



The Record

JOURNAL • OF • THE • APPELLATE • PRACTICE • SECTION

www.flabarappellate.org

Volume XX, No. 4

THE FLORIDA BAR

Winter 2014

INSIDE:

<i>Proposed Amendments (Some Controversial) to the Federal Rules of Appellate Procedure ... 2</i>
<i>Quick Reference Guide for Florida Practitioners Using The Bluebook and Rule 9.800..... 3</i>
<i>Turning the Tables on the Florida Supreme Court 4</i>
<i>Annual Dessert Reception and Award Winners..... 5</i>
<i>University of Miami School of Law Wins Robert Orseck Memorial Moot Court Competition..... 6</i>
<i>Photos from 2014 Annual Convention..... 7</i>

Chair's Message –

By Ceci Berman



C. BERMAN

In this edition, I want to talk with you about your membership in the Appellate Practice Section. For those of you who are reading this message, but who might not regularly attend the Section's committee or Executive Council meetings, please take just a moment to reflect on your membership. Consider what belonging to the Section has done for you and why you should be selling it to your colleagues. My goal is for all of our members to feel proud to be a part of the Section and, as a result of that, to be eager to encourage others to join.

If you do not think Section membership has benefitted you—and if we are being honest, there are probably a few of you out there with that thought—we need to work on changing that. So let's talk about the benefits of membership. The Section offers many benefits (and many reasons to promote the Section to other lawyers), but because I am limited to about 500 words here, I'll try to cover a few of the big ones:

1. Great CLEs. Every Bar section puts on CLEs, it's true. But the Appellate Section does it better than most, with top-notch programming every year. For those of you who are aiming for board certification, you can obtain all of the advanced CLE credits that you need just through our Section. And for those of you who are looking for a time-efficient way to gain credits and exposure to important appellate issues, the Section offers telephone CLEs, which are a wonder-

ful members-only benefit. The telephone CLEs are refreshingly relaxed and candid, and their informal nature allows for easy question and answer sessions. Even better, these CLEs are very inexpensive: you can, over the course of the year, earn ten credit hours for less than the cost of most eight-hour CLE courses.

2. A Chance to Really Get Involved. The Appellate Practice Section is one of the only Bar sections where you can raise your hand, say you are interested in contributing, and find yourself in charge of a substantial project within a month or two. All you have to do is ask. And once you take on this higher level of responsibility, you will find that you are provided with invaluable networking opportunities (and the chance to meet and work with an all-around great group of people). Ultimately, being involved is not just good for the Section; it is good for your law practice.

3. You Can Publish. Publishing is another way you can easily become involved. The Section offers many opportunities to publish and welcomes submissions from everyone. The Section's publications offer important, timely information on a variety of appellate topics and are a tremendous resource for all of the Section's members. And, in terms of personal benefit, publishing is good for you and your career. Again, all you have to do is raise your hand.

I'll leave you with a final note that is clichéd, but also true: what you get out of the Section largely depends on what you want to put into it. I hope you decide to take advantage of the Section's opportunities. If you do, I promise that you will reap the benefits.

PROPOSED AMENDMENTS (SOME CONTROVERSIAL) TO THE FEDERAL RULES OF APPELLATE PROCEDURE

By Dorothy F. Easley¹



D. EASLEY

With the exception of the United States Supreme Court, the Rules Enabling Act, 28 U.S.C. §§ 2071–2077² establishes the process by which the federal rules are made for all federal courts, including all circuit courts of appeals. One of the greatest features of the process is that federal judicial rule-making is transparent and intentionally designed for public participation. These comments to proposed federal rule amendments are often from bar associations, judges, practitioners, and law professors, but can also come from the general public.³ The judicial rulemaking process allows for participation by the public, even at open Standing Committee and advisory committees meetings,⁴ subject to some exceptions where public meetings may impede the process, with the publication of all proposed rule amendments and a generous amount of time to submit written comments.⁵ There is even the opportunity to submit testimony at public hearings.⁶ These comments to proposed federal rule amendments are taken very seriously.⁷ “Based on comments from the bench, bar, and general public, the advisory committee may then choose to discard, revise, or transmit the amendment as contemplated to the Standing Committee.”⁸

Against that backdrop, below are some proposed amendments to the Federal Rules of Appellate Procedure to which comments have been invited. One proposed amendment concerns Rule 4(c), Fed. R. App. P., on inmate filings, with the Committee Notes explaining that the proposed

revision to Rule 4(c)(1) is to offer an alternative way for inmates to establish timely filing, to “streamline and clarify” the inmate-filing rule’s operation, and “that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution’s mail system and attesting to the prepayment of first-class postage.”⁹ Amendment to Rule 25(a)(2)(C), concerning filing methods and timeliness, is also proposed to address those inmate-filing revisions in Rule 4.¹⁰ With these amendments, the filing date would be the date on which “the inmate deposited the document in the institution’s mail system rather than the date the court received the document.”¹¹

