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The Record

JOURNAL OF THE APPELLATE PRACTICE AND ADVOCACY SECTION

www.flabarappellate.org

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Proposed Changes to Appellate Rules

by Susan W. Fox, Chair, Appellate Court Rules Committee

No major overhauls are in the works, but, over the past four years, the Appellate Court Rules Committee has dealt with many points on which the appellate rules may need improvement[1]. This article will discuss those proposed changes being submitted in the Committee's four year cycle report on April 1, 2000. Anyone interested in advocating for or against a particular change is permitted to file comments with the Court. To determine the exact deadline for filing comments, please watch The Florida Bar *News* or check the Supreme Court's web site. The Court will set Oral Argument on the proposed amendments in May or June 2000, and the Oral Argument date is usually the cut-off date for filing comments.

This article will group the Committee's primary proposals. A table printed with this article gives a brief summary of each change by rule number. Editorial and technical changes are not discussed here, but may be reviewed on the Appellate Practice Section's website *www.flabarappellate.org.*

Appealable Non-Final Orders and Appellate Venue

Non-Final Orders Determining Liability.

Perhaps the most substantial change included in the four-year cycle amendments is the repeal of 9.130(a)(3)(C)(iv) allowing review of non-final orders determining the is-

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Message from the Chair

HOFMANN

As you may have noticed already, this issue of *The Record* is packed with information of interest to all appellate practitioners. Please take a minute to read Susan Fox's article "Proposed Changes to Appellate Rules." There is still time to give the Florida Supreme Court your comments on the proposed changes.

Also, you probably noticed the enclosed, blue Membership Survey. The Section's Membership Committee, chaired this year by Betsy Gallagher, designed this survey to formalize a method for you to comment on how well the Appellate Practice Section is meeting your needs. Please take the time to put your thoughts down and communicate to us your evaluation of our existing services and your ideas for possible future services. As you can see, we already do a lot for a relatively small Section, but if we need to be doing more, we need to know that!

Please read carefully two other features: the proposed by-law change and the report of the Retreat Committee. The Executive Council will vote on the by-law change at the June 22nd meeting, so if you have an opinion to express, please contact me, one of the Section's officers, or any member of the Executive Council. Also, it is important to read the Retreat Committee report if you are planning to attend the Retreat in April. As reported, the Saturday planning and goal-setting session will last until 5:00 p.m., and the Sunday morning breakfast will be purely social! A pleasant end to an important weekend for the future of the Section.

And last, I would like to encourage you to attend the Annual Meeting of

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INSIDE:

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Appellate Practice Section Sponsors Southeast Regional Moot Court Competition

Our Moot Court Competition Committee, chaired by Robert Glazier, worked hard to sponsor the Regional Moot Court Competition held at Nova Southeastern University's Shepard Broad Law Center in mid-November.

The judges for the preliminary rounds were recruited from the membership of the Appellate Practice Section. This is the first time in the history of the regional competition that all the judges in the preliminary rounds were lawyers with real-world appellate experience. The judges for the final round were Supreme Court Justice Peggy Quince, Fourth DCA Chief Judge Martha Warner, and Third DCA Judge Rodolfo Sorondo. The judges for the semifinals were Third DCA Judges Gerald B. Cope, Jr. and David Levy, Fourth DCA Judges Gary Farmer and Fred A. Hazouri, Broward Circuit Court Judge Melanie May, and former DCA Judge Daniel S. Pearson. Bruce Rogow, Esq., a professor at Nova, sponsored the Friday evening reception.

"And the winner is..." C. Renee Jarrett and Jack Wallace of the University of Florida team hold their trophy. On the bench (L-R): Judge Warner (4th DCA), Justice Quince (Fla. S. Ct.), and Judge Sorondo (3d DCA).

Robert Glazier (right), chair of the Appellate Practice Section's Regional Moot Court Competition Committee congratulates Gregory Beck, Best Oralist.

Bruce Rogow, sponsor of the Friday evening reception, and Section Chair, Cindy Hofmann.

By-Law Amendment Approved

During the January 13, 2000 Appellate Practice and Advocacy Section Executive Council Meeting, the following By-Law Amendment was approved. The proposed By-Law Amendment will be presented to the General Membership for a vote at the June 22, 2000 General Meeting.

Article IX
COMMITTEES

Section 1. Except as otherwise provided in these bylaws, all committees shall be appointed in accordance with the provisions of Article IV, and any member of the section, including officers and members of the executive council, may serve as chair or as a member of a committee.

Section 2. Standing committees of the section shall be:
1. Nominating (mentioned in Article VII of these bylaws);
~~2. Membership;~~
~~3. Criminal Appellate Practice;~~
~~4. Civil Appellate Practice;~~
~~5. Administrative Appellate Practice;~~
~~6. Appellate Court Liaison;~~
2.~~7.~~ Continuing Legal Education;
3.~~8.~~ Programs;
~~9. Appellate Rules Committee Liaison;~~
~~10. Appellate Certification Liaison;~~
4.~~11.~~ Legislation; and
5.~~12.~~ Publications.~~; and~~
~~13. Amicus Curiae.~~

Any of these committees may work jointly as the need to do so may from time to time arise.

Section 3. ~~Special committees shall be appointed, as provided herein, as the need to do so may from time to time arise.~~ Other committees, intended to be created for a period of one (1) year or more, shall be identified as annual committees. Such annual committees shall be created upon recommendation of the chair-elect or chair made at any meeting of the executive council of the section during that chair's term of office and shall be approved by a majority vote of the members of the executive council then present and voting. The term of each committee will commence after the next annual meeting of the section. Other annual committees may be created by the executive council upon proper motion, second, and a majority vote. The term of each annual committee created by this method will be deemed to automatically renew for the following section year, absent a specific request to delete that committee from the list of annual committees made by the chair or the executive council in the manner noted above.

Section 4. All committees not identified as standing or annual committees shall be created as special committees, which shall be appointed by the chair in the chair's discretion as the need to do so may from time to time arise. If it appears that a special committee's term will continue beyond the term of the chair creating said committee, then it shall be submitted to the executive council of the section by the incoming chair for approval as an annual committee in the manner set forth above.

Section Has Big Plans for Annual Meeting

It is not often that we have the privilege to meet with all of the Justices of the Florida Supreme Court in an informal setting. Each year the Section hosts a panel discussion with the Justices which provides such an opportunity. This year's discussion will be held on Thursday, June 22, 2000, from 3:30 p.m. to 4:30 p.m. at the Boca Raton Resort and Club. The discussion is held "open mike" style and provides a rare opportunity to ask the Justices almost any question relating to the inner workings of the court, or the thoughts and experiences of the Justices. In the past, the topics have included the merits of a PCA decision, the use of computer technology in the practice of law and discussions regarding individual Justice's experiences on the bench.

