to file a motion.9 The court concluded that the trial court had the authority to grant a stay on conditions other than those required for an automatic stay under Rule. 9.310(b)(1).10

The Second District panel also found that the trial court does not have the authority to stay a judgment without imposing any conditions upon the judgment debtor.11 The court reasoned that a judgment debtor without any assets subject to execution and without income subject to garnishment would not need a stay without conditions because the debtor would suffer no prejudice by an outstanding judgment during the pendency of the appeal.12 Conversely, if the judgment debtor did have such assets or income that could satisfy even just part of the judgment, the issuance of a stay without conditions would prejudice the judgment holder by failing to provide the judgment holder with protection to the extent of the assets and income.13

The court also reasoned that while a trial judge has the authority to stay a judgment upon conditions that fall short of guaranteeing full payment of the judgment at the conclusion of the appeal, this authority “should be exercised with great care.”14 The court suggested that “it would be reasonable to require the judgment debtor to submit to a deposit in aid of execution and a production of financial records before the entry of such a stay.”15

Although the Second District did not certify conflict with any of the Third District cases, conflict clearly existed. Yet an apparent resolution of this conflict has come not from the Florida Supreme Court, but rather from the Florida Legislature through its enactment of section 45.045, Florida Statutes.16 Section 45.045 provides that “a party seeking a stay of execution of a judgment pending review of any amount may move the court to reduce the amount of a supersedeas bond required to obtain such a stay.”17 The statute further provides that the trial court, “in the interest of justice and for good cause shown, may reduce the supersedeas bond or may set other conditions for the stay with or without a bond.”18 In addition, the statute provides for a $50 million cap on bonds,19 and permits limited discovery where an appellant has posted a bond in an amount less than that provided for in Rule 9.310(b)(1).20

Leaving aside (for the moment) the bond cap in section 45.045(1), there are distinct echoes of Platt in the statute. Yet it is unclear whether Platt contributed to the legislation. As originally filed by Representative Frank Attkisson, Rep., Kissimmee, House Bill 841 provided only for bond caps: one for $25 million and another of either $1 million or five percent of the net worth of an appellant who is an individual or an independently owned business with less than 400 employees.21 Committee substitutes with minor changes came out of both the House Civil Justice Committee and the House Justice Council.22

However, a committee substitute for the essentially identical Senate Bill 2250, which had been introduced a month after House Bill 841, came out of the Senate Judiciary Committee embodying the statute as it exists today.23 Rep. Attkisson then offered an amendment to his bill on the House floor that tracked the language in the Senate committee substitute.24 Both chambers passed the House version unanimously the following week. Yet given the last-minute addition of the provision allowing trial courts to reduce bonds upon motion, none of the Senate or House committee staff analyses of the bills mention Platt or any of the Third District cases; their focus is solely on the bond cap provision.25

Irrespective of whether the Legislature...
requires that a party seeking a stay of a final order file a motion with the lower tribunal, “[e]xcept as provided by general law and subdivision (b) of this rule.” Thus, in enacting section 45.045(2), the Legislature was simply exercising its power to modify the terms of Rule 9.310 as expressly authorized by the rule itself.

Second, like the bond-cap provision in section 45.045(1), the bond-reduction provision in section 45.045(2) concerns the same “substantive rights to property and appeal.” The Florida Constitution grants the right to appeal “as a matter of right, from final judgments or orders of trial courts.” The supreme court has observed that the Legislature “may implement this constitutional right and place reasonable conditions upon it so long as they do not thwart the litigants’ legitimate appellate rights.”

Finally, as BDO Seidman observed with respect to the Florida Supreme Court’s holding in *St. Mary’s Hospital,* if the legislature has the power to preclude a stay of payment, it has the power to authorize a reduction of the amount required to secure a payment stay — or even to authorize the setting of other conditions to secure a payment stay without a bond.

Another view that avoids any constitutional concerns is that the Legislature has done nothing more than ratify by statute what Platt recognized was already the appellant’s choice under Rule 9.310: either file a motion that seeks a stay “conditioned on the posting of a good and sufficient bond, other conditions, or both,” or obtain a stay without having to file a motion by posting a bond in the amount of the judgment plus twice the statutory rate of interest. This view necessarily entails a determination that *Platt* was correctly decided, and that the Third District cases were not. A review of the origins of the Third District precedent reveals that this would not be an unfair assessment. All of the cases from the Third District refer back to the court’s 1980 decision in *Palm Beach Heights Development & Sales Corp. v. Decillis.*

Despite the seeming difference between capping the amount of a supersedeas bond and allowing its reduction — or even elimination, paired with other conditions — the reasoning of the Third District in *BDO Seidman* would nonetheless appear equally applicable in any constitutional analysis of section 45.045(2).

First, Rule 9.310 asserted that it had a right to obtain a stay under Rule 9.310(a) without posting a bond or by posting a bond in an amount lower than provided for in Rule 9.310(b). The court conclusorily responded that the appellant was “entitled to a stay of the final judgment only by the posting of the bond in the amount set forth in Rule 9.310(b).” Citing *Barnett v. Barnett Bank of Jacksonville,* the court observed that “the trial court is not empowered to deprive the Decillis of their right to execute on the judgment by ordering any lesser bond or otherwise setting less onerous conditions.”

Both *Barnett* and *Jenkins Trucking* were decidedly odd cases on which to rely for this proposition, at the very least because they predate the adoption of Rule 9.310. The First District in *Barnett* held that a trial court could not utilize its authority under Florida Rule of Civil Procedure 1.550(b) to stay execution pending appellate review. The court noted that while Rule 1.550(b) allows a trial court to protect a judgment debtor briefly while an appeal was perfected and arrangements were made to obtain a bond, it nevertheless did not allow supersedeas of the judgment, which under the appellate rules could be secured “only by filing a supersedeas bond conditioned as required by [Florida Appellate] Rule 5.7.”

The court, however, simply did not address whether the trial court could set such bond at an amount less than the judgment or set other conditions instead. Even if it had, the court would have been interpreting an older and vastly different set of appellate rules.

In *Jenkins Trucking,* the defendant moved the trial court to fix the amount and conditions of a supersedeas bond pursuant to Florida Appellate Rule 5.5. The trial court order fixing the amount of the bond provided that the defendant would have 110 days to file the bond. On review of the order, the defendant argued that because Rule 5.5 allowed an appellant to move for an order fixing the bond at any time prior to the filing of the record on appeal, the rule operated to give the appellant freedom from execution for the 110-day period to file the record.
Disagreeing, the Third District noted that the rule contained no provision precluding execution during the 110-day interval and prior to the filing of bond. The court concluded that “[i]n the absence of a showing of some good cause to stay execution as provided for by s 55.38 Fla.Stat., F.S.A., the judgment was subject to execution unless and until bond was filed in the amount and on the conditions which the court had fixed therefor.”

Nothing in Jenkins Trucking speaks to the purported lack of any trial court authority to set a lower bond or otherwise set less onerous conditions. Indeed, there was no dispute about the amount of the bond set by the trial court. Rather, as shown by the court’s reference to the nowrepealed section 55.38, which was replaced by Florida Rule of Civil Procedure 1.550(b), Jenkins Trucking, like Barnett, was ultimately concerned with the extent of the trial court’s authority under section 55.38/Rule 1.550(b) to temporarily stay execution while the judgment debtor perfects an appeal and obtains a bond.

Despite these tenuous underpinnings of the Third District precedent, Judge Padovano, acknowledging the conflict with the Second District, has reasoned in his treatise that the Third District’s approach “appears to be the better view.” According to Judge Padovano, basic principles of statutory construction compel a reading that the specific provision in subdivision (b)(1) of Rule 9.310 prevails over the more general provision in subdivision (a). Further, he writes, the formula in subdivision (b)(1) “would be rendered meaningless if the trial judge could use it in some cases and avoid it in others.” However, it is unnecessary to resort to principles of statutory construction inasmuch as the plain language of Rule 9.310 is clear. Rule 9.310 states that “[e]xcept as provided by general law and in subdivision (b) of this rule, a party seeking to stay a final or nonfinal order pending review shall file a motion in the lower tribunal . . . .” Subdivision (b) provides that if the order is a money judgment, “a party may obtain an automatic stay of execution pending appellate review, without the necessity of a motion or order,” by posting a bond in the amount of the judgment plus twice the statutory rate of interest. In other words, a party seeking a stay of an order pending review of must file a motion in the trial court, except the party may get an automatic stay instead by posting a bond in the amount of the judgment plus twice the statutory rate of interest. There is nothing mandatory at all in the language of Rule 9.310(b)(1); it merely provides a permissive “may” exception to the general rule in subdivision (a).

In addition, the formula in subdivision (b) is far from meaningless inasmuch as it provides parties who have the financial wherewithal to satisfy a judgment to obtain a stay without having to resort to filing a motion. Indeed, this is the purpose of the automatic stay provision: “to relieve the trial and appellate courts from the taxing administrative burden of hearing and deciding routine, non-controversial motions for supersedeas on appeals from money judgments by fixing a formula for the posting of such bonds with the clerk of the court without the necessity for a motion or hearing.” There is obviously no need for the trial judge to use the formula in such cases because the trial judge is bypassed completely.

There is also a more compelling and practical reason for viewing section 45.045(2) as nothing more than the codification of a correctly decided Platt. Under Rule 9.310 as interpreted by the pre-section 45.045(2) cases from the Third District, a defendant against whom a $100,000 judgment has been entered, but who only has $20,000 in combined assets and income, has what is essentially only a meaningless right to appeal, at least barring any agreement with the plaintiff not to execute on the judgment during the pendency of the appeal. As the court in Platt implied, allowing the trial judge to set a bond amount at $20,000 in such instances would not prejudice the judgment holder because the judgment debtor would only be able to satisfy the judgment to that extent in any event. Further, the potential to reduce the bond amount would also give the defendant, who might otherwise be inhibited from taking an appeal due to the threat of execution on his relatively limited assets, a meaningful right to appeal. Thus, not only is section 45.045(2) a constitutional exercise of the Legislature’s authority to create and modify substantive rights, it also actually furthers the constitutional right of access to the courts.

