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What I Did At Appellate Camp This Summer

(A Report from the Best Seminar Ever!)

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Chief Judge Carolyn Fulmer

by Raymond T. (Tom) Elligett, Jr.¹



Judge Carolyn Fulmer was appointed to the Second District Court of Appeal in January, 1994. She became the Court's first woman Chief Judge in July, 2005. She graciously agreed to the following interview with Tom Elligett

of Schropp, Buell & Elligett.

You have now been on the Second District for over eleven years. What have been the most significant changes?

The amount of material to read

for each panel has increased and the issues seem to be more complex than they were years ago. The number of post-conviction appeals has grown and the laws governing sentencing have become unnecessarily complicated. Another change that is on the horizon is the move toward electronic filing in our appellate court system.

How is the quality of practice before the Court?

In general, the majority of counsel we see before us in oral argument are very professional and do a fine

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Message From the Chair

by Thomas D. Hall

A number of years ago then Chief Justice Rosemary Barkett gathered judges, court staff, attorneys and citizens from across the state to envision what Florida courts would look like in the 21st century. At one of the follow up meetings devoted specifically to appellate practice, one of our members (a former chair) offered that his vision of appellate practice in the future was that he would be able to practice appellate law from a sailboat in the Bahamas. It seemed a perfect answer for a visioning session. Idealistic, even possible, yet practically a long way off.

That one attorney's dream will soon become reality, or at least possible.

Florida is starting the process to make electronic access to the appellate courts practical. All the technical requirements exist. More importantly, one of the last big steps has been taken. The Supreme Court, through its administrative arm, the Office of State Court Administrator (OSCA), has awarded a contract to a company to develop and provide a new appellate court information management system. That system will include the capability of allowing e-filing by attorneys and the e-service of orders and opinions by the courts. It is contemplated that most pleadings will also be available to attorneys on line in addition to the docket, which is currently available. Florida – as

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CHAIR'S MESSAGE

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is often the case – is attempting a big step here. The system as envisioned will be totally comprehensive involving all aspects of processing a case through the appellate courts.

Currently Florida's appellate courts have a case management system much like every appellate court in the country. Basically it is an electronic docketing system that allows for the tracking of pleadings, orders, opinions and other events that occur during the process. However, as it is a "static system," every entry is en-

tered manually into the system and it will only store documents created within the system. So for example, there can be no direct link to an opinion in a case from the docket because the opinion was created using a separate word processing system. While Florida has one of the best systems in the country, it has little utility for assisting with workflow within the court. As a result, a number of other separate systems have been developed to assist with those additional tasks. For example, software called E-vote was developed by the technology staff in OSCA to allow the supreme court justices to vote electronically on circulated opinions. The

Judicial Information System (JIS) was created to allow justices to track individual works assignments within their chambers. One of Florida's district courts of appeal has a knowledge management system that locates law clerk summaries from cases that were PCA'd. At the supreme court, separate e-mail addresses have been created to allow rudimentary e-filing of briefs and other documents. There are also separate e-mail addresses for general filings and for when a death warrant is pending; but all of these systems are not integrated. With few exceptions, they do not "talk" to each other. The new system will combine all of these processes, and many more, to not only make the courts more efficient, but to hopefully make the practice of appellate law much easier, or at least far more convenient. The process has just started and the courts' personnel will be working more intensely on this project during the next few months. But if you have that sailboat, and it's properly equipped, you might soon be practicing appellate law from there.

Things are progressing well on the projects I had hoped to accomplish while Chair. The retreat dates are now set and we have a location. The retreat is now scheduled for May 12th through May 14th at the Marriott Indian River Plantation on Hutchinson Island. We will be providing reservation information as soon as possible. In the meantime, please mark your calendars and plan on attending the retreat.

The committee chaired by Harvey Sepler, to involve more government lawyers in our section, is hard at work. The committee will make a presentation at our January meeting and will provide some good ideas for the Executive Council to consider.

Finally, the Pro Se Handbook Committee is also hard at work, although delayed somewhat by Hurricane Wilma. Again, we will get a complete report on the status of this committee's work at the January meeting.

We are always looking for new people to become active in our section. If you are a member of the section and want to work on any of our committees or volunteer in any way, please get in touch with me. There is always a lot of work to be done and we need people to do it.

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CHIEF JUDGE FULMER

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job. However, the brief writing in some cases we review could be improved.

In the past you have noted a concern over the number of cases that appear to have errors that might result in reversal, but those points were not preserved below. Does this continue to be a problem?

Preservation of error continues to be a problem. A fair number of cases are lost because errors were not preserved.

Perhaps trial counsel should take along appellate counsel to the trial to help preserve issues?

Certainly in large cases where the economics support it, this is a good idea. In other cases this problem underscores the need for trial counsel to be familiar with preservation principles. This is fundamental for all trial counsel, like the rules of evidence.

The independence of state and federal courts has come under increasing criticism in recent years. The late Justice William Rehnquist recently responded to such criticism as being unfair, and others have noted it ignores basic civics that one role of the court system is to protect those not in political power. Would the judges like to see lawyers and the organized bar take a more active role in this debate?

My short answer to this question is yes. It's frightening to have to acknowledge that judicial independence in the United States is under attack. It is one thing for a person or group to criticize a judge's ruling in a particular case. In fact, that is a First Amendment right of every citizen in this country. But it is an entirely different matter when criticisms are leveled to undermine or eliminate judicial independence. Those types of attacks erode our entire system of government because judicial independence is the most essential element in our system for

protecting the freedoms for which our country was created. I worry that the general public does not make the distinction between these types of criticisms. Because not everyone will make these distinctions, it is important for lawyers and judges to explain how the branches of government were designed to work by our founding fathers. I believe it is our responsibility as members of the Bar to go out into the community and help provide the civics course to our friends, neighbors and civic groups that is no longer taught in most schools. And, we should not wait until a controversy arises because people do not listen well when their emotions are aroused. We need to take every opportunity that presents itself in our daily lives to explain the role of the judge and the court in America.

Has this recent change in the tone of criticism impacted the quality of life on the bench or other aspects of judging?

It has heightened my level of frustration and my amazement at the lack of understanding that is being displayed about the fundamental roles of the three branches of government. For example, when a judge is criticized for setting a bond in a non-capital criminal case, I am always a little surprised that more people don't seem to understand that the judge is simply doing

what the constitution requires. As far as my own quality of life on the bench, I would like to think that I have not altered how I do my job for fear of criticism.

We realize you downplay this, but after being the first woman assistant county attorney and first woman circuit judge in Polk County, you became the first woman on the Second District and now its first woman Chief Judge. What plans do you have for your term as Chief Judge?