While the discussion is usually well attended, the Justices themselves have recently expressed an interest is expanding the audience to newer members of the Bar. Accordingly, please encourage your friends and associates to join us for this exciting event.

We also hope you will join the Section in the evening for the annual dessert reception and the presentation of the Adkins award. The reception features a cordial bar and a large selection of desserts. An ice cream bar is usually provided for the kids. The reception offers an additional opportunity to socialize with appellate judges. We look forward to seeing you and your families at the annual meeting.

This newsletter is prepared and published by
the Appellate Practice and Advocacy Section of The Florida Bar.

SUCCESSFUL APPELLATE ADVOCACY

An Intensive Skills CLE Workshop
Offered by the Appellate Practice and Advocacy Section of The Florida Bar
and Stetson University College of Law
July 26 - 28, 2000
Stetson Law Campus; St. Petersburg, Florida

This three-day program features a top faculty of DCA judges, renowned appellate practitioners and Stetson law professors. Due to the low faculty-student ratio for the program, registration will absolutely be limited to forty participants on a first-come, first-served basis. Participants will receive everything they need to draft an appellate brief due **June 26, 2000.** The training begins with two days of plenary and small group breakout sessions focusing on oral and written appellate advocacy skills. Through lectures, demonstrations and presentations, workshops, videotape review, and individual critique, participants will experience a focused CLE program designed to teach the skills necessary for successful appellate advocacy. On the final day, registrants will put themselves to the test by conducting an oral argument before a three judge panel in one of Stetson's courtroom classrooms.

Topics and sessions:
Overview of Appellate Brief Writing; Writing Exercises: Issue Framing, Facts, Drafting the Argument; Individual Feedback Sessions; Demonstration of Effective Oral Argument; Ethics and Professionalism; Oral Argument Exercises; How NOT to do Oral Arguments; How to Handle Rebuttal

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REGISTER ME FOR SUCCESSFUL APPELLATE ADVOCACY
JULY 26 - 28, 2000

Please print or type:

NAME: _____ PHONE: (_____) _____

TITLE: _____ FAX: (_____) _____

ORGANIZATION: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

❑ Stetson Univ. College of Law graduate? ❑ Attorney CLE Credit?

❑ Which states?: _____

❑ Tuition: $750 "Section Rate" TOTAL ENCLOSED: $_____

Mail or FAX registration form to: Office for CLE, Stetson University College of Law, 1401 61st Street South, St. Petersburg, FL 33707 • Telephone: (727) 562-7830 • FAX: (727) 381-7320
e-mail: cle@law.stetson.edu

❑ Check (Payable to: STETSON UNIVERSITY COLLEGE OF LAW)
❑ Master Card ❑ VISA ❑ AMEX

Card No: _____ Exp. Date: _____

Authorized Signature: _____

You? A Board Certified Appellate Specialist? *Why Not!*

by Debra J. Sutton

What is a Board Certified Appellate Specialist, and why would anyone want to become one? Let's face it, we have all taken the bar exam and a number of us have vowed that the bar exam would be our last test. However, with the public confidence in attorneys dwindling, certification is one way to assist the public in making an informed decision when selecting an attorney.

A Board Certified Appellate Specialist is an attorney whose practice deals with the recognition and preservation of error committed by lower tribunals and the presentation of argument concerning the presence or absence of such error to appellate courts. This is accomplished through brief writing, writ and motion practice and oral argument. The attorney has practiced law full-time for at least five years, part of which includes substantial involvement in appellate practice. The attorney has to pass a peer review, complete 45 hours of continuing legal education within the three years immediately preceding the application and must pass a written examination. Only certified attorneys can identify themselves as a "specialist." The certification program affords the highest level of recognition by The Florida Bar of the competency and experience of attorneys in the areas of law indicated.

There are a number of benefits to becoming a Board Certified Appellate Specialist. It is a way to make your experience known to the public, as well as to other lawyers. Your skills will improve by the continuing legal education requirements for certification in the appellate practice specialty field. In fact, you will probably find preparation for the exam some of the best continuing education you have experienced in a while. After all, when was the last time you read all of the rules of appellate procedure? You could be surprised at what you will find.

In addition, some of the other benefits to becoming a Board Certified Appellate Specialist are:

- You are recognized by your peers in the field as being a specialist in this area of law and become a good source for referrals both from other lawyers, as well as the general public;
- It will afford you an opportunity for targeted advertising;
- You may advertise yourself as a "certified specialist" in your chosen area of practice, a distinction that becomes ever more important as the number of certified specialists increases and the public becomes more aware of the significance of certification;
- Your name is listed in the Directory of The Florida Bar *Journal* in the Certified Lawyer's section, under the area of specialty by geographical location;

Brochures explaining the significance of board certification in appellate practice for your clients and referring attorneys are available from The Florida Bar.

At present, there are only 201 appellate specialists in Florida. Some of our colleagues will be sitting for an examination in March, 2000. While it is too late to apply for this exam, you can be ahead of the others by making your application now for the 2001 exam. The application filing period for the 2001 exam is July 1 to August 31, 2000. You can request an application now and have your filing requirements met long before the August 31st deadline. To obtain your application, contact Carol Vaught, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300; telephone: (800)561-5842 or E-mail: cvaught@flabar.org. For additional information, you can also access The Florida Bar website at: www.flabar.org/newflabar/memberservices/CERTIFY.

Debra J. Sutton, Esquire, is a Board Certified Appellate Specialist practicing in Bartow, Florida. Ms. Sutton is chair of the Appellate Certification Liaison Committee and vice-chair of the Appellate Certification Committee.

Appellate Practice Workshop for Experienced Practitioners, Too

All who have attended the Appellate Practice Workshop claim dramatic improvements in their skills. These improvements result from direct intensive feedback given to attendees by appellate judges and other faculty members during the three day workshop. Most of these attendees have been young lawyers with only a few years experience.

Yet, judicial faculty members have urged more experienced practitioners to attend the Workshop as well. They say even the best of us have room for improvement. Many good appellate lawyers could become much better if only they could realize and overcome some bad habit or blind spot that prevents consistently stellar performance.

Judge Peter Webster of the First District Court of Appeal has been a member of the Workshop's core faculty since its inception. He believes that experienced practitioners can benefit as much as young lawyers from the Workshop's program, which is presented principally by judges from each of the state's appellate courts. He points out that, in addition to the formal program, the Workshop provides frequent opportunities to engage in one-on-one discussions with faculty members. He also notes that those experienced practitioners who have participated are uniform in their praise.

