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Chair's Message –

By: Christopher V. Carlyle



C. CARLYLE

I am both humbled and excited to serve as the Appellate Practice Section's Chair for the 2015-2016 year. I am in the enviable position of leading the Section at a time when its finances have never been stronger. The Section's reserves are at an all-time high, and Immediate Past Chair Ceci Berman began the process of addressing the long range planning for the Section in light of these reserves. Ceci spearheaded a survey that was sent out to Section members earlier this year, and the results of that survey were discussed by the Executive Council at the Florida Bar's Annual Meeting in June. Also at that meeting, the Section was approached by representatives of The Florida Bar Foundation which provides funds for indigent legal services, and which has received substantial contributions from several other Sections in the recent past. Funding for that organization and its critical work has declined greatly as interest rates have fallen since the financial crisis of several years ago.

Over the course of the year we will address the questions of how much should be kept in reserve, as well as what should be done with the surplus. These are good problems to have, and it reflects well on the Section's past leadership that we are in a position to consider these issues at this time.

As always, the Section will continue to provide excellent continuing legal education options for its members, as well as the Bar as a whole. CLE Chair Jessie Harrell is work-

ing with other Section members to prepare several live CLE programs over the course of the year, and those are enhanced by our monthly telephonic CLE calls (co-chaired by Chris Donovan and Kansas Gooden). We are also considering new CLEs in the upcoming year, and I encourage members who have ideas for a CLE to feel free to approach Section leadership. We will continue to provide relevant and informative articles under the direction of our Publications Chair Kimberly Jones, and we will continue to provide pro bono services under the direction of our Pro Bono Chair, Carrie Ann Wozniak. We are also in the process of working to review and update the Section's by-laws, an unglamorous but necessary task.

It has been many years since the Section has held a leadership retreat, and perhaps the time has again arrived. The Section has been running smoothly and profitably for many years, but perhaps it is time to review how we might be even more effective, and to analyze if we are meeting the needs of our members as thoroughly as possible.

The Section once again was asked to participate in the Florida Conference of District Court of Appeal Judges Annual Education Program that was held on September 8-10 at the Sawgrass Marriott Golf Resort and Spa in Ponte Vedra Beach. Section members worked closely with the judges on the educational programs and the Section, as it has in the past, sponsored a reception on the eve of the conference. Our next Section meeting will be held during the Bar's Winter Meeting in Orlando on January 21, 2016. Please consult the Section's website for further details.

Judge Ross L. Bilbrey

By: Kansas R. Gooden



JUDGE BILBREY

You will not find him waving a metal detector on the beautiful beaches of the Florida panhandle he has called home for most of his life, but Judge Ross L. Bilbrey is a treasure hunter. He is a patient searcher that spots value in public service, education, justice, and Gator football.

Even though he was born in Fort Worth, Texas, Ross Bilbrey grew up as a Floridian. He was raised along Florida's Gulf Coast in Escambia and Santa Rosa Counties and graduated from Milton High School.

As an undergraduate at the University of Florida planning a career as a politician, Bilbrey majored in political science and minored in criminology. He served as Chancellor and Vice-Chancellor of the Student Honor Court, and was inducted to Phi Beta Kappa, Florida Blue Key, and Omicron Delta Kappa. During those years, he found his lifelong passion for the University's football team, and he discovered that he was a "bad politician."

The decision that his public service would not be in elective office led him to clerk at a law firm in Jacksonville. He equates the legal research he did then to a treasure hunt. He often stayed late into the night at the law library methodically searching through the Southern Reporters. He enjoyed the process and became fascinated with how the law affects people's lives.

After graduating from the University of Florida Levin College of Law in 1993, Bilbrey moved to Jacksonville to work in private practice. His practice included civil and commercial litigation with a focus in insurance defense and admiralty. The case that he still considers the most memorable of his career came during this time, and it is

one that cast the young business and defense litigator against type. He was asked to represent someone suffering from a rare form of cancer and in dire need of a bone marrow transplant. The client's health insurer denied coverage for the procedure and labeled it experimental. Bilbrey handled the case pro bono, and, without having to resort to litigation, convinced the health insurance carrier to provide benefits for the procedure. His eyes were opened to the meaningful impact a lawyer could make through advocacy outside the courtroom, and his nostalgia for that case is evident in his voice all these years later.

