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Message from the Chair

By Jack J. Aiello



As the incoming Chair, I recognize my good fortune in taking the reins at a time when the Appellate Practice Section is, by all accounts, thriving. In its nine years, the Section has grown from an initial membership of 175 to today's total of almost 1,400. Taking our mission statement seriously, the Section just completed its second retreat, at which our course has been, once again, made clear and our goals

refined. Now it's time to follow through and carry out the plan of continuing to pursue the mission of the Section in new and better ways.

I spent my first half-day as Chair, at the End-of-Year Meeting in Orlando, searching for clues as to where my and our focus should be this year. Knowing that this typical activity-filled day at the End-of-Year Meeting would be capped off by our annual Dessert Reception, I went to dinner early with other Section members and officers. Enrapt by discussions -- mostly unheated -- about everything from the true value of oral argument

and the real impact of the legislative budget cuts to my newborn son's mysterious facial expressions and night-time jungle sounds, we lingered a bit. On my way to the Desert Reception, about forty minutes after the starting bell, I observed a briskly moving, casually-dressed man near the elevator lobby, sporting a mischievous smirk and toting an over-filled plate of what looked like amaretto cheesecake slices and generous portions of tiramisu. As the Reception room came into view, I may have also caught a peripheral glance of a lady with a poorly-folded kerchief

See "Message from the Chair," page 2

Section Retreat a Huge Success!

by Angela Flowers



The Appellate Practice Section held its second Section Retreat May 1-3, 2003, at the Don CeSar Beach Resort & Spa. The focus of the retreat was to gather section members for camaraderie and long range planning. The almost thirty members who attended were provided with a stunningly beautiful beach location in which to approach the tasks at hand.

The retreat began Thursday evening with an onsite cocktail reception un-

der a covered pavilion overlooking the Gulf of Mexico. Friendships, old and new, flourished. Dinner soon followed in the same location graced by a spectacular west coast sunset.

Section members gathered for the workshop Friday morning. The intent of the workshop was to identify goals, set priorities and elicit commitments to carry the section through the next few years. The program was facilitated by David Freeman of Whetstone Consulting. David, a lawyer himself, guided us through a well organized and very productive workshop.

We began with an overview of our agenda followed by group introduc-

tions. We quickly launched into the defining of expectations and identification of top issues. The Section's Mission Statement, which was

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about to burst forth with fruit fritters and chocolate covered strawberries. I gave it no thought.

Once I arrived, the crowded room was hopping -- probably not just the product of the usual anticipation of the announcement of the Adkins and Appellate Pro Bono Awards. Most of the Section's officers and many of the Executive Council were there, the Supreme Court was represented, as were most of the DCAs. I could barely spy the dessert "staging area" along one side of the room and the amply-stocked open bar on the other. No doubt, this is the place where the high-minded aspirations of a Florida Bar section meet the low-nutrition temptations of real life.

As I pushed toward the first of several dessert tables and caught but a glimpse of just a few available sugary things, I was intercepted by one of our members who wished to discuss some of the initiatives established at the Section Retreat in May. She was particularly enthusiastic about how the Section's website is really starting to take shape and about the plans for continued improvements and additions online, including the use of Listserve to send "blast" e-mails to keep membership informed, more useful appellate content, and many other exploratory ideas. She had some thoughts about the initiative to market appellate skills more efficiently to trial lawyers and the interest in enhancing social events and increasing judicial participation in all of the Section's

events. We discussed the renewed interest in outreach and the establishment of the new Outreach Committee that will focus its attention on building relationships between the Section and the judiciary as well as marketing appellate skills; we briefly touched on the implementation of our appellate mentor program. When her companion arrived to present her with some sort of torte du jour, she excused herself.