Therefore, don't forget to register for the annual workshop to be held this year on July 26-28. The registration form appears on page 4.

APPELLATE CERTIFICATION LIAISON COMMITTEE

The committee has sent letters to each of the Chief Judges of the District Courts of Appeal requesting that the informational pamphlet, "Become Board Certified in Appellate Practice" be made available in the their clerk's office and/or the attorney's lounge. We have provided an initial supply of the brochures. Responses have not yet been received. We want to encourage Section members who have attorneys in their offices who are eligible to apply.

CLE COMMITTEE

1. Joint Seminar with Trial Lawyers Section

The joint seminar with the Trial Lawyers Section was held on October 14, 1999. The program enjoyed a great turnout and was a success for both Sections. The program addressed aspects of appellate practice and procedure for trial lawyers, including an analysis of the various phases of a trial from an appellate perspective. The topics included jury selection, pleadings, discovery, pre-trial motions and interlocutory review, evidentiary issues, working with appellate lawyers at the trial level, closing arguments, jury instructions, verdict forms and verdicts, and post-trial motions. An impressive slate of speakers was assembled, including 4th DCA Judge Larry Klein, 3rd DCA Judges Gerald B. Cope, Jr. and Alan R. Schwartz, 2nd DCA Judges Carolyn Fulmer and Chris W. Altenbernd, 6th Circuit Judge Nelly Khouzam, 17th Circuit Judge Jeffrey E. Streitfeld, and appellate and trial practitioners, Tom Elligett and Cody Davis. The future plan is that this seminar will be held in alternate years from the "Hot Topics" seminar, which will be held in the Fall, 2000. The Steering Committee included co-chairs Steve Stark and Robert Glazier, Tom Elligett, Susan Fox, Allison Hochman, and Steve Wisotsky.

2. Appellate Practice Certification Exam Review Course

This year's course took place on January 28, 2000, in Tampa. Jennifer Carroll and Steve Brannock formed the Steering Committee. The course was last held on February 5, 1999 and was successful once again with 45 attendees.

3. Federal Appellate Seminar

The Committee discussed when and how frequently to hold the Federal Appellate Seminar. A decision will be made shortly. A Steering Committee has been assembled.

4. Appellate Practice Workshop

The 1999 Appellate Practice Workshop, which was held in July, was once again a success. The program is being held again this year at Stetson University on July 26 - 28. Minor changes are being made based upon comments from the participants in the hopes of tweaking an already very successful program. Once again, the program is not being co-sponsored with The Florida Bar so the Section can take advantage of the opportunity for increased revenues. Enrollment in the course is again limited to 40. Tom Hall, who served as the Chair of the Steering Committee for the 1999 program, is again working on this program.

5. Co-Sponsorships

The Appellate Practice Section and the Family Law Section co-sponsored an appellate seminar, held on December 2 and 3, 1999, in Miami and Tampa, respectively. Debra Sutton coordinated the program on behalf of the Appellate Practice Section. The Sections will split the proceeds of the program. The program included five segments on appellate topics with a focus upon family law practitioners. The Section is exploring the possibility of co-sponsoring seminars with other Sections of The Florida Bar, including the Government Lawyers Section and the Administrative Law Section.

6. Committee Membership

The Committee is seeking a few new members who are willing to play an assisting role with respect to one of our seminars for the 2000-2001 year. Anyone who is interested in serving on the Committee should contact Jack Aiello at 561-650-0716 or Cindy Hofmann at 305-789-7729.

The next meeting of the CLE Committee will be at the Bar's Annual Meeting in June in Boca Raton. The exact time and place will be announced shortly.

FEDERAL APPELLATE PRACTICE COMMITTEE

Members of the Federal Appellate Practice Committee met to conduct business on January 28, 2000. Frederick ("Rick") Nelson, the Committee Chair, presented an overview of the Committee's past activities and requested suggestions for year 2000 goals. The members focused their suggestions on solving practical problems they have encountered in the past. The Committee is currently compiling these suggestions to present a complete overview of concerns.

Some concerns include the impact of the Eleventh Circuit's "docketing" revisions and how the rules impact filing deadlines. Members also expressed concern with the repeated rules violations by *pro se* appellants. The Committee would like to see more consistent enforcement of the rules to assist in creating uniformity. Committee members debated submitting these problem areas to the current seminar titled "Inside the Eleventh Circuit" as a teaching aid and sending a report to the Clerk of the Eleventh Circuit.

The Committee also considered areas to aid practitioners. Some sugges-

tions included permitting briefs to be filed through electronic media and telephonic extensions of time as used in other circuits. These suggestions will also be submitted to the Eleventh Circuit for review.

The Committee also debated presenting a judge's reception for the federal trial and appellate judges at the Annual Meeting of The Florida Bar. The concept was tabled until the next Committee meeting in March. If time constraints prohibit consideration, the proposal will be carried over to the next Bar meeting.

PROGRAMS COMMITTEE

The Committee continues to work to ensure that the discussion with the Florida Supreme Court and the dessert reception at The Florida Bar's annual meeting are well attended and exciting. In order to minimize the conflict between the Supreme Court discussion and other meetings or receptions, The Florida Bar's planning committee has agreed to move the discussion from 4:00 p.m. to 3:00 p.m. or 3:30 p.m. on Thursday June 22, 2000. In addition, the Committee has arranged to purchase the back cover of the Annual Meeting Flyer in The Florida Bar *Journal* to advertise the discussion with the Florida Supreme Court and the dessert reception. Advertisements are also being placed in *The Record* and Florida Bar *News*. We ask that all Section members try to attend these events.

PUBLICATIONS COMMITTEE

The Publications Committee continues its work on three main publications; The Guide, *The Record*, and articles for The Florida Bar *Journal*. In addition, the Publications Committee will now submit material to the Appellate Practice Section's new web site, including prior articles from *The Record*. Committee member Valeria Hendricks is currently preparing an index, topical and by title, that will allow users to access articles appearing on the web site. The Committee may also place our Section's Florida Bar *Journal* articles on the web site.

Submissions to The Florida Bar *Journal* continue as planned. An article by Susan Fox addressing bluebook citation format will appear in the March issue. Articles addressing proposed changes to Rule 9.130 will appear in a future issue of The Florida Bar *Journal*.

Publication of *The Record* proceeds smoothly. The Winter issue was timely published. The Spring issue was just sent to publication and should be received by members in March. Room remains for articles in the Summer edition. *The Record* has become so successful, other newsletters have requested permission to re-print articles from *The Record* in their newsletters.

The Guide will be mailed sometime in February of 2000.

The Committee plans to create manuals with job descriptions for each publication of the Section.