After seven years in private practice, Ross Bilbrey joined the JAG Naval Legal Office at NAS Pensacola. There, he was named Civilian of the Year for his work mobilizing reservists to active duty following the September 11, 2001 terrorist attacks. After three years in civil service, Bilbrey opened his own law firm focusing on civil litigation and family law.

During this time, he pursued another one of the things he cherishes. He taught undergraduate courses on criminal law, criminal procedure, and evidence as an adjunct professor at the

University of West Florida. He had always thought he would serve as an educator; it is a path down which he followed his parents - his mother was a school teacher and principal and his father was a psychologist.

Bilbrey found his ultimate calling when Santa Rosa County was in need of a County Court Judge, but this was not a prize he sought for himself. It was only after the position was re-advertised that he yielded to the encouragement of several members of the Judicial Nominating Commission to put his name in the hat. Governor Jeb Bush appointed him to the county bench in March 2006.

While he was a county judge, the First Circuit Court designated Bilbrey to hear circuit court cases in the family, probate and felony divisions. FavorHouse of Northwest Florida, a domestic violence service center, recognized him for his work in reducing domestic violence in Santa Rosa County. Judge Bilbrey also chaired the Santa Rosa Canvassing Board during the 2006 and 2010 elections and the 2012 presidential preference primary.

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THE APPELLATE PRACTICE SECTION OF THE FLORIDA BAR PREPARES AND PUBLISHES THIS JOURNAL

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JUDGE ROSS L. BILBREY, *from preceding page*

Governor Rick Scott elevated Judge Bilbrey to the First Judicial Circuit Bench in July 2012. He presided over a juvenile division for less than three years before Governor Scott appointed him to the First District Court of Appeal. He took the bench on January 6, 2015.

Judge Bilbrey values the time he spent as a county and circuit judge. He found rewarding the opportunity to help children that appeared in juvenile court, and he explains that the experience he gained in areas of law beyond the fields in which he previously practiced prepared him to become an appellate judge.

Judge Bilbrey is relishing the transition. He delights in devoting the time to research without the time constraints involved in county or circuit trial cases. As a trial judge, he often had to make quick rulings, especially during trial. Now, he is able to be more reflective. The pace gives him the ability to focus on issues, perform extensive research and drill down the facts of each case. It is a return to the "treasure hunt" that captivated him as a young clerk.

After several months on the appellate bench, the difference Judge Bilbrey finds most surprising is the lack of interaction with other people. As a county and circuit judge, he had

contact with attorneys, parties, court staff and other judges on a daily basis. Now, he spends little time in open court and exchanges ideas and opinions with the other judges through memoranda between chambers.

What has changed since he began to practice law? Technology. Judge Bilbrey explained that he did not have a computer on his desk, there was no internet at his firm, and Westlaw and LexisNexis were prohibitively expensive. Research involved reading bound volumes, and he prepared letters and court filings by dictating and writing longhand.

Now, Judge Bilbrey uses an iPad or his computer to read briefs and motions and to write orders and opinions. He still prints briefs in cases set for oral argument so he can highlight and compare documents side-by-side, and he is quick to point out that he recycles all those printouts.

Judge Bilbrey also believes that the practice of law has become more impersonal. The sheer number of attorneys practicing in the state means that there is more supply than demand for many legal services. He opines this has contributed to professionalism issues and created a "win-at-all-costs attitude" in many attorneys. The number of Florida lawyers notwithstanding, Judge Bilbrey

sees the unmet demand for access to civil justice and encourages attorneys to help bridge that gap.

Judge Bilbrey and his family are currently transitioning to Tallahassee. Judge Bilbrey, a former president of the Pensacola Chapter of the American Inns of Court, has joined the First District Appellate Inn of Court. His wife accepted a job at The Florida Bar in the Practice Resource Institute as a practice management advisor. She previously worked as the legal administrator at Judge Bilbrey's and other firms. Their youngest daughter just started the eighth grade in Tallahassee, and their two oldest daughters are attending Florida State University.

His job and location may have changed, but the things he treasures have not. The appellate court is another platform for service and consideration of the law. He is looking to return to teaching as an adjunct professor. And this new Tallahassee resident and proud father of FSU students continues to hold season tickets to Gator football.

Kansas Gooden is a partner of Boyd & Jenerette practicing in the Jacksonville office. Her practice focuses primarily in civil appeals, insurance coverage and bad faith/extra-contractual liability litigation.