So I eagerly stole toward another of the dessert tables. I got close enough to take note of three or four oversized plates that looked to have near-microscopic remnants of -- my guess -- key lime pie, crème brûlée, something with nuts, and, because they are my favorite, chocolate éclairs -- only remnants. Just then I suffered a momentary flashback to Nurse Diesel's famed appraisal that "those who are late do not get fruitcup." A little anxious, I looked for another table, as I considered that my quest for guidance on my focus as Chair was becoming sidetracked. Again, I was intercepted by a Section member who expressed an interest in joining the CLE Committee. Having just heard the CLE report at the day's Executive Council meeting, I was able to share that the work of the Committee has never been more broad-based, with numerous planned CLE events, including several co-sponsorships with other sections. In July, we will hold the next Stetson Appellate Workshop, a brilliantly conceived learning-by-doing three-day program, where attendees who either practice or are interested in appellate practice, work hypothetically and learn incontrovertibly, side-by-side with some of the finest appel-

late judges and practitioners from around the state. As he plowed through the slice of chocolatey cake he was holding, I mentioned the bi-annual preservation of error seminar coming up on October 24, co-sponsored with the Trial Lawyers Section, that has been so well-attended in the past. We discussed the new co-sponsored seminar with the Criminal Law Section, set for November 14 in Miami, entitled "Let My People Go, Or Not!", which has an outstanding slate of judges, justices and practitioners scheduled to speak. The member asked me whether I had plans to sample one of the desserts, but cut off my response with an inquiry about appellate certification and the Appellate Certification Review Course that the Section holds every January.

After acknowledging the potential co-sponsored worker's compensation and family law appellate seminars, we parted ways. So I sought to diplomatically muscle my way through the throngs toward the other dessert tables. Briefly alone with my thoughts in a very crowded place, I wondered again what I could do to serve the Appellate Practice Section in its greatest areas of need this year. As I perused another table with several platters of morsel-remnants of stuff-that-must-have-tasted-great-that-I-was-never-going-to-get, I spied a cappuccino truffle that had escaped to the floor. I struggled to be mindful of where I was and to restrain myself. Fortunately, I was rescued from the dilemma by a long-time Section member and officer, who wanted to discuss the impending success of our Pro Se Appellate Handbook (and who kindly pointed me in the direction of the open bar, which was still quite open). Of course, it was more important than usual to imbibe carefully because I still remembered exactly where the fallen truffle was.

On my final trip back toward the dessert staging area, I saw the waning of the enormous number of people coming and going and witnessed the now indisputably barren array of specialty dishes. Deserted by the desserts, I realized that we had become victims of our own success. Later, several Bar members confirmed to me that the word is out: our Dessert Reception has become one of the must-attend events at the End-of-Year Meeting. No longer having choices,

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

- Jack J. Aiello, West Palm Beach Chair
- John G. Crabtree, West Palm Beach Chair-elect
- Thomas D. Hall, Tallahassee Vice-Chair
- Susan Fox, Tampa Secretary
- Hon. Patricia J. Kelly, Key Biscayne Treasurer
- Siobhan Helene Shea, Palm Beach Editor
- Valeria Hendricks, Tampa Assistant Editor
- Austin Newberry, Tallahassee Program Administrator
- Lynn M. Brady, Tallahassee Layout

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my lone consolation was that Messrs. Haagen and Daaz, humbly positioned at their separate station near the door, kept me (and several others) from being shut out completely.

The next morning, on the way to the airport, as my cabby stuffed the last chunk of a suspiciously-familiar looking pastry into his mouth, it occurred to me that you just can't overestimate the power of a good dessert in bringing people together and bridging gaps. It was before 6:00 a.m. at the time and my brain doesn't usually awaken until at least 8:30, but I honestly considered for a moment that the Dessert Reception may be the most important thing that we do. I resolved that, as one of our showcase events, we cannot afford to have

the trough completely emptied. Of course, in light of the many worthy pursuits of this Section, the Dessert Reception, simply for dessert's sake, cannot credibly top off the list of priorities for any given Bar year. However, it is clear that, as one item on our agenda, we must put the dessert back into the Dessert Reception.

As noted at the outset, the Section is in stellar condition. If, during the next year, we can hold the ship on course, I will feel like I have achieved the "ungoal" of not messing things up. If, however, we can work the plan and explore and develop some of the new ideas identified and supported at the Retreat (and, yes, stem the defections of the confections) -- these would be worthy accomplishments.