Federal Civil Case Law Update

by Paul A. Avron

Dzikowski v. Boomer's Sports & Recreation Center, Inc., (In re Boca Arena, Inc.), 184 F.3d 1285 (11th Cir. 1999).

The Eleventh Circuit addressed an issue of first impression: whether it had subject matter jurisdiction from an appeal where less than all of the claims brought by the bankruptcy trustee in an adversary proceeding had been adjudicated and the underlying judgment on partial findings was not certified pursuant to Fed. R. Civ. P. 54(b) and Fed. R. Bankr. P. 7054(b). Both parties asserted that the order was final and appealable because it completely resolved the trustee's claim against Boomer's notwithstanding that claims against individual defendants remained.

The parties relied on the premise that flexible concepts of finality in bankruptcy proceedings should override the clear mandate of Fed. R. Civ. P. 54(b) and Bankruptcy Rule 74(b). The Eleventh Circuit rejected the parties' position holding that Bankruptcy Rule 7054(b) requires the losing party to an adversary proceeding in a bankruptcy case to obtain Rule 54(b) certification to file an appeal. Therefore, because there was no such certification, the court lacked jurisdiction and dismissed the appeal.

Druhan v. American Mut. Life, 166 F.3d 1324 (11th Cir. 1999).

The Eleventh Circuit addressed whether it had subject matter jurisdiction to hear an appeal from a voluntary dismissal with prejudice. In *Druhan*, Druhan brought suit against American Mutual in Alabama state court claiming she was fraudulently induced to purchase a life insurance policy. American Mutual removed the case to U.S. District Court asserting preemption pursuant to the Employee Income Retirement Security Act ("ERISA").

The District Court denied Druhan's remand motion finding that ERISA preempted her state law claim. Druhan subsequently filed a motion to dismiss with prejudice asserting that she did not have an ERISA claim and the order denying her remand motion left her with no remedy. The District Court granted Druhan's motion.

On appeal, Druhan argued that her appeal was from an interlocutory order denying her remand motion. Druhan also stated she requested a dismissal with prejudice in order to establish finality for an immediate appeal. The Eleventh Circuit stated that the order denying remand was not appealable because Druhan failed to seek certification pursuant to 28 U.S.C. §1292.

Further, the Eleventh Circuit declined to follow other circuits which have allowed appeals from voluntary dismissals with prejudice where the sole purpose for seeking dismissal was to expedite review of orders that eliminated a plaintiff's claim. Ultimately, the court held that it lacked jurisdiction because there was no case or controversy as required by the U.S. Constitution. Druhan had requested dismissal with prejudice and the defendant understandably did not complain.

Snapper, Inc. v. Redan, 171 F.3d 1249 (11th Cir. 1999).

The Eleventh Circuit addressed whether a district court's remand or-

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Federal Civil Case Law Update
from preceding page

der is reviewable when issued to enforce a forum selection clause. The case arose from a state court action seeking enforcement of certain guarantees. The guarantors removed the case to District Court and then moved for a change of venue seeking to have the case consolidated with a related proceeding in New Jersey. Snapper, Inc. moved to remand the case to state court and opposed the motion for change of venue. The District Court granted Snapper, Inc.'s motion and remanded the matter to state court holding that the forum selection clause in the security agreements provided for litigation in the state court.

On appeal, the Eleventh Circuit addressed the application of Sections 1447(c) and (d) to the facts before it. Section 1447(d) has been interpreted by the Supreme Court to preclude appellate review of remand orders if the remand order is based on grounds set forth in §1447(c). Section 1447(c) provides that "a motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within thirty days after the filing of the notice of removal under section 1446(a) ..." The court found that the term "defect" referred to removal defects which were not present in the case before it. Therefore, the court held that §1447(d) did not preclude appellate review of the remand order.

Randolph v. Green Tree Financial Corp., 178 F.3d 1149 (11th Cir. 1999).

The Eleventh Circuit addressed whether an order dismissing a Truth In Lending Act ("TILA") action with prejudice and directing the parties to proceed with arbitration was a "final decision" under the Federal Arbitration Act. In support of its argument that the Court lacked jurisdiction the defendant distinguished between "embedded" and "independent" proceedings, a distinction that has been drawn by several circuit courts that have considered Section 16(a)(3) of the Federal Arbitration Act. An "embedded" proceeding is one where the arbitration issue arises in the broader proceeding that deals with other issues. An "independent" proceeding is one where the motion to compel arbitration is the sole issue before the court.

The Court noted a split in the circuits on the issue of whether a district court's order compelling arbitration in an embedded proceeding (the type of matter before it; plaintiff alleged a substantial TILA violation) is an appealable "final decision" where it dismisses the remaining claims. The Court declined to attach significance to the 'embedded' versus 'independent' distinction. Instead, the Court applied the long-standing definition of "final decision", holding that where the District Court effectively disposed of all other issues by compelling arbitration and dismissing the remaining claims with prejudice, the order was final and appealable.

Hollins v. Department of Corrections, 191 F.3d 1324 (11th Cir. 1999).

The Eleventh Circuit addressed whether it had jurisdiction over an untimely appeal of an order denying a petition for writ of prohibition. The Petitioner asserted that he had not received a copy of the order and a review of the docket on the PACER system did not indicate that an order had been entered. The official docket, however, which Petitioner did not review, indicated that the Order had been entered.

The Court applied the unique circumstances doctrine to allow the untimely appeal to proceed. Under the "unique circumstances" doctrine, an appellant who reasonably and in good faith relied upon judicial action that indicates that his appeal will be timely may maintain an untimely appeal. The Eleventh Circuit found that it was reasonable for the petitioner's counsel to rely on the PACER docket. The Clerk's failure to enter the final order on the PACER system constituted "judicial action." Thus, the Petitioner's reasonable reliance on the PACER docket lulled him into inactivity, justifying invocation of the "unique circumstances" doctrine.

Paul A Avron is an independent contractor and a member of the Appellate Practice Section of The Florida Bar. He has expertise in bankruptcy law and appellate litigation.

Minutes of the Appellate Practice Section Retreat Committee Meeting

Thursday, January 13, 2000, at 4:00 p.m. at the Hyatt Regency, Miami

The first item on the agenda was Cindy Hofmann's report on her meeting with Lisa Gunther and Austin Newberry at the Tampa Airport Marriott on Wednesday, January 12, 2000. Cindy reported that the meeting lasted over an hour and that Lisa exhibited a firm grasp of our goals and expectations and presented solid plans to meet them. It was decided that the Executive Council members attending the Retreat would vote at Thursday's meeting whether to take an oral survey of Section members and/or use the written survey planned for inclusion in the Spring issue of *The Record* by the Membership Committee. It was also decided that the Sunday breakfast need not be reserved for business, but could be a social get-together instead. Lisa plans to end the day on Saturday, April 29, 2000 at 5:00 p.m.