Amendment to Rule 4 is also being proposed to address what is meant by “timely” tolling motions, to resolve a split among the circuit courts of appeals regarding whether a motion filed outside the Fed. R. Civ. P. 50, 52, or 59 deadlines, which are non-extendable, still qualifies under Rule 4, Fed. R. App. P., as “timely” where the district court ordered in error an

extension of the deadline to file such a motion.¹²

There is also a proposed amendment to Rule 29, Fed. R. App. P., concerning amicus filings in connection with rehearing.¹³ The Rule 29 amendments would not require a circuit to accept amicus briefs, but would renumber Rule 29 as Rule 29(a) and add a new Rule 29(b) to establish guidelines and default rules for the treatment of amicus filings concerning rehearing petitions.¹⁴ An amendment is also proposed for Rule 26(c), Fed. R. App. P., and the “three-day rule” in the context of electronic service (catching up with the e-technology, in other words). The above proposed amendments are clarifying and helpful.

Now, to the more controversial. There are also some proposed amendments to the Federal Rules of Appellate Procedure that convert page limits to word count limits, to be consistent with other appellate rules on word count limits, and to further reduce word count limits, for documents created on a computer, in Rules 5 (Appeals by Permission), 21

continued on page 9

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QUICK REFERENCE GUIDE FOR FLORIDA PRACTITIONERS USING THE BLUEBOOK AND RULE 9.800

By Susan W. Fox

Florida Cases:

Supreme Court: *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992)

District Court of Appeal: *Sotolongo v. State*, 530 So. 2d 514 (Fla. 2d DCA 1988)

Circuit Court: *Whidden v. Frances*, 27 Fla. Supp. 80 (Fla. 11th Cir. Ct. 1966)

County Court: *State v. Alvarez*, 42 Fla. Supp. 83 (Fla. Dade Cty. Ct. 1975)

Florida Cases Not in Official Reporter:

Traylor v. State, 17 Fla. L. Weekly S42 (Fla. Jan. 16, 1992)

If Florida Law Weekly is not available: *Medina v. State*, No. SC00-280 (Fla. Mar. 14, 2002); *Fleming v. State*, No. 1D01-2734 (Fla. 1st DCA Mar. 6, 2002)

Federal Cases:

United States Supreme Court: *Sansone v. United States*, 380 U.S. 343 (1965)

Federal Courts of Appeals: *Gulf Oil Corp. v. Bivins*, 276 F.2d 753 (5th Cir. 1960)

Federal District Courts: *Pugh v. Rainwater*, 332 F. Supp. 1107 (S.D. Fla. 1971)

Federal Cases Not in Official Reporter:

Wasko v. Dugger, 13 Fla. L. Weekly Fed. D183 (S.D. Fla. Apr. 2, 1991)

Electronic Database Case Citations (Westlaw, Lexis):

Cases in Electronic Databases: docket number, database identifier, electronic report number, at star page number and full date: *Charlesworth v. Mack*, No. 2D05-01234, 2006 WL 47632, at *2 (Fla. 2d DCA Sept. 7, 2006)

Florida Constitution: Art. V, § 3(b) (3), Fla. Const.

Florida Statutes: § 350.34, Fla. Stat. (2005); or, Ch. 74-177, § 5 at 473, Laws of Fla.

United States Constitution. Art. IV, § 2, cl. 2, U.S. Const. or Amend. V, U.S. Const.

Federal Statutes Entire law: Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 (2006)

Individual statute: Administrative Procedure Act § 6, 5 U.S.C. § 555 (2006)

Other Authorities:

Book: Philip J. Padovano, *Florida Appellate Practice* § 1.1 (2014 ed.)

Law Review: Jon Mills, *Sex, Lies and Genetic Testing: What Are Your Rights to Privacy in Florida*, 48 U. Fla. L. Rev. 813 (1996)

Newspaper Article: Andrew Rosenthal, *White House Tutors Kremlin in How a Presidency Works*, N.Y. Times, June 15, 1990, at A1

Special forms for frequently cited works:

Black's Law Dictionary 712 (9th ed. 2009)

17 Am. Jur. 2d *Contracts* § 74 (1964)

88 C.J.S. *Trial* § 192 (1955)

Florida Administrative Rules and Regulations: Fla. Admin. Code R. 62D-2.014

Federal Administrative Rules and Regulations 7 C.F.R. § 319.76 (1999)