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Judge James A. Edwards

By: David C. Knapp



JUDGE EDWARDS

James A. “Jim” Edwards had just finished speaking at a Civility in Litigation seminar for the Indian River Bar Association in Vero Beach, and was reviewing voice messages before getting into his car, when he came across a voice message from a fellow named Rick Scott. Needless to say, the call was quickly returned. Governor Scott told Jim that he was being appointed to fill the newly-created position as the 11th judge on the Fifth District Court of Appeal in Daytona Beach. The position was created by the Florida Legislature in 2014 because the Fifth DCA had a case load of 330 cases per judge, the highest in the state. In selecting Judge Edwards to fill this new position, Governor Scott not only chose an elite legal mind, but also someone who was born and raised in Central Florida, where the 5th DCA is located.

Judge Edwards was born at Orange Regional Medical Center (ORMC) in Orlando in 1954, the youngest of three children. His father was longtime Orange County Circuit Court Judge, Claude Edwards. His mother was Sarah Edwards, who was always active in community organizations. Judge Edwards met his wife, Marcia, in the 7th grade, when they attended Howard Junior High School in downtown Orlando. They started dating during their senior year at William R. Boone High School, where they both graduated in 1972. After Boone, both Judge Edwards and Marcia attended the University of Auburn.

1976 turned out to be a very big year not only for the United States celebrating its bicentennial, but also for Judge Edwards. Judge Edwards

received his Bachelor of Arts in Psychology with high honors in March of 1976, with minors in economics and French. Marcia received her Bachelor of Arts in Elementary Education at the same time. Jim and Marcia were married the very next month, in April of 1976. During that same summer, Judge Edwards served as a Deputy Clerk for the Orange County Circuit Court, criminal division. Then in the fall of 1976, Judge Edwards and Marcia moved to Gainesville so that he could begin law school at the University of Florida.

While Judge Edwards attended law school, Marcia worked as an elementary school teacher. Judge Edwards became a member of the Moot Court Team, was an Appellate Advocacy instructor, was inducted into the Order of the Coif, and graduated number 1 in his law school class in March of 1979. Judge Edward’s favorite instructor during law school was Jeffrey Lewis, who ultimately became Dean of the U.F. College of Law. Judge Edwards appreciated that Professor Lewis was always well prepared, and knew what he was talking about – something any good appellate attorney can certainly appreciate.

After graduating from law school, Judge Edwards became the 7th attorney to join Rumberger, Kirk and Caldwell, P.A., which started in the fall of 1978. At Rumberger, Judge Edward’s practice consisted of products liability defense (primarily automobile manufacturers), insurance defense, and attorney malpractice defense. He had his first oral argument within his first 2 years of practice. He was fortunate to have fantastic mentors at Rumberger, including Thom Rumberger, Bud Kirk, Dick Caldwell, and Ronald Cabaniss.

In 1979, Judge Edwards became Board Certified as a Civil Trial At-

torney. That same year he left Rumberger to form a new firm -- Roth, Edwards & Smith, P.A., where he added trucking liability and railroad litigation to his repertoire. In 1996, Judge Edwards became a certified mediator, and began mediating cases at both the trial and appellate levels. In 2000 Judge Edwards became partners again with one of his mentors, Ronald Cabaniss, at Cabaniss, Conroy & McDonald, with offices in Orlando, Atlanta, and Philadelphia. Ultimately, Judge Edwards became a partner at Zimmerman Kiser Sutcliffe, P.A. in Orlando in 2011, where he remained until being appointed by Governor Scott.

During his years of practice, Judge Edwards has represented clients in numerous state, federal and appellate courts, in a variety of cases that have included banking, bonds, civil rights claims, corporate and partnership disputes, employment matters, false arrest and imprisonment, food poisoning claims, franchise claims, internet and print defamation, jurisdictional disputes, and personal injury or wrongful death cases resulting from product liability claims involving automobiles, trucks, forklifts, manufacturing equipment, chemical sensitivity, toxic torts, construction equipment, and sporting goods. While his law offices were always in Central Florida, he handled cases throughout the state and in the Caribbean as well. In fact, he became a full member of the U.S. Virgin Islands Bar Association in 2010 because he had such an active practice there. He was elected to membership in the American Board of Trial Advocates and remains active in the Central Florida Chapter of ABOTA, which he describes as an outstanding organization made up

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equally by experienced plaintiffs' and defendants' trial lawyers.