The next item on the agenda was planning for the Friday reception and dinner. Section Vice Chair, Hala Sandridge, volunteered to coordinate these two events with the Marriott and Austin Newberry to make them smooth running, fun, and enjoyable for all. The Retreat Committee enthusiastically accepted Hala's offer.

The Committee plans to send an information packet to all Section members who register for the Retreat. The packet will include information about the hotel, the surrounding areas, fun/interesting things for spouses and families to do during the day, and directions to the hotel. Tom Hall noted that the Marriott gives a discount to governmental lawyers/judges.

And last, it was decided that the Sunday morning breakfast will be a social breakfast open to members, spouses, and children. The Retreat registration deadline is March 24, 2000.

A Few Words with Judge Northcutt *

Judge Stevan Northcutt joined the Second District Court of Appeal in January, 1997. He graciously agreed to the following interview in December, 1999, with Tom Elligett of Schropp, Buell & Elligett.

While attending USF to obtain your Mass Communications degree and then FSU Law School, you worked for several papers including the Tampa Tribune. Does your newspaper training drive you to write appellate opinions with short paragraphs?

Why? Does it show? My newspaper period ended many years ago, but I still feel its influence. I like short paragraphs that are easy on the eyes and don't test the reader's navigation skills. But my staff attorneys complain that I violate the conventions of good paragraph structure. We argue about it sometimes. Occasionally, I win one of those arguments.

After writing hundreds of appellate briefs, was it difficult to switch to writing appellate opinions?

I think writing is one thing that is easier to do as an advocate than as a decision-maker. The quality of a brief writer's advocacy is not necessarily diminished just because he or she makes a losing argument. On the other hand, an opinion that contains unsound or unclear reasoning always undermines confidence in the decision-making. You can't avoid thinking about that when you send an opinion to the parties–and to West's and the Florida Law Weekly for publication to the world-at-large. As for the mechanics of the writing itself, the most difficult aspect of my transition has been finding a suitable "voice." During my eighteen years of brief writing, I grew as an advocate, and my voice changed. Eventually, I developed a voice that I was pretty happy with. As an opinion writer, I'm still pre-adolescent; my voice hasn't matured yet.

Appellate courts note they employ per curiam affirmances in cases where the issues are well-settled and writing would not add to the body of law. Why might a panel issue a pca in a case where there is no clear precedent and the issues are preserved?

Believe it or not, judges engage in a lot of discussion about this topic. Each of us develops his or her own philosophy about when or why a PCA is appropriate, and we don't always agree either as a matter of overall policy or as to its application to a particular case. Speaking for myself: It is trite but true that bad facts make bad law. A case can be so unique or convoluted that it would be a poor vessel for making or clarifying the law. If the panel feels the result in the case is just, it might affirm without an opinion precisely to avoid stirring more mud into murky waters. Other times, we might know what the law ought to be, but we haven't reached consensus about how to articulate it or what its parameters should be. Recently I read an article about giving reasons, written by a professor at the John F. Kennedy School of Government. He pointed out that when we give reasons for what we do–in any setting, public or private–we impliedly promise that we will always act the same way when those reasons are present. As judges, we are acutely aware that giving reasons is an important part of our work. Just as important, though, is our commitment to the promises the reasons imply, because people rely on them in virtually every realm of their lives. Consequently, those promises can be hard to make, and sometimes they should be.

You have lectured frequently on various aspects of appellate practice, including oral argument. What advice do you have for advocates in oral argument, and especially in presenting rebuttal?

You have heard me give this talk a couple of times, so you know that my first advice about rebuttal is to never waive it before you hear what your opponent has to say. Arguing last is the only advantage an appellant has; why would you give it up? That seems pretty obvious, but a surprising number of attorneys waive rebuttal when they're running out of time during their initial presentations. I did it just once when I was practicing, and I learned a hard lesson.

My other advice, based on my experience both making oral arguments and having them made to me, is that time flies when you're standing at the podium, but it can crawl when you're sitting at the bench. Some of the Second District's more senior judges who suffered through many of my long-winded oral arguments are going to read this and laugh at the irony. I really enjoyed giving oral arguments, to the point that I would forget all about the clock and just chatter away. It used to drive the judges nuts. When I came on the court I got teased about it. Judge

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2000 Adkins Award nominations now being accepted

Nominations are being sought for the Appellate Practice and Advocacy Section's annual James C. Adkins Award, established in 1995 to honor those who have made significant contributions to the field of appellate practice in Florida.

The 2000 Adkins Award will be presented at the Section's Dessert Reception, June 22 at the Boca Raton Resort & Club.

Nominations may be submitted by April 21, 2000, to Austin Newberry, Program Administrator, Appellate Practice and Advocacy Section, The Florida Bar, 650 Apalachee Parkway, Tallahassee 32399-2300.

Judge Northcutt
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Patterson told me he was happy to have me here because he didn't have to sit through my oral arguments anymore. To this day, sometimes when I'm sitting with Judge Blue he'll warn attorneys not to measure their time in "Northcutt minutes." All I can tell you is that it is better to do as I say, not as I did.

You have been active in the American Inns of Court, which are known for their emphasis on professionalism. How can trial and appellate judges enhance lawyer professionalism?
In many cases the behavior of the judge can help attorneys raise their expectations of themselves. I think the most important thing a judge can do is conduct proceedings in a manner that demonstrates his or her own reverence for the judicial process. This doesn't mean the judge has to be stuffy or stern. My own preference is for a relaxed atmosphere--a sort of respectful informality. But whatever style suits the individual judge, he or she can stay engaged with the attorneys while lifting the whole proceeding, attorneys and all, above the silliness. I could give you a number of examples of judges who are gifted at this, but three who come to mind are retired Hillsborough Circuit Judge Jack Griffin, U.S. District Judge Terrell Hodges, and Judge Paul Danahy, who retired from the Second District last year. All of us, judges and attorneys alike, have much to learn from their examples.

As a "Seminole," and keeping in mind that this interview won't appear until February, do you have a prediction for the collegiate football national champion?
If I were answering this question in February, this is what I would say: If the Seminoles played in New Orleans with the same poise and confidence they had against the Gators in the Swamp, then by the time this reaches print they have won the national championship. But if they played as they did last fall against Georgia Tech or Clemson, then I was indisposed during the second half, and Judge Blue was to have to told me who won after I regained my senses. If he hasn't given me the news by now . . . well, I am still clinging to my hopes.

Thanks for visiting with us.