Short Form Citations:

Cases: *Palsgraf*, 162 N.E. at 100 or 162 N.E. at 100 or *Id.* at 100

Other Authorities: Padovano, *supra* at § 16.2

Internet Citations:

(1) name of the author(s) (if applicable); (2) title of the specific page of website, (italics or underlined); (3) title of the main page of website; (4) date and time (omit when source not updated daily, or no time is listed); and (5) URL

Eric Posner, *More on Section 7 of the Torture Convention*, The Volokh Conspiracy (Jan. 29, 2009, 10:04 AM), <http://www.volokh.com/posts/1233241458.shtml>

Ashby Jones, *Activists, Research Facili-*

ties Taking Disclosure Battles to the Courts, Wall St. J. L. Blog (Feb. 26, 2009, 9:40 AM), <http://blogs.wsj.com/law/2009/02/26/activists-research-facilities-taking-disclosure-battles-to-the-courts>

Daily Kos (Jan. 19, 2009), <http://www.dailykos.com/storyonly/2009/1/18/235223/489/683/685802> Yahoo! Home Page, <http://www.yahoo.com> (last visited Dec. 10, 2005)

Florida Administrative Decisions:

Decisions posted on the Division of Administrative Hearings' website: *Big Bend Hospice, Inc. v. Agency for Health Care Administration*, Case No. 01-4415 CON (Fla. DOAH Nov. 7, 2002; Fla. AHCA Apr. 8, 2003)

Decisions not posted on the DOAH website but reported in the Florida Administrative Law Reports: *Insurance Co. v. Dep't of Ins.*, 2 F.A.L.R. 648-A (Fla. Dep't of Ins. 1980).

Florida Public Employees Relations Commission: *Indian River Educ. Ass'n v. School Board*, 4 F.P.E.R. 4262 (1978)

Florida Public Service Commission: *In Re Application for Approval of Transfer*, 89 F.P.S.C. 11:5 (1989)

For orders that are not posted on the DOAH website or reported in one of the above reporters: *In re Town of Inglis Petition for Waiver*, Final Order No. 07-0590 (Fla. DEP Apr. 12, 2007) (available from the agency clerk)

Most Common Florida Rules.

Fla. R. Civ. P. 1.180

Fla. R. Jud. Admin. 2.110

Fla. R. Crim. P. 3.850

Fla. Prob. R. 5.120

Fla. Sm. Cl. R. 7.070

Fla. R. Juv. P. 8.070

Fla. R. App. P. 9.100

Fla. Fam. L. R. P. 12.010

R. Regulating Fla. Bar 4-1.10

Fla. Std. Jury Instr. (Civ.) 601.4

TURNING THE TABLES ON THE FLORIDA SUPREME COURT

By Jason Lambert

It was a hot, sticky June afternoon outside, but inside the Tallahassee Room at the Gaylord Palms in Orlando, Florida, the Justices of the Florida Supreme Court kept their cool despite an intense interrogation by the Appellate Practice Section of the Florida Bar. And by “intense interrogation” I mean an informative and delightful question and answer session following the final rounds of the Orseck Memorial Moot Court Competition. Per usual, questions were gathered from the Appellate Practice Section in advance, and this year’s session was deftly facilitated by Appellate Practice Section Chair-Elect Christopher Carlyle.

After a brief discussion of the U.S. Men’s National Team’s World Cup performance, Mr. Carlyle began by querying the Justices as to their favorite and least favorite tasks. Justice Quince indicated her favorite task was swearing in new lawyers and seeing the fresh energy they brought to the profession. Justice Lewis and Justice Canady expressed enjoyment with respect to writing opinions and Justice Canady drew a laugh when he quipped that this was especially so when writing as part of the majority. Justice Perry and current Chief Justice Labarga both mentioned that getting out into the community and engaging with other judges, lawyers, and the public

in general is a favorite activity.

Then-Chief Justice Polston shared that his least favorite role activity was disciplining other judges, while Justice Pariente indicated it was the possibility for negative repercussions following unpopular decisions. Chief Justice Labarga then remarked that there were “so many tentacles” to each Justice’s role—working on rules and jury instructions, bar disciplinary proceedings, and generally overseeing Florida’s 992 judges. With respect to bar disciplinary proceedings, Mr. Carlyle asked whether the Justices felt public reprimand was an effective sanction for judges or lawyers and Justice Pariente opined that such reprimands were very powerful sanctions.

Mr. Carlyle then guided the conversation to a more practice-oriented focus, asking the Justices what one should avoid doing at oral argument. All agreed that practitioners should answer the questions asked directly—yes or no—rather than avoiding the question or providing a rambling answer. The Court also indicated that attorneys should make every effort not to speak over the Justices.