Well, I bet I could become very popular, very fast with the Bar if I could announce that during my tenure we will do away with PCAs. But, I don't have the power to do that, nor do I think it would be a good idea. But that is a subject for another day. . . or should I say, a debate for another day. My only plan for the next two years is to have the quietest two years ever. The last two were filled with the construction of our new facility at the Stetson Tampa campus, an asbestos removal project that caused us to evacuate the Lakeland court offices for about 14 months, and four hurricanes. It's time for the weather and the court to get back to normal.

Thank you for taking the time to visit with us.

Endnotes

¹ Raymond T. (Tom) Elligett, Jr. is with the firm Schropp, Buell & Elligett, P.A. in Tampa, Florida.

Do you like to WRITE? Write for *The Record!!!*

The Record is actively welcoming articles on a wide variety of appellate issues. Please submit your articles to:

Betsy E. Gallagher, Editor
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An Afternoon with the Chief: Robert H. Pleus, Jr., of Florida's Fifth District Court of Appeal

by Shannon McLin Carlyle¹



Judge Robert J. Pleus, Jr. has enjoyed a distinguished career as a lawyer and judge that spans some 40 years. He recently added yet another honor to a lifetime list of accomplishments

that is too extensive to include in just one article – the honor of being selected Chief Judge of the Fifth District Court of Appeal. I recently had the chance to spend the afternoon with Chief Judge Pleus, and he spoke openly about his background, his time on the bench, and his goals as Chief Judge.

When speaking with Chief Judge Pleus, it does not take long to understand the dominant influences of his life: his family, his faith, and his career in law. Chief Judge Pleus was born and raised in Orlando, and attended parochial school from kindergarten through high school. Upon graduation, he continued his Catholic education at the University of Notre Dame where he earned his Bachelor of Arts in Political Science. He spent several years in the Navy before earning his law degree from the University of Florida College of Law in 1962.

After graduation, Chief Judge Pleus began practicing law in Orlando where he was a leading member of the bar for nearly 40 years. He was a member of the firm of Carlton Fields for 10 years, had his own general civil practice for 15 years, and prior to his appointment, was of counsel to Ackerman Senterfitt & Eidson. Although he is board certified in real estate, he practiced in a wide variety of areas, including litigation. He has been active in bar activities throughout his career, including an eight-year term on the Board of Governors of the Florida Bar. He also served as President of the Orange County Bar Association, as well as President of the Young Lawyer's Division of The Florida Bar.

On the personal side, Chief Judge

Pleus was Mayor of the City of Windermere from 1988 to 1994, and served as past President of the Windermere Rotary Club and the Orange County Historical Society. The proud father of six children and five grandchildren, Judge Pleus has been married to his wife, Terry, for 43 years. Also, in 1999, Chief Judge Pleus earned his Masters Degree in Pastoral Ministries from Loyola University in New Orleans. Chief Judge Pleus is an ordained permanent deacon in the Catholic church.

In March, 2000, Chief Judge Pleus was selected to serve on the Fifth District Court of Appeal. In assuming the role of appellate judge, he was following in his father's footsteps. He explained, "My father was one of the original three judges on the Second District Court of Appeal when there were only three DCAs - Miami, Tallahassee and Lakeland." His father's time on the bench was too short, however. He was appointed in 1957 by Governor Leroy Collins and died Thanksgiving day that same year, after serving on the bench for only five short months.

Chief Judge Pleus enjoys the variety of cases that come before the appellate court, and is especially intrigued by real property cases, and cases involving individual property rights. When asked what he missed about the private practice of law, he mentioned the socializing and just being around other lawyers on a day to day basis. As with most appellate judges, such socializing has become less frequent since he went on the bench.

When asked about what he believed lawyers could do to improve their performance in appellate courts, Chief Judge Pleus pointed to a lack of understanding among some lawyers concerning the applicable standard of review. He is often frustrated by appeals that focus exclusively on challenging a trial court's findings of fact. He believes the practitioner should be wary of bringing such appeals, noting that reversal in such

cases is "very, very rare."

Chief Judge Pleus also commented on The Florida Bar's recognition of appellate practice as a specialty. He stated, "I think it's great - it's good for the profession and good for the clients. Having appellate specialists certainly enhances the performance of the lawyers."

When asked to recall some of his most notable opinions, Judge Pleus quickly cited his dissent in *In Re Guardianship of J.D.S.*¹ In the case, the majority upheld a trial court's decision denying a guardian to the fetus of a mentally disabled rape victim. The majority noted that Florida's Legislature had not mentioned the term "fetus" in enacting the guardianship law, and therefore found that "[h]ad the Legislature decided that a fetus was entitled to the protection of the guardianship statutes, it would have so legislated . . ."²

Judge Pleus disagreed. In a 16-page dissenting opinion, Judge Pleus asserted that appointing a guardian for a fetus is "not an undue burden and is the only means to ensure that the State's compelling interest in the health, welfare and life of an unborn child is protected."³ Judge Pleus stated that the legislature's reference to a person by using the terms "fetus" and "embryo" was "confusing, outdated and meaningless" and he urged the legislature to overturn the decision and affirm "that an unborn child is a person."⁴ Judge Pleus declared that "[s]uch action would be a clear and unambiguous acknowledgement of human life."⁵

Judge Pleus then exposed a personal story rarely seen in appellate decisions. He wrote of his new grandson, Nicolas, whose crib bore his name and who had delighted his family members with sonogram pictures of a heartbeat and wiggling toes long before the day of his birth. Judge Pleus stated that he knew Nicolas was a human life from the moment of conception. By that same token, Judge Pleus asserted that J.D.S.'s daughter,

who was born prior to the decision's release, is called Baby S. He wrote: "Ironically, within a short time after her birth, a guardian was appointed for Baby S..."⁶ Pleus continued, "It makes no sense to me that Baby S could have a guardian after the Caesarean [section] but not before."⁷ Judge Pleus therefore believed "the Legislature intended the reality that Baby S was a minor under the age of 18 both before and after the Caesarean operation on her mother. As a minor under the age of 18, prior to her birth, Baby S was eligible for a plenary guardian under the statute."⁸

When asked to what extent his parochial background influenced the opinion, Judge Pleus candidly asserted that while it certainly had some influence, his legal reasons stemmed from statutory interpretation, which he believes should be strictly construed.

Turning to his new duties and goals as Chief Judge, Judge Pleus noted that the duties of chief judge vary from DCA to DCA, and they have evolved in different ways that reflect the culture of each court. In the Fifth District, among other duties, the

chief judge acts as the spokesperson for the court and as a liaison to other courts. He also sets the agendas and chairs the monthly judges meetings, reviews and approves the budget, and supervises the clerk and the marshal as well as the central staff attorneys and the motions clerk.

