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The Record

JOURNAL OF THE APPELLATE PRACTICE AND ADVOCACY SECTION

www.flabarappellate.org

Volume VIII, No. 4 **THE FLORIDA BAR** **Summer 2000**

Chair's Message


HOFMANN

By all reports, the Section's first retreat was a success. Those of us who got there early enough to attend the CLE seminar on professionalism found ourselves engaged in some heated discussion concerning the "right" thing to do when presented with "impossible" but probable case scenarios. Paul Remillard, from the Florida Bar's Professionalism Center, relentlessly questioned and challenged our every answer. By the 6:00 reception by the pool most were in attendance, many with spouses and significant others. Lisa Gunther, our facilitator for Saturday's planning sessions, joined us for a cocktail and met as many Section members and spouses as she was able to before taking off to set up her props and make her charts. We also welcomed two new judicial members of the Executive Council: Judge Fulmer from the Second District and Judge Goderich from the Third District. Thus, Judge Polen, an enthusiastic member of the retreat committee, was the retreat's "senior" judicial attendee.

The reception and dinner, planned by Hala Sandridge and Austin Newberry, ran smoothly and enabled us to get to know each other better. Some of us were lucky enough to win such door prizes as gift baskets and a free weekend at the Hutchinson Island Marriott. The highlight of the evening was, of course, Judge Padovano's talk on appellate practice as a specialty. We were honored that he took the time to be with us. Between Steve Stark's fancy, technically advanced, digital camera and the disposable cameras placed on every table, we were able to record the good time had by all.

I am happy to report that Saturday's all-day planning and goal-setting meeting was also a success. During the morning session, we hammered out a new mission statement and in the process discovered that we, as a Section, had pretty much achieved the initial mission set when the Section was first formed in 1993. After a bit of wordsmithing, we came up with the following statement to guide us through the next few years:

Appellate Practice Section Mission Statement

The mission of the Appellate Practice Section is to advance the administration of justice by promoting high standards of appellate practice. To achieve this we will:

- Foster a community of appellate practitioners and judges;
- Provide education and training;
- Facilitate the exchange of information and ideas; and,
- Heighten awareness of the special role of appellate practitioners.

As with most endeavors, the learning was in the doing – and in the cutting, and pasting, and drawing and taping.

After hammering out a mission statement and having a hearty, working lunch to keep up our energy and sugar levels, we shifted briefly to a discussion of our visions of what the future would hold for those in the practice of appellate law. From that discussion we moved straight to formulating goals that we anticipated would meet our expectations. Through a process of multivoting we settled on ten goals we thought were achievable (if we can recruit more members from within the Section to help). A sample of the goals we targeted were:

(a) to keep *The Record* a first-

continued, page 5

INSIDE:

The Top Ten Common Errors in Bluebook Citation 3
Brief Thoughts 5
BOOK REVIEW: *Leaving The Bench: Supreme Court Justices at the End* 6
Section Announces Hot Topics in Appellate Practice 2000 Seminar 7
Section Plans Discussion with the Supreme Court at Bar's Annual Meeting 8
2000/2001 Budget Summary 9
Minutes of the Executive Council Meeting 10
Committee Reports 12
A Few Words with Judge Threadgill 13
Scenes from the Section Retreat 14

06/00

Important Information on Appellate Practice Certification and Dates of Importance

If you are interested in being certified as an appellate practice attorney or are just curious about the advantages of specialization, listed below are some advantages of specialization:

- One benefit is the identification of "proficient" practitioners for the general public.
- Your name will be listed in the September directory issue of The Florida Bar *Journal* in the Certified Lawyers' section, under the area of speciality by geographical location.
- Possible discounts on malpractice insurance rates. It has been reported that a 10% discount on insurance rates has been offered to certified attorneys. Check with your own insurance carrier for more information.
- Being certified makes you a good source for referrals, both from other lawyers (who may feel greater confidence in making referrals to certified specialists) and the general public (which seem to be using certification as a primary test in selecting attorneys).
- Courts are increasingly recognizing the merits of certified specialists by both awarding fees more easily to such specialists and awarding higher fees to such specialists.
- Public agencies and law firms are beginning to make certification a criterion for advancement.
- Martindale-Hubbel has reportedly decided to add a listing of "Certified Specialists" to its annual directory explanations of the significance of certification.
- The ability to 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 aware of the significance of certification.

Applications may be filed during a two month period each year and the examination is offered once each year. A summary of the *minimum requirements* are as follows: A minimum of 5 years in the practice of law; substantial involvement; passage of the examination; peer review to determine proficient performance, as well as character, ethics and reputation for professionalism; and CLE in the chosen area.

Dates to keep in mind when filing your application:

- *July 1- August 31, 2000* Applications accepted for March 2001 Examination
- *Wednesday, March 7, 2001* Examination administered at Airport Marriott, Tampa
- *June 1, 2001* Certification becomes effective.

The submission of an application does not automatically guarantee the acceptance of your application for examination. The Appellate Practice Certification Committee will make the final decision on your qualifications to sit for the examination. You may also request an application online, download the application through The Florida Bar's webpage at **www.flabar.org/Member Services/Certification/Appellate Practice/** or you may request an application by completing the form below and mailing to The Florida Bar.

To obtain an application, complete this form and return it to: The Florida Bar, Certification Department, 650 Apalachee Parkway, Tallahassee, FL 32399-2300. Applications for the Appellate Practice Area are currently available and must be completed and returned by August 31, 2000. Please print or type all information legibly.