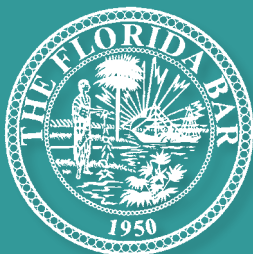
The Court also stated that attorneys should avoid misleading the court at oral argument. And in response to a follow up by Mr. Carlyle, several Justices admitted that

attorneys can, and in fact had, filed documents following oral argument to correct these misrepresentations.

Keeping the focus on oral argument, Mr. Carlyle then inquired how much of an impact oral argument had on the Court’s final decision. Justice Canady responded that oral argument usually just served to confirm his general inclination about a case, though sometimes it did bring certain facts into focus. He also admitted that he had seen cases both won and lost at oral argument. Justice Quince, however, confirmed that briefs were still one of the most significant tools used by the Court in reaching a decision, recommending that attorneys write in order to bring clarity to the issues before the Court.

On that note, the Justices indicated that it was time to announce the winners of the Orseck Competition and the conversation ended. The discussion with the Court was enjoyable, with the Justices taking the time to share their knowledge and experience with everyone in attendance in a casual and open forum. We are, as always, grateful for their time and willingness to share.

Mr. Lambert is an appellate attorney with Zinzow Law (www.zinzowlaw.com), which also provides legal services to the construction and real estate industries.



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ANNUAL DESSERT RECEPTION AND AWARD WINNERS

By Kimberly Kanoff Berman

“I Want Candy” was this year’s theme for the Appellate Practice Section’s Dessert Reception held during The 2014 Florida Bar Convention at the Gaylord Palms Hotel in Orlando. Over 150 people attended the event.

The reception featured over a dozen different desserts – from mud pies, creamsicle dessert cups, cake pops, to an 80’s themed layer cake. The room was decorated with blasts from the past. Slap Bracelets, Rubik’s Cubes, glow sticks, and other glitz filled the centerpieces. For those who came to the reception to get their candy fix, there was no shortage of gummy bears, sour gummy worms, Pixie Sticks, Milk Duds, Sugar Daddy Caramel Pops, Airheads, and Pop Rocks.

A disc jockey played songs from the 80’s as the guests entered the room and headed to the candy bar for their sugar fix. Images from our favorite 80’s movies and television shows were screened on the back of the dance floor wall,

while members danced the night away.

In between the sugar rush and the blast from the past, the Appellate Practice Section recognized two of its members for their extraordinary accomplishments in the field of appellate practice.

John R. Hamilton of the firm Foley & Lardner, LLP, in Orlando, Florida, received the Adkins Award. The Adkins Award is given to a member of the Florida Bar who has made significant contribution to the field of appellate practice in Florida. Mr. Hamilton has been instrumental in effectuating rule changes to the Florida Rules of Appellate Procedure. Mr. Hamilton is also a partner at the firm of Foley &

Lardner, LLP. William Van Nortwick, Jr., a judge on the First District Court of Appeal in Tallahassee, Florida, received this



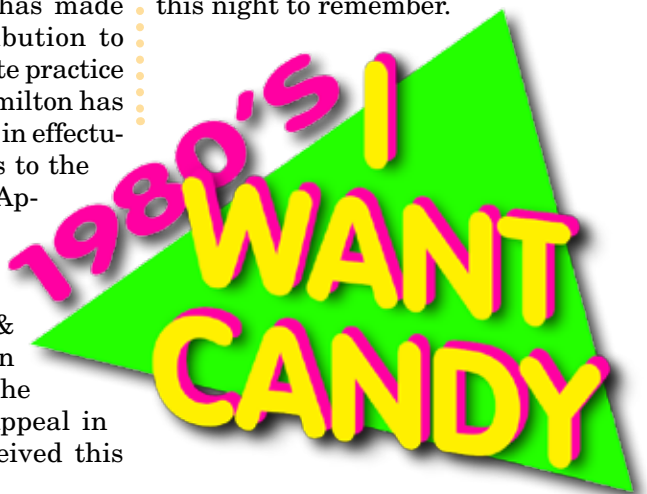
W. VAN NORTWICK

year’s Pro Bono Award. The Pro Bono Award is bestowed upon a member of the Appellate Practice Section who has devoted significant pro bono efforts in appellate matters.

The Appellate Practice Section would like to thank its sponsors for making this reception possible. The Section also thanks Programs Chair, Robin Bresky and Vice Chair, Kimberly Kanoff Berman, for organizing this night to remember.