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Endnotes:
2. In re Proposed Florida Appellate Rules, 351 So. 2d 981, 1010 (Fla. 1977).
4. See Palm Beach Heights Dev. & Sales Corp. v. Decillis, 385 So. 2d 1170, 1171 (Fla. 3d DCA 1980) (defendant may obtain stay “only by the posting of the bond in the amount set forth in Rule 9.310(b)”; see also Mellon United Nat’l Bank v. Cochran, 776 So. 2d 964, 964 (Fla. 3d DCA 2000) (same); Campbell v. Jones, 648 So. 2d 208, 209 (Fla. 3d DCA 1994) (same).
5. See Gold v. Gold, 504 So. 2d 48, 49 (Fla. 4th DCA 1987); see also Caruso v. Caruso, 932 So. 2d 457, 458 (Fla. 4th DCA 2006).
7. Platt v. Rusek, 921 So. 2d 5, 7 (Fla. 2d DCA 2004).
8. Id.
9. Id. at 7-8.
10. Id. at 8.
11. Platt, 921 So. 2d at 8.
12. Id.
13. Id.
14. Platt, 921 So. 2d at 8.
15. Id.
18. Id. The bond-reduction provision is applicable to certified class actions and to appellants who have an applicable insurance or indemnification policy. See id.
19. Id. § 45.045(1).
20. Id. § 45.045(3).
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24 Fla. H.R. Jour. 917-18 (Reg. Sess. 2006) (amendment 1 to Fla. CS 2 for HB 841 (2006)).
26 998 So. 2d 1 (Fla. 3d DCA), review denied, 996 So. 2d 211 (Fla. 2008).
27 BDO Seidman, 998 So. 2d at 2.
28 Id.
29 769 So. 2d 961, 965 (Fla. 2000).
30 BDO Seidman, 998 So. 2d at 3.
31 Id.
33 BDO Seidman, 998 So. 2d at 2.
35 Amendments to the Florida Rules of Appellate Procedure, 696 So. 2d 1103, 1104-05 (Fla. 1996).
36 See BDO Seidman, 998 So. 2d at 3.
37 Fla. R. App. P. 9.310(a),
38 Id. at R. 9.310(b)(1).
39 385 So. 2d 1170 (Fla. 3d DCA 1980).
40 It is, of course, well-established that a trial court has no power to condition a party’s right to appeal on the posting of a supersedeas bond. See, e.g., Horn v. Horn, 73 So. 2d 905, 906 (Fla. 1954).
41 Palm Beach Heights, 385 So. 2d at 1171.
42 338 So. 2d 888 (Fla. 1st DCA 1976)
43 207 So. 2d 280 (Fla. 3d DCA 1968)
44 Palm Beach Heights, 385 So. 2d at 1171.
45 338 So. 2d at 889.
46 Id.
47 207 So. 2d at 280.
48 Id. at 280-81.
49 Id. at 281.
50 Id.
51 Id.
52 Philip J. Padovano, Florida Appellate Practice § 11:4, at 207 (2009 ed.).
53 Id.
54 Id.
58 Proprietors Ins. Co. v. Valsecchi, 385 So. 2d 749, 751 (Fla. 3d DCA 1980).
Scenes from the Section Dessert Reception at The Florida Bar’s Annual Convention
June 2009, Orlando World Center Marriott
Section Presents 2009 Adkins Award to Judge Webster

By Rob Hauser

The Appellate Practice Section presented the 2009 James C. Adkins Award to First District Court of Appeal Judge Peter D. Webster at its annual Dessert Reception at the Florida Bar Annual Convention in Orlando on June 25, 2009.

The Section annually presents the award to a member of the Florida Bar or Florida judiciary who has significantly contributed to the field of appellate practice in Florida. The past two recipients were former Florida Supreme Court Justice Raoul Cantero and Florida Supreme Court Clerk Thomas D. Hall.

Judge Webster accepted the award and thanked a room of attendees for the award. “I consider it a great honor to have been chosen to receive this award.” Judge Webster said the fact he had been chosen to receive the Adkins Award was a total surprise to him.

According to outgoing Section Chair Siobhan Shea, the Nominating Committee selected Judge Webster from a number of highly qualified candidates for his outstanding and continued involvement in Section towards the advancement of appellate practice and jurisprudence. Judge Webster had been nominated several times in the past. “The Section thought it was particularly appropriate to award him the distinction for his dedication to education of appellate lawyers and judges,” Shea said. Judge Webster participates as a member of the faculty in the periodic Advanced Appellate Advocacy workshop and E. Earle Zehmer Appellate Practice Before the First DCA seminar.

Judge Webster was one of the original members of the executive council of the Appellate Practice Section, and intends to continue his involvement. “I have been delighted to have the opportunity to work with many outstanding appellate lawyers and hope to have the opportunity to work with them for many more years.”

Judge Webster has served as a District Judge at the First District since his appointment in 1991. Judge Webster is a graduate of Georgetown University and Duke University School of Law. Before joining the bench, Judge Webster had been a law clerk to then-District Judge Gerald Bard Tjoflat in the Middle District of Florida and a member of Bedell, Bedell, Dittmar, Smith & Zehmer, P.A. and successor firms, in Jacksonville.

Rob Hauser is a shareholder at Beasley Hauser Kramer Leonard & Galardi, P.A., a business litigation boutique in West Palm Beach. Rob received his Bachelor of Arts in Public Policy Studies from Duke University in 1991 and graduated with High Honors from the University of Florida College of Law in 1995. Rob is Board Certified in Appellate Practice.

The Appellate Practice Section congratulates the following attorneys who were recently certified in Appellate Practice:

Henry Gerome Gyden, Tampa
Robert Jeffrey Hauser, West Palm Beach
H. Michael Muniz, Delray Beach
Erik W. Scharf, Coconut Creek
Mark David Tinker, St. Petersburg
Brandon Stuart Vesely, St. Petersburg
James Henry Wyman, Fort Lauderdale
Congratulations!

Sylvia H. Walbolt: Recipient of the 2009 Florida Bar Foundation Medal of Honor Award

By Christine Davis Graves

Each year, The Florida Bar Foundation recognizes the significant achievements of a lawyer who has improved the administration of justice. It is the highest award given to a member of Florida’s legal profession. This year, the Medal of Honor went to Sylvia H. Walbolt.

Anyone who has come into contact with Sylvia Walbolt knows without a doubt that she more than worthy of this prestigious award. Throughout her 45-year legal career, Sylvia has demonstrated above-and-beyond dedication to improving the administration of justice in Florida through her direct representation of those who could not afford attorneys and through her encouragement of others to do the same. She has done this while maintaining an extremely busy law practice with Carlton Fields, P.A.

Sylvia has worked tirelessly for the poor, personally contributing hundreds of hours every year to pro bono representations and touching countless lives of those in need of civil or criminal representation. She has been actively involved in the Florida Innocence Project, which assists Florida prisoners attempting to prove their innocence by DNA testing; the Florida Institute of Justice, which is dedicated to improving prison conditions in Florida; and the Powers of Congress Project, which is dedicated to assisting the civil rights community to defend federal civil rights legislations against attacks on constitutional grounds. She has been appointed by the Florida Supreme Court on numerous occasions to represent, on a pro bono basis, inmates seeking to bring post conviction appeals. And, Sylvia led Carlton Fields’ efforts on behalf of a group of U.S. holocaust survivors in a class action settlement of claims against a Swiss bank.

In addition to her direct pro bono involvement, Sylvia has been actively involved in organizations whose primary mission is to ensure equal access to justice. She is an honorary lifetime member of the Board of Trustees of the Lawyers’ Committee for Civil Rights Under Law, an organization that works in association with the bar to obtain equal opportunities for minorities by addressing factors that contribute to racial justice and economic opportunity. She also served on the Board’s Amicus Briefs Committee, which prepares amicus briefs, on a pro bono basis, in cases of widespread public interest.

Sylvia has held such a strong commitment to pro bono work that she encouraged others in her law firm to perform pro bono service and has worked to maintain a culture within her firm and the profession that encourages pro bono work. She established and was the first chair of her firm’s Pro Bono Committee. And, she convinced her firm to become a charter member of the ABA Pro Bono Challenge (now known as the Law Firm Pro Bono Challenge), a program whereby law firms commit a considerable percentage of billable hours to pro bono service. She has not only encouraged countless other attorneys to provide pro bono representation, but also ensured that her firm’s commitment to pro bono will live on for generations to come.

Sylvia is also dedicated to improving her community. After reading a newspaper account of a couple in St. Petersburg who cooked meals out of their home for the homeless and needy families, Sylvia contacted the couple and made a personal donation to help them defray their costs. She then offered to provide pro bono services to incorporate them as a nonprofit organization to which tax deductible donations can be made.

Sylvia’s commitment to the legal profession is further demonstrated by her active involvement in Bar activities that further the administration of justice. She has served on numerous state and national Bar committees, ranging from committees considering judicial nominations, jury reform issues, and jury instructions, to the Lawyers’ Committee for the National Conference of State Courts. She was one of five attorney members of the 1999-2000 Anglo-American Exchange, created to further the administration of justice through papers and private discussions of judges and lawyers on judicial issues of interest in both the United States and Great Britain. Recently, Sylvia was recognized for her contributions to the profession when she was inducted into the Warren E. Burger Society of the National Center of State Courts, awarded the 2008 Tobias Simon Pro Bono Service Award, and the 2009 St. Petersburg Bar Foundation Heroes Among Us Service Award.

Sylvia’s dedication to the legal profession is beyond words. One would be hard-pressed to find a lawyer that has spent more personal time improving the practice of law and providing legal services to those who cannot afford it. She is truly deserving of this award.

Christine Davis Graves is an associate in the Tallahassee office of Carlton Fields, P.A. Her practice focuses on all aspects of appellate litigation and trial support.
Bryan Gowdy Receives 2009 Pro Bono Award

By Sarah Lahlou-Amine

Every year, the Appellate Practice Section presents its Pro Bono Award to an appellate attorney who demonstrates an outstanding commitment to serving the legal needs of those who cannot afford representation. This year, on June 25, 2009, at the Florida Bar Convention in Orlando, Florida, the Section proudly presented this award to Bryan S. Gowdy of Mills, Creed & Gowdy, P.A. Raised in Tampa, Gowdy obtained his undergraduate degree in international economics from the School of Foreign Service at Georgetown University. While at Georgetown, he played NCAA Division I soccer and was a naval ROTC scholarship recipient. After graduation, Gowdy served as an active-duty naval line officer on ships home-ported in Italy and Japan and deployed to the Persian Gulf. Gowdy later entered the Naval Reserves and became a commanding officer of a 60-person reserve unit. After returning home, Gowdy attended the University of Florida College of Law, where he served on the editorial board of the Florida Law Review and graduated first in his class.

As a board-certified appellate specialist, Gowdy is a zealous and skillful advocate for those who otherwise face complex appellate proceedings without representation. His current pro bono projects include the United States Supreme Court case of Graham v. Florida, a case addressing important constitutional issues under the Eighth Amendment.

In addition to devoting a substantial portion of his practice to providing pro bono services to those in need, Gowdy uses his experience and understanding of the critical need for such services in his community. As a board member of Jacksonville Area Legal Aid and as Chair of the Section’s Pro Bono Committee, Gowdy lends his expertise to large-scale efforts in the pro bono arena.

Gowdy’s tireless dedication to the Section’s Pro Bono Committee is not limited to the hundreds of hours he spends on pro bono matters. As Chair of the Committee, Gowdy provides leadership and guidance to the legal community, encouraging others to get involved. Gowdy states, “I am honored to receive the award. I am very grateful to everyone who has volunteered for the Pro Bono Committee, and I hope that more appellate attorneys can volunteer to take cases to meet the tremendous need for pro bono legal services.”