Name: _____ Attorney Number: _____

Mailing Address: _____

City/State/Zip: _____

The Top Ten Common Errors in *Bluebook* Citation

by Brendan M. Lee

As a recent law school graduate, many useful legal principles are still fresh in my mind. For example, I understand the necessity for the Statute of Frauds, as well as the dangers of Rule 11 sanctions. On the other hand, I have also retained an inordinate amount of knowledge that is essentially useless in my work as an attorney. In the minds of most practicing attorneys, knowledge of the *Bluebook* will undoubtedly fall into the second category.

The *Bluebook* intimidated many of my first-year classmates. I remember one student telling me that he would simply take the five-point deduction for citation style rather than agonize over whether to use a full cite or *Id*. After a short time practicing law, it is obvious that many have adopted this approach.

The appellate practitioner should be especially mindful of following proper citation procedure. *Bluebook* errors can make an author appear sloppy or uninformed, and the reader may question the substance of the text as a result. The following is a list of ten common *Bluebook* errors that seem to plague attorneys and judges.

1. Introductory Signals -- Rule 1.2

The 1996 publication of the Sixteenth Edition of the *Bluebook* introduced a number of modifications to the use and style of citations.[1] One major change occurred in the area of introductory signals. The definitions for a number of introductory signals changed with the Sixteenth Edition. The most important changes for the practitioner concern [no signal] and "see."

The [no signal] cite had previously been used in case descriptions when the cited authority clearly stated the proposition, identified the source of a quotation, or identified an authority referred to in text. The "see" signal was used "when the proposition is not directly stated by the cited authority but obviously follows from it; there is an inferential step between the authority cited and the proposition it supports."

The Sixteenth Edition changed the "see" signal to show that the cited authority "*directly states* or *clearly supports* the proposition." Furthermore, the [no signal] cite is no longer used when a cited authority clearly states the proposition. As a result, the [no signal] cite generally should be limited to instances in which the cited authority "identifies the source of a quotation."[2] The "see" signal should be used in most instances which previously required a [no signal].

Since most practitioners were schooled before the publication of the Sixteenth Edition, many attorneys still use the [no signal] cite where a "see" signal is appropriate. Look at it as a two-step process: choose the appropriate introductory signal, even if it requires a [no signal], and then select the appropriate citation form. More often than not, the correct introductory signal will be "see."

2. "*Supra*" and "Hereinafter" -- Rule 4.2

For some reason, many attorneys and judges have a love affair with "*supra*." After citing a case earlier in the document, they will simply refer back to the case by using "*supra*." For example, an author might state:

The Court found that "in filing the subject rehearing motion, complete with expletives, derogatory remarks about opposing counsel's argument, and conjectured innuendoes regarding the district court's impartiality, Arslanian showed at the very least a 'substantial likelihood' that he had compromised the integrity of the legal profession, engaged in professional misconduct, or violated one or more of the Rules Regulating The Florida Bar." *5-H Corp.*, *supra*.

This is incorrect. The *Bluebook* provides that "*supra*" should not be used "to refer to cases, statutes, constitutions, legislative materials (other than hearings), or regulations, except in extraordinary circumstances, such as when the name of the authority is extremely long." When considering whether a specific occasion constitutes an extraordinary circumstance, recognize that it probably does not. Use another short cite.

3. Section (§) and Paragraph (¶) Symbols

Rule 6.2(b) Many of the recent changes to the *Bluebook* have coincided with technological advancements that have affected legal writing. The *Bluebook* now provides citation forms for Internet cites and public domain citations. In addition, the Sixteenth Edition assumes that attorneys have access to word processing software capable of producing both section (§) and paragraph (¶) symbols.

Rule 6.2(b) provides that the first word in any sentence should be spelled out. Further, the rule provides that the words "section" and "paragraph" should be spelled out in law review pieces and other documents, "except when referring to a provision in the U.S. Code, a state code, or a federal regulation." As

continued, next page

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

Top Ten Common Errors
from page 3

such, use the section symbol (§) when referring to provisions of the Florida Statutes or U.S. Code.

4. C*ase* Names in Citations -- Rule 10.2.2

The *Bluebook* provides several distinctions between case names in citations and case names in textual sentences. One of the most important distinctions can be found in the abbreviation of case names under Table 6.

For case names in textual sentences, the *Bluebook* advises that only eight words making up the case name should be abbreviated: "&," "Ass'n.," "Bros.," "Co.," "Corp.," "Inc.," "Ltd.," and "No." When case names appear in a citation, however, Rule 10.2.2 provides that any word listed in Table 6 should be abbreviated unless it is the first word of the name of a party.[3]

Although all practitioners know the abbreviation for "incorporation" or "association," most do not know that the *Bluebook* provides abbreviations for words such as "advertising" and "transcontinental." The Sixteenth Edition added a number of words to Table 6. Prior to filing a brief with the court, review your Table of Authorities to ensure compliance with Rule 10.2.2.

5. Parallel Cites – Rule 10.3.1

One of the most common errors in *Bluebook* citation is at least in part due to members of the judiciary. Older opinions included citation to a state's official reporter, as well as the relevant regional reporter. Recent opinions which rely on these cases often include the authorities cited therein, along with the citation to the state's official reporter.

Florida has not published an official state reporter since 1948, so this error is limited to cases from other jurisdictions.[4] Attorneys often use these authorities in court documents and legal memoranda without considering the need for a parallel citation. These parallel citations from outside jurisdiction are unnecessary and should be excluded pursuant to Rule 10.3.1.

6. Date or Year – Rule 10.5

While the *Bluebook* suggests denials of discretionary appeals be omitted under Rule 10.7, certain subsequent history must be included. In some cases, decisions may be decided in the same year. Rule 10.5(d) provides that when citing a case with several decisions published in the same year, include the year only with the last-cited decision in that year. For example,

United States v. Eller, 114 F. Supp. 284 (M.D.N.C.), *rev'd*, 208 F.2d 716 (4th Cir. 1953).