With that in mind, for those of you who have submitted Committee Preference Forms indicating your willingness to become involved in one or more of the Section's committees, please arrange your schedules and make the time to attend the next Appellate Practice Section meeting, which is the General Meeting in Tampa on September 4. For others of you who are interested in serving on a committee, please contact me or Austin Newberry at The Florida Bar, and let us know of your interest. If you do, I believe you will enjoy, as I have, the rewards of working (and, with any luck, dessert-gobbling) side-by-side with some of the finest members of The Florida Bar. I hope to see you at future Bar meetings.

CLE Committee Update

By Steve Brannock, Chair

Despite the early hour, we had an overflow crowd at our appellate CLE Committee meeting in Orlando at the annual meeting. Thanks to all of you who attended, especially those of you who attended for the first time. For those of you who could not attend, despair not, there are still volunteer opportunities out there! Here is a report of our current Committee activities. If you would like to volunteer or have more questions, please contact Steve Brannock, phone (813) 227-6611, or e-mail sbrannoc@hklaw.com.

Preservation of Error. On October 24, 2003 we will present our bi-annual Preservation of Error seminar, jointly sponsored by the trial lawyers section. The seminar will be held at the Marriott Marina in Ft. Lauderdale. Tracy Carlin and Calianne Lantz co-chaired this seminar assisted by Tom Elligett, Allyn Giambalvo, Denise Powers, and Kim Mello. The committee has done an excellent job putting the seminar together. **Please get the word out to your friends, partners and associates about this great seminar.** As usual, we have an excellent lineup of speakers and topics (including judges from around the state).

Let my People Go, or Not! On November 14 at the Downtown Miami Hyatt we will be presenting a

criminal appellate seminar co-sponsored by the criminal law section. Steve Wisotsky has chaired the seminar with the assistance of Calianne Lantz, Ben Kuehne, Donna Koch, and Siobhan Shea. The agenda looks great. **Once again, spread the word.**

Appellate Certification Review Course. Our annual appellate certification review course will be held in January 2004. David Cassetty has agreed to chair the subcommittee with the assistance of Rebecca Creed and Kim Mello. The time and location are yet to be determined although we are exploring the possibility of bringing the seminar to Orlando for the first time.

Workers Compensation Appellate Seminar. We're hoping to schedule a seminar on appellate issues in workers comp cases to be co-sponsored by the Workers Compensation Section. We're looking at Orlando as the seminar site. Rebecca Townsend will chair the committee with Judge Pecko, aided by Tom Hall. **Please let me know if you are interested in assisting with this committee.**

Family Law Appellate Seminar. We've formed a subcommittee chaired by Tracy Carlin, with the assistance of Deborah Marks, Siobhan Shea, Shannon Carlyle, and Nancy

Gregoire. Deborah is a past chair of the family law section and might be able to enlist the family law section in a joint venture.

Lunchtime Telephone Conference Seminars. We're exploring the possibility of starting a monthly lunchtime series of seminars on issues of current interest to be held by telephone conference. To participate, you'll just need a call in number. You bring your lunch to your desk, turn on the speakerphone and get an hour or two of CLE credit on a current hot topic. John Mills has agreed to chair a committee to develop this seminar series assisted by Denise Powers, Matt Conigliaro, and Louise McMurray. **Let the members of the committee know if you have a topic and/or and interest in being a speaker at one of these programs.**

Circuit Court Appellate Clerk Training. Tracy Carlin is working with Jon Wheeler, the clerk of the First DCA, on training materials for circuit court appellate clerks. The idea is to introduce some standardization in the way appellate records are prepared around the state. **If you have any ideas about the ideal format for an appellate record, please e-mail Tracy at tcarlin@appellate-firm.com.**

Section Honors Dan Pearson and Siobhan Shea

By Valeria Hendricks, Co-Editor



SIOBAHN SHEA

This year, the Appellate Practice Section chose Dan Pearson as the recipient of its James C. Adkins Award for the many contributions he has made to the practice of appellate law in Florida.

Pearson earned his *juris doctorate* from Yale University in 1958 and started the practice of law with the United States Attorney's Office for the Southern District of Florida. He later entered private practice in a firm specializing in white collar criminal defense cases.