As his experience grew, Judge Edward's passion became promoting professionalism within the legal community. He was a member of the Orange County Bar's Professionalism Committee for over 10 years, and served as its Chair for two years. He was a member of the Florida Bar's Standing Committee on Professionalism for 6 years. He frequently wrote and spoke about professionalism. And according to Judge Edwards, one of the highlights of his legal career was receiving the 2013 William Trickel, Jr. Professionalism Award, which is presented annually by the Orange County Bar to an attorney who has practiced law for more than 15 years, and whose "conduct and career stands as a model of success built on unquestioned professionalism." Even though Orlando has changed significantly during Judge Edward's lifetime, he is proud that the Central Florida bar has remained highly collegial, and highly professional.

Judge Edwards has 2 grown sons – Scott James Edwards (33), whose practice includes civil litigation and appeals in Boca Raton, Florida; and Stephen Edwards (31), who works in the accounting department at Zimmerman Kiser Sutcliffe. Judge Edwards and his wife also recently became first time grandparents with

the birth of Scott's first son, Oliver James Edwards. During his down time, Judge Edwards enjoys light tackle saltwater fishing, and spending time with family and friends.

Judge Edwards is very proud to be a judge on the Fifth District Court of Appeal, which has always had a reputation for scholarship, and dealing with difficult cases on a timely basis. Judge Edwards has been impressed with how seriously all of the judges take their decisions, and how committed they are to getting the right result. He highly values the congenial, collegial relationship that exists in this court. Many of the 5th DCA judges have been Circuit Court judges. Judge Edwards hopes that his years of handling civil trials and appeals, dealing with wide ranging subjects, will add yet another, helpful perspective to the court. Judge Rick Orfinger has been Judge Edward's mentor at the 5th, and Judge Edwards says he could not have asked for someone better to help him make this transition. Judge Edwards said that he feels very fortunate as well to have two excellent staff attorneys/law clerks and an experienced judicial assistant who are indispensable to him in his new position.

What are Judge Edward's suggestions for appellate attorneys appearing before the Fifth District Court of Appeal? Keep your brief, brief; pick

and focus on your best arguments, do not use a shotgun approach; and, of course, exhibit professionalism by being civil at all times to counsel and judges, in your briefs, motion practice, oral arguments, and outside the courtroom. The judges on the Fifth DCA come to oral argument fully prepared, so you may go straight into arguing your case without the need to lay a detailed background first.

So what type of judge did Governor Rick Scott and the residents of Florida get when Governor Scott selected Judge James "Jim" Edwards to be the newest Judge on the Fifth District Court of Appeal? They got a home grown, tried and true Central Floridian, who knows the law, who knows the people of Florida, and who will do his very best to provide them with the best legal decisions possible.

David C. Knapp is a partner at McDonald Toole Wiggins, P.A., in Orlando, Florida, where his practice focuses primarily on appeals, product liability defense and e-discovery.



D. KNAPP



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Florida Coastal School of Law Wins 2015 Orseck Moot Court Competition

Twenty-four students from eleven of Florida's twelve law schools spent the start of their summer preparing for the Robert Orseck Memorial Moot Court Competition. The competition is run by The Florida Bar Young Lawyers Division in conjunction with the Florida Bar Annual Convention with support by the Appellate Practice Section.

This year's problem raised very relevant and interesting legal issues. Students briefed whether or not Florida's statutory ban on open carry is constitutional under the Second Amendment and whether the use of drone surveillance upon the curtilage

of a home without a warrant constitutes an unreasonable search under the Fourth Amendment.

The competition was chaired by attorneys Andrew Manko and Alexandra Haddad Palermo of the Florida Bar Young Lawyers Division Board of Governors. Approximately fifty Florida attorneys and judges participated as judges throughout the competition. The two semi-final rounds consisted of panels of five to six Florida District Court of Appeal judges per round. The seven Florida Supreme Court justices presided over the final round of the competition, which was well attended by the of-

ficers and Executive Council of the Appellate Practice Section.