The Section is proud to honor Gowdy’s commitment to his community with the 2009 Pro Bono Award.

Sarah Lahlou-Amine is an attorney at Fowler White Boggs P.A. and a member of the Appellate Practice Section’s Pro Bono Committee. Her practice includes civil appeals and insurance coverage litigation.

AJEI – 2009 Summit

Plan to attend the Appellate Judges Education Institute’s 2009 Summit, sponsored by the ABA Judicial Division Appellate Judges Conference (including the Council of Appellate Lawyers and Council of Appellate Staff Attorneys) and SMU Dedman School of Law. The Institute is scheduled for November 19 - 22, 2009 at the Regal Sun Resort, an official Walt Disney World hotel in Orlando, FL.

Go to http://www.law.smu.edu/ajei to register. Registration fees include continental breakfasts, lunches, receptions, and admission to the AJEI annual dinner, making the 2009 Summit an exceptional CLE value. Registration fees for private sector ABÂ members are $595 per person with reduced rates available for judges, government sector lawyers, and appellate staff attorneys.

Hotel reservations using conference block rates can be made now at rates from $89-$119 per night. Register on the hotel website at http://www.regalsunresort.com or call 800.624.4109.
Make Sure Proposed Participation as Amicus Curiae Is Actually Court-Friendly

By Jeffrey Gillen

It is elementary that amicus curiae means “a friend of the court.”1 However, merely assuming the title does not, in and of itself, make it so. A number of Florida’s appellate court judges have made this observation.

On April 22, 2009, during oral argument before the Florida Supreme Court on a case in which The Florida Bar’s Family Law Section sought to file an amicus curiae brief in the Third District Court of Appeal in support of a circuit court order holding that section 63.042(3), Florida Statutes’ prohibition of adoptions by homosexuals is unconstitutional, Justice R. Fred Lewis commented: “They’re not friends of the court. They want to assert a position.”2 Justice Lewis went on to explain that, in his experience, amicus briefs “really turn into partisan briefs no matter who files them.”3

Justice Lewis’ views are not, however, expressed in the opinion issued by the Florida Supreme Court in that case, an opinion that Justice Lewis joined. Justice Barbara J. Pariente, writing for the five-justice majority, clarified as follows:

‘[T]his case does not concern the merits of the underlying case, that is, whether section 63.042(3), Florida Statutes (2008), is constitutional. The merits of that controversy are pending in the Third District. This case is also not about whether this Court should grant permission for the Family Law Section to file an amicus brief. Liberty Counsel itself has announced that it is seeking to file an amicus brief in support of the ban against adoptions by homosexuals, and of course nothing prevents other voluntary associations from seeking to file amicus briefs. Pursuant to the applicable Rule of Appellate Procedure, 9.370, an amicus brief may be filed only with “leave of court.” In this case, because the case is pending in the Third District, the decision as to whether to grant leave of court to file an amicus brief will be made by that court.’4

The opinion explains that the issue before the Court was whether voluntary sections of the Florida Bar have the authority to file an amicus brief, and whether there should be limits on that authority.5 In a footnote to the foregoing passage, Justice Pariente quotes more extensively from Florida Rule of Appellate Procedure 9.370 and emphasizes that the person or entity seeking leave to file an amicus brief must state how they “can assist the court in the disposition of the case.”6

Justice Lewis is not alone in his opinion that amicus briefs generally fail to assist courts in their disposition of cases. For example, in Rathkamp v. Department of Community Affairs, Judge Alan R. Schwartz wrote the one-sentence opinion, in which Judges David M. Gersten and Melvia B. Green concurred, denying a motion for leave to file an amicus brief and stating that the court “fully endorse[s] and adopt[s] ... the principles stated in Chief Judge Posner’s opinion in Ryan v. Commodity Futures Trading Commission, 125 F.3d 1062 (7th Cir. 1997).”7 In Ryan, Judge Posner stated:

‘The vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants’ briefs, in effect merely extending the length of the litigant’s brief. Such amicus briefs should not be allowed. They are an abuse. ...’

‘... In an era of heavy judicial case-loads and public impatience with the delays and expense of litigation, we judges should be assiduous to bar the gates to amicus curiae briefs that fail to present convincing reasons why the parties’ briefs do not give us all the help we need for deciding the appeal.’8

So, to properly fulfill their function, on what should an amicus curiae focus in moving for leave to file and in constructing a brief? Florida Rule of Appellate Procedure 9.370 affords some guidance. Rule 9.370(a) provides:

‘An amicus curiae may file a brief only by leave of the court. A motion for leave to file must state the movant’s interest, the particular issue to be addressed, how the movant can assist the court in the disposition of the case, and whether all parties consent to the filing of the brief.’

Further, Rule 9.370(b) states that “[a]n amicus brief ... shall omit a statement of the case and facts and may not exceed 20 pages. The cover must identify the party or parties supported. An amicus brief must include a concise statement of the identity of the amicus curiae and its interest in the case.” As is usually the case, we must turn to case law for more detailed direction.

The Fourth District Court of Appeal’s brief opinion in Ciba-Geigy Limited v. Fish Peddler, Inc.,9 succinctly admonishes what amicus briefs should and should not do. They should assist the court in cases of “general public interest” or raising “difficult issues” by getting “right to the additional information which the amicus believes will assist the court.”10 They should not “contain a statement of the case or facts,” “argue the facts in issue,” “be used to simply give one side more exposure,” or “be repetitious of the parties’ briefs.”11 In addition, an amicus curiae should not have “a direct interest in the outcome of” the appeal in which leave to file is sought.12 In other words, a party to the lower court proceedings may not act as an amicus curiae in the appellate court in the same matter.13 Also, an amicus curiae may not raise an issue for which resolution might require granting relief when the issue was not first raised by the parties to the appeal.14

It seems clear that a number of appellate judges are frustrated with the misuse of the amicus curiae procedure in Florida’s appellate courts. This is

continued on next page
true whether or not those frustrations are reduced to writing. Therefore, a practitioner would be well advised to take to heart the admonitions in Ciba-Geigy and Florida Rule of Appellate Procedure 9.370 when considering whether to enter an appellate matter as a true friend of the court.

Jeffrey Dana Gillen is the Statewide Appeals Director for the Department of Children and Families’ Children’s Legal Services. He has practiced before all of Florida’s District Courts of Appeal as well as the Florida Supreme Court, appellate divisions of the New York Supreme Court, United States Circuit Courts of Appeals and the United States Supreme Court. He obtained his B.A. from Denison University and his J.D. from Syracuse University.

Endnotes:
1. BLACK’S LAW DICTIONARY, 83 (7th ed. 1999).
3. Id.
4. Liberty Counsel v. The Florida Bar Board of Governors, 12 So. 3d 183, 186 (Fla. 2009) (footnote omitted).
5. Id.
7. 730 So. 2d 866, 866 (Fla. 3rd DCA 1999).
8. Ryan, 125 F. 3d at 1063-64.
9. 683 So. 2d 522 (Fla. 4th DCA 1996).
10. Id. at 523-24.
11. Id.
13. See id.
It’s no secret that Nikki Ann Clark has wanted a job at the First District Court of Appeal for a long time. She’s submitted her application many times and her persistence finally paid off when Governor Charlie Crist appointed her on January 13, 2009, to fill the vacancy created when he elevated Judge Ricky Polston to the Florida Supreme Court.

Is the dream job everything that Judge Clark hoped for? Definitely yes. “I’m loving every minute of it! I wake up every morning thinking, ‘Good, I get to go to work again today.’” She feels challenged by the work, which is brand new to the former trial judge, and she enjoys tackling the steep learning curve she faces. Judge Clark is quick to point out, however, that she has had plenty of help and support from her 14 colleagues, who have welcomed her and willingly shared their knowledge and tips for wading through voluminous caseloads.

Nikki Ann Clark grew up in Detroit, Michigan, the sixth of seven children of parents James and Mary Elizabeth, who taught their children the importance of honesty, humility, integrity, education, and dedication to public service. These are the lessons she has passed on to her own daughter, Kianna Ferguson, who graduated in May 2009 from University of Colorado Law School.

Role models for Judge Clark were abundant in Detroit in the late 1960s. She had an aunt who had attended law school and there were many women lawyers in Detroit, including African-American lawyers, and, in fact, her best friend’s mother was a judge. Consequently, it never occurred to Judge Clark that she could not become a lawyer or even a judge.

A day in court with her older sister’s friend, Ken Cockrell, is what set the course for a legal career for Judge Clark. She was only 14 or 15 years old when he invited her to court to watch him present a case, which was “the coolest thing she had ever seen.” Judge Clark recalls she did not understand exactly what he was arguing, but it was apparent that he was protecting his clients’ rights and seeking justice, and she was hooked.

Being “hooked” on the law was a matter of controversy in her family, however, because Judge Clark often found it more interesting to spend the day at the courthouse watching trials when she should have been at school. Her parents were not pleased. What her family saw as a rebellious youth, however, was simply the birth of life-long commitment to the law and justice.

Judge Clark received her under-graduate degree in 1974 from Wayne State University, an urban research university located in the heart of Detroit’s university cultural center, known for its mission to transmit knowledge that contributes to the positive development of its students and the region’s social, cultural, economic and educational enrichment.

What began as a temporary move from Detroit to attend Florida State University College of Law, from which she graduated in 1977, eventually became a permanent relocation to Tallahassee.

The lessons she learned from her parents, her sense of justice that caused her to stand up for students who were treated unfairly in school, and her training at Wayne State and FSU were quickly put to work as a new lawyer at Legal Services of North Florida, Inc., where she pursued her quest to seek justice for the area’s most indigent citizens. She later turned to protecting the rights of Floridians through her ten years of service as an Assistant Attorney General from 1981–1991, where opposing counsel, such as Martha Barnett, found her to be “prepared, focused, and tough as nails.” She considered public policy and pursued the public good, carefully balancing individual rights while seeking equality and justice. For the next two years, she served as Director of Legislation and Policy for the Department of Environmental Protection, striving to protect Florida’s air, water, and land. She took her public policy interest to the Governor’s Office in 1993, and it was from there that Governor Lawton Chiles appointed Judge Clark to the Second Judicial Circuit as its first African-American judge and first fe-
female circuit court judge.

For the past 16 years, Judge Clark’s quest for justice was pursued through her public service as a trial court judge. The nation’s spotlight focused on Judge Clark in 2000 when she was assigned to handle two of the most significant cases in Bush v. Gore dealing with absentee ballots and the manual recount. Her experience with election law led to a trip to Liberia to help that country restore its judicial branch, which had been destroyed in the civil war, and several trips to Nigeria to teach election dispute resolution to judges, lawyers and elections officials.

While on the circuit court bench, Judge Clark also served for over ten years as an Adjunct Professor of Law at FSU College of Law, teaching Trial Practice. Since 2006, she has chaired the Florida Supreme Court Committee on Children and Families in the Court, and two of her proudest accomplishments were the creation of the Unified Family Court and the Independent Living Court for Florida’s foster children in the Second Circuit.