DANIEL PEARSON

In 1980, Governor Bob Graham appointed Dan Pearson to the Third District Court of Appeal, where he authored over 1,000 opinions during his nine years of service on the court. Pearson left the bench in 1989 to

join Holland & Knight's Miami office, where he formed an appellate practice group. A Board Certified Appellate Practitioner, Pearson has briefed and argued scores of appeals in Florida's state and federal appellate courts. He was Chair of The Florida Bar's Appellate Certification Committee. He has also served on the Judicial Nominating Commission for the Third District Court of Appeal and is on the Federal Magistrate Selection Panel for the Southern District of Florida.

Dan Pearson has taught and written extensively on appellate practice and procedure, and has received many awards from the legal community. The Appellate Practice Section was proud to present the 2003 Adkins Award to Dan Pearson, who honors our profession and specialty with his high standards of practice.

Siobhan Helene Shea received the Section's second annual Pro Bono Award in recognition of her many hours of public service to those in need of legal representation but who are without resources to hire an attorney. This year she represented the Florida Association for Women Lawyers and the National Organization for Women's North Palm Beach

County Chapter as amici in an action challenging the unconstitutional privacy violations of the adoption statute. The appeal was successful, and was instrumental in bringing about changes in the legislation to provide for a putative father registry, allowing parents to provide notice in adoptions in Florida without violating the right of privacy.

On a personal level, Shea also served this year as a mentor to a young girl incarcerated in a high risk juvenile detention facility by working each month with the Breakfast and Books program. Shea underwent additional background checks to also provide the girl with additional individual mentoring, tutoring her, and helping her prepare for her return to society.

Shea has been awarded the Florida Bar President's Pro Bono Service Award and the American Immigration Lawyers' Association Human Rights Award for her appellate advocacy on behalf of Haitian refugees fleeing political persecution after the overthrow of Aristide. She also worked pro bono as "of counsel" in *Haitian Centers Council v. McNary*, in which she negotiated terms of discovery between the United States government and Haitian Centers Council and conducted extensive discovery of government files.

Shea also designed, developed and ran community involvement program while maintaining full caseload of appeals at the Public Defender's Office in the Fifteenth Judicial Circuit. Shea continues to write articles and to speak at community organizations and schools about appeals and the legal system.

Shea is an "AV rated" appellate attorney in private practice in Palm Beach County, Florida, representing clients in all stages of civil and criminal appeals in state and federal courts, extraordinary writs and post-trial motions. She earned her *juris doctorate* with honors from the University of Miami School of Law.

Valeria Hendricks, a Florida Bar Board Certified Appellate Practitioner, is a partner with Davis & Harmon, P.A. in Tampa.

The Florida Bar Appellate Practice Section *General Meeting Schedule*

Thursday, September 4, 2003

Tampa Airport Marriott, Tampa, Florida

Committees:	10:00 a.m. - 12:00 noon
Executive Council:	2:00 p.m. - 4:00 p.m.
Reception:	4:00 p.m. - 6:00 p.m.

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

The Record relies on submission of articles by members of the Section. Please submit your articles on issues of interest to appellate practitioners to Siobhan Shea, Editor, P.O. Box 2436, Palm Beach, FL 33480, or e-mail to Shea@sheappeals.com

BOOK REVIEWS:

Advocacy on Appeal and Florida Civil Procedure

Reviewed by Scott D. Makar*

No matter how long a lawyer has been in the business of writing appellate briefs and arguing in appellate courts, it is never a bad idea to return to the basics. The “first principles” of appellate practice -- such as having a coherent theme, knowing your audience, etc. -- are oftentimes lost in the hectic pace of meeting deadlines, conferring with clients and other counsel, and so on. A compact handbook that provides a succinct statement of such principles in a structured and reader-friendly way is always a welcome addition to the appellate bookshelf.

Enter *Advocacy on Appeal* (West Group 2001) (204 pages) authored by Professor Bradley G. Clary (Clinical Professor and Director of Legal Writing), Associate Dean Sharon Reich Paulsen, and Adjunct Professor Michael J. Vanselow, all of the University of Minnesota Law School.

The key difference between *Advocacy on Appeal* and other appellate practice materials is its limited, but highly important, scope. It is not an exhaustive treatise or text. It does not explain local rules or how to preserve error at trial. It does not analyze complex jurisdictional issues. None of these is its purpose.