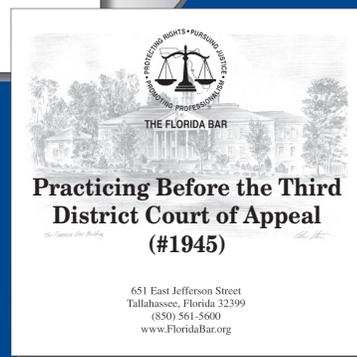
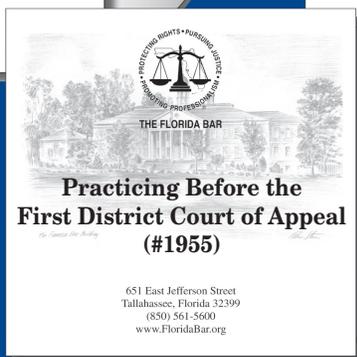
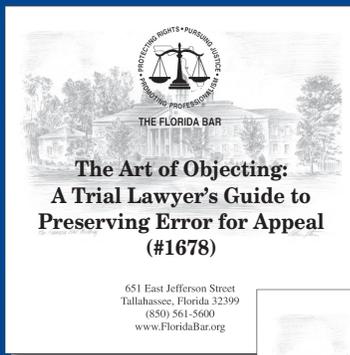
The caliber of competition this year was excellent. Florida Coastal School of Law prevailed as the winner and Stetson University College of Law was the runner-up. Florida Coastal School of Law also won best brief. Joseph Lamb of Florida State University College of Law won the award for Preliminary Round Best Oral Advocate and Cassandra Klusmeyer of Florida Coastal School of Law won the award for Final Round Best Oral Advocate.



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The Use Of Latin Words or Phrases in Legal Writing

Adam M. Hapner

This article serves to briefly educate readers on the appropriate use of Latin words or phrases in legal writing. It addresses two common misconceptions concerning when and how to use a Latin word or phrase. While the following rules and advice are particularly helpful to appellate practitioners, they apply to all legal writing.

For whatever reason, many lawyers use Latin words or phrases in an attempt to enhance their legal writing, perhaps thinking it will impress their readers. However, it often has the opposite effect. Not only does the use of archaic and uncommon Latin make your writing less clear, but also, you are more likely to make a grammatical mistake when using Latin.¹ For those reasons, the use of plain English is generally superior.² The one excep-

tion is for Latin words or phrases that have specialized legal meaning and no adequate English equivalent, such as “voir dire,” “habeas corpus,” and “ex parte.”³ In all other instances, use English instead of Latin.

Once you have determined that the use of Latin is appropriate, determine whether to italicize the word or phrase.⁴ It is a common misconception to think that because a word or phrase is Latin, it should be italicized. To the contrary, *The Bluebook* Rule 7(b) states that “Latin words and phrases that are often used in legal writing are considered to be in common English usage and should not be italicized.”⁵ However, very long Latin phrases and obsolete or uncommon Latin words and phrases should remain italicized.” It also provides several examples of Latin words and

phrases that are “often used in legal writing.”⁶ To determine whether a Latin word or phrase that is not listed in rule 7(b) is “often used in legal writing” or “obsolete or uncommon,” without making an arbitrary determination yourself, consult the latest edition of *Black’s Law Dictionary*.⁷ For convenience, the following charts—which are not intended to be exhaustive—incorporate the examples provided in rule 7(b) as well as other examples not listed in rule 7(b), as provided in *Black’s Law Dictionary* (10th ed. 2014).⁸

¹See BRYAN A. GARNER, THE ELEMENTS OF LEGAL STYLE § 7.8, at 193–95 (Oxford University Press, Inc. 2d ed. 2002).

²See *id.*; see also THE REDBOOK: A

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ITALICIZED

| |
|--|
| • <i>caveat-emptor</i> |
| • <i>de-minimis</i> |
| • <i>duces-tecum</i> |
| • <i>ex-dolo-malo-non-oritur actio</i> |
| • <i>expressio-unius-est-exclusio-alterius</i> |
| • <i>ignorantia-legis-neminem-excusat</i> |
| • <i>in-pari-delicto</i> |
| • <i>in-pari-materia</i> |
| • <i>inter-alia</i> |
| • <i>ore-tenus</i> |
| • <i>sero-sed-serio</i> |