This article was originally published in the February, 2000 issue of the Hillsborough County Bar Association Lawyer.

Brief Thoughts

by: Bonnie Kneeland Brown

"When Bad Poems Happen to Good Poets"

In a bookstore a few years ago, I noticed a slim volume of poetry with a catchy title, *Very Bad Poetry* (edited by Kathryn and Ross Petras.) The poetry inside, all of which had once been published, was outrageous. Naturally, I could not resist purchasing the book. To some extent, the poems' titles alone convey their contents: "Ode to a Ditch," "Come Back Clean," and "Earwigs." My personal favorites are "My Last Tooth," author unknown ("You have gone, old tooth, Though hard to yield, You have long stood alone, Like a stub in the field . . ") and "I Saw Her in Cabbage Time," penned by Slocum Slugs, Esq. ("I saw her first in Cabbage time, She was a-cutting kraut -- She'd stop the cutter, now and then, To turn the head about . . ."). The book does not spare even a "good" poet. It features William Wordsworth in a section called "When Bad Poems Happen to Good Poets."

This "bad poetry" had another common denominator. The authors wrote these poems in earnest, were proud of their work, and expected it to be admired. We, who consider ourselves to be "good" brief writers, sometimes become so enamored with our writing that we fail to recognize its flaws. One reality check, of course, is asking a fellow lawyer to read the draft brief for candid feedback. However, when he was still in private practice with our firm, Judge Chris Altenbernd suggested giving the draft to a non-lawyer instead, saying: "If your Aunt Minnie can't follow what you are arguing in your brief, you haven't done your job." It doesn't take a poet to recognize bad poetry.

Note: BRIEF THOUGHTS will be a running column in The Record *and will comment – briefly – on various matters pertaining to appellate advocacy. Suggestions for topics for future columns are welcome and should be directed to Bonnie Brown (at Fowler White in Tampa), fax number 813/ 229-8313.*

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sue of liability in favor of a party seeking affirmative relief[2]. Decisional law has given an expansive reading to this rule, allowing non-final appeals in situations not intended by the Committee to be reviewable and in situations in which review is contrary to the underlying philosophy of the rules. Due to the problems encountered in applying the rule for the past 20+ years, the Committee feels the rule should be repealed altogether.

Historically, prior to 1978, the appellate rules permitted appeals from partial summary judgments on liability. The current wording of the rule was adopted in the last major overhaul of the appellate rules in 1978 and was intended to carry over that same concept. Although the Committee has had a consistent philosophy of avoiding piecemeal appeals, and disallowing non-final appeals except as to urgent threshold issues like jurisdiction and venue, there seemed to be some logic in allowing appeals of partial summary judgments on liability. Thus, in that sense, the rule allowing appeals of orders determining liability is largely an anomaly and an exception to the general principle of review upon finality only. The federal system and most other jurisdictions do not allow such appeals.

In actual practice, however, the rule has, in the view of many Committee members, been an unnecessary source of delay in resolution of cases, and has become burdensome to the appellate courts. The Supreme Court has addressed inconsistencies or uncertainties in application of the rule at least six times.

During the current four year cycle, the proposed repeal arose in conjunction with a movement to abolish all non-final appeals in order to reduce the workload on the appellate courts. After thoroughly debating a proposal to repeal Rule 9.130 in its entirety, the Committee felt that repeal of just this subsection was warranted and would help to streamline the appellate process while removing the most objectionable aspect of the non-final appeals[3]. The Committee reached this decision in 1997, but since the rule change was not an emergency, the proposal was held to the end of the four-year cycle. In the meantime, however, the Supreme Court issued its decision in *Meyers v. Metropolitan Dade County*, 24 Fla. L. Weekly S135 (Fla. Mar. 18, 1999) finding that a verdict entered in a bifurcated trial proceeding was an appealable non-final order under this rule, and that a motion to defeat the verdict on liability tolls the appeal time.

The Supreme Court asked the Committee to review and clarify the rules in this respect. The Committee noted that the Court was apparently unaware of its pending recommendation for repeal and declined to codify the *Meyers* ruling. Instead, the Committee stood by its proposed repeal of the rule, but at the same time proposed an alternate amendment that allowed review of orders determining liability only "if entered prior to trial," in the event the rule was not repealed. This alternative language would avoid the prospect of a bifurcated trial being disrupted in the manner inherent in *Meyers*.

The Committee felt any effort to codify the *Meyers* decision would be cumbersome and create further anomalies. In part, this was because the Committee felt that the Florida Rules of Civil Procedure would need to be amended to require entry of orders following a trial on liability (so that there would be a written order to appeal), and to allow authorized post-trial motions directed to such orders. As the rules now stand, a verdict is not intended to be a reviewable order. Even if a verdict was reviewable as a non-final order, motions for rehearing would not toll the time for seeking appellate review unless the civil rules were changed to make such motions "authorized".

Appellate Venue.

Challenges to appellate venue are not common, but when the issue does come up, it is a nightmare. In *Cottingham v. State*, 672 So.2d 28 (Fla. 1996), an order was entered transferring venue from Hernando County to Leon County. The appeal was docketed in the Fifth District which transferred it to the First District, citing *Vasilinda v. Lozano*, 631 So.2d 1082 (Fla. 1994). The First District disagreed and transferred the case back to the Fifth District. To spare the litigant further volleying back and forth, the venue question was certified to the Supreme Court.

Under *Vasilinda* (and now *Cottingham*), appellate venue in a civil case depends on when the transfer fees are paid and in a criminal case on when the file is shipped to the transferee court. The Committee felt that this leads to arbitrary results and encourages forum shopping[4]. In addition, since the fees are often paid by mail, it leaves the parties in limbo for some period of time, unable to determine which court actually has jurisdiction until a receipt is returned by the clerk. For these reasons, the Committee is proposing a rule that specifies which court should review orders transferring venue to a lower tribunal outside the appellate district of the transferor court:

RULE 9.040. GENERAL PROVISIONS

(b) Forum. (1) If a proceeding is commenced in an inappropriate

continued, next page

AMICUS CURIAE

The Section's *Amicus Curiae* Committee participates in cases presenting appellate issues that are "procedurally significant, but substantively neutral."

If you have, or know of, an appropriate case, it is essential for *amicus* participation that you notify the Committee as early as possible. You may reach the chair, John G. Crabtree, at (305) 361-2769 or crabtreej@adelphia.net.

court, that court shall transfer the cause to an appropriate court.

(2) After a lower tribunal renders an order transferring venue, the appropriate court to review otherwise reviewable non-final orders is as follows:

(A) After rendition of an order transferring venue, the appropriate court to review the non-final venue order, all other reviewable non-final orders rendered prior to or simultaneously with the venue order, any order staying, vacating, or modifying the transfer of venue order, or an order dismissing a cause for failure to pay venue transfer fees, is the court which would review non-final orders in the cause, had venue not been transferred.