Instead, it offers -- in the authors’ words -- a “cookbook” or “formula” for constructing and presenting appellate arguments. While it may seem obvious, the “basic recipe” for appellate advocacy is to: (1) “Decide where you are going”; (2) “Give the court a reason to want to go there”; and (3) “Give the court a permissible legal route to go there.” Simple, right?

Well, according to the authors (who have 59 years of collective experience in observing appellate advocacy), the “single biggest defect in ineffective arguments is that the advocate never fully decided what to say; so ultimately the advocate did not say it.” This problem can manifest itself in a number of ways, such as trying to make too many points on

appeal, raising a number of points but only arguing some, having a key point but getting bogged down in unnecessary minutiae, and so on.

What to do? Pull out the cookbook! Use the ingredients you have (applicable facts/law) to craft an “argument which (like a good meal) your audience will eagerly consume.” Chef Emeril Lagasse, look out!

Advocacy on Appeal also has useful “guidelines” in preparing briefs and oral arguments, such as a “Do” and “Don’ts” list. A sort of “Goofus and Gallant” of Highlights® fame for appellate lawyers. For example, it may seem obvious that one should “Stop mid-sentence if a judge interrupts.” But, how often have we seen others not follow this maxim? The authors say that pens or “loose papers” should not be brought to the podium. Many of us do so, before our argument is called or during opposing counsel’s argument, but -- upon reflection -- I cannot recall the last time I had time to write something down during my own argument. Loose papers, of course, are simply an invitation for an embarrassing episode of “52 Card Pickup.” A copy of “*Advocacy on Appeal*” is an excellent reality check that provides lots of great practical tips as well as useful exercises in preparing your next case.

Okay, now that you’ve got a good appellate cookbook on your shelf, why would you need a Florida Civil Procedure treatise? The answer is that effective appellate practitioners must have a working knowledge of procedural rules in the lower tribunals.

An excellent and useful addition to the marketplace is Bruce J. Berman’s *Florida Civil Procedure* (West 2003) (958 pages). Mr. Berman, with able insights and assistance from distinguished appellate judges and civil practitioners, has produced a well-researched and practical guide to the civil rules and their history and nuances.

Florida Civil Procedure has a number of features that distinguish it from our such guides. One is an index that leads readers quickly to relevant sections. Another is a useful set of appendices that includes the rules and mediation/arbitration provisions, as well as a table of “time frames” for determining compliance with the Rules and a “tracing table” that correlates the Florida Rules to the Federal Civil Rules.

The most notable aspect of the book is its detailed focus on the historical development of the Rules. Insights into “how” and “why” specific rules have been amended are referenced in footnotes and text. The author, who serves on the Florida Bar’s Civil Procedure Rules Committee, has accumulated a wealth of knowledge and perspective into the evolution of particular rules as they have been amended and judicially construed over the years. In doing so, he has done extensive research as well as gathered wisdom from judges and practitioners who have served on the Committee.

The net result is a concise and useful publication that is conveniently softbound to fit in a briefcase or bookcase. From an appellate practitioner’s perspective, *Florida Civil Procedure* has a number of index entries regarding appeals and review of trial court orders. Its greater importance is that it is a well-written and well-researched presentation of the Rules synthesized from the perspective of an experienced and thoughtful practitioner. Those who have worked with or served on committees with Mr. Berman can attest that his analysis of a legal topic is methodical and meticulous. *Florida Civil Procedure* reflects those virtues.

Scott D. Makar is an Assistant General Counsel in the Office of General Counsel, Appellate and Local Government Section, City of Jacksonville, Florida.

RETREAT

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drafted at the prior retreat, formed the basis for our discussion. The Mission Statement declares:

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.

With these goals in mind, the group identified the following six initiatives. (1) Foster a community of appellate practitioners and judges; (2) Provide education and training; (3) Facilitate the exchange of information and ideas; (4) Heighten the awareness of the special role of appellate practitioners; (5) Cultivate excellence in appellate courts; and, (6) Strengthen internal operations. We then broke into small groups,

each of which was assigned the task of developing strategies to implement an appointed initiative. At the end of the day, the small groups reported back to the group at large with details of their action plans. We regrouped the following morning for a final review and discussion.