J. HAMILTON



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University of Miami School of Law Wins Robert Orseck Memorial Moot Court Competition

The Florida Bar Young Lawyers Division hosted the annual Robert Orseck Memorial Moot Court Competition in conjunction with the Florida Bar 2014 Annual Convention in Orlando. For the first time this competition featured all twelve law schools in Florida. The final round of the competition was conducted in conjunction with the Section's presentation of its Discussion with the Florida Supreme Court.

Four teams advanced to the semi-final rounds: Stetson, FAMU, University of Miami and Barry. The

Best Brief Award was presented to Stetson students Jeremy Bailie, Anisha Patel and Nick Sellars. The Best Oralist from the preliminary round was presented to Sterling Spencer from Florida Coastal School of Law, Stetson University School of Law, coached by Brooke Bowman, and University of Miami School of Law, coached by Harvey Sepler, squared off in the final round of the competition. The final round was judged by all seven justices from the Florida Supreme Court. Facing tough questions from the panel of justices, the

two teams skillfully advanced their arguments before an audience of practitioners, judges and fellow competitors. University of Miami students Leah Aaronson and Daniel Ferrante emerged victorious. The runners-up were Stetson students Jeremy Bailie and Nick Sellars. The award for best oralist in the final round was presented to University of Miami student Leah Aaronson. Congratulations to all of the participants, winners and coaches on a job well done!

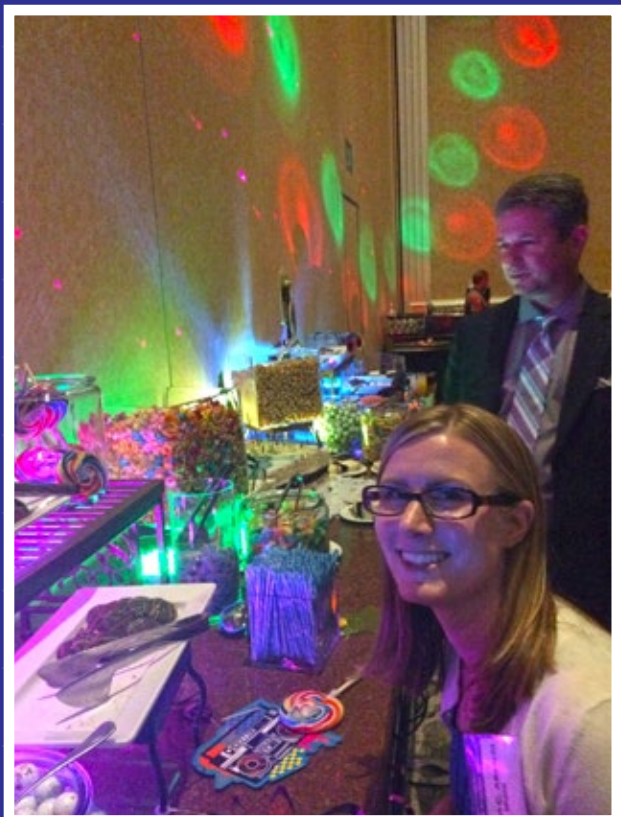
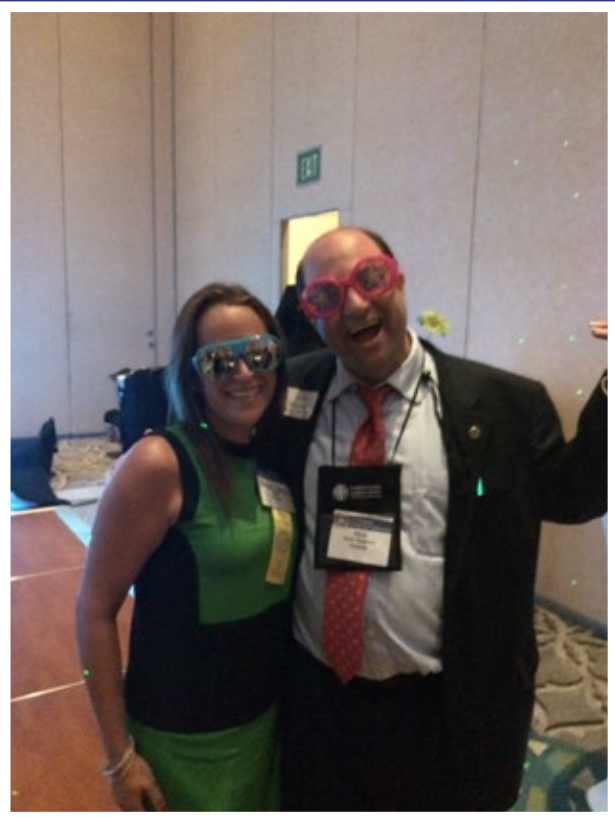


Pictured above are the Justices along with the team finalists from Stetson and University of Miami. The students pictured from left to right are Nick Sellars (Stetson), Jeremy Bailie (Stetson), Daniel Ferrante (University of Miami) and Leah Aaronson (University of Miami).