(B) After rendition of an order transferring venue, the appropriate court to review any subsequently rendered reviewable non-final order, except for those orders listed in subdivision (b)(2)(A), is the court which would review the order, if the cause had been filed in the lower tribunal to which venue was transferred.

(C) The clerk of the lower tribunal whose order is being reviewed shall perform the procedures required by these provisions regarding transfer of venue, including accepting and filing a notice of appeal. If necessary to facilitate non-final review, after an order transferring venue has been rendered, the clerk of the lower tribunal shall copy and retain such portions of the record as are necessary for review of the non-final order. If the file of the cause has been transferred to the transferee tribunal before the notice of appeal is filed in the transferring tribunal, the clerk of the transferee tribunal shall copy and transmit to the transferring tribunal such portions of the record as are necessary for review of the non-final order.

Under the proposed revision, the date of rendition of the venue order is the critical factor in determining jurisdiction, rather than the time fees are paid, or the time the file is received by the transferee court. The proposed rule applies equally in civil and criminal cases. The appellate district that normally reviews orders entered by the transferor court will review orders transferring venue, as well as all other reviewable non-final orders rendered **before** the venue order, or simultaneously with it. The appellate district that normally reviews orders entered by the transferee court will review orders rendered **after** the change of venue with two exceptions: (1) orders staying or vacating the transfer order; and (2) orders dismissing the cause for failure to pay the transfer fees.

CONTENTS OF RECORD ON APPEAL

There are two proposed revisions to Rule 9.200 (a) (1):

(1) Except as otherwise designated by the parties, the record shall consist of the original documents, exhibits, and transcript(s) of proceedings, if any, filed in the lower tribunal, except summonses, praecipes, subpoenas, returns, notices of hearing or of taking deposition, depositions, other discovery, and physical evidence. The record shall also include a progress docket.

Exclusion of Notices of Hearing and Deposition From the Record. Apparently, some clerks' offices take a strict view of the rule that all "notices" be omitted from the record unless specifically designated by the parties. Some of these clerks refuse to include notices of filing, notices of lis pendens, and many other types of substantive notices that are generally needed in the record on appeal. Accordingly, the Committee has proposed a rule specifying that "notices of hearing or of taking deposition" shall be omitted from the record, unless otherwise designated.

Case Progress Docket. Questions invariably arise about whether or not a particular document was filed with the lower tribunal. The question arises in issues relating to supplementation of the record on appeal, and is a frequent problem for appellate public defenders who have difficulty getting a complete set of documents from trial counsel. Some appellate public defenders have had difficulty getting the clerk to give them a case progress docket that lists all of the items filed with the court. The Committee dealt with these concerns in Rule 9.200 (a) (1) by requiring that a progress docket be included in the record on appeal, and requiring in Rule 9.200 (d) (1) (A) and (d) (2) that the clerk to attach a copy of the progress docket to the index to the record.

APPELLATE BRIEFS

Standard of Review. Rule 9.210 would be amended to add a provision that the argument section of every brief should address the applicable appellate standard of review:

(b) Contents of Initial Brief. The initial brief shall contain the following, in order:

* * *

(5) Argument with regard to each issue including the applicable appellate standard of review.

The Committee reached a consensus, largely urged by its judicial members, that addressing the appellate standard of review will enhance the quality of appellate briefs and provide valuable assistance to the courts. This section of the brief can be short, but should state whether review is de novo, based on lack of competent substantial evidence, or based on abuse of discretion, and provide a citation of authority for the standard.

Proportional Fonts. As usual, the nuts- and-bolts issues like typeface and brief binding can be the hardest to resolve. The proposed changes concerning typeface are as follows:

RULE 9.210. BRIEFS

(a) (2) The lettering in briefs shall be black and in distinct type, double-spaced, ~~and~~ with margins no less than 1 inch. Lettering in script or type made in imitation of handwriting shall not be permitted. ~~Text shall be printed in type of no more than 10 characters per inch. Text should be double spaced so that there are no more than 27 lines per page.~~ Footnotes and quo-

tations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text. Typed matter that is not proportionally spaced shall be in 12 point or larger type and shall not exceed 10 characters per inch (10 pitch) and 27 lines per page; typed matter that is proportionally spaced shall be in 13 point or larger Times Roman, Times New Roman, CG Times, or similar type and shall not exceed 23 lines per page.

The current rule, which requires typeface of at least 10 characters per inch ("cpi"), virtually requires use of Legal Courier 12, a non-proportional font in which each letter takes up the same space. The current rule is obsolete since modern word processors use proportional fonts that give each letter the space it needs.

The Committee struggled to achieve a consensus on a new standard. The 10 cpi rule has the benefit of controlling the amount of text that can be squeezed into a 50 page brief. Some members were concerned that the proportional fonts could be manipulated to allow extra text and wanted to place strict limits on the font and formatting to be used. Some members wanted a 14 point proportional font that would *reduce* the amount of text in a 50 page brief by approximately five pages (as compared to the current cpi standard). Other members felt that the attorneys should have more freedom and that using a reasonably sized font was simply a matter of good appellate practice. Ultimately, the Committee attempted to adopt a proportional font that produces an amount of text closest to the current 10 cpi rule. This resulted in 13 pt. Times New Roman, C.G. Times, or similar fonts, with no more than 23 lines per page.

Brief Binding.
The following clarification as to the binding of briefs has also been proposed:

(3) Briefs ~~should~~shall be securely bound in book form and fastened along the left side in a manner that will allow them to lie flat when opened~~. Alternatively, briefs may be~~ or be securely stapled in the upper left corner. ~~No other method of securing the brief is acceptable.~~

Thus, briefs may be bound either along the left-hand side or by a staple in the upper left-hand corner. Briefs still must "lie flat when open". Binding is optional. Many courts do prefer a simple staple in the upper left-hand corner.

Parallel Citation of Florida Reports. The Uniform System of Citation in Rule 9.800 would be amended to remove the requirement for parallel citation of the Florida Reporter. This requirement is believed to be obsolete.

Appendix to Briefs on Jurisdiction. The Supreme Court requested the Committee to adopt an amendment limiting the contents of the appendix to briefs on jurisdiction to "only" a conformed copy of the decision of the district court. The internal procedures of the court eliminate the need for filing copies of allegedly conflicting cases, and the court feels that the appendix is sometimes used to bring extraneous materials before the court.

Motions for Rehearing. Rule 9.330 would be clarified, cleaned up and conformed to current practice under this proposed amendment.