We accomplished a tremendous amount of work in a relatively short period time and are already reaping the benefits. Some of the immediate results include an improved website, the initiation of listserv communications, the addition of new CLE topics, the formation of an Outreach Committee and a Leadership Committee. You may access a detailed report of what occurred during the workshop at our website.

Many thanks are due to Hala Sandridge and Austin Newberry for their hard work and dedication to the success of this event. The Section plans to schedule the next retreat to occur in 2006 in a similarly attractive location. If you have an interest in becoming actively involved in the section or just enjoy hanging out with other appellate lawyers, you are strongly encouraged to attend the next retreat.

*Angela C. Flowers,
Immediate Past Chair*



Incoming Secretary, Susan Fox and Incoming Treasurer, Judge Patricia Kelly at the Executive Council meeting.



Outgoing Chair, Angela Flowers thanks Hala Sandridge for her work in planning the Section Retreat.



Smiling Retreat participants at a reception, are (L-R): Incoming Chair Jack Aiello; former Section member Justice Raoul Cantero; Incoming Chair-elect John Crabtree; Outgoing Chair Angela Flowers and 3rd DCA Judge Alan Schwartz



Incoming Chair, Jack Aiello and Program Administrator Austin Newberry present Outgoing Chair Angela Flowers a memento for her year of service to the Section as chair.

CHECK OUT THE SECTION'S UPDATED WEBSITE!

<http://www.flabarappellate.org>



If you are interested in becoming Board Certified, please contact the area's staff liaison below:

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850/561-5842**

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lcook@flabar.org

* Criminal Trial (2nd Cycle)

* Criminal Appellate (2nd)

Cherie Morgan - ext. 6793

cmorgan@flabar.org

* Civil Trial (1st Cycle)

* Elder (1st)

* Antitrust & Trade Regulation (2nd)

Kate Wasson - ext. 6792

kwasson@flabar.org

* Aviation (1st)

* Labor & Employment (1st)

* Workers' Compensation (2nd)

Pausha Pendarvis - ext. 6791

ppendarvis@flabar.org

* Marital & Family (1st)

* Immigration & Nationality (1st)

* Wills, Trusts & Estates (2nd)

Carol Vaught - ext. 6798

cvaught@flabar.org

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Michelle Acuff - ext. 6795

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*The Honorable Harry L. Anstead
Justice, Supreme Court of Florida*

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- ◆ Admiralty & Maritime
- ◆ Antitrust & Trade Regulation
- ◆ Appellate Practice
- ◆ Aviation Law
- ◆ Business Litigation
- ◆ Civil Trial
- ◆ City, County & Local Gov't
- ◆ Criminal Appellate
- ◆ Criminal Trial
- ◆ Elder Law
- ◆ Health Law
- ◆ Immigration & Nationality
- ◆ International Law
- ◆ Labor & Employment Law
- ◆ Marital & Family Law
- ◆ Real Estate Law
- ◆ Tax Law
- ◆ Wills, Trusts & Estates
- ◆ Workers' Compensation

* To review the specific standards for each practice area, please refer to Chapter 6, Rules Regulating The Florida Bar, in your directory issue of the Bar *Journal*.



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Minimum Requirements*

- ✓ A minimum of 5 years in the practice of law
- ✓ Substantial Involvement
- ✓ Passage of an exam
- ✓ Satisfactory peer review
- ✓ Completion of the certification area's CLE requirement



Important Dates

1st Cycle Filing Period:

July 1 - August 31

of each year

2nd Cycle Filing Period:

September 1 - October 31

of each year

Attorneys Certified In Appellate Practice

The Board of Legal Specialization and Education along with the Appellate Practice Certification Committee has certified the following attorneys in appellate practice, effective June 1, 2003.

Congratulations!!

Charles Franklin Beall, Jr. - Pensacola

Robert Erich Biasotti - St. Petersburg

Michael T. Burke - Ft. Lauderdale

Sharon C. Degnan - Plantation

Dorothy F. Easley - Hollywood

June Galkoski Hoffman - Miami

John S. Mills - Jacksonville

Jack R. Reiter - Miami

CERTIFICATION: Make It Your Goal Too!

Filing Period for March 2004 Examination: July 1, 2003 through August 31, 2003

Contact:

Carol Vaught

Legal Specialization and Education

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