When asked what his goals were as Chief Judge, Judge Pleus stated that his "number one priority is to move the cases faster." He noted that when appeals languish at the courthouse, the entire system is weakened. In the opinion of Judge Pleus, "justice delayed is justice denied." Improving the efficiency of the court will be his overriding goal.

Judge Pleus focused on other goals as well, including promoting collegiality at the court and striving to maintain the highest quality in the opinions released by the court. He also intends to lobby the legislature on matters important to the Fifth District and the legal system as a whole, and he plans to keep the court current with technological advances.

On this point, Chief Judge Pleus did not waste any time in taking action. During our conversation, we dis-

cussed the Fifth District's website; specifically, Chief Judge Pleus was interested in a lawyer's view of the "user-friendliness" of the docket information provided. He urged me to send him an e-mail with suggestions for improvement. Within a few days of my doing so, I received a copy of a letter the Chief Judge had penned to Chief Justice Pariente of the Supreme Court of Florida summarizing the suggestions and requesting their implementation.

Anyone who has spent time with Chief Judge Pleus is certain to come away with the impression that he is a very candid, professional judge with strong opinions that reflect his background. His tenure as Chief Judge of the Fifth District is yet another milestone in a remarkable career built on family, faith, and a love of the law.

Endnotes:

¹ 864 So. 2d 534 (Fla. 5th DCA 2004).

² *Id.* at 539.

³ *Id.* at 545-46 (Pleus, J. dissenting).

⁴ *Id.* 548. (Pleus, J., dissenting).

⁵ *Id.* at 548 (Pleus, J., dissenting).

⁶ *Id.* at 549 (Pleus, J., dissenting).

⁷ *Id.* (Pleus, J., dissenting).

⁸ *Id.* (Pleus, J., dissenting).

Upcoming Events!!!

Appellate Practice Section

Mid-Year Meeting

Thursday, January 19, 2006

Miami, Florida

Hyatt Regency Downtown

10:00 a.m. – 11:30 p.m. : Committee Meetings

11:30 a.m. – 12:30 p.m. : Lunch

1:00 p.m. – 3:00 p.m. : Executive Council

Judge Bradford L. Thomas Joins the First DCA

by Wendy S. Loquasto¹



Judge
Bradford L. Thomas

If you have not been to the First District Court of Appeal recently, you may not have had the opportunity to see or meet its newest jurist, Bradford L. Thomas. Appointed by Governor Jeb Bush to fill the vacancy created when Judge Anne C. Booth retired at the end of 2004, Judge Thomas began his tenure in January 2005. He brings a unique perspective to the bench, having had the unusual opportunity to be employed by both the legislative and executive branches of government before coming to the judiciary. Judge Thomas is hopeful that his experience will be an asset to the court.

Judge Thomas was born and raised in Jacksonville. His father, Ben Thomas, helped build the McDuff Appliance business, which eventually became a national chain. As a successful businessman, his father set a high standard in terms of work ethic—one Judge Thomas strives to satisfy. His mother, Faye Thomas, instilled in him a love of reading. After graduating from Sandalwood High School, Judge Thomas pursued his love of reading by obtaining a B.A. in English literature at Florida State University in 1977. Along the way, he developed a love of writing.

After graduating from FSU, Judge Thomas worked for a few years be-

fore attending law school. A surprising fact revealed by Governor Bush at Judge Thomas's investiture was that he owned a baby furniture store between college and law school. Judge Thomas always wanted to become a lawyer, however, and so he entered Stetson University College of Law in 1979. He later transferred to the University of Florida College of Law and graduated with his J.D. degree with honors in 1982.

Some Seminoles have retained their loyalty to their undergraduate *alma mater* even when attending UF for law school. For Judge Thomas, however, his two years at UF introduced him to his future wife, Susan Ann Cox, and his future father-in-law, Asa Cox, who was a four-year starter in UF's football program. Under the circumstances, his allegiance to Gator football is understood.

Judge Thomas and his wife Susan were married in 1982 and will celebrate their 23rd anniversary in August. He credits much of his success to his wife, whom his friends say, and he admits, has the patience of Job. Susan is employed as a physical therapist, and the couple has one daughter, four-year-old Nancy Anastasia ("Ana" for short), whom they adopted from China. Plans to adopt a second child are currently underway. As a relatively new father, Judge Thomas admits that parenting is a time-consuming and challenging role, but he is quick to draw out Ana's photograph and say that she is the greatest blessing in their lives.

Judge Thomas is a voracious

reader with varied tastes and a particular appreciation for 16th century European history. Perhaps Judge Thomas is a bit of a Renaissance man himself, as he has co-authored a screenplay. The late Charles E. Miner, Jr., who also served at the First DCA, would likely be pleased to know the court has another author in its midst.

Judge Thomas comes to the First District Court of Appeal with a background in appellate law. In law school, he was a moot court debater, and after law school he was Assistant Director of the Appellate Advocacy Program at UF College of Law from 1982-1984. He worked for two years in 1987-1989 as an Assistant Attorney General in the Criminal Appeals Division. His article titled "The Proper Standard of Appellate Review of Circumstantial Criminal Convictions" was published in *The Florida Bar Journal* in June 1988. Judge Thomas recalls that he had approximately 75 published opinions as a result of his appellate cases.

Working in criminal appeals sparked Judge Thomas's interest in criminal law, which he pursued through several different avenues. From the Attorney General's Office, Judge Thomas went to the Florida Parole Commission, where he was employed as Assistant General Counsel from 1989 to 1991. He published his second article, "Restricting State Prisoners' Due Process Rights: The Supreme Court Demonstrates Its Loyalty to Judicial Restraint," in the *Cumberland Law Review* in 1991.



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He then worked from 1991 through 1996 as an Assistant State Attorney in the Felony Division of the Second Judicial Circuit. Leon County Judge Tim Harley, who supervised Judge Thomas in the State Attorney's Office, described Judge Thomas as a prosecutor who cared about his job and people. Violent crime was on the increase during this time and, as a prosecutor, Judge Thomas was keenly aware of the effects of crime on the people of Florida and our society. In 1995, he appeared on behalf of an interested party in the Supreme Court of Florida's review of the proposed constitutional amendment requiring prisoners to serve 85 percent of their prison terms prior to release.²

He brought his insight to the Florida Legislature in 1996, when he became Staff Director for the Florida Senate Criminal Justice Committee from 1996 to 1997, and Council Director to the Florida House of Representatives Justice Council from 1997 to 1999.