RULE 9.330. REHEARING; CLARIFICATION; CERTIFICATION

(a) **Time for Filing; Contents; ~~Reply~~Response.** A motion for rehearing, clarification, or certification may be filed within 15 days of an order or within such other time set by the court. A motion for rehearing ~~or clarification~~ shall state with particularity the points of law or fact that in the opinion of the movant the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding. A motion for clarification shall state with particularity the points of law or fact in the court's decision that in the opinion of the movant are in need of clarification. ~~The motion shall not re-argue the merits of the court's order.~~ A ~~reply~~response may be served within 10 days of service of the motion.

By omitting the sentence that prohibits rearguing the merits of the court's order, the Committee intends to clarify the permissible scope of motions for rehearing. Nevertheless, the essential purpose of a motion for rehearing remains the same. It should be utilized to bring to the attention of the court points of law or fact that it has overlooked or misapprehended in its decision, not to express mere disagreement with its resolution of the issues on appeal.

The rule would be further amended to prohibit presentation of "issues not previously raised in the proceeding." This amendment is a codification of decisional law. Lastly,

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scribed by general law and not by Rule 9.130 as clarified in *Blore v. Fierro*, 636 So.2d 1329 (Fla. 1994). A companion amendment to Rule 9.130(a)(1) would correct the similar language of that rule.

The title to Rule 9.130 would be amended to add "and Specified Final Orders" because the title was misleading: appeals of orders determining class certification, insurance coverage and relief under rule 1.540 may be final orders, but are still appealable under this rule.

Proposed Rule 9.140(b)(6)(B) would require court reporters to file the record in capital cases on computer disk.

Proposed Rule 9.140(i) would codify the procedures and requirements for filing *Anders* briefs. Although this is a significant change in the rules, since this issue is primarily of interest to appellate public defenders, it was not discussed at length here.

Rule 9.141 would be amended to create a new rule relating to review of collateral or post-conviction orders in criminal cases.

Proposed Rule 9.190 would add a new subsection (e) regarding stays pending review in administrative cases.

Proposed Rule 9.210(a)(1) would delete the provision that printed briefs should measure 6 x 9 inches, which has proved to be a constant source of confusion and misunderstanding among *pro se* litigants.

Rule 9.210(a)(5) would impose a 15 page limit on the argument portion of reply briefs in cases in which cross-appeals are taken.

Rule 9.420(a) would adopt the "mailbox rule" based on Fed. R. App. P. 25(a)(2)(C) for *pro se* inmate filings.

Rule 9.800 (I) would amend the citation style for Florida Standard Jury Instructions.

Conclusion

Problems with the Florida Rules of Appellate Procedure are raised by court opinions, individual judges, members of the Bar, court reporters, and other interested groups or persons. The Appellate Court Rules

continued, next page

Appellate Court Rules Committee Four-Year-Cycle Amendments

RULE	ACTION:
9.020(h)	Creates subdivision (h)(4), regarding rendition in district courts of appeal, to correct problem noted in *St. Paul Fire & Marine Insurance Co. v. Indemnity Insurance Co. of North America*, 675 So. 2d 590 (Fla. 1996); moves text of subdivision (i) into main body of subdivision (h) to retain consistency; deletes subdivision (i).
9.030(c)(1)(B)	Amends subdivision (c)(1)(B) to reflect that appellate jurisdiction of circuit courts is prescribed by general law and not by rule 9.130, as clarified in *Blore v. Fierro*, 636 So. 2d 1329 (Fla. 1994).
9.040(b)	Determines which appellate court may review non-final orders after the trial court has granted a change of venue to a circuit court located within another district. Changes and clarifies the rules announced in *Vasilinda v. Lozano*, 631 So. 2d 1082 (Fla. 1994), and *Cottingham v. State*, 672 So. 2d 28 (Fla. 1996).
9.120(d)	Amends rule to limit the appendix accompanying a brief to a copy of the opinion, to prevent the inclusion of excessive materials.
9.130	Amends rule title to include "specified final orders."
9.130(a)(1)	accompanies amendment to 9.030(c)(1)(B)] Amends subdivision (a)(1) to reflect that appellate jurisdiction of circuit courts is prescribed by general law and not by this rule, as clarified in *Blore v. Fierro*, 636 So. 2d 1329 (Fla. 1994).
9.130(a)(3)(C)(iv)	Repeals provision that allows appeal of non-final orders that determine liability in favor of a party seeking affirmative relief; renumbers subsequent subdivisions. [Should the court decline to accept the repeal of 9.130(a)(3)(C)(iv), the committee offers the following alternate amendment: "the issue of liability in favor of a party seeking affirmative relief, if entered prior to trial. This will avoid the disruption of a bifurcated trial as in *Myers v. Metropolitan Dade County*, 24 Fla. L. Weekly S135 (Fla. March 18, 1999.]
9.130(a)(5)	Amends rule to provide review for judgments under rule 7.190.
9.130(a)(7)	Deletes subdivision (a)(7) because it is superseded by proposed rule 9.040(b)(2).
9.140(b)(1)	Adds new subdivision (b)(1)(B) to reflect the holding of *State v. Schultz*, 770 So. 2d 247 (Fla. 1998); renumbers subsequent subdivisions; modifies renumbered subdivision (b)(1)(D) to reflect long-established practice.
9.140(b)(6)(B)	Requires court reporters to file transcripts on computer disks in the appellate record in capital cases.
9.140(b)(6)(E)	Deletes the last sentence of this rule because it refers to subdivision (j) which no longer exists. This sentence now is contained in new rule 9.141(a).

9.140(i)–(j)	Deletes subdivisions (i) and (j) and transfers them to proposed new rule 9.141.
9.140(i)	Creates new subdivision 9.140(i) providing for rules regarding *Anders* briefs.
9.141	Creates new rule relating to review of collateral or post conviction orders in criminal cases. Incorporates the old 9.140(i) and (j) as amended. Rule 9.141(b) requires the clerk to tell court reporter to prepare transcript in nonsummary rule 3.850 appeals by pro se indigent appellants if no designations are filed; broadens rule to include state appeals; specifies that a court can grant "other appropriate relief" as well as an evidentiary hearing in appeals of summary denial of motions for post-conviction relief.
9.190(c)(6)	Editorial change to correct reference from rule 9.200(a)(2) to rule 9.200(a)(3).
9.190(e)	Adds a new section (e) regarding stays pending review.
9.200(a)(1)	Limits "notices" to be excluded from record on appeal to notices of hearing or deposition.
9.200(a)(1), (d)(1)(A), and	Adds requirement that clerk include a case progress docket in the record and attach a case progress docket

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