NOT

United States v. Eller, 114. F. Supp. 284 (M.D.N.C. 1953), *rev'd*, 208 F.2d 716 (4th Cir. 1953).

7. Subsequent History -- Rule 10.7

Another change in the Sixteenth Edition is that the subsequent history of a case should not include denials of certiorari or denials of similar discretionary appeals unless the decision is less than two years old or the denial is particularly relevant. Many practitioners continue, however, to include this information.

Scholars have agreed that the two-year provision is a good rule because it impliedly demonstrates the finality of the lower court's decision.[5] Thus, practitioners should follow this rule and eliminate cites to denials of discretionary appeals.

8. Pending and Unreported Cases –Rule 10.8.1

The citation to unreported cases available only on electronic databases has increased in recent years. Legal research through LEXIS or Westlaw offers a number of benefits to the practitioner, but presents problems in terms of citation form. Although these electronic databases often attempt to provide guidance for proper citation, the suggested forms frequently do not comply with the *Bluebook*.

Most practitioners include the identifying codes or numbers that uniquely identify the case, such as 1991 WL 55402 or 1991 U.S. App. LEXIS 5863. However, Rule 10.8.1 mandates that in addition to the case name and database identifier, the citation must also include the docket number of the case. In addition, the citation should include the "full date of the most recent major disposition of the case." An example of the correct citation form is as follows:

Clark v. Homrighous, No. CIV.A. 90-1380-T, 1991 WL 55402, at *3 (D. Kan. Apr. 10, 1991).

9. Short Forms for Cases – Rule 10.9

There are several short citation forms that may be used to identify a case in place of a full cite. The *Bluebook* lists the following as acceptable short forms:

United States v. Calandra, 414 U.S. at 343.
Calandra, 414 U.S. at 343.
414 U.S. at 343.
Id. at 343.

The *Bluebook* cautions that one of the shorter three forms should be used only "if the reader will have no doubt as to which case it refers."

Rule 10.9 provides the instances in which a short citation is acceptable, but the discussion concerns law review footnotes. The Practitioners' Notes advise that a short citation form may be used as long as "(i) it will be clear to the reader from the short form what is being referenced; (ii) the earlier full citation falls in the same general discussion; and (iii) the reader will have little trouble locating the full citation quickly." By following these three guidelines, practitioners will avoid unnecessary confusion in an improper short cite.

10. Incorporating Rule 9.800 of the Florida Rules of Appellate Procedure

Finally, the practitioner should be aware of Rule 9.800 of the Florida Rules of Appellate Procedure, entitled "Uniform Citation System." Rule 9.800 was adopted in 1977 "to standardize appellate practice and ease the burdens on the courts." With two notable exceptions, Rule 9.800 follows the *Bluebook* in its proposed uniform citation system.

First, the *Bluebook* does not advise identifying the specific Florida District Court of Appeal in a citation. Rule 9.800 suggests providing this information, which undoubtedly assists the court and opposing counsel. Second, Rule 9.800 provides a different citation form for the Florida Statutes. It provides that the section

symbol should be used to identify the specific statutory provision, followed by the abbreviation "Fla. Stat." and the date.

While the preceding list of *Bluebook* errors is by no means comprehensive, I hope that it provides some guidance to the appellate practitioner.

"It is the duty of each litigant and counsel to assist the judicial system by use of these standard forms of citation."[6]

Endnotes:

1. See, *e.g.* Susan W. Fox, "The Bluebook Signals a New Era and Other Changes in the 16th Edition of uniform System of Citation," *The Record* (May, 1997).
2. The [no signal] cite should also be used to identify an authority referred to in text, which is generally limited to law reviews and other legal publications.
3. The rule also provides that states, countries, and other geographical units should be abbreviated as indicated in Table 10, unless the geographical unit is a named party.
4. In fact, Rule 9.800 of the Florida Rules of Appellate Procedure provides that a parallel citation should be included if available. This follows the Practioner's Notes from the *Bluebook*, which advises that "all citations to cases decided by the courts of that state... should include a citation to the official reporter, if available."
5. *See* A Darby Dickerson, "An Un-Uniform System of Citation: Surviving with the New Bluebook," 26 STETSON L. REV. 53 (1996).
6. Fla. R. App. P. 9.800, Committee Notes.

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Brief Thoughts

by Bonnie Kneeland Brown

"The English Teacher"

My children grew up with the dubious advantage of having an English teacher as their mother (pre-law career). Unfortunately, I could never control my need to correct their grammar and word usage, even in their tender years: "No, dear, you have 'fewer' toys than your best friend, not 'less.' We have 'less' money."

Thus, turnabout was fair play when my son graduated from the University of Florida School of Journalism in 1992 and took a job as copy editor with the Gainesville Sun (pre-law career). It was not long before he gleefully began to correct my word usage: "No, Mom, you aren't 'anxious' to meet my new girlfriend. You're 'eager' to meet her." (I bit my tongue on that one).

I am told by my young associate, Ty Cone (a product of the computer age), that with the advent of e-mail and other computer writing, the old grammar and word usage rules have lost their rigidity. I know I see a growing relaxation of the rules in the printed press, such as sentence fragments and sentences ending in prepositions. Yet, the phrase "the chair she sat on" appears in writing to have far less dignity than "the chair on which she sat." The more colloquial version does not seem offensive in general conversation, however.

In writing briefs, the use of good grammar and word usage is probably much appreciated by the judiciary -- second only to clarity, I would think. Formality to the point of sounding ludicrous is best avoided, of course. (To paraphrase Winston Churchill: "This is the kind of stuff up with which we will not put."). Yet, the courts deserve a brief written with respect shown to both the courts and the English language. Colloquial English is best left to conversations and e-mail.