In 1999, however, Judge Thomas left his position in the legislative branch and became Public Safety Policy Coordinator for Governor Jeb Bush, and he remained in that position until his appointment to the First District Court of Appeal. The work he did while employed by the Legislature and in the Governor's office gave birth to his interest in becoming a judge.

As for the transition from the

Governor's office to the First District Court of Appeal, Judge Thomas likens it to the transition from private practice to the bench. He concedes the court is quiet, but hastens to add that it is not too quiet. He loves the work and appreciates that he has the opportunity to think things through thoroughly. Judge Thomas agrees with the Latin motto on the Supreme Court of Florida's seal: "*Sat Cito Si Recte*" - "soon enough if done rightly," but as a former appellate lawyer, he is mindful of the need to provide timely decisions to the litigants and attorneys. Thus, his challenge as a judge is to balance his desire to reach the right decision in a thoughtful analysis with the need for appropriate promptness for the litigants and attorneys.

Judge Thomas credits his success to the wonderful mentors he has had, starting with his parents and teachers, continuing with the lawyers he has worked for during his legal career, as well as Governor Bush. He has been a long-time member of the William Stafford Tallahassee Inn of Court. When Judge Thomas recently participated in swearing in the new admittees to the Florida Bar, he encouraged them to take advantage of bar associations, Inns of Court, and the mentors who can be found there. As a former appellate practitioner, Judge Thomas knows how difficult it is to write a brief. He remembers being "fired up" when writing a statement of the facts in his briefs, and he

understands the duty to zealously represent your client. As a judge, however, he now appreciates how many briefs he must read and he encourages practitioners to "be informative, be reasonable, and be concise." He advises practitioners to include the relevant facts, even when adverse. Judge Thomas wants practitioners to know that he appreciates their hard work and professional advocacy.

At his investiture and again during his interview for this article, Judge Thomas quoted John Donne, the famous poet-preacher of the late 16th and early 17th centuries, who said: "No man is an island, entire of itself; every man is a piece of the continent, a part of the main[.]" These words reflect Judge Thomas's core belief that people are not isolated from one another, but rather are interconnected, as well as the basis for his promise to work hard to serve the people of the State of Florida.

Endnotes:

¹ Wendy S. Loquasto is a partner with Fox & Loquasto, P.A., a statewide appellate practice firm with offices in Tampa and Tallahassee. Upon graduating from Stetson University College of Law in 1988, she clerked for 15 years for The Honorable Richard W. Ervin, III, at the First District Court of Appeal. She is currently a member of the Executive Council of the Appellate Practice Section, a member of the Florida Bar Journal and Editorial Board, and President-elect of the Florida Association for Women Lawyers.

² *Advisory Opinion to the Attorney General re Stop Early Release of Prisoners*, 661 So. 2d 1204 (Fla. 1995).



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Judge Edward LaRose Joins the Second District

by Raymond T. (Tom) Elligett, Jr.¹



Ed LaRose majored in economics and political science at Boston College, before earning his law degree, with honors, from Cornell University in 1980. After working three years with

Howrey and Simon in Washington, D.C., he moved to Tampa to practice with Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis. Judge LaRose's practice emphasized antitrust and employment law. Active in the Florida Bar Business Law Section, where he served on the executive council and several committees, he has taught antitrust and alternative dispute resolution at Stetson University School of Law as an adjunct professor for the past five years. He is married and with his wife, Jane, is raising three teenagers. Governor Bush appointed Judge LaRose to the Second District, where he started in February, 2005. He graciously agreed to this interview in March.

Our readers who have always been in private practice might find it interesting to hear what your first couple of weeks at the Court were like. For example, were there a pile of briefs and records waiting on your desk when you arrived? And did you get to select a desk?

My transition has been going smoothly. There is no lack of work. Upon joining the court, I found that I had been assigned to many cases. My first oral arguments were not scheduled until mid-March so I spent a lot of time reading briefs, getting acquainted with court personnel and learning how things are done at the court. My staff has been very helpful in making sure that I learn the ropes quickly. A minor inconvenience was that I had a temporary office in Tampa while renovations at the court's

Lakeland headquarters continued. Despite the lack of a "permanent" space, my temporary stay in the Tampa branch offered the opportunity for me to get to know the many fine people there. I am now in Lakeland in my own office. The work is interesting and the days go by quickly. Surprisingly, the telephone doesn't ring nearly as often as it did in private practice.

How have you found the transition from business litigation to the Second District's heavy caseload of criminal, family law and tort cases?

In private practice, I focused primarily on business-related litigation. Antitrust and employment matters occupied the bulk of my practice. I now deal with a much broader menu of cases. Criminal cases comprise a large percentage of the court's docket. Family law and dependency matters are also a staple of what I now see regularly. Although I did not deal with criminal, family or dependency matters in private practice, I did try to stay up to date on developments in those areas. I do consider myself a "quick study" and expect to gain prompt familiarity of the various new areas of the law that will come before me in my new position. As a group, the judges on the court have broad experience. Each is willing to share his or her knowledge and wisdom with the new kid on the block.

You participated in appeals while in private practice. Seeing appeals from a different perspective now, what advice would you have for lawyers practicing before the Second District or other appellate courts?

I like to look through the record. Practitioners can help the judges by making sure that everything is there. The briefs are very important to me. Well-crafted, well-researched, well-written papers are critical. I

want the written product to focus me on what's important. Unnecessary details are distracting. I have always believed that brevity is a virtue. Don't take a paragraph to say what could be said in a sentence. Judges appreciate concise, uncluttered briefs. Those papers help us focus on your strongest arguments. For practitioners, short, surgically precise briefs force you to think about your case and marshal your best arguments forward. I think lawyers who practice before any appellate court should stick with the strong points; discard the chaff.

How have you found the collegial process at the appellate court?

This court enjoys a great reputation for the fine working relationship among the judges. Each of my colleagues brings a wealth of experience to the bench. Each is held in high regard by the others. The judging process is addressed seriously by all the judges. Differences on legal issues do not degenerate to personal conflicts. We are all trying to reach the proper result. With everything being decided by panels of three judges, it is important that all of our deliberations be professional, cordial and civil. I am, indeed, fortunate to be serving with such a good group of men and women.

You were quite active in the local Catholic charities and the church's community outreach programs. Have you found the Bay Area's attorneys and other professionals involved in such efforts, and why do you think it is important?