Judge Clark is enjoying the transition from trial to appellate court judge. She explains that when she was a trial court judge, the parties came to her court ready for her to make a decision. All the discovery was done, mediation and settlement had failed, and all that remained was an unresolved controversy only a trial court could determine through a bench or jury trial. She would make a decision in one case and move on to the next case. Occasionally, a colleague would run something by her, but it is a trial court judge’s job to make decisions that affect or resolve one particular case.

At the appellate court, however, everything is done in a group. She discusses the cases with her colleagues, expresses her views, and makes suggestions, and then the group comes to a decision with which she may or may not agree. She has discovered that each panel has a different process for reaching agreement, so there is no formulaic approach. Consequently, she has had to rethink her methods and she’s honing new communication skills to present her views to her colleagues and build consensus in the decision-making process. Judge Clark is quick to point out that the appellate process is not a matter of convincing the other panel members of the correctness of your position; rather it is a process of fully explaining why you think your decision is right, and then listening to the other judges’ perspectives. The opportunity to discuss differing views is a refreshing change from the trial court, and it’s a transition she’s glad to make.

Judge Clark offers the following advice for appellate practitioners: Do your homework. Know your case better than anybody in the courtroom, whether you were trial counsel or not. When there is a question about the record, make no excuses for not knowing it. If a judge has asked a question about the record, it is because she needs the answer to make a proper ruling. Know the rules of appellate procedure. Do not assume they are the same as the last time you had a case – especially if you don’t litigate appellate cases regularly. Rules get amended, repealed and interpreted on a regular basis. Finally, make your briefs and arguments clear. Do not assume the court is concentrating only on your issue of interest for the day. In the course of a day, the court may review and consider a broad variety of cases and can easily go from a criminal case, to a personal injury case, to an administrative law case to a land use case. Do not assume the court knows as much as you do about your case when writing your brief. “Write so that by the time we finish the brief, we do.”

Wendy S. Loquasto is the managing partner of the Tallahassee office of Fox & Loquasto, P.A. She is board certified in Appellate Practice and serves on the Executive Council of The Florida Bar Appellate Practice Section and Appellate Court Rules Committee.

Chief Judge Paul M. Hawkes Shepherds the First DCA into the Future

By Wendy S. Loquasto

Walking into Chief Judge Paul M. Hawkes’ chambers at the First District Court of Appeal, one sees wood, granite and carpet samples being considered for the new courthouse. When asked about the new courthouse, Judge Hawkes’ exuberance for the project is palpable. “We’re very excited!” It is beautiful, spacious, planned for anticipated growth 25 years into the future, and will be state of the art technology-wise. Substantial completion is scheduled for October 21, 2010, and the court plans to hold its first oral arguments there in November 2010.

The new courthouse project is sorely needed. As then-Chief Judge Browning explained in 2007, “We’re obsolete . . . We were designed for eight or 10 judges and we have 15. When it was designed, each judge had one law clerk and now they have two.” A tour of the facility demonstrates the truth of these words. As a former law clerk, I remember the First DCA back in 1988 when it only had 12 judges and a two-attorney central staff. Now, there are 15 judges, a writs and motions staff of six, central staff
of eight, and the newest addition of the six-person Workers’ Compensation Unit. Attorneys occupy the library and spaces that once were copy rooms, every available cubby hole is filled with a desk or office equipment, and even the kitchen space has been reconfigured to make room for the document scanning department.

The new courthouse project has been ongoing for the past five years. It was begun in much better economic times when the real estate boom in Florida permitted the necessary appropriations to be made. The project also was the beneficiary of a generous donation of the land, located in the SouthWood Office Complex on Capital Circle, by the owner, a subsidiary of St. Joe Company.

Chief Judge Hawkes explained that the new courthouse is built for today and for a long time into the future. The planners tried to anticipate future growth in the number of judges, law clerks, central staff, and clerk’s office employees. The building will be wired to facilitate changes in technology. The U.S. Marshall’s Office has assisted in planning the security. There will be two courtrooms, which will increase flexibility in scheduling oral arguments. One of the courtrooms will be a technology courtroom, fully capable of remote oral arguments. There will be a large multipurpose room, suitable for CLEs, conferences, and use by the legal community, including bar associations.

The new courthouse is located just 7 1/2 miles from Tallahassee Regional Airport, so it will be easy to access for travelers. Simply drive out of the airport, turn right onto Capital Circle, and in the blink of an eye, you will be pulling into the parking lot. Speaking of parking, the lack of which has always been a source of complaint by both employees and attorneys alike, I am happy to report that there will be parking spots for each of the court’s current 135 employees, as well as 50–yes, 50–spots for customers. That means we will all have a place to park at the court when we have oral argument! All in all, it is a building that will not only look beautiful, but it will also be functional so as to permit the First DCA to best serve its customers, the citizens of the State of Florida.

Chief Judge Hawkes is also busy at work shaping the future of electronic filing in Florida’s appellate courts. The First DCA is going above and beyond what any other court is doing in Florida with electronic filing. By partnering with the Office of the Judges of Compensation Claims and creating a document management system that works with the court’s current case management system, the First DCA is able to bring about true electronic filing for all workers’ compensation cases at a low cost to the state. Since the First DCA has exclusive jurisdiction of workers’ compensation cases, this advance will benefit attorneys and litigants around the entire state. I had the privilege of seeing the First DCA’s electronic record management system in operation as Judge Hawkes demonstrated it. Not only will we be able to view the documents electronically, we will be able to use an entire electronic record, complete with the ability to fully search the documents and bookmark sections. If you need to print a section of the record, you can, but you can also provide annotations on the electronic record documents, just like writing on paper. Judge Hawkes was quick to point out the tremendous savings by use of electronic records – approximately $1,000 for a typical workers’ compensation case.

The electronic system will make a big difference to the court employees, as each case will have its own mini-website that includes: the docket; all the documents, including the record; the case correspondence file; and all internal court documents generated for the case. If a judge needs to see a section of a record or a decision critical to disposition of the case, it will be available at the click of a finger. In addition, there will be a “chat box” for the court personnel, for interactive communications about the case and its disposition. What a change from the old system I knew when I worked at the court, where parts of the file were stored in numerous locations, case summaries were circulated without the file, and the files themselves were pushed around the court on a cart that made rounds twice a day!

Chief Judge Hawkes’ theory is simple: electronic records are coming and the First DCA can either wait and be told how electronic filing will work or it can be actively involved in shaping the future. He and the members of the court have wisely chosen the latter.

Another new innovation Judge Hawkes wants to suggest to the legislature is electronic generation of postconviction motions. He and his staff are currently developing an interactive questionnaire similar to the standard form for motions filed under Florida Rule of Criminal Procedure 3.850. He envisions a few computers donated to the prisons as the Legislature recycles its old equipment, inmates would be able to click through a series of questions about their case and postconviction claims, the answer to which will dictate the next question to be answered, thus individualizing each form to the circumstances and complaints at issue. When the inmate has completed the last question, a catch-all “Is there anything else you need to tell the court?”, a click will allow the computer to compile a legible
document that will be electronically transmitted to the Chief Judge in the appropriate Circuit for assignment to the appropriate judge. If relief is denied, the inmate will be able to click a box indicating he or she wants to appeal, and all the documents will be transmitted to the court for the appeal. If it sounds a little futuristic, it is, but Judge Hawkes has a vision for the future and the determination to forge reality from that vision.

Chief Judge Hawkes is the right judge for the right time. He was appointed by Governor Jeb Bush to the First DCA on January 2, 2003, and began his term as Chief Judge of the First DCA just six years later in January 2009. When one considers his work history, it seems almost inevitable that Judge Hawkes would prove to be an innovative problem-solver. Before his appointment, Judge Hawkes was Chief of Policy for the Florida House of Representatives in 2000-02 and he earlier worked in the Office of Policy & Budget within the Executive Office of the Governor in 2000. He also served as State Representative for Florida House District 26 and District 43 (1990-1994), and he helped shape Florida’s constitution while serving on the Constitutional Revision Commission in 1997-98. He became familiar with Florida’s criminal justice system when he worked as an Assistant State Attorney for the 5th Judicial Circuit from 1986 to 1988, and he experienced the justice system as an attorney in private practice, first with Rumberger, Kirk, Caldwell, Cabinas & Burke, P.A. in 1986, and then in his own practice in Crystal River from 1988-2000.

On a personal note, Judge Hawkes was born in New London, Connecticut, and he married his high school sweetheart, Leslie K. Greer, in 1975. The couple has five sons: Jeremiah, Benjamin, Joshua, Jacob and Caleb. Son Jeremiah followed his father into the law in 2001.

Judge Hawkes served in the United States Air Force from 1975 to 1978. He received a B.S. Degree in political science, cum laude, from the University of South Florida in 1983. He graduated with honors from Florida State University College of Law with his J.D. in 1985, having served as Research Editor on the FSU Law Review.

His words of advice to appellate practitioners: Craft your statement of the facts so each statement whispers “I win,” a phrase he picked up from his law clerk. He believes that the statement of the facts is one of the most important parts of the brief – an appellate attorney’s best opportunity to present his or her case.

Under Construction: The First District Court of Appeal in Tallahassee, FL. (Photo courtesy of www.aerophoto.com.)
Judge Robert J. Morris, Jr., Joins the Second District Court of Appeal

By Stephanie Zimmerman

Judge Robert J. Morris, Jr., was with his wife Anne Marie, flying to St. Louis to pick up their son Cullen, who had spent the summer studying at a biological station in the Ozarks, when his cell phone rang with a call from the Governor's office. After excitedly accepting the Governor's offer to be the next judge at the Second District Court of Appeal, he found himself standing in an airport with no meaningful way to inform the Sixth Judicial Circuit's sixty-nine judges and hundreds of employees across Pasco and Pinellas Counties, for whom he served as chief judge, that a transition was about to take place. However, the many hats that Judge Morris has worn over the years prepared him for the task that awaited him when he arrived back in Clearwater.

Judge Morris was born in Jacksonville, Florida. His family moved to the Bahamas for his father's work when Judge Morris was in the third grade. The family returned to Florida when he was fifteen, and they landed in Tarpon Springs. While attending Tarpon Springs High School, he met his future wife Anne Marie Cullen, whose family has lived in Pinellas County since before World War II.

Both Judge Morris and his wife attended the University of Florida. Judge Morris, along with his seven siblings, worked the summers at his parents' dude ranch in the Ozarks (coincidentally just one mile away from where his son Cullen studied this summer) to repay his parents for their help with his tuition. After graduating with a Bachelor of Science from the College of Journalism in 1975, in the midst of a recession, Judge Morris moved from the Sunshine State to the Windy City, where he worked for a major national financial institution and became a Registered Principal with the National Association of Securities Dealers (NASD). He married Anne Marie the following spring.