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.*

Chair's Message
from page 1

rate periodical, timely published with articles of substance and of value to the membership;

(b) to enhance the Section's website (*www.flabarappellate.org*) by institutionalizing the responsibility for creating, organizing, and maintaining content to reflect the broad range of Section services, publications, CLE seminars, committee activities, and special events, and by creating a Section Listserv;

(c) to create and maintain a procedures/operations manual for use by future officers and members responsible for Section services, publications, and events; and

(d) to generate and foster more opportunities for Section members to get together and interact locally.

We need *your* help to accomplish these and our other six goals. If you would like to join one of our committees (Continuing Legal Education, Publications, Membership, Legislative, and Programs) or help with any of the above-mentioned goals, please contact me or Ben Kuehne, the Chair-elect, and we will be sure to find a place for your talents.

The retreat ended on Sunday morning at the Marriott breakfast buffet, where we shared our restaurant and babysitting experiences from the night before. Along the way, we congratulated our very own Tom Hall on his appointment as the new Clerk of the Supreme Court of Florida, and Harvey Sepler on his recent victory in the United States Supreme Court. We then headed home already looking forward to the next retreat and more camaraderie, discussions, planning, and *fun!*

BOOK REVIEW:

Leaving the Bench: Supreme Court Justices at the End

Author: David N. Atkinson

Review by Scott D. Makar*

During its 1997-98 Convention, the Florida Constitution Revision Commission debated a proposal that would have raised the mandatory retirement age of judges. The idea was that judges do not automatically become senile at age seventy and may have a number of productive years left to perform judicial functions. Experienced judges, like other professionals with specialized expertise, should continue to serve if advancing age does not impair their productivity. The proposal did not make it to the ballot, but the issue is one that is likely to be considered again.

United States Supreme Court Justices, on the other hand, are appointed to serve life terms with no mandatory retirement requirements. With no compulsion to leave office, why would a justice decide to retire or resign before the end of his or her term? What circumstances would cause a justice to hold on to the end, even when faced with debilitating physical and mental impairments? A recent book, "Leaving the Bench: Supreme Court Justices at the End" (University Press of Kansas, 1999, $29.95) explores these questions by reviewing each of the almost 100 justices who have left the Court. Professor David Atkinson, a political science and law professor at the University of Missouri-Kansas City, has written a gem. The book is full of historical research, keen insights, and little known minutiae about each of the justices.

Professor Atkinson wrote the book to find out "why justices leave the Court and why some refuse to leave; to provide a description of how each justice left; and to ask when justices should leave." Each of these questions is closely related.

Why do they leave? Eight reasons. The threat of impeachment; an appealing pension; personal ambition; unhappiness or apathy; declining health or lack of energy; diminished mental capacity; pressures from family; and voluntarily despite no reduced capacity to work. Why do they stay? Money; ideological or political purposes; a determination to remain; a feeling of indispensability; fear of lost status; belief that work can still be done despite age or diminished capacity; "not knowing what else to do"; and pressures from family to stay.

A strong point of *Leaving The Bench* is the brief, but succinct, discussion of each justice who left the Court. The author must necessarily delve into many private matters by discussing the most personal aspects of these justices' lives (i.e., their physical and mental health as well as their deaths themselves). It comes as no surprise that most of the justices - in their so-called "golden years" of life - experience a wide range of health problems. In doing so, Professor Atkinson successfully stays away from voyeurism/sensationalism and provides specific details only to punctuate or highlight the effects of justices who stayed too long.

Many of the stories are legendary. The portion of *Leaving the Bench* about Justice William O. Douglas is a case study in the reason why justices cling to power in the face of overwhelming physical and mental deficits. Justice Douglas suffered a stroke on New Year's Eve, 1974. Despite his documented frailties and deteriorated mental condition, he unyieldingly pledged that "I won't resign while there's a breath in my body - until we get a Democratic president." (Incumbent President Gerald Ford had "led the attempt to impeach him in 1970.").

Justice Douglas's ability to work was diminished severely with much time spent in the hospital. He often cast his votes through Justice William Brennan, a highly criticized practice. According to the author, Justice Douglas at one point "held court" in Yakima, Washington. Although responding to questions with "short crisp phrases," a number of people in attendance became "alarmed when for nine and [one] half minutes he stared motionless at his hands shuffling his papers, saying nothing. . . . The fact of his incapacitation had been viewed on television by millions of people." He ultimately retired on November 12, 1975 after 36 years and seven months on the Court, the longest tenure in the Court's history. Yet it was not over. He later returned to the Court and insisted on voting on cases. His colleagues ignored his memoranda. Court personnel were told to do so as well. He died in 1980 at age eighty-one.

Other justices stayed on too long, according to the author. Justice Thurgood Marshall suffered from heart problems, emphysema, glaucoma and deafness - yet stayed on the Court until age eighty-two (dying a year later). He had said, "I was appointed to a life term, and I intend to serve it." He served despite a heart attack in 1976 (on the evening after the Court's decision restoring capital punishment in *Gregg v. Georgia* was released), recurrent attacks of bronchitis, and a number of falls that left him less mobile. When asked at a news conference what was "wrong" that lead to his decision to retire, he shot back "I'm getting old and coming apart." The heart of a fiery civil rights litigator till the end.

Justice John Marshall Harlan, who Justice Douglas described as "blind in one eye and only able to see three inches away from the other," was reluctant to leave "even after he knew he was grievously ill." The author quotes the following passage from *The Brethren*:

Harlan continued to run his chambers from his hospital bed. Nearly blind, he could not even see the ash from his own cigarette, but he doggedly prepared for the coming term.