Community involvement is something that everyone should do, no matter what job you hold. Lawyers have a particular obligation to engage in community, civic, religious, fraternal or political activities. By virtue of

their education and experience, lawyers are well suited to lend their talents to one or more of the many worthwhile organizations in the area that are dedicated to improving the quality of life for all of us. Lawyers in the Tampa Bay area have always been at the forefront of community involvement. That is a fine commentary on our local bar. I am concerned, however, that the pressures of practice, coupled with financial and family obligations, are forcing many newer lawyers to delay or forego community involvement. I hope this does not become a trend. Individual lawyers and the community would suffer.

You have been teaching as an adjunct at Stetson University College of

Law for the last five years. Do you plan to continue in teaching in that or some other capacity?

I have enjoyed my teaching experience at Stetson. The students keep me on my toes. I hope that I will be able to continue serving as an adjunct law professor.

What non-law related activities do you enjoy for recreation?

I enjoy reading, mostly history and political books. I'm a passionate golfer looking to lower my handicap to a respectable level. I also love music. I play the piano a bit and enjoy Broadway musicals and opera. I'd love to be reincarnated as a Gershwin song and dance man.

How has the transition to judge

been on a personal level?

People have asked me whether I get more respect now that I'm a judge. I like to think that people will treat me right because of who I am and not what I am. I am still somewhat unsettled when people call me judge. To my friends and colleagues, remember that I still have a first name. I'm also mindful of the fact that I was appointed not anointed. With three teenagers in the house and a host of non-lawyer friends, I have no trouble staying humble and grounded in reality.

Thanks for visiting with us.

(Endnotes)

¹ Raymond T. (Tom) Elligett, Jr. is with the firm Schropp, Buell & Elligett, P.A. in Tampa, Florida

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A fine time was had by all!





Appellate Jurisdiction--Orders on Motions for New Trial, Rehearing, and Relief from Judgment--What's Appealable?

by Craig B. Hewitt, II¹



You probably know that the current fee for filing an appeal for review by one of Florida's five district courts of appeal is \$300.² This fee is not refundable - even if your appeal is dismissed before you have written the first word of your initial brief. Unfortunately, many appeals are dismissed before any briefing because the appellate court determines that it lacks jurisdiction to review the order on appeal.³ Even so, some practitioners "in an abundance of caution" will file a premature notice of appeal to avoid potentially losing their appellate rights altogether. This is not necessarily a bad strategy, especially where the law on jurisdiction or the nature of the offending order is not clear. This expense is often unnecessary, however, and may be avoided by the appellate attorney who understands the appellate jurisdiction of Florida's appellate courts.

This article is intended as the first in a series of articles discussing appellate jurisdiction and issues, or jurisdictional defects, that may result in the dismissal of an appeal. As a staff attorney for the First District Court of Appeal, I have reviewed thousands of notices of appeal and final orders, and can report that the majority of those filed in this court contain no jurisdictional problems. However, some common jurisdictional issues arise again and again, and each time the court must notify the parties of the problem before the appeal may proceed. These issues often do not receive any attention outside of the appeal in which they arise because the problems are often addressed in unpublished orders and corrected before the appeal is dismissed.⁴ Therefore, they are not included in

reported opinions, and the issues and their resolutions do not reach the Southern Reporter for the benefit of the bench and bar. One such issue that comes up not infrequently involves orders that are entered on post-judgment motions.

Two common post-judgment motions that lead to frequently appealed orders are a motion for rehearing or new trial⁵ and a motion for relief from judgment.⁶ The Florida Rules of Appellate Procedure specifically address appellate jurisdiction to review post-judgment orders on these motions.⁷ An order on a motion for rehearing or new trial is not a reviewable order because the motion suspends rendition of the underlying order,⁸ and review is prohibited by rule 9.130(a)(4), Florida Rules of Appellate Procedure, unless the order grants a new trial.⁹ Although such orders are not subject to review, the good news is that if the motion was timely¹⁰ and the appeal is taken within 30 days from the rendition of the order denying the motion, the appellate court will have plenary jurisdiction to review the underlying order; this review may include issues raised in the motion. An order on a motion for relief from judgment is reviewable by the method prescribed in rule 9.130(a)(5), Florida Rules of Appellate Procedure, as a nonfinal order.¹¹ Therefore, whether to file an appeal from a nonfinal order on motion for relief from judgment, or an appeal from a final order underlying a motion for rehearing or new trial, depends on the nature of the motion. Similarly, the jurisdiction of the court, *vel non*, depends on the nature of the motion, which determines the nature of the resulting order.

The nature of a motion is determined by its substance, rather than its title or the rule cited in the motion.¹² Thus, it is imperative to know the specific relief requested in the motion, as well as the grounds

supporting this relief. Sometimes, when an order disposing of a motion clearly sets forth the relief requested and the basis for relief, a copy of the order is sufficient for an appellate court to determine its jurisdiction. When the order is not clear, however, the basis for invoking the appellate jurisdiction of the court may also be unclear. Neither rule 9.110 nor rule 9.130 require a copy of the underlying motion to be included with the notice of appeal. Therefore, it is understandable that many appellate counsel do not include a copy of the motion with the notice of appeal. However, the appellate court may issue an order directing the appellant to file a copy of the motion in order to determine whether its jurisdiction was properly invoked by the notice of appeal. Because the appellate court is concerned that it may lack jurisdiction, this order often takes the form of an order to show cause why the appeal should not be dismissed. Understanding why this order was issued may help when drafting a response and alleviate much of the anxiety caused by the order.

The posture of the proceedings below may also affect the nature of a motion. Therefore, in addition to filing a copy of the motion, either in response to an order of the court or along with the notice of appeal, the thoughtful appellant should also file a copy of the order addressed by the motion. If this order is not final,¹³ a motion directed at it is obviously neither a post-judgment motion for rehearing nor a motion for relief from final judgment. An interlocutory motion for rehearing does not delay rendition of the underlying order¹⁴ and an appeal identifying an order on such a motion as the order on appeal is subject to dismissal. An interlocutory motion for relief from judgment similarly will not give rise to an appealable order because it cannot be a motion filed pursuant to rule 1.540, Florida

Rules of Civil Procedure.¹⁵

An appellate court may not be able to conclusively determine its jurisdiction over an appeal taken from an order on a post-judgment motion without copies of the order on appeal, the motion underlying this order, and the order addressed by the motion. Other than the order on appeal, the rules of appellate procedure do not require filing these copies with the notice of appeal. However, it is the appellant's burden to show that the appellate court has jurisdiction.¹⁶ Thus, it is a good idea to include these documents with your notice of appeal. If you make it your practice to review these documents before you draft your notice of appeal, you will have them ready to attach when it is time to file.

