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The Record

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Message from the Chair

by Lucinda Hofmann


HOFMANN

The 1999-2000 Bar year promises to be a very busy and productive one for the Appellate Practice Section. That's right! - the Appellate Practice Section. At the Section's General Membership Meeting held at the Bar's Annual Meeting last June, we voted to shorten the name of the Section from Appellate Practice and Advocacy Section to Appellate Practice Section or if you prefer acronyms from "APAS" to "APS." The change will not be official until it is approved by the Florida Supreme Court. We will keep you posted.

Two important first-time-ever events will take place during the coming year. The Section will sponsor the upcoming Southeast Regional Moot Court Competition. Mike Richmond, Professor of Law at Nova Southeastern University, spearheaded the effort to bring the Regionals to Florida on an alternate-year basis and thus enable Florida law schools to share the Regionals with Georgia law schools, which have hosted the event for the past twelve years. This year the Competition will be hosted by Nova Southeastern and will take place from November 16-18, 1999. The Section's Executive Council has formed a sponsorship committee to work with the Florida law school hosting the event. If you have any interest in participating as an oral argument judge or as a brief grader this November, please contact Robert Glazier in Miami, who will be happy to sign you up.

And, in case you haven't heard, the Section will be holding its first Re-

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Announcing Florida's First Regional Moot Court Competition

by Robert Glazier

The Southeast Regional Tournament of the National Moot Court Competition will be held in Florida this year, for the first time. Students from law schools throughout the South will be participating. The organizers of the competition have asked that members of the Appellate Practice Section serve as judges.

The competition will be held on November 12th to the 14th at Nova Southeastern Law School. We anticipate that the judges for the semi-final and final rounds will be judges from Florida and federal appellate courts. The primary rounds will be