The 2014 Florida Bar Annual Convention



Jay Yagoda, Stephanie Varela, Chief Justice Jorge Labarga, and Zulma Labarga attend the annual Judicial Luncheon held during the Florida Bar Convention.



PROPOSED AMENDMENTS from page 2

(Writs of Mandamus and Prohibition and Other Extraordinary Writs), 27 (Motions), 28.1 (Cross-Appeals), 32 (Briefs), 35 (En Banc Determinations), and 40 (Petitions for Panel Rehearing), and Form 6, Fed. R. App. P.

Rule 28.1(e)(2)(A)(i), Fed. R. App. P., for example, concerns word limits and a proposed reduction from the current 14,000 words to 12,500 words for opening and response briefs. Rule 28.1(e)(2)(B)(i), Fed. R. App. P., concerns cross-appeals and a proposed reduction from the current 16,500 words to 14,700 words for opening and response briefs, with reductions in reply briefs as well. Rule 32 (a)(7)(B)(i), Fed. R. App. P., concerns briefs generally, and there is a proposed reduction in word limit from the current 14,000 words to 12,500 words. The limit on reply briefs would drop from 7,000 to 6,250 words. There is also a proposed change to Petitions en Banc under Rule 35, Fed. R. App. P., currently limited to 15 pages, to impose a limit of 3,750 words. Those same changes are being proposed for Petitions for Rehearing under Rule 40, Fed. R. App. P., to impose a 3,750 word limit.

As to the above proposed word limit reduction amendments, comments have already been submitted, with some favoring and others disfavoring the reductions.¹⁵ All agree that appellate courts, more than ever, must insist on concise appellate briefs and word/page limits. The concern among some appellate practitioners is this reduction in word count within the already-strict confines of the rule that arguments in the appellate brief are required to be raised with sufficient specificity and depth or the appellate courts will deem them waived.¹⁶ The circuit courts of appeals generally hold that unspecific arguments and footnote arguments in the opening or response brief will not sufficiently preserve an issue or argument in the appeal, and are certainly waived

if presented for the first time in the reply brief.¹⁷

Added to the above concern is the general view that federal appellate courts—like state appellate courts—disfavor motions to exceed page limits and what is often referred to as the “brief bloat” trend. Consider the January 9, 2012 “Standing Order Regarding Motions to Exceed Page Limitations of the Federal Rules of Appellate Procedure” that the full United States Court of Appeals for the Third Circuit issued, which explicitly warns that motions to exceed page limits or word counts are “strongly disfavored” absent demonstration of “extraordinary circumstances”.¹⁸ “Of the 12 Circuits surveyed, 9 Circuits reported that they ‘rarely’ or ‘almost never’ grant motions to exceed the page or word limitations.”¹⁹

The Hon. Judge Joel Dubina, former Chief Judge and a current Senior Judge of the United States Court of Appeals for the Eleventh Circuit, has observed that, under the current word limits, in the Eleventh Circuit, only “a small percentage of lawyers file motions to exceed the page limitations, which are almost always denied” and that “Eleventh Circuit Rule 28-1 explicitly states ‘that [the Eleventh Circuit] looks with disfavor upon motions to exceed the page limitation and will only grant such a motion for extraordinary and compelling reasons.’”²⁰

But significant about the Third Circuit’s Standing Order is that it notes statistics that, even under the current word count limits “motions to exceed the page/word limitations for briefs are filed in approximately twenty-five percent of cases on appeal, and . . . seventy-one percent of those motions seek to exceed the page/word limitations by more than twenty percent”.²¹ Experienced appellate practitioners recognize that lengthy, shotgun-issue briefs are ineffective and do not serve their clients, but **twenty-five percent** of practitioners in the Third Circuit are already seeking to exceed page and word count limit under the current limits, presumably in part to ensure adequate appellate briefing.

Judge Dubina adds that “[a]lthough not one excess word should be used, the writer should not make the brief so short as to be incomplete and inadequate. Lawyers need to explain their reasons sufficiently so that the court can follow what they are trying to say. A brief that omits steps and reasoning essential to understanding will fail to serve its purpose.”²² These statistics and judicial observations suggest that the existing word count limits are already balanced and that further reductions in word count may not aid the appellate process.