Judge Morris always wanted to be a lawyer but there simply was no money to pay for law school. He nearly gave up on the idea until his wife made him an offer. She would support him while he attended law school if they returned to Florida once he was finished. It was a deal. Judge Morris obtained a Juris Doctor from DePaul University College of Law in 1980. On the day of his last exam, the car was packed and they drove back to Florida before the rest of the DePaul graduates donned their caps and gowns. Twenty-nine years later, Judge Morris witnessed the graduation experience when both his daughter, Anne Marie, and son, Robert III, graduated from law school earlier this year.

While in law school, Judge Morris had his first brush with the world of appellate law when he clerked for the Illinois Attorney General, where he had the opportunity to work on briefs submitted to the Illinois Supreme Court and the Seventh Circuit Court of Appeals. Upon returning to Florida, he took a job as an Assistant State Attorney in the Sixth Judicial Circuit. There he was able to develop the trial skills that he would later use when he went into private practice with Hill, Hill & Dickenson, an established Tampa firm that was later acquired by Foley & Lardner. Because “sometimes life has a plan for you,” after ten years, Judge Morris returned to Pinellas County and opened his own law firm. His practice concentrated on complex commercial litigation and transactions. During this time, he also was the founding Chair of the 13th Judicial Circuit Committee on Racial, Ethnic, and Gender Bias.

After practicing for seventeen years, Governor Lawton Chiles appointed him to the Pinellas County Court in 1997. Four years later, Governor Jeb Bush appointed him to the circuit court bench. During his time as a circuit court judge, Justice Barbara Pariente appointed him Chair of the Supreme Court Committee on Families and Children and Justice R. Fred Lewis appointed him to the Trial Court Budget Commission. He also received the William J. Castagna Award for Judicial Excellence. In 2007, and again in 2009, the sixty-nine judges of the Sixth Judicial Circuit unanimously elected him chief judge.

Judge Morris's time as chief judge was not undemanding. Last year, a heavily-armed man in the middle of a divorce fired shots in the lobby of the St. Petersburg courthouse. The man was killed by two bailiffs, one of whom was injured in the gun battle. The Sixth Judicial Circuit has also had to deal with economy-induced... continued, next page
budget cuts, staff reductions, hiring freezes, and pay cuts. In addition to advocating on behalf of the judiciary before the Florida Bar and the Florida Legislature, Judge Morris wrote a number of columns for local papers to give the general public a better understanding of “how hard it is for the judiciary” and how the budget crisis has very real effects on the people of Pinellas and Pasco Counties. He hopes to continue these efforts because “if people don’t wake up to the plight of the judiciary, we are going to be relegated to being an agency quick.”

Despite these obstacles, Judge Morris “really enjoyed” his twelve years at the Sixth Judicial Circuit. His work there allowed him to bring closure to the stresses in numerous people’s lives. Judge Morris explained that as long as everyone has been given a fair chance to be heard, there is a “very noticeable and significant feeling of relief, no matter the outcome,” when a case is over. He also will miss the people who work for the Circuit, whom he describes as a “special breed” who “reach beyond themselves to serve others every day of their lives.”

When Governor Crist appointed Judge Morris to the Second District Court of Appeal, the Governor described him as “a compassionate leader with extensive knowledge and experience.” Judge Morris “has great empathy” for solo practitioners, big-firm lawyers, government lawyers, and trial judges because he has been in all of their shoes and understands their stresses, worries, and concerns. He looks forward to sharing his experiences as a trial lawyer and trial judge with the other judges at the Second DCA, whom he admires “a great deal.”

A self-described “perfectionist,” Judge Morris is most looking forward to having more opportunities to write and to having a different view of the system. Right now, Judge Morris is a little nervous about the new challenge before him but believes it will make him prepare better and become a better judge. He theorizes that a district court judge is “a whole lot better five years later” than he is when he first takes the position, and plans to work until he is told “to go home.” He advises those who appear before him to be practical about the law. “The law is supposed to operate for our benefit. It is not supposed to be so complicated that none of us can understand it or make it useful.”

Stephanie Zimmerman is an associate in the Appellate and Trial Support Practice Group at Carlton Fields’ St. Petersburg office. She is a former law clerk to The Honorable Judge Douglas A. Wallace on Florida’s Second District Court of Appeal.
On July 1st, Judge Darryl Casanueva began his two-year term as Chief Judge of Florida’s Second District Court of Appeal. Judge Casanueva, who is from Charlotte County and who still commutes daily from his home there to the Tampa branch, was appointed to the court in 1998. When asked what his goal is for his tenure, Chief Judge Casanueva responded in his humorous, yet modest, fashion, “To get out alive.”

Most appellate practitioners might think that being the chief judge of a district court of appeal is a glamorous position. But, according to Chief Judge Casanueva, being chief judge requires many hours of attending to administrative duties, in addition to his own case load (a sentiment possibly shared by the other chief judges in Florida’s five district courts of appeal and by Chief Justice Quince of the Florida Supreme Court). He has already appointed and met with the members of the Second District’s standing committees on budget, long-term planning, central staff, technology, liaison, and case management. One of Judge Casanueva’s first items of business as chief is to implement the new swine flu prevention regulations this fall. He also continues to be the Second District liaison to his home circuit, the Twentieth Judicial Circuit.

Pursuant to the Chief Justice’s directive, Chief Judge Casanueva also recently reported the Second District’s need for an additional judgeship, which position would include a judge, two staff attorneys and a judicial assistant. While the Second District has certified the need for seven out of the last eight years, the legislature has not funded a position since 1993. Chief Judge Casanueva explained in his letter reporting the need for an additional judgeship that the populations of the five largest counties in the fourteen-county Second District have grown dramatically since 1993. While the legislature has funded “a substantial increase in the number of circuit court judges,” the fourteen active judges on the Second District have faced a 22.8 percent increase in criminal appeals. Additionally, the budget cuts of the last legislative session “significantly reduced” the court’s central staff attorneys, who assist the judges in processing postconviction appeals.

Chief Judge Casanueva has requested full or partial restoration of the budget cuts so that the court may fill the central staff attorney and clerk’s office positions that were cut last year. At the very least, he would like to reward the present court staff attorneys and employees who have been struggling to timely process the increasing number of appeals, writs, and motions.

Reflecting on how he prepared to take on the administrative responsibilities of his new role, Judge Casanueva said that he owed much of his training and many thanks to Judge Steve Northcutt, who preceded him as chief judge.

When asked how appellate practitioners in the Second District could assist the court in timely processing the appeals of their clients, Chief Judge Casanueva advised, “Try to keep to the briefing schedules as much as possible, limit motion practice to the essentials, and be patient.”

Valeria Hendricks is a partner at Davis & Harmon, PA, in Tampa, where she heads the appellate and litigation support department. She is certified by The Florida Bar in Appellate Practice and is AV rated by Martindale-Hubbell. Prior to entering private practice she was a staff attorney at the Second District Court of Appeal.
Welcoming Judge Juan Ramirez, Jr. as Chief Judge of the Third District Court of Appeal

By Jordan S. Kosches

On July 1, 2009, the Honorable Juan Ramirez, Jr. was sworn in as the thirteenth Chief Judge of the Third District Court of Appeal. Taking the helm from outgoing Chief Judge David M. Gersten, who held the position since 2007, Judge Ramirez will serve until 2011 when the leadership role will then be passed to Judge Linda Ann Wells.

As chief, Judge Ramirez holds a very important position. Elected to a two-year term by his fellow justices, the Chief Judge is defined by Florida Rule of Judicial Administration 2.210(a)(2) as “the administrative officer of the court, responsible for the dispatch of its business.” The Rule continues that the Chief Judge holds “the power to order consolidation of cases, and shall assign cases to the judges for the preparation of opinions, orders, or judgments.” However, as Judge Ramirez explained both at his Passing of the Gavel ceremony, held on July 1, 2009, at the Florida International University School of Law, and during a subsequent interview with this author, to him the position invokes much more. “It is the culmination of my career,” Judge Ramirez said, and “I am honored that my colleagues have trusted me with this position.”

Judge Ramirez, appointed to the Third District in 2000 by then Governor Jeb Bush, is an accomplished and well-respected jurist. After earning his Bachelor and Master’s degrees from Vanderbilt University, Judge Ramirez pursued a Ph.D in Latin American History from the University of Florida. Later earning his law degree with honors from the University of Connecticut School of Law, he served as a county court judge from 1988 through 1990, and as a circuit court judge from 1990 through 1999 prior to being elevated to the Third District. While still on the circuit court, Judge Ramirez authored a two-volume set entitled “Florida Civil Procedure” which was published in 1997, and thereafter a three-volume set entitled “Florida Evidence Manual,” which was published in 2000. According to the guidelines set forth in Rule 2.210(a)(2), “[t]he selection of a chief judge should be based on managerial, administrative, and leadership abilities.” With regard to these criteria, Judge Ramirez more than fits the bill. Aside from his renowned excellent judicial temperament and legal acumen, Judge Ramirez has devoted a significant amount of his time to causes that he holds dear. For instance, he represents the Third District Court of Appeal on the Court Technology Committee for the Appellate Courts of Florida, is a member of the Advisory Board of the Law and Economics Center of George Mason School of Law, is a member of the Civil Procedure Rules Committee, was the Administrative Judge of the Appellate Division of the Circuit Court, was the Associate Dean of the College of Advanced Judicial Studies, served in the Florida Courts Education Council as well as the Education Committee of the Conference of District Court Judges, and has taught numerous courses as an adjunct professor at the Florida International University, St. Thomas University, and Nova Southeastern University schools of law.

While he has only just begun his tenure as chief, Judge Ramirez has already set goals for his new administration. As he explained, before the end of his term he would like to implement the requisite technology so that oral arguments can be streamed and archived on the Internet, putting the Third District on par with its sister courts and the Supreme Court of Florida in that regard. Further, he would like to make it the standard practice of the Third District that the names of the oral argument panel members be released in advance of argument.

Although many practitioners will likely be elated to learn of Judge Ramirez’s plans, they should be cautioned that they are, at least for now, just goals and not certainties. As Judge Ramirez modestly explained, “A lot of people think that the Chief Judge is more powerful than just being judge.” However, especially with important policy decisions such as these “all of the judges and I just basically get together and discuss the issues.”

Also important to Judge Ramirez is that he serve as a role-model to those in the Hispanic community. “It is a very satisfying position to be the one of, if not the, first Hispanic Chief Judge of any appellate court in the state. Hopefully I can be a role-model for Hispanics – a trailblazer so-to-speak.”

continued, next page
As for his new position, Judge Ramirez said that so far “it has been more work than I thought, especially since we are renovating the Court and doing other construction throughout the building.” Notwithstanding his added responsibilities, Judge Ramirez still tries to unwind when he can; usually by reading books on his Amazon Kindle, reading news stories on the Internet, and practicing yoga. Judge Ramirez shared that, when he finds the time, he enjoys the beach—especially the views of the ocean.

Although he is the new chief, Judge Ramirez will still perform his usual duties as a member of the Third District, and in that regard he shared his expectations of every attorney who appears before him. “Know the record,” Judge Ramirez explained. Also, “Shepardize the cases and expect the Court to ask questions.” In sum, “be prepared.”