One day a clerk brought in an emergency petition. Harlan remained in bed as he discussed the case with the clerk. They agreed that the petition should be denied. Harlan bent down, his eyes virtually to the paper, wrote his name, and handed the paper to his clerk. The clerk saw no signature. He looked over at Harlan. "Justice Harlan, you just denied your sheet," the clerk said, gently pointing to the scrawl on the linen. Harlan smiled and tried again, signing the paper this time.

A common theme throughout much of *Leaving the Bench* are these sad albeit somewhat remarkable tales about the practical consequences of holding on to power when diminished physical or mental health dictates a change of guard.

Some of the accounts place the readers in key places at key times when memorable things are said. Chief Justice Earl Warren retired at age seventy-seven while in good health. He retained an office in the Court during his retirement where he wrote his memoirs. In 1974, he was hospitalized for congestive heart failure. He was visited by Justice Brennan at about 5:30pm one evening to brief him on the status of the *Watergate Tapes* case. "When told that the Court unanimously was opposed Nixon's contention that he need not release the tapes to the district court, Warren was pleased. 'Thank God! Thank God! Thank God! Warren exclaimed. 'If you don't do it this way Bill, it's the end of the country as we have known it.' Shortly after Brennan left, Earl Warren died, at 8:10pm, with his wife and youngest daughter beside him."

Leaving the Bench is full of trivia. Test yourself on the next three questions, which focus on justices from the contemporary period: (1) which justice used a personal computer to write a one-page will with the word "executor" misspelled? (2) which justice, known for his physical prowess, was the "first justice to move out of the Supreme Court Building since it was built in 1935" and take an office in the Federal Judicial Center? (3) which justice, an ardent anti-death penalty advocate, "became confused and voted for the first time in favor of the death penalty in conference" only to be rectified later the next day by his law clerks? Burger, White, Marshall is a perfect score.

Professor Atkinson proposes three reforms. First, he suggests that the Court respond more directly and forthrightly about the health of each justice. He points out that the justices tend to be overly sensitive about this topic (perhaps rightly so), noting that Justice William Rehnquist "just flipped out" and called the media "vultures" when asked by a reporter about accommodating the press by letting them know when a justice is hospitalized. Second, he suggests that law clerk pools be used rather than individual clerks for each justice. His theory is that law clerks form strong loyalties to their justices rather than to the Court itself. A law clerk pool would reduce the "deplorable combat attitude" and diminish the ability of clerks to insulate their justice from criticism and critical inquiry. Finally, he suggests that justices exercise greater personal self-awareness and retire while still in good health "usually in their mid-seventies, although the age might be extended if medical science continues to lengthen average life spans." He notes that this proposal could become an informal institutional tradition (and has to some extent in recent years).

The appendices to the book are interesting. One contains a summary by year of the average age and average tenure of the justices. For instance, in 1998 the average age of justices was 64 with an average tenure of 13 years. Since 1900, the highest average age and average tenure was in 1986: 72 years old and seventeen years on the Court. The lowest average age and average tenure was forty years earlier in 1946: 57 years old and 6 years on the Court.

Another appendix, entitled "Where Are They Buried," contains a listing of the locations where justices are buried. It also contains brief discussions about three justices who "have been the subject of some confusion regarding their burial sites" but are now accounted for. Trivia: No justice has ever been interred in Florida.

In summary, *Leaving the Bench* is entertaining and informative. It provides an excellent review of the "whys" and "whens" of Supreme Court deaths, resignations, and retirements. Professor Atkinson handles a morbid, but important, topic in a masterful and systemic way that will be of use to policymakers. As one reviewer has stated, this book is clearly for "Supreme Court junkies" - which should appeal to much of the Section's membership.

Scott D. Makar is a partner in the Jacksonville office of Holland & Knight LLP. His practice includes trial and appellate litigation.

Section Announces Hot Topics in Appellate Practice 2000 Seminar

by Siobhan Helene Shea, "Hot Topics in Appellate Practice" Chair

Florida Supreme Court Justices Barbara J. Pariente and Harry Lee Anstead will speak at the Hot Topics in Appellate Practice Seminar, on Thursday, October 12, 2000 at the Tampa Airport Marriott. Justice Pariente will speak on Effective Oral Argument and Justice Anstead will discuss Professionalism in Appellate Practice. Other confirmed speakers to date include: Fourth DCA Judge Gary Farmer, Fifth DCA Judge Jacqueline R. Griffin, First DCA Judge Philip J. Padovano, Second DCA Judge Chris W. Altenbernd, and Appellate Rules Chair Susan J. Fox. The lively one day seminar will cover Appellate Attorneys' Fees, Appellate Rule Changes, Standards of Review and Preservation of Error. This seminar is presented by the Appellate Practice CLE Committee of the Florida Bar. For more information contact the Hot Topics in Appellate Practice Chair Siobhan Helene Shea at 561/355-7638.

Section Plans Discussion with the Supreme Court at Bar's Annual Meeting

by Caryn Bellus-Lewis, Chair, Programs Committee

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 to 4:30 p.m. at the Boca 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.

A Panel Discussion with the

JUSTICES OF THE FLORIDA SUPREME COURT

Sponsored by

THE APPELLATE PRACTICE & ADVOCACY SECTION

In conjunction with the

ANNUAL MEETING OF THE FLORIDA BAR

June 22, 2000
3:30 p.m. - 4:30 p.m.