Every attorney practicing before Florida's appellate courts should have a good understanding of appellate jurisdiction, which is critical to the role of the appellate practitioner. Having a better understanding of this area of the law will ultimately reduce the number of improperly filed appeals. This will serve the dual role of conserving valuable court time and avoiding unnecessary expense to the parties.

(Endnotes)

¹ Craig B. Hewitt, II is a career attorney with the First District Court of Appeal. Since

2001, he has reviewed civil notices of appeal and the orders on appeal to determine whether the orders were properly before the court for review.

² § 35.22(3), Fla. Stat. (2005).

³ The appellate courts have jurisdiction to determine their own jurisdiction even if the court ultimately determines that it lacks jurisdiction to review the order on appeal. See *Katz v. NME Hosp., Inc.*, 791 So. 2d 1127 (Fla. 4th DCA 2000). A quick search of cases in Florida will reveal hundreds of cases over the past several years that were dismissed by the district courts for "lack of jurisdiction." In addition to these reported cases, many other appeals are voluntarily dismissed, and no opinion issued, after the problem is brought to the attention of the parties.

⁴ For example, rule 9.110(l), Florida Rule of Appellate Procedure, provides that a notice of appeal that identifies a non-final, non-appealable order shall be considered effective to vest jurisdiction in the court to review a subsequently filed final order if the final order is rendered before dismissal of the premature appeal. Therefore, if the appellant was able to obtain a final order without too much trouble, the problem may be identified, the parties notified, and the problem fixed without even interfering with the normal appellate briefing schedule. In this instance, you should note, the appellate courts need not allow additional time to obtain such a final order if no exceptional circumstance exists to compel them to do so. See *Benton v. Moore*, 655 So. 2d 1272 (Fla. 1st DCA 1995).

⁵ See Fla. R. Civ. P. 1.530; Fla. Prob. R. 5.020(d); Fla. Sm. Cl. R. 7.180; Fla. R. Juv. P. 8.265; Fla. Fam. L. R. P. 12.530.

⁶ See Fla. R. Civ. P. 1.540; Fla. Sm. Cl. R. 7.190; Fla. R. Juv. P. 8.270; Fla. Fam. L. R. P. 12.540.

⁷ Appeals from orders on other authorized post-judgment motions that do not suspend rendition are allowed under the catch-all provision of rule 9.130(a)(4), Florida Rules

of Appellate Procedure. Be aware, however, that a preliminary post-judgment order that will culminate in a subsequent order granting or denying the relief requested by the motion is not appealable pursuant to the rule. See *Maryland Cas. Co. v. Century Constr. Corp.*, 656 So. 2d 611 (Fla. 1st DCA 1995).

⁸ See Fla. R. App. P. 9.020(h). Also included in the list of motions that suspend rendition of civil orders are motions: for certification, to alter or amend, for judgment in accordance with prior motion for directed verdict, for arrest of judgment, to challenge the verdict, or to vacate an order based upon the recommendations of a hearing officer in accordance with Florida Family Law Rule of Procedure 12.491.

⁹ See Fla. R. App. P. 9.110(a)(4).

¹⁰ See Fla. R. Civ. P. 1.530(b).

¹¹ See Fla. R. App. P. 9.130(a)(5).

¹² See *Olson v. Olson*, 704 So. 2d 208 (Fla. 5th DCA 1998).

¹³ The traditional test for finality is "whether the order in question constitutes an end to the judicial labor in the cause, and nothing further remains to be done by the court to effectuate a termination of the cause as between the parties directly affected." *S.L.T. Warehouse Co. v. Webb*, 304 So. 2d 97, 99 (Fla. 1974). That is, a "final judgment is one which ends the litigation between the parties and disposes of all issues involved such that no further action by the court will be necessary." *Caufield v. Cantele*, 837 So. 2d 371, 375 (Fla. 2002).

¹⁴ See *Caufield v. Cantele*, 837 So. 2d at 376 n. 3.

¹⁵ See *Bennett's Leasing, Inc. v. First Street Mortgage Corp.*, 870 So. 2d 93, 98 (Fla. 1st DCA 2003).

¹⁶ See, e.g., *Osceola County v. Best Diversified, Inc.*, 830 So. 2d 139 (Fla. 5th DCA 2002); *Vazquez v. Truly Nolan of Am.*, 752 So. 2d 68 (Fla. 1st DCA 2000).

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What I Did at Appellate Camp This Summer

(A Report from the Best Seminar Ever)

by Nicholas A. Shannin, Appellate Camp graduate '05



What?!? You consider yourself a “seasoned appellate lawyer” – and you’ve never been to an appellate summer camp even once? Well, I’m here to tell you friend and fellow reader of *The*

Record, you have missed out on what is quite likely the best appellate seminar in the free world.

The formal name for Appellate Summer Camp is “Successful Appellate Advocacy,” a three-day marathon seminar offered by the Stetson University College of Law in conjunction with the Appellate Practice Section of the Florida Bar. Because Stetson played host, you can forget the idea of Camp Grenada-style mosquito-netted lodgings and meeting areas. Instead, the forum was the recently

built Tampa campus for the Stetson College of Law, which conveniently serves as the Tampa headquarters of the Second District Court of Appeal. Accordingly, our primary meeting room – far from a sterile hotel conference room – was instead the very same courtroom where the Second District hears oral arguments when they are in session in Tampa.

Still, you say, my boast of “best appellate seminar ever” must be hyperbole, right? Here’s a stat for the unbeliever: A student faculty ratio of two-to-one. Find me another seminar that can compete with that. Making this impossibly low ratio even more incredible is a review of the composition of the faculty: A sitting judge from every Florida DCA (The Honorable William Van Nortwick, Jr., First District Court of Appeal; The Honorable Chris Altenbernd, Chief Judge, Second District Court of Appeal; The Honorable Leslie Rothenberg, Third District Court of Appeal; The Honorable Larry Klein, Fourth District Court of Appeal; and The Honorable Jacqueline Griffin, Fifth District Court of Appeal); a sitting judge from the Eleventh Circuit Court of Appeals (The Honorable Charles Wilson); Thomas Hall, Clerk, Supreme Court of Florida; and for good measure appellate titans Steven Brannock, Raymond Elligett, Jr., Jane Kreusler-Walsh, Gary Sasso, and Rodolfo Sorondo, Jr., former Judge, Third District Court of Appeal. This killer faculty was matched with a killer format. Far from the traditional “we talk, you listen” seminar, this was appropriately billed as “an intense skills CLE workshop.” On multiple occasions during the first two days, the already small student class was broken up into five smaller groups, each of which was assigned at least two appellate instructors, with a minimum of one sitting DCA judge. Each of us had written a short mock brief prior to attending, and one of our small group sessions got even smaller – one-on-one time with our small group judges to discuss the sample brief written before the seminar.