Notwithstanding the high expectations set for Judge Ramirez by virtue of his having assumed the leadership role from Judge Gersten, it seems evident that Judge Ramirez will excel in his new position. On behalf of the Appellate Practice Section of the Florida Bar, we wish Judge Ramirez all of the best during his tenure as Chief Judge of the Third District Court of Appeal.

Judge Jonathan Gerber: Humility and Hard Work Is a Formula for Achievement

By Ivy Ginsberg

On April 6, 2009, Jonathan Gerber was appointed to the Fourth District Court of Appeal to fill the vacancy created by the retirement of Judge Larry Klein. On the appointment, Governor Crist said, “Judge Gerber’s civil and criminal court experience have prepared him well to serve on the appellate court. His commitment to public service, along with his strong work ethic, will serve the people of the Fourth District well.” Judge Gerber’s biography, on the court’s website, outlines his many accomplishments as a scholar, an attorney, a judge and his leadership in the community. This profile is intended to give you an idea of the man behind the outstanding resume.

Judge Gerber grew up in Broward County, Florida, initially living in Hollywood. His family then moved west, where he was raised on ten acres of land in Southwest Ranches. His father is a retired pathologist, and his mother is a retired nurse. Judge Gerber grew up with horses and cows and loved working on his family’s plant nursery and playing baseball. He attended public schools, graduating from Western High.

After high school, Judge Gerber spread his wings and headed north to study at Princeton University. In addition to the fine education he received, at Princeton he experienced snow for the first time. In 1990 he graduated cum laude with a major in politics. I asked the judge why, after attending an Ivy League university, he chose to attend the University of Florida College of Law. He answered that he wanted to come back home. He knew he wanted to practice law in Florida, and his older brother, a lawyer in Orlando, advised him to attend a Florida law school. At the University of Florida, he immersed himself in the law by becoming president of the Trial Team, an editor of the Law Review and a clerk to Eighth Circuit Court Judge Frederick Smith.

Equally important, it was at Florida during a trial team competition that he met the love of his life, his wife, Tracy. He walked into the library where she was studying and asked her to be a witness for a trial competition in Texas. After graduation, Judge Gerber headed south to Palm Beach County where Tracy grew up. In 1993, he accepted an offer as an associate in the Palm Beach office of Cadwalader, Wickersham & Taft, a prestigious 200 year old New York law firm. However, after only one year with the firm, it shut down its Palm Beach office, and Jonathan Gerber was briefly out of a job.

It was not long before he was hired by Shutts & Bowen, where he spent the rest of his private legal career practicing insurance, general commercial and probate litigation.
important influences in his legal career were Shutts lawyers Arnie Ber- man, Joe McSorley and John Meagh- er. In addition to fine tuning his trial skills, these men instilled in him the importance of professionalism and being involved in the community.

Since 1994, Judge Gerber has con- tinuously served on the Judicial Rela- tions Committee of the Palm Beach County Bar Association. The commit- tee is responsible for organizing the Bench/Bar Conference, which fosters communication between lawyers and judges to improve the judicial system. Similarly, through his participation with the American Inns of Court, Judge Gerber has been involved in fostering ethics and professionalism in young lawyers. The judge explained that the American Inns of Court de- rive from England, where pupils and associates learn from barristers and masters in law. About thirty years ago, United States Supreme Court Chief Justice Warren Burger decided to bring the tutelage aspects of the Inns of Court to the United States. In the American program, Judge Gerber explained, local Inns generally em- phasize ethics rules through skits and lectures.

Judge Gerber remained at Shutts & Bowen for eight years until 2002 when Govenor Bush appointed him to the County Court bench. He served in both the Criminal and Civil Divisions until 2004 when he was elevated to the Circuit Court Bench. As a Circuit Court Judge, he served in the Civil Division for four years including as the Administrative Judge in 2008; he served as the Appellate Division Supervisor from 2005-2007 and in the Criminal Division from 2008-2009. As a trial judge, Judge Gerber was voted “Jurist of the Year” two years in a row by different sections of the Palm Beach County Bar Association.

In another notable activity, since 2003 Judge Gerber has served as a co-coordinator of the Judge Marvin Mounts Statewide Prison Tour. This project was started by the late Judge Marvin Mounts who believed it was important for all of the stakehold- ers in the criminal justice system to see where criminal defendants served their prison time. Typically, a group of twenty five prosecutors, public defenders, private attorneys, judges, law enforcement officers and probation officers visit eight facilities from a minimum security prison in Palm Beach County to a maximum security facility such as the Florida State Prison in Starke. Judge Mounts asked Judge Gerber to keep the pro- gram going, and he has helped fill the void since Judge Mounts’ passing.

When asked about his experience thus far with the Fourth District Court of Appeal, Judge Gerber in- dicated he was impressed with the quality of briefs he has reviewed and the oral argument presentations. He encouraged all of the attorneys to keep up the good work. In keeping with his sense of ethics, Judge Gerber recuses himself from all cases that come before the court involving his wife’s or his brother’s law firms. His judicial philosophy is “if you want to be fair, follow the law.”

The Fourth District’s procedures for setting oral arguments, Judge Gerber explained, is to screen each case to determine whether oral argu- ment would be beneficial. The assigned judge from the panel makes a recommendation. If one of the other panel members disagrees with the recommendation, then two judges must agree whether oral argument will be scheduled. One of the primary considerations is whether the briefs address all of the issues to the judges’ satisfaction.

Tracy Gerber has always admired that her husband is the hardest working person she knows. Jonathan Ger- ber is extremely diligent and has always invested the time necessary to understand the legal issue before him whether he is the attorney on a case or the judge. She noted that he is always bringing work home and works on weekends, but most impor- tantly, he really enjoys his work. When he is not hard at work, Judge Gerber enjoys spending time with his wife and three daughters, ages 12, 10, and 6. His wife describes him as an amazing husband and father and a true partner at home. For example, he even prepares the children’s lunches every night. While his baseball play- ing days are over, Judge Gerber enjoys watching the Florida Marlins games and working in the yard. He looks forward to a long career on the appel- late bench where he can continue to serve the public. After interviewing this straightforward, humble man, I hope this brief profile does Judge Gerber justice and offers the reader a glimpse of the judge who may be decid- ing your next case.

Ivy Ginsberg is a sole practitioner in Miami, Florida. Ms. Ginsberg concen- trates in criminal and civil appeals and trial work.

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not presented in the initial and answer briefs also usually will not be entertained for the first time in a motion for rehearing filed with a Florida appellate court.\footnote{\textsuperscript{11}}

Federal courts generally hold the same under Federal Rule of Appellate Procedure 28(a)(5), which requires “a statement of the issues presented for review” in appellant’s initial brief. Florida Rule of Appellate Procedure 9.210(b)(5) requires “[a]rgument with regard to each issue including the applicable appellate standard of review.” Federal Rule of Appellate Procedure 28(a)(9)(A)-(B) requires “argument, which must contain . . . appellant’s contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and . . . for each issue, a concise statement of the applicable standard of review . . . .” An appellate point on appeal may be forfeited (i.e., “abandoned” or “waived”), if the dictates of Rule 28(a)(9)(A) are not followed.\footnote{\textsuperscript{12}}

Federal Rule of Appellate Procedure 28, like its Florida counterpart, may not be “circumvented” by raising new issues in a petition for rehearing, a supplemental brief, a reply brief or at oral argument.\footnote{\textsuperscript{13}} Forfeiture of points on appeal may be created by the “spaghetti approach” to presenting issues on appeal.\footnote{\textsuperscript{14}} Also, a skeletal point or issue, raised obscurely may be nothing more than an assertion, not an issue to be decided. Bare assertion of an appellate issue in a brief without specific argument of it, or citation of authority, and argument of how the outcome should be affected by a point on appeal may not be considered by the appellate court.\footnote{\textsuperscript{15}}

The Eleventh Circuit Court of Appeals, like other federal circuits, recontinued, next page

The Outreach Committee Wants YOU!

By Gwendolyn Powell Braswell

The Outreach Committee is the marketing arm of the Appellate Practice Section (“APS”). A primary goal of the committee is to increase awareness of appellate practice as a specialty area of law. The committee does this by establishing “partnerships” with other Florida Bar sections and committees, as well as other lawyer-related organizations in Florida. These partnerships are designed to encourage participation in joint CLE programs and social events. They also facilitate an exchange of useful information between the organizations. To assist in forming these strategic relationships, members of the Outreach Committee serve as liaisons to the partner organizations by attending their meetings and keeping them apprised of activities within our section that may be of interest to them. Currently, we have liaisons assigned to numerous other Florida Bar sections, including the Business Law, Trial Lawyers, Workers’ Compensation Law, Young Lawyers Division, Criminal Law, Entertainment & Arts Law, Family Law, Governmental Lawyers, Health Law, City, County & Local Government Law, and Real Property, Probate & Trust Law Sections. In addition, we have liaisons assigned to the local bar associations in Miami-Dade County, Orange County, Sarasota County, and Tallahassee. We also have liaisons assigned to various historical court societies.

Other important goals of the Outreach Committee are to increase the general membership of the APS and to encourage all members to take an active leadership role in the section. Once the proposed APS by-law change is approved by the Board of Governors to allow law school professors and students to join the APS as associate members, the Outreach Committee will interact with the law schools to encourage and solicit associate memberships.

The Outreach Committee welcomes new committee members. If you would like to get involved, please contact Gwendolyn Powell Braswell or Betsy Gallagher, Co-Chairs of the Outreach Committee.

Gwendolyn Powell Braswell is a board-certified appellate attorney in Sarasota, Florida. She graduated in 1991 from Boalt Hall School of Law at the University of California, Berkeley. She currently serves on the Appellate Court Rules Committee and the Executive Council of the Appellate Practice Section of The Florida Bar. She is the founder and past chair of the Sarasota County Appellate Practice Section.
Repeatedly and regularly refuses to consider new issues injected late in the appellate process. The Court finds its practice is predictable as a “valuable” “procedural default rule,” similar in purpose to other procedural default rules. A party also “defaults” in the Eleventh Circuit when only “passing reference” to a point or issue is made in a brief, without specific identification of the issue and argument related to the issue.

Supplemental Briefing Is Not Re-Briefing.

While “supplemental briefing” is permitted under Federal Rule of Appellate Procedure 28(j), in practice there does not appear to be great difference in federal and Florida appellate practice. Rule 9.210(a) of the Florida Rules of Appellate Procedure does not recognize a “supplemental brief,” but Rule 9.225 recognizes “supplemental authority.” Rule 9.225 disallows argument and obviously ties discovery of supplemental authority “after the last brief served” to points properly argued already, thus not waived or abandoned. Similarly, a “supplemental brief” under Federal Rule 28(j) is limited in length (350 words), may not be argumentative and cannot inject new points not already waived (nor can new evidence and facts be argued).