Get your ***Just Desserts***

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ANNUAL MEETING
OF THE FLORIDA BAR

Reception

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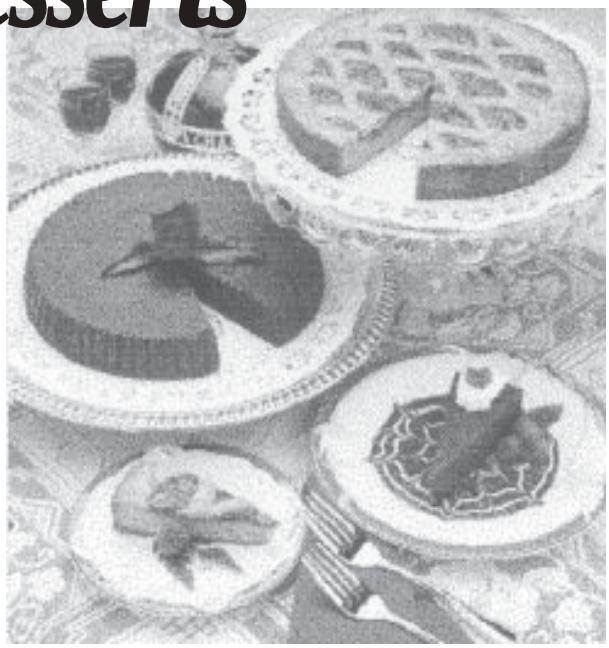

2000/2001 Budget Summary

(Approved by Executive Council, Jan. 2000)

Revenue	
Dues	28,750
Less 50% Retained by TFB	(14,375)
Total Dues	**14,375**
CLE Courses	1,214
Total Course Income	**1,214**
Other Revenue	
Videotapes	800
Audiotape Section Share	3,500
Member Service Programs	3,000
Investment Income	4,802
Book Sales	250
Sponsor Reception	3,000
Moot Court	5,000
Directory Ads	1,200
Total Other Revenue	**21,552**
Total Revenue	**37,141**
Expenses	
Staff Travel	1,692
Postage	2,100
Printing	600
Newsletter	2,900
Membership	500
Photocopying	300
Other Travel	300
Meeting Travel	400
Committee Expense	1,000
Public Info&Awareness	750
General Meeting	400
Bar Annual Meeting	5,000
Midyear Meeting	400
Section Service Program	2,500
Retreat	3,000
Directory	7,000
Awards	800
Writing Contest	500
Website	3,000
Legislative Travel	200
Council of Sections	300
Other	100
Moot Court	5,000
Total Expenses	**38,742**
Operating Reserve	**3,874**
Total Expenses	**42,616**
Net Operations	**(5,476)**
Beginning Fund Balance	**68,595**
Net Operations	**(5,476)**
Net Operations (ApCertRev)	**(1,769)**
Ending Fund Balance	**61,351**

Minutes of the Executive Council Meeting

January 13, 2000 • Miami Hyatt

I. Call to Order

The Chair, Lucinda Hofmann, called the meeting to order at 1:55 p.m. All persons present signed the attendance sheet.

II.Approval of the Minutes of the October 1999 Meeting

The minutes of the October 29, 1999 meeting of the Executive Council were approved unanimously.

III. Old Business

A. National Moot Court Regional Competition

Robert Glazier reported that the National Moot Court Competition received great reviews. He attributes this primarily to the participation of appellate practitioners and Judges in the competition. Issues to be addressed in the future include how often the Appellate Practice Section would like to sponsor the event and at what locations.

Mike Richman reported that the two teams advancing from the regional competition are South Carolina and the University of Florida. He also received many compliments from all the participants. He conveyed his deep thanks to the Appellate Practice Section. Due to the sponsorship, the Florida teams were given a level playing field. Special thank you is given to Robert Glazier for his outstanding work in coordinating the competition, and Angela Flowers for coordination of fund raising and awards.

In regard to future sponsorships, it was noted that the change in the format to include a wine reception made a lot of sense for the students and was well received. Mike Richman is in possession of a computer program to calculate scores that he will gladly pass on to the Section for use in future sponsorships. The schools in the region include South Carolina, four Georgia schools, and 10 Florida schools. Georgia will be hosting the competition in the year 2000. It would make sense to seek to sponsor the competition once every three years. Mike Richman recommends that the Section contact South Carolina and Georgia to seek an informal agreement regarding the location of the competitions. One other factor to consider in selecting the location is the availability of sufficient lawyers to judge the competition.

B. By-law Amendment (Deletion of Committee List)

Steve Stark and Raoul Cantero presented a written report in response to the executive council's request that the by-laws committee evaluate the committee list. A discussion followed regarding when preference forms are sent out and a need for flexibility in making appointments.

The ad hoc by-laws committee recommended that the Section retain certain Standing committees, i.e., nominating, continuing legal education, programs, legislation, and publications. Other committees would be created for a period of one year, as needed, and would be identified as annual committees. Special committees could be created at the chair's discretion.

Steve Stark moved to adopt the proposed by-law amendment. Raoul Cantero seconded it. Discussion followed. Raoul Cantero supported the by-law amendment as one designed to identify meaningful committees and create greater flexibility. The language of the proposed by-law amendment was refined following the discussion. Concern was expressed by some members in regard to making any changes to this aspect of the by-laws. The ones supporting the amendment felt like it was unfair to have members apply to serve on committees that were not active in a particular year, as well as to expend the resources to supervise such committees. A vote was taken and the proposed by-law amendment passed.

C. Cost of Appellate Transcripts

John Crabtree reported that discussion is continuing regarding the charges court reporters are demanding for appellate transcripts. Judge Webster reported that the Supreme Court is reviewing the issue, as is the Appellate Court Rules Committee, in conjunction with the Rules of Judicial Administration Committee. There may be constitutional dimensions in regard to creating a rule that impacts the Court Reporter's livelihood. The best way to resolve the matter would be by agreement through a dialogue with the Court Reporters.

IV New Business

A. Budget Approval

The 2000-2001 section budget was presented for discussion. Roy Wasson moved to adopt the budget as presented. Tom Hall seconded it. The motion passed.