Perhaps the highlight of the workshop was the oral arguments. Yes, plural, since we were treated to two *very* different demonstrations of oral arguments, and then got to perform and receive direct feedback for numerous oral arguments of our own. The first day of the seminar concluded with an eye-opening oral argument pitting Gary Sasso, seasoned appellate attorney and author of *Litigation* article “Appellate Oral Argument,” versus the Honorable Judge Klein. Mr. Sasso was clearly well prepared and gave a textbook-perfect oral argument, persuasive and well thought out. It was everything we had learned a proper oral argument should be. And it was doomed. Judge Klein’s illustration of an oral argument was nothing anyone would ever see in a textbook, or likely see in watching weeks of oral arguments being performed by us regular practitioners. Instead, this was, on display, what one appellate judge thinks (knows) other appellate judges would be genuinely interested in from an oral argument. He conceded right, left, and center. He conversationally engaged the court in a manner that almost took the argument out of oral argument. He pared off every issue, gave up every factual dispute that was not central to the singular point that he was espousing. In the end, it is clear what he had done – he had sacrificed his queen (and several other pieces) as a gambit for reaching checkmate. He did, as the panel, three-zero, agreed with him on his central point.

Perhaps even more eye-opening was the, er, performance of an oral argument on the second day. This one pitted Judge Altenbernd of the Second DCA versus former Judge Sorondo of the Third in a far more entertaining, if not more educational, synthesis of some less fortunate oral argument maneuvers these jurists have seen over their years on the bench. I will not reveal their trade secrets here – this part of the seminar simply must be attended to be believed – but I will say you haven’t “seen it all” until you’ve seen a pickle-

Correction

The Section financial information in the Summer 2005 issue of *The Record* failed to include the following statement:

... [O]fficers and members of the executive council shall be entitled to reimbursement for expenses ordinarily, reasonably and necessarily incurred on behalf of the section upon submission to the treasurer of appropriate requests with receipts. (Appellate Section Bylaws, Article XI, Section 2)

pin wearing Judge Altenbernd furiously attempting to stop his laptop computer from belting out a downloaded clip of Britney Spears' "Toxic," mid oral argument.

Of course, all of the demonstrations in the world pale in comparison to actually doing one – and that's what every student gets to do on the second day in his or her small group, multiple times before individual judges, and again on the third day, this time in a full courtroom setting before a different panel of DCA judges. The majority of the readers

of *The Record* have given their share of oral arguments, but how many of you have been able to field comments and suggestions directly from the judges you have just argued before? And received a videotape of your argument to review later for improving your future arguments? You would have if you had attended the best appellate seminar ever!

My argument? I wound up arguing our 4th Amendment case (not my traditional milieu) against a seasoned criminal practitioner – and I was the one crazy volunteer to go "off briefs" arguing the

side opposite of my prepared brief. Even so, I was handling the adversity reasonably well until Judge Rothenberg "agreed" with my central point in an effort to "get me off my game." She succeeded! Still, I survived to tell this tale, and to put it in *The Record*. If you get the chance to go and create your own tales of appellate derring-do, I cannot recommend this seminar highly enough. Class size is always, understandably, limited so when you first see the details regarding Summer Camp '06 get your RSVP in, grab your backpack, and prepare to attend one fantastic seminar.

Book Review: *Florida Appellate Practice and Advocacy*

Reviewed by Scott D. Makar¹

The marketing concept of "branding" applies to products, services, and even personalities. One need only view commercials promoting adult beverages, law firms, or celebrity entertainers to see that identifying core constituents is at work via segmenting markets via demographics and attention-getting techniques. A game my five-year-old son and I play when we're watching TV ads is to ask: "What are they trying to sell us?" He's gotten very good at it, though the commercials that have only a bunch of attractive young people dancing around can be stumpers.² A follow-up question in the game is "To whom are they trying to sell?"

Let's play the game in the appellate treatise marketplace. Over the years, this column has reviewed them all at one point or another—Judge Padovano's "*Florida Appellate Practice*," the Florida Bar's "*Florida Appellate Practice*" by various authors, and "*Florida Appellate Practice and Advocacy*" by Tom Elligett and John M. Scheb. This reviewer has found each of them useful and helpful in their own ways, but has never fully deliberated how each differs or may be more segmented to a particular group.

This introspection springs forth from the recent release of "*Florida Appellate Practice and Advocacy*" by Elligett and Scheb, now in its fourth edition. It caught my eye because, unlike its prior incarnation in a blue-

bound paperback format, it is now in a spiral bound mint green cover that is otherwise identical.³ My paint color wheel says it's a cross between "viridian" and "chromium oxide;" it is not a color scheme I would have chosen for "branding" purposes, but I suspect the authors didn't have much say in its selection (if I had to choose a green, I'd go with the hue on the 2005 Florida Statutes). The other prominent change is the addition of an index at the book's end, a feature that is valuable despite the highly detailed table of contents.

Like the earlier edition, a CD-Rom is included and a website is available on which updates are located. The website is a bit confusing and could use a little more explanation about how to update a particular edition. It appears that anyone with the second or third editions can essentially update their books by cross-referencing the sections to see if any new materials have been posted. Be forewarned, however, that there are two places to look on the webpage if you are updating the third edition, one at the top of the page and another that starts about 80% of the way down.

My humble suggestion to the authors is to jettison the web update page for the earlier editions and to provide updates only for the most recent fourth edition. Why? A few reasons, the first being the difficulty of separating updates year to year by edition. A second is to promote the

purchase of the newer edition; for the modest price of \$59 a lawyer can eliminate the need to update his/her old edition. At today's billable rates, it will generally be more cost-efficient for appellate lawyers to simply refer to the newer edition versus spending the time going to the website and searching for updates. Of course, the "dog-eared" crowd who hang onto their highlighted, marked, and spindled versions may rebel, but I suspect that is a minority coalition in the appellate treatise world.

Now, back to the "branding" theme. Based on longevity, citation record in appellate decisions, and overall name recognition, Padovano's *Florida Appellate Practice* is the indisputable market leader in the field. No overnight sensation, just year after year the maharishi of Florida appellate law, a veritable mainstay and entrenched incumbent. It has a big-time publisher, Thomson/West, and over 100 citations by appellate Florida courts. Its citation debut was in a 1989 First District decision (by Judge Joanos at a time when Judge Padovano was then on the circuit bench), and its frequency of citation has increased in recent years (indeed about 15 citations by Florida appellate courts in the past year alone). Its only concession to its dominance is its "soft cover" format ("dark green" with "black and gold" trim according to its West website), which at one time was a formidable hard cover

BOOK REVIEW

from previous page

“hornbook” with pocket parts that reeked of “old, established law.” The publisher probably chose to make it more “useable” with its less heavy, portable format; in a CD age, who wants to cart a bunch of weighty tomes around in a briefcase? In overall summary, it is the fine vintage wine of the appellate treatise vineyard.