NOT -ITALICIZED

| | | |
|---------------|----------------------|---------------------|
| ab-initio | ex-post-facto | obiter-dictum |
| actus-reus | guardian-ad-litem | per-curiam |
| ad-hoc | habeas-corpus | per-se |
| ad-valorem | i.e. | res-ipsa-loquitur |
| amicus-curiae | in-absentia | res-judicata |
| arguendo | in-camera | respondeat-superior |
| capias | in-personam | quid-pro-quo |
| caveat | indicia | sic |
| certiorari | in-rem | stare-decisus |
| corpus-juris | mens-rea | sub-judice |
| de-facto | modus-operandi | subpoena |
| de-jure | motion-in-limine | sua-sponte |
| de-novo | nolle-prosecui | sui-generis |
| demurrer | nolo-contendere | |
| e.g. | nonobstante-verdicto | |
| en-banc | non-sequitur | |
| ex-parte | nunc-pro-tunc | |

MANUAL ON LEGAL STYLE § 11, at 215–24 (West Academic Publishing 3d ed. 2013) (stating “the trend today is toward plain language and away from the stuffiness and jargon-laced prose that characterized so much legal writing in the past” and recommending avoiding legalese); ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES § 44, at 113–14 (Thompson/West 2008) (recommending banishing needless Latin).

³See GARNER, *supra* note 1, at 194–95

⁴In regard to nonacademic legal writing, *The Bluebook* permits the use of underlining in lieu of italicization. See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. B1, at 3 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010). However, because underlining is archaic, puts more strain on the reader’s eyes

than italicization, and obliterates the descenders of some letters (such as “g” and “j,” which then look like “o” and “i,” respectively), the use of underlining is not recommended in textual sentences. See REDBOOK, *supra* note 2, at 79–80 (“Underlining and all-caps styles are just hold-overs from the typewriter era and should be avoided altogether.”); SCALIA & GARNER, *supra* note 2, § 47, at 122 (“Nobody using a computer in the 21st century should be underlining text. To the extent that *The Bluebook* suggests otherwise, it should be revised.”); GARNER, *supra* note 1, § 4.3, at 78 (“Generally, if italic print is available, you should prefer it to underlining.”).

⁵BLUEBOOK, *supra* note 4, R. 7(b), at 83; see also THE CHICAGO MANUAL OF STYLE § 7.53, at 365 (The University of Chicago Press 16th ed. 2010) (“Commonly used Latin words and abbreviations should not be italicized.”).

⁶BLUEBOOK, *supra* note 4, R. 7(b), at 83.

⁷See REDBOOK, *supra* note 2, § 3.3(a)–(b), at 80–81.

⁸Although “sic” is not provided as an example in rule 7(b) and is italicized in *Black’s Law Dictionary*, “sic” should not be italicized when used to indicate a significant mistake in a quotation per *Bluebook* Rule 5.2(c). See BLUEBOOK, *supra* note 4, at 77; see also REDBOOK, *supra* note 2, at 34 (“An interpolated ‘[sic]’ should not be italicized . . .”). But see CHICAGO MANUAL OF STYLE, *supra* note 5, at 642 (stating that “sic” is “traditionally set in italics”).

Adam M. Hapner is a 2014 graduate of the University of Florida Levin College of Law and currently serves as Law Clerk to the Honorable Patrick M. Hunt of the United States District Court for the Southern District of Florida.

2015 Adkins and Pro Bono Award Winners



JUDGE PADOVANO

The winner of the Appellate Practice Section’s James C. Adkins Award is Phillip J. Padovano. The James C. Adkins Award is bestowed upon a member of the Florida Bar who has made significant contributions

to the field of appellate practice in Florida. Mr. Padovano practices with the firm of Brannock & Humphries and prior to joining the firm he served as a Judge on the First District Court of Appeal from 1996 through 2015. Mr. Padovano has received numerous

awards throughout his career, including the Florida Bar Outstanding Jurist Award and the Tobias Simon Pro Bono Service Award. He is well known to appellate practitioners as the author of “Florida Appellate Practice,” which is one of the definitive treatises on appellate practice in Florida.



J. MOSES

Jamie Billotte Moses received the Appellate Practice Section’s Pro Bono Award. Ms. Moses practices with the firm of Fisher Rushmer, P.A., and she has devoted count-

less hours to appellate pro bono causes through several legal aid organizations throughout Central Florida. Ms. Moses has served on the Florida Bar Board of Governors, and presently serves as President of the Orange County Bar Association. The pro bono award is given to a member of the Florida Bar who has devoted significant pro bono efforts in appellate matters.

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