“Free-wheeling” appellate advocates should be ever mindful of the vital importance to obtain early grasp of the point(s) involved in an appeal. Immediate understanding of the issues to be argued in an appeal facilitates other potential ethical and practical requirements, including whether the point of the appeal is economically sensible and appropriate ab initio.

“Assignments of Error” Still Relevant.

A history lesson also serves to demonstrate the significance of immediately spotting and comprehending the point(s) to be appealed. The historical “assignment of error,” abolished in 1977, should not be altogether overlooked by a new generation of lawyers. Florida Rule of Appellate Procedure 9.040(e) provides, “[a]ssignments of error are neither required nor permitted.” While obsolete, however, the law created during the era of “assignments of error” is persuasive authority, if not black letter authority.

One need look no further than Florida Rule of Appellate Procedure 9.210(b)-(c) plus the committee notes to the 1977 amendment of the appellate rules to realize that while “assignments of errors” are nominally extinct, their purpose within the appellate process has viability. Subsection (b)(5) requires argument with regard to “each issue,” and subsection (b)(6) requires a conclusion articulating “the precise relief sought.” A brief without “assigned,” well-articulated “points” (“issues”) faces potential non-compliance with Rule 9.210(b)(1), (b)(5), and (b)(6), and adverse results on appeal. Subsection (b)(1) of Rule 9.210 requires a “list” of “issues presented for review” in the table of contents to the brief. The committee notes state, in pertinent part: “[t]he abolition of assignments of error requires that counsel be vigilant in specifying for the court the errors committed; that greater attention be given the formulation of questions presented; and that counsel comply with subdivision (b)(5) [now (b)(6)] by setting forth the precise relief sought.”

In a post-abolition decision, one Florida appellate court quoted the above language of the 1977 committee note to Rule 9.210, and observed, “[t]his Court does not read minds.” Appellant sought on appeal “an individualized hearing to evaluate the need and suitability for sexual offender designation and notification provisions,” and also made reference to a “right of privacy” in his initial and reply briefs which was “unclear.” The court declined to consider an ill-articulated “point,” the “right of privacy” violation.

In another post-abolition opinion, an appellant sought to raise the negligence vel non of a municipality for the first time in the reply brief, which the court held was improper. The court remarked, “[e]ven in the absence of a rule requiring that errors be assigned, professional advocacy necessitates that errors relied on for reversal should be stated in the brief, with the points argued.” The court cited two cases decided by the Fourth District Court of Appeal, prior to abolition of “assignments of error.” The court in one of those two cases observed, “[r]eversal on appeal is not to be expected in the absence of judicial error of the lower court assigned, stated and argued in appellant’s brief.”

The Supreme Court defined the “function” of assignments in 1955: “[t]he assignment of error performs the same function in the appellate court as the complaint or declaration in the court of original jurisdiction.” The court added that without a complaint, “there is no trial,” and without proper assignment of error, “the appellate court will not review.” “Assignments of error” no longer possesses the semantic analogy made in the Supreme Court’s 1955 decision; however, “points” (or the statement of “issues” on appeal) may still be analogized to a trial court complaint. Florida Rule of Civil Procedure 1.110(b) mandates a “short and plain statement” for all “claims for relief.” An appeal “claims” “relief,” and the case law appropriately requires “points” (statements of “issues”) that, if not always “short,” should be “plain” and clear, assuring a separate point is understood by the court. Further, precise, “organized” attention to the point or issue on appeal allows avoidance of the “double-barreled” point (containing two issues within a single listed “point,” one point being buried beneath the other). Proper organization also may avoid the incomprehensible point embracing unstated sub-points, hoping the appellate court will perceive intuitively your “point.”

Organize, Simplify and Clarify the “Point.”

The case law teaches disorganization of points on appeal, and inattention to precisely what judicial acts are “assigned” as error on appeal invites failure. “[T]o obtain appellate review, alleged errors relied upon for reversal must be raised clearly, concisely and separate as points on appeal.” An appellate court may struggle with an unclear point listed as an issue in an appellant’s table of contents, but not argued with clarity under that issue in the argument portion of a brief. In one case, a defendant did not raise below, as an affirmative defense, that there had been a subse-
quent oral modification of a written agreement. Nor had the defendant made a clear, separate point pertaining to the subsequent modification on appeal. Instead, appellate argument focused upon application of the parol evidence rule as a bar to prior or contemporaneous oral discussion seeking modification of a written agreement, with a merger clause. The court observed:

While assignments of error are no longer required in Florida appellate practice, it should be clear that each matter upon which an appellant relies for reversal must be argued under an appropriate issue presented for review. Argument which addresses a point not set out in the issue on appeal will not be considered.

Points “covered by a decree of the trial court will not be considered by an appellate court unless they are properly raised and discussed in the brief.”

Appellate counsel should anticipate and expect courts to require clarity, separateness and precision in statements of the issues (i.e., points) on appeal and a direct connection of each argument addressing each separate issue on appeal. In another decision, a medical malpractice suit alleging wrongful death, the defendants appealed a money judgment. The court stated the defendants raised four points on appeal, but none challenged excessiveness of damages awarded to one of three children. The court indicated the damages issue was “attempted” in the argument portion of the brief and the statement of facts, but the court held the attempt was “not sufficient to obtain appellate review.”

In “Exceptional Circumstances” Court May Fashion Its Own Point.

As true with many general rules, there are exceptions to the rule precluding appellate courts from addressing issues either not raised below or not properly stated or presented on appeal. But, unlike many general rules, when exceptions may almost equal the general rule, there is a “very high bar against” application of exceptions to the general rule of proper party presentation of points on appeal. “Exceptional circumstances . . . in the public interests, may” allow a court “of their own motion, [to] notice errors to which no exception has been taken.”

Appellate courts, both state and federal, have inherent authority to raise and consider issues of “fundamental,” “plain,” or “obvious” error, even if the parties do not. However, “fundamental” error is used by Florida appellate courts “very guardedly;” the error must go to the case “foundation,” or the merits of a cause of action, or it must be basic to judicial decision under review, or it must be equivalent to denial of due process. Federal courts will take notice of errors “to which no exception has been taken” only if the error is “obvious” or “plain,” or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings. Such plain error surfaces “especially in criminal cases.”

Courts exercising discretion to raise and consider “plain” error, not raised in the briefs or at oral argument, will do so “particularly when substantial public interests are involved.” A federal court’s willingness to inject a new point, not raised by the parties, “rests on a balancing of considerations of judicial orderliness and efficiency against the need for the greatest possible accuracy in judicial decisionmaking.”

There also are instances when the parties advance legal theories or agreed issues or points to which the parties “stipulate,” but which an appellate court retains “independent power to identify and apply proper construction of governing law.” An appellate court, of course, will raise its own point, sua sponte, any time, during the appeal and despite party stipulation otherwise, when the court identifies an issue of the court’s jurisdiction to entertain the appeal.

Conclusion

One should never expect, let alone rely, on an appellate court’s exercise of independent power, under “exceptional circumstances,” to raise an appellate issue sua sponte. It is the calling of the appellate counsel to identify issues (points) on appeal; to carefully research and draft those points so they are understood, and critically to organize an argument that ties into each singular point on appeal. It is the “principle of party presentation” that principally empowers lawyers to add (or subtract) from the common law.

Appellate counsel should avoid, at all cost, making her/his brief a law school exam for the court, requiring the court to “issue spot” the brief. Counsel (and his/her client), not the court, likely will receive the “F” grade. The “principle of party presentation” depends on the careful and competent exercise of identification (of the point) and preparation (of that point) with clear, concise and separate argument under each point.

Evan J. Langbein is a partner in Langbein & Langbein, P.A., in Miami Lakes. He has been Board Certified in Appellate Practice since 1994. He also is a certified as an arbitrator with the American Arbitration Association, and certified as a mediator with the Supreme Court in Family and Civil Circuit Mediaion, and as a mediator with the District Court of the Southern District of Florida.

Endnotes:
2 Id. at 2562.
3 Id.
4 Id.
5 Id. at 2564 n.3 (citing Kaplan, Civil Procedure – Reflections on the Comparison of Systems, 9 Buffalo L. Review 499, 431-32 (1960) (Other systems, like Germany’s, allow “paternalistic” judges to cooperate with counsel “maturing adversarial zeal”).
7 Polyglycoat Corp. v. Hirsch Distributions, Inc., 442 So. 2d 958, 960 (Fla. 4th DCA 1983) (citations omitted).
8 Gibson v. Ingals, 161 So. 395, 396 (1935); State v. Town of Sweetwater, 112 So. 2d 852, 854 (Fla. 1959); Chaouch v. Chaouch, 135 So. 206, 221 (Fla. 1961); Lesperance v. Lesperance, 257 So. 2d 66, 67 (Fla. 3d DCA 1971); Truax v. Truax, 259 So. 2d 766, 768 (Fla. 1st DCA 1972); Patterson v. State, 342 So. 2d 515, 515 (Fla. 1st DCA 1976); Norris v. Edwin continued, next page
in hopes that something would stick” usually results in a court’s refusal “to sort through the
noodles” to find out appellant’s contention); see also United States v. Dunkel, 927 F.2d 955, 956
(7th Cir. 1991) (“judges are not pigs, hunting for truffles buried in briefs”).

15 DARE Am. v. Rolling Stone Magazine, 270 F.3d 793, 793 (9th Cir. 2001).

16 Levy, 379 F.3d at 1244; Dixon v. Palm Beach County Parks & Rec. Dept., No. 09-1550, 2009
U.S. App. LEXIS 14747, at *2 n.2 (11th Cir. August 31, 2009) (issues not raised in the initial
brief deemed abandoned).

17 Greenbriar, Ltd. v. City of Albany, 881 F.2d 1570, 1573 n. 6 (11th Cir. 1989) (reference
to an issue in the statement of case without elaboration in the argument of the initial or
reply brief forfeits the issue); see also United States v. Rini, 229 Fed. Appx. 841, 845 (11th Cir.
2007) (citing Sepulveda v. U.S. Attorney Gen., 401 F.3d 1226, 1228 n.2 (11th Cir. 2005),
and Flanagan’s Enters., Inc. v. Fulton County, 242 F.3d 976, 987 n.16 (11th Cir. 2001) (lack of
elaboration and citation of authority on a point
waives the issue).

18 E.g., United States v. Nealy, 232 F.3d 825, 830 (11th Cir. 2000) (discussing Rule 28(a))
and 11th Cir. R.28-1, L.O.P.-5; see also, e.g., United States v. Lester, 211 Fed. Appx. 129, 132 (3d
Cir. 2006) (issues otherwise waived cannot be argued in a supplemental brief); Kitty Hawk Airreco, Inc. v. Chao, 418 F.3d 453, 460 (5th Cir. 2005) (same); United States v. Barbour, 394 F.3d 82, 94 (1st Cir. 2004) (same); United States v. Jones, 308 F.3d 425, 427 n.1 (4th Cir. 2002)
(same); Brady v. Gebbie, 859 F.2d 1543, 1557 n.13 (9th Cir. 1988) (Rule 28(j) not intended
to reinvestigate point raised in trial court, but
waived in initial brief); United States v. Iannello, 824 F.2d 203, 209 (2d Cir. 1987) (Rule 28(j)
not intended to “clarify” oral argument, and
supplemental “letter” briefs must be “without
argument”); Trans-Sterling, Inc. v. Bible, 804 F.2d 525, 528 (9th Cir. 1986) (supplemental
brief cannot bring in new evidence through the back door).