B. Website

Steve Stark reported that the website is still under construction, but growing every day. The website currently contains photographs from the Moot Court Competition. Recommendation is made to add the proposed by-law change. Other timely information is to be added to the website including an update from the certification committee regarding the format of the appellate certification exam, committee reports, and changes to the Rules of Appellate Procedure adopted over the past four years. Special thanks are conveyed to Sam Lewis for his work on the website. The memberships' thoughts and recommendations are solicited.

C. Judicial Management Council on DCA Performance and Accountability

Tom Hall reported that the committee on Court of Appeal Performance and Accountability has prepared its report and recommendations. The document was circulated for review and comment. The deadline to complete the report is June 15, 2000 for consideration in the performance based program budget. The constitutional amendment to require performance and accountability analysis includes the Court System. Feedback regarding the report should be directed to Ben Kuehne. A

discussion ensued regarding the issues that arose in trying to establish criteria for evaluating performance of appellate courts. The issue of PCAs is connected. The only program that all agree is subject to numerical evaluation is the appellate mediation program existing in the 1st and 4th DCAs. The debate continues regarding how to evaluate work product in the adjudicatory function. Recommendations are on the table regarding a system of uniform classification of cases. There are national standards for performance and accountability of Courts. A request is made to include this on the Agenda for the June meeting for further discussion and perhaps at the Appellate Practice section retreat.

V. Committee Reports

A. Amicus Curiae

John Crabtree reports that, as mentioned earlier, the issue regarding the Court Reporters is on hold at this time.

B. Appellate Rules Committee Liaison

Raoul Cantero reported that the Appellate Rules Committee has finished its four year cycle. Proposed rules will be submitted for comments shortly.

C. Continuing Legal Education

Jack Aiello reported that the Appellate Certification Exam Review Seminar is scheduled for January 28, 2000. The Federal Appellate Seminar should be in late May. During the calendar year 2000-2001, the Appellate Practice Workshop is scheduled for late July. The Hot Topics seminar will be scheduled every other year and will be held in late October. The certification review course will be presented again in January 2001. A joint program with the Administrative Law Committee is scheduled for Spring, 2001.

Tony Musto reported that the Florida Bar CLE Committee was beginning a project aimed at the presentation of continuing legal education courses to be distributed on a national basis. The Appellate Practice Section is invited to participate and has the opportunity to get in on the ground floor. This program would offer substantial revenue making opportunity.

Jack Aiello announced that the Appellate Practice Section had been invited to submit a proposal to participate at the Annual Meeting in the President's showcase seminars. The Section submitted as a proposal the October seminar "What Every Trial Lawyer Needs to Know About Preservation of Error and Appeal." The president of The Florida Bar is to select which CLEs will be showcased. Participation in this event would offer good exposure for the Section.

Tom Hall reported regarding the Stetson Appellate Practice Workshop. It will take place during the last week of July or the second week of August. The goal is to obtain full enrollment in the program. Because of the huge commitment made by faculty to participate in this program, it does not appear justified unless we obtain full enrollment. The workshop will offer twenty-four hours of advanced appellate CLE. A proposal was advanced to provide discounts to government lawyers if the enrollment goals are not reached. Last year, 24 lawyers participated, 5 of whom were government lawyers. The government lawyers received a $100.00 discount. The workshop must attract a minimum of 16 people to break even.

D. Programs

Caryn Bellus-Lewis reported that the Programs Committee is on schedule and planning the events for the Annual Meeting. Once again, the major programs will include the discussion with the Supreme Court and the dessert reception where the Justice Adkins Award will be given. These events will be advertised on the website as well as in The Florida Bar News. The committee is meeting in the afternoon to draft advertisements for the event.

E. Publications

Hala Sandridge reported regarding the Publications Committee. The Section has four publications, three of which are written and the website. The website will be adding old articles from *The Record* for access by the Bar. They will be organized topically and by title. The committee is also looking into including full Florida Bar articles or a link to allow users to access The Florida Bar's webpage.

There is ongoing discussion regarding how much information to place on the website for unlimited access to all. There is consensus that the old articles should be placed on the website and would not preclude people from wanting to join the Section. The same is true for The Guide. Old articles are defined as those that are one year old.

Kim Mello reported regarding *The Record*. They continue to experience some problems with mailing but are close to correcting this. The Section's appreciation is bestowed upon Kim Mello for the great job she is doing as Editor.

The Florida Appellate Practice Guide is scheduled for distribution in February and will again have the purple cover.

The Florida Bar Journal permits a section to publish five articles per year. The Section has submitted three articles for publication to date. A discussion followed regarding the article submitted by Joel Eaton. This will be submitted for either the March or April issue, and a counter point article is slated for submission for the May issue.

continued,next page

Minutes
from preceding page

The Publications Committee will, this year, create procedure manuals regarding how each of the various publications operates. These will describe how to successfully and timely run the publications.

Point of information: The DCAs need to be added to the Appellate Practice section mailing list.

F. Retreat

Cindy Hofmann reported that the retreat is scheduled for April 28 through 30th, 2000. All of the executive committee is requested to attend. The meeting facilitator is Lisa Gunther. The program will begin Saturday at 8:30 a.m., and go until 5:00 p.m. The program will involve goal setting and designing a strategic plan to carry this Section the next two to three years and, thereafter, the next five years. A retreat meeting will be held later today. Each person attending the retreat is asked to call two or three section members in advance and ask several questions designed to elicit ideas from others to be communicated during the retreat planning session.

It is also reported that the membership committee intends to distribute a survey in the Spring issue of *The Record* seeking to determine how well the Section is providing services to its members. They said that this survey will be returned in time for consideration at the retreat.

The CLE will provide three hours of ethics credits. This professionalism seminar will be presented by Paul Remillard. The format includes hypotheticals that address appellate ethics issues and an organized discussion of these controversial situations.