Meaning, with reductions in court funding, including reductions in support staff, and judges expected to carry the heaviest of case loads, reductions in word count could backfire and increase work load. That is, while an experienced appellate practitioner has a strong sense of the issues that are worthy of advancing on appeal and labors many hours editing the brief down to hone those issues and discard the rest, it is also true that appellate courts sometimes adjudicate based on an issue that the practitioner had considered to be minor, but included in an abundance of caution to protect the client’s appellate rights. The above statistics and advice from appellate judges suggest, therefore, that the proposed reductions in word count, coupled with strict appellate issue preservation requirements and motions to exceed word count granted in only the rarest of cases, may present a more onerous burden in appeals, with the most adverse effects on criminal appeals, where preservation can affect later collateral proceedings.

To be sure, page and word limits aid appellate advocacy. Having to “[w]rit[e] succinctly forces the lawyer to think with precision by focusing on what he or she is trying to say.”²³ But reductions in word count in appellate briefs and petitions may not aid appellate advocacy in the context of protecting all of the client’s appellate rights during the appeal. Again returning to Judge Dubina’s wisdom: “the brief is the single most important aspect of appellate advocacy. Indeed, I suspect that in the future, as the

PROPOSED AMENDMENTS from previous page

court's caseload continues to climb, more and more cases will be decided without oral argument. Consequently, the brief will be even more significant.²⁴ Word count reductions may actually increase the appellate court's labor in understanding the issues on appeal if they are insufficiently developed in the briefs because of word count limits. The law is being decided at ever increasing rates and, as society and business grow more complex, the law grows more complex.

Anyone wishing to provide comments on the proposed amendments to the appellate rules, whether favorable, adverse, or otherwise, must submit them electronically by following the instructions at: <http://www.uscourts.gov/rulesandpolicies/rules/proposed-amendments.aspx>. Or those wishing to comment may do so by visiting "regulations.gov, Your Voice in Federal Decision-Making", and proceeding to this direct link: <http://www.regulations.gov/#!docketDetail;D=USC-RULES-AP-2014-0002>. All comments must be submitted no later than **Tuesday, February 17, 2015**. All comments will be made a part of the official record and available to the public.

Endnotes

1 Dorothy F. Easley earned her J.D., with honors, in 1994 from the University of Miami School of Law and her M.S., with highest honors, in 1986 from SUNY/CESF. She is board certified in appellate practice, managing partner of Easley Appellate Practice, PLLC, and is admitted to practice in all Circuit Courts of Appeals and the Supreme Court. Ms. Easley is a past chair of the Appellate Practice Section, 2009-2010.

2 Congress enacted Title 28 U.S.C. § 2071 to establish the federal courts' rule making powers generally, with specificity in Title 28 U.S.C. § 2072. Title 28 U.S.C. § 2073 establishes the method by which rules are enacted, with § 2073(b) authorizing the "Judicial Conference [of the United States to] appoint[] a standing committee on rules of practice, procedure, and

evidence." The Judicial Conference is tasked in Title 28 U.S.C. § 331 with a continuing responsibility to "carry on a continuous study of the operation and effect of the general rules of practice and procedure," to "promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay".

3 More detailed information regarding the Federal Rulemaking process can be found on the U.S. Courts website: <http://www.uscourts.gov/RulesAndPolicies/rules/about-rulemaking.aspx> (last visited Nov. 8, 2014).

4 28 U.S.C. § 2073(b), (c); Guide to Judiciary Policy, Vol. 1, § 440, § 440.20.40 Publication and Public Hearings (website address: <http://www.uscourts.gov/RulesAndPolicies/rules/about-rulemaking/laws-procedures-governing-work-rules/rules-committee-procedures.aspx>) (last visited Nov. 8, 2014).

5 *Id.*

6 *Id.*

7 More detailed information regarding the Federal Rulemaking process can be found on the U.S. Courts website: <http://www.uscourts.gov/RulesAndPolicies/rules/about-rulemaking.aspx> (last visited Nov. 8, 2014).

8 U.S. Courts, *How the Rulemaking Process Works* (website address: <http://www.uscourts.gov/RulesAndPolicies/rules/about-rulemaking/how-rulemaking-process-works.aspx>) (last visited Nov. 8, 2014).

9 Committee on the Rules of Practice and Procedure of the Judicial Conference of the United States, *Preliminary Draft of Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure: Rule 4, Fed. R. App. P.*, 1, 26-27 and Rule 4 comm. notes. (Aug. 2014).

10 *Id.* at Rule 25, at 29 and Rule 25 comm. notes.

11 *Id.* at 16 (citing *Houston v. Lack*, 487 U.S. 266 (1988); see also Rule 4 at 26-27. Amendments for related Forms 1 and 5 and a new, related Form 7 are also proposed.