Next, the Florida Bar’s CLE publication has evolved over the decades, and predated Padovano’s publication. It has generally been a compilation of contributions by appellate practitioners with various degrees of overall editorial oversight. Florida appellate courts have cited it about a dozen times over the years. It made its citation debut in a 1981 case in which an article entitled “General Appellate Principles” was quoted for a substance versus procedure issue.⁴ Its format has changed from the utilitarian, plastic, three-ring binder characteristic of prior bar publications to its current heavy-duty, impressive, royal blue/gold-inscribed hard cover format. Its contributors are notable appellate practitioners, its content is practice-focused, and Lexis/Nexis is its distributor. It is the only treatise of the three with a limitation of liability clause.⁵ Given its blend of contributions, it is the “fusion cuisine” among the appellate treatise bistros.

Amongst these two competing pub-

lications arose Elligett and Scheb’s *Florida Appellate Practice and Advocacy*. It started 5+ years ago as materials for an appellate advocacy course at Stetson University College of Law and has evolved into a combination of treatise and “how-tos” for appellate practitioners.⁶ Its ongoing challenge is to find its “niche;” it serves many of the same, useful purposes of its two elder siblings, but does it want to become fine wine, fusion cuisine, or what have you? Does it want to peacefully coexist with its competition or duke it out? What is its mission in life or “mantra statement?”⁷ In the words of my advertising mastermind sister-in-law, perhaps it needs a “personal brand” to get it beyond a stage of “tourist indecision?”⁸

The short-term answer is probably that it will continue usefully to serve a number of markets (law school & practitioners) but not substantially change its primary focus on the needs of practitioners. It would be nice to see a casebook approach to Florida appellate practice for law school users and academics evolve from the project, but that is an undertaking with a number of risks and a smaller market. For now, perhaps being in equipoise in the present market place isn’t a bad place to be.

In the late 1960s and early 1970s, Florida’s appellate courts cited to “Florida Appellate Practice and Procedure” by Malloy⁹ which to this writer’s knowledge no longer exists. It appears to have been the one and only treatise on the topic at the time that faded into obscurity (for reasons

unknown to this author). Given that treatises are, to a great extent, the “love children” of their authors, they can sometimes hit plateaus or fall into desuetude for many reasons including the demise of their creators. Thankfully, appellate practitioners have three “Malloys” in the current marketplace and the likelihood of a dearth of appellate guidance is remote.

(Endnotes)

¹ Scott D. Makar is Chief of the Appellate Division, Office of General Counsel, City of Jacksonville, Florida

² He’s shown some insight by guessing that they’re selling “fun,” which is probably what the marketers generally intended.

³ Each of the three Florida appellate publications currently has its own unique format (spiral bound, hard cover, and soft cover) that distinguishes each from the others.

⁴ *Fields v. Zinman*, 394 So. 2d 1133, 1136 (Fla. 4th DCA 1981) (“If the rule involved can be said to be one of procedure rather than substance, the court is not at all reluctant to make a drastic change.”) (citing treatise).

⁵ “In no event will the authors, reviewers, or The Florida Bar be liable for any direct, indirect, or consequential damages resulting from use of these materials.”

⁶ It has not been cited by an appellate court yet, but its authors have been cited, ironically, for their article published in The Florida Bar’s appellate treatise. See *Merkle v. Guardianship of Jacoby*, 2005 WL 433143, *3 (Fla. 2nd DCA 2005).

⁷ See Sally Hogshead, *Radical Careering* (2005) (glossary of careering buzzwords).

⁸ *Id.*

⁹ Interestingly, the one commonality between citations to Molloy’s and Padovano’s treatises is that both authors’ names are misspelled with approximately the same degree of regularity (Padovano v. Padavano/Molloy v. Maloy). A possible trivia question for Matt Conigliaro’s “Abstract Appeal” is “Who was Molloy?”.

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Thinking About Becoming Board Certified in Appellate Practice?

If you would like to become Board Certified in Appellate Practice or would like more complete information, please contact the area's staff liaison below:

Carol Vaught

**Legal Specialization
& Education**

The Florida Bar

**651 East Jefferson Street
Tallahassee, FL 32399-2300
800/342-8060, ext. 5738 or
850/561-5738**

cvaught@flabar.org

Certification is granted for five years. To be recertified, requirements similar to those for initial certification must be met.



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Click "member services,"
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Certification can help you by giving you a way to make known your experience to the public and other lawyers. Certification also improves competence by requiring continuing legal education in a specialty field.

There are many benefits to becoming Board Certified in Appellate Practice such as:

- ★ Malpractice carriers discounts.
- ★ Advances the importance and significance of certification to large malpractice carriers.
- ★ Good source of referrals from both attorneys and the general public.
- ★ Ability to advertise yourself as a "certified specialist" in your chosen area of practice.
- ★ Young lawyers are seeking certification as a means of expediting their professional advancement.
- ★ Name is listed in the Directory issue of *The Florida Bar Journal* in the Certified Lawyers' section.

The application filing period is July 1 - August 31 of each year. Applications may be requested year-round, but only filed during this two month period.

All requirements must be met by the August 31st filing deadline of the year in which you apply.

Your application must be approved before you become eligible to sit for the examination, usually given in March.

What are the requirements?

- ➡ Have been engaged in the practice of law for at least five years prior to the date of the application.
- ➡ Demonstrate substantial involvement in the practice of appellate practice during the three years immediately preceding the date of application. (Substantial involvement is defined as devoting not less than 30% in direct participation and sole or primary responsibility for 25 appellate actions including 5 oral arguments.)
- ➡ Complete at least 45 hours of continuing legal education (CLE) in appellate practice activities within the three year period immediately preceding the date of application.
- ➡ Submit the names of four attorneys and two judges who can attest to your reputation for knowledge, skills, proficiency and substantial involvement as well as your character, ethics and reputation for professionalism in the field of appellate practice.
- ➡ Pass a written examination demonstrating special knowledge, skills and proficiency in appellate practice.

Certification Statistics

There are currently 149 attorneys Board Certified in Appellate Practice. The area was started in 1993. Certified attorneys make up approximately 6% of The Florida Bar's total membership.



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