G. Other

Tom Hall reported that the Administrative Law Committee is examining the suspension of professional licenses and stay on appeal rule. The rule change did pass. He is also working with the CLE committee.

Debra Sutton reported that the Appellate Certification Liaison Committee is seeking to obtain permission from the DCAs to display brochures in the court's lounge on becoming board certified.

VI. Informational

A. Statement of operations

As of the end of November of 1999, revenues and reserves are of good standing.

B. Membership

As of January 3, 2000 the Section consists of 1,063 members.

VII. Chair's Remarks

Cindy Hofmann makes note of the town meeting that was held on multi-disciplinary practice. Ben Kuehne reports that he attended the town meeting and the discussion focused on educating lawyers regarding multi-disciplinary practice (MDP). There are various levels of understanding among lawyers. The Florida Bar is looking at whether to change the rules that allow non-lawyers to own legal businesses. The Florida Bar will make a decision soon on this very controversial issue. The appellate practice area could become involved as it relates to the mediation practice. There are intellectual and practical issues to be considered.

VIII.Adjournment

The meeting was adjourned at 4:00 p.m.

committee reports

CLE COMMITTEE

Hot Topics in Appellate Practice

The Section will be once again hosting its Hot Topics in Appellate Practice seminar on October 12, 2000. The program, which has become one of the most successful for the Section, will once again feature appellate judges from each of the five district courts of appeal and from the Florida Supreme Court on topics of continuing and current interest in appellate practice. Among the speakers expected to participate are Justices Anstead and Pariente from the Florida Supreme Court, Judge Griffin from the 5th DCA, Judge Padovano from the 1st District, and Judge Altenbernd from the 2nd District.

Appellate Practice Certification Exam Review Course

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

Federal Appellate Seminar

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

Appellate Practice Workshop

The Appellate Practice Workshop, which has been held each of the past two years, is being held again this year at Stetson University sometime during the summer. 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.

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 200-2001 year. Anyone who is interested in serving on the Committee should contact Austin Newberry at The Florida Bar.

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

A Few Words with Judge Threadgill

Judge Edward Threadgill joined the Second District Court of Appeal in March, 1987. He graciously agreed to the following interview in January, 2000, with Tom Elligett of Schropp, Buell & Elligett.

You were born in Mobile, Alabama, and earned your college and law degrees at the University of Florida. How did you get to Gainesville?
After a three-year term in the Army, I started college at FSU under the GI Bill. After completing a two-year course in pre-engineering, I transferred to the University of Florida and got a degree in Industrial Engineering. I then enrolled in law school and graduated in 1962.

Has your college major in industrial engineering assisted in any appeals?
While engineering is more of a precise science than law, I have found that the engineering training has helped somewhat in analyzing some difficult problems. It is still a matter of collecting all of the facts and plugging them into a formula to arrive at a correct answer. So, I would answer your question in the affirmative.

Does having served as a trial judge for twelve years help you ferret out when a trial court properly granted a new trial on the grounds of alleged harmful error, versus when the judge just disagreed with the result?
Yes, I think so. I sat through many jury trials, heard the same evidence the jury heard and completely disagreed with the verdict. But I felt that there was nothing I could do about it, because the jury's decision was perfectly legal and no error had been committed.

As a former trial judge, do you see differences in trial practice skills where the emphasis is often on presenting facts, and appellate skills that focus on legal issues?
Yes, I can see a lot of difference. Some of the best appellate lawyers would make bad trial lawyers and vice versa. Occasionally we get a trial lawyer up here, arguing his case just as he did to the jury in the trial court. Lawyers arguing appeals should know exactly what we need to hear and concentrate on that, both in their brief and at oral argument.

Appellate courts note they use 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?
A PCA might be issued in that instance because the panel disagrees with the argument that there is no clear precedent; or, maybe the case is not a good one to write about because of its unique facts; or, maybe the litigant did a poor job of explaining why a written opinion is necessary. There are also times when the trial court may have ruled correctly and there is really nothing that the panel thinks is important enough to write about. Also, there are instances when the panel believes the precedent is clear enough and a written opinion would not contribute to Florida jurisprudence and could cause confusion or conflict. There are many other reasons why cases are PCA'd. The panel of judges hearing the case is better qualified to determine when to write an opinion than either of the litigants since opinions are usually written to provide precedent for future litigation.

Not to rush you, but what are your plans for when you retire from the Second District?
I'll retire at age 70 which is about two years away. I hope to do some senior judge work, but would also like to play more with some of my hunting, fishing and golfing toys.

In a prior interview in this series, one of your colleagues remarked on your sense of humor. Do you have a favorite story you can share with us?
When I first came on this court, it was smaller and a lot more formal than it is today. Some of the judges were very particular about procedures and appearances. At one photo session, after we were arranged according to seniority, of course, Vince Hall and I put on our gorilla masks and the photographer snapped the picture before the senior judges discovered it. That photo is somewhere in this building.

Thanks for visiting with us.

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

Attorneys Certified in Appellate Practice

The Board of Legal Specialization and Education along with the Appellate Practice Certification Committee have certified the following individuals in appellate practice. The examination was administered on March 9, 2000 in Tampa. Congratulations to all!

David Robert Cassetty, Coral Gables
Jonathan Alan Glogau, Tallahassee
Stephen R. Senn, Lakeland

Scenes from the Section Retreat

April 28-30, 2000
Marriott Hutcheson
Stuart, Florida

Ben Kuchne and Susan Fox explain their group's vision for the future of the Section.

Judge Philip Padovano addresses the first Appellate Practice Section Retreat.

A small group discussion at the Section Retreat.

Section Chair, Cindy Hofmann, leads a group in working on an historical time-line at the Section Retreat.

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