12 *Id.* at 16 (discussing *Bowles v. Russell*, 551 U.S. 205 (2007), which held that statutory appeal deadlines were jurisdictional while non-statutory appeal deadlines (those set by rule) are nonjurisdictional and the circuit split that the proposed amendment resolves); see also Rule 4 at 37-38.

13 *Id.* at proposed Rule 29 at 62-63.

14 *Id.*

15 U.S. Courts, *Comments on Proposed Amendments to the Federal Rules of Appellate Procedure* (website address: <http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;D=USC-RULES-AP-2014-0002;act=PS>) (last visited Nov. 9, 2014).

16 See, e.g., *Anderson v. City of Boston*, 375 F.3d 71, 91 (1st Cir. 2004) (When a party presents in its appellate brief "no developed argumentation on a point ... we treat the argument as waived under our well established rule."); *Tolbert v. Queens Coll.*, 242 F.3d 58, 75 (2d Cir. 2001)

(same); *U.S. v. Elder*, 90 F.3d 1110, 1118 (6th Cir. 1996) (same); *Laborers' Int'l Union of N. Am. v. Foster Wheeler Corp.*, 26 F.3d 375, 398 (3d Cir. 1994), *cert. denied*, 513 U.S. 946 (1994) ("a passing reference to an issue ... will not suffice to bring that issue before this court.") (quoting *Simmons v. City of Philadelphia*, 947 F.2d 1042, 1066 (3d Cir. 1991), *cert. denied*, 503 U.S. 985 (1992)); *U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("A skeletal 'argument', really nothing more than an assertion, does not preserve a claim . . . Especially not when the brief presents a passel of other arguments . . . Judges are not like pigs, hunting for truffles buried in briefs."); *Adler v. Wal-Mart Stores*, 144 F.3d 664, 679 (10th Cir. 1998) (arguments inadequately briefed in the opening brief are waived); *Optivus Technology, Inc. v. Ion Beam Applications S.A.*, 469 F.3d 978 (Fed. Cir. 2006) (argument not raised in opening brief on appeal is waived); *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006) (similar); see also *Tallahassee Mem'l Reg'l Med. Ctr. v. Bowen*, 815 F.2d 1435, 1446 n. 16 (11th Cir. 1987), *cert. denied*, 485 U.S. 1020 (1988); see also *Shah v. Wilco Systems, Inc.*, 76 F. App'x 383, 385 (2d Cir. 2003) (where only a single footnote contained in a brief made state law contentions, that was not sufficient to preserve the issue for appeal); *Ethypharm S.A. France v. Abbott Laboratories*, 707 F.3d 223, 231 n. 13 (3d Cir. 2013) (same); *Silicon Knights, Inc. v. Epic Games, Inc.*, 551 F. App'x 646 (4th Cir. 2014) (issue raised only in footnote of appellate brief, addressed with only declarative sentences, waived for appellate review.); *U.S. v. Johnson*, 440 F.3d 832, 845-46 (6th Cir. 2006) (argument raised in "single footnote and . . . not otherwise developed" considered forfeited); *U.S. v. Dairy Farmers of America, Inc.*, 426 F.3d 850, 856 (6th Cir. 2005) (same); *Hutchins v. District of Columbia*, 188 F.3d 531, 539-540 n. 3 (D.C. Cir. 1999) (court "need not consider cursory arguments made only in a footnote").

17 See, e.g., *Tallahassee*, 815 F.2d at 1446 n. 16.

18 Jan. 9, 2012 United States Court of Appeals for the Third Circuit Standing Order Regarding Motions to Exceed the Page Limitations of the Federal Rules of Appellate Procedure (hereinafter, "Third Circuit Standing Order") (website address: <http://www.ca3.uscourts.gov/standing-orders-0>) (last visited Nov. 9, 2014).

19 Hon. Theodore A. McKee, Chief Judge of the United States Court of Appeals for the Third Circuit, *Permission to Exceed the Page or Word Limitations for Briefs Is Now the Exception, Not the Rule*, Vol. VI(1) BAR ASS'N THIRD CIR. 1 (Mar. 2012).

20 Hon. Joel F. Dubina, *How to Litigate Successfully in the United States Court of Appeals for the Eleventh Circuit*, 29 CUMB. L. REV. 1, 6, n. 26 (1998) (hereinafter, "Dubina, *How to Litigate Successfully in the Eleventh Circuit*").

21 Jan. 9, 2012 Third Circuit Standing Order.

22 Dubina, *How to Litigate Successfully in the Eleventh Circuit* at 6.

23 *Id.* at 6.

24 *Id.* at 6.

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