19 E.g., Boca Burger, Inc. v. Forum, 912 So. 2d 561, 569-73 (Fla. 2005) (citing Rapid Credit Corp.
v. Sunset Park Centre, 566 So. 2d 810, 812 n.1 (Fla. 5th DCA 1990) (lawyer’s duty to adminis-
tration of justice outweighs duty to client); Wrona v. Wrona, 592 So. 2d 684, 697 (Fla. 2d
Cir. 1991) (advocating businesslike approach to litigation disputes, “analyzing
the issues at the beginning;” “develop[ing] cost effective method to resolve those issues;
estimat[ing] of fees and costs;” and seeking “method[s] to minimize . . . nonproductive
expenses of litigation.”)


21 Johnson v. State, 795 So. 2d 169, 179 (Fla. 5th DCA 2001).

22 Id.

23 Id.

24 Lynch v. Tennyson, 443 So. 2d 1017, 1019 (Fla. 5th DCA 1983), receded from on other
grounds, Pierce v. Progressive Am. Ins. Co., 592 So. 2d 712, 715 (Fla. 5th DCA 1991); see also
Hall v. State, 823 So. 2d 757, 763 (Fla. 2002); J.A.B. Enters. v. Gibbons, 596 So. 2d 1247, 1250

25 Lynch v. Tennyson, 443 So. 2d at 1019.
about support for our judiciary and about cutting-edge appellate issues. You will find both at this Summit. The AJEI Summit courses include: how appellate jurists decide cases and the role of man vs. the rule of law, the critical role of fair and impartial state courts, U.S. Supreme Court updates in the civil and criminal areas of law, the important role of “plain” English, better appellate writing, better and more moving appellate oral arguments, the recent developments in National Security Law, what judges and lawyers need to understand about immigration law, appellate oral persuasion, e-filing. Plus opportunities each evening to interact with the finest appellate jurists in the country, including our own. This Summit represents a tremendous opportunity for us to attend courses directed to helping us understand the end users and decision-makers over our appellate briefs and oral arguments—appellate judges and justices. Can you imagine a Summit more responsive to the issues that concern each of us?

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Most of us, due to time constraints, family commitments, or money, will never have this opportunity again to attend something of this magnitude. Please go to this link, http://www.flabarappellate.org/updates/lpdf/AJEI2009_Brochure.pdf to see the important and useful course offerings, and show it to your firm and your appellate colleagues. Online registration is easy: www.law.smu.edu/ajei

For more information, you may also contact Harvey Sepler, HSepler@aol.com, and immediate past APS chair Siobhan Shea, sheappeals@ymail.com, who co-chair the ABA-APS liaison committee for the Summit this year. I hope that each of you can attend the Summit and be noted as a Sponsor. I thank you on behalf of the Section for your support.

There are two things that every appellate attorney must do in practically every Florida appeal—file a motion for an extension of time and file a brief (both electronically and in hard copy). In the following chart, you will find important local rules regarding these essential tasks as published by each of Florida’s appellate courts.

<table>
<thead>
<tr>
<th>Court</th>
<th>Clerk’s Office</th>
<th>Drop Box</th>
<th>Information published by Court regarding Motions for EOT</th>
<th>Electronic Filing Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>FSC</td>
<td>(850) 488-0125</td>
<td>No.</td>
<td>If a filing cannot be delivered to the court prior to 5:00 p.m. on the date it is due, a motions for extension of time should be filed prior to 5:00 p.m. that day.</td>
<td>Electronic copies of merits briefs, jurisdictional briefs, pleadings filed in death warrant cases, pleadings filed in JQC cases, referee reports in Florida Bar disciplinary cases, hearing transcripts in death penalty cases, petitions requesting rule amendments, petitions requesting procedural rule form amendments, comments in rules cases, and petitions and responses in which the Court determines it will hold oral argument shall be emailed to <a href="mailto:e-file@flcourts.org">e-file@flcourts.org</a> in Microsoft Word format only.</td>
</tr>
<tr>
<td>1st DCA</td>
<td>(850) 488-6151</td>
<td>No, but there is usually a guard on duty at the court on business days from 5:00 p.m. until midnight. Filings will be stamped with the date they are received by the guard.</td>
<td>• Unopposed, first requests for extensions of time up to 30 days are usually granted. BUT, in Workers’ Compensation cases, motions must specifically state the circumstances justifying an extension, which must amount to more than the attorney’s busy schedule, and must include the number of days requested and a date certain when the brief will be filed. In expedited child cases, extensions are granted only in emergency circumstances.</td>
<td>All appellate briefs and petitions, responses, and replies in original proceedings shall be submitted to <a href="mailto:emailfilings@1dca.org">emailfilings@1dca.org</a> on the date of the certificate of service of the paper original. Appendices are not permitted to be electronically filed.</td>
</tr>
<tr>
<td>2d DCA</td>
<td>(863) 499-2290</td>
<td>No</td>
<td>• Motions for extensions of time shall contain a certificate that opposing counsel has been consulted and shall state whether opposing counsel has an objection to the motion. Attempts to contact opposing counsel are generally not sufficient.</td>
<td>The electronically filed documents shall be attached to an email that states in the subject line the type of document:</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>• Good cause must be shown for extensions of time and motions must be filed before the applicable deadline.</td>
<td>• Initial Brief 1D07-3004IB</td>
</tr>
<tr>
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<td>• A motion for extension of time should specify the expiration day of the requested extension.</td>
<td>• Amended Initial Brief 1D07-3004IBamend</td>
</tr>
<tr>
<td></td>
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<td>• Motions for extensions of time shall contain a certificate that opposing counsel has been consulted and either has no objection or will promptly file an objection.</td>
<td>• Second Amended Initial Brief 1D07-3004IB2amend</td>
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<td>• Answer Brief 1D07-3004AB</td>
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<td>• Reply Brief 1D07-3004RB</td>
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<td>• Cross Reply Brief 1D07-3004XB</td>
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<td>• Supplemental Brief 1D07-3004SB</td>
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<td>• Amicus Brief 1D07-3004AM</td>
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<td>• Petition 1D07-3004PE</td>
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<td>• Response 1D07-3004PS</td>
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<td>• Reply 1D07-3004RP</td>
</tr>
</tbody>
</table>

The electronically filed documents shall be attached to an email that states in the subject line the type of document attached, and the case name (e.g., 1D07-3004IB William J. Doe v. State of Florida).
Motions for extensions of time shall contain a certificate that opposing counsel has been consulted and shall state whether opposing counsel has an objection to the motion. Attempts to contact opposing counsel are not sufficient.

Limited extensions for initial and answer briefs will be granted by the clerk, unless the motion certifies that the opposing party opposes the motion.

Electronic filings shall be made on the earlier of the day of the filing of the paper original or the day of service, and the email shall list Fourth District case name and number in the subject line.

1. Initial Brief 05-726.ini.doc
2. Answer Brief 05-726.ans.doc
3. Reply Brief/Reply 05-726.rep.doc
4. Cross Reply Brief 05-726.cro.doc
5. Supplemental Brief 05-726.sup.doc
6. Amicus Brief 05-726.ami.doc
7. Petition 05-726.pet.doc
8. Response 05-726.res.doc

The electronically filed documents shall be attached to an email that states the style of the case, case number, and type of document.

All appellate briefs, petitions and responses in original proceedings shall be submitted in Microsoft Word, Corel WordPerfect, or .pdf format and named according to the following uniform format that includes the case number and type of document:

- Initial Brief 2D06-3004IB.doc
- Answer Brief 2D06-3004AB.doc
- Reply Brief 2D06-3004RB.doc
- Cross Reply Brief 2D06-3004XB.doc
- Supplemental Brief 2D06-3004SB.doc
- Amicus Brief 2D06-3004AM.doc
- Petition 2D06-3004PE.doc
- Response 2D06-3004RS.doc
- Reply 2D06-3004RP.doc
- Motion for Rehearing En Banc 2D06-3004EB.doc

The electronically filed documents shall be attached to an email that states the name of the document (e.g., 2D06-3004IB) and states in the body the case name, number and type of document attached (e.g., Jones v. Carter, 2D06-3004, initial brief).

Yes, in the Dade County Courthouse Clerk’s office, 73 West Flagler Street, available from 9:00 a.m. to 4:00 p.m. Documents placed in the drop box will be date stamped the business day prior to delivery of the box to the 3d DCA.

None.

All appellate briefs and petitions and responses in original proceedings shall be emailed to 3DCAefiling@flcourts.org on the earlier of the day of filing the paper original or the day of service.

Electronically filed documents shall be submitted in Microsoft Word, Corel WordPerfect, or .pdf format and named according to the following uniform format that includes the case number and type of document:

- Initial Brief 05-726.ini.doc
- Answer Brief 05-726.ans.doc
- Reply Brief/Reply 05-726.rep.doc
- Cross Reply Brief 05-726.cro.doc
- Supplemental Brief 05-726.sup.doc
- Amicus Brief 05-726.ami.doc
- Petition 05-726.pet.doc
- Response 05-726.res.doc

The electronically filed documents shall be attached to an email that states the style of the case, case number, and type of document.

No, but filings made in the clerk's office before 9:00 a.m. will be date stamped the previous business day. Petitions for original writs, notices of appeal, and notices to invoke discretionary jurisdiction will be back dated because jurisdictional time limits may not be extended.

Motions for extensions of time shall contain a certificate that opposing counsel has been consulted and shall state whether opposing counsel has an objection to the motion. Attempts to contact opposing counsel are not sufficient.

Electronic filings shall be made on the earlier of the day of the filing of the paper original or the day of service, and the email shall list Fourth District case name and number in the subject line.

Limited extensions for initial and answer briefs will be granted by the clerk, unless the motion certifies that the opposing party opposes the motion.

Electronic filings shall be made on the earlier of the day of the filing of the paper original or the day of service, and the email shall list Fourth District case name and number in the subject line.
Yes. Papers placed in the Court’s Drop Box will be date stamped the next business day with a “Drop Box” stamp placed on them. Jurisdictional time limits cannot be avoided or extended by use of the Drop Box.

Diana L. Martin is an associate at Leopold-Kuvin, P.A., in Palm Beach Gardens, where she handles civil appeals in state and federal courts and provides complex litigation support. Ms. Martin is a 2002 high-honors graduate of the University of Florida Levin College of Law. Before entering private practice, she was law clerk to the Honorable Martha Warner at the Fourth District Court of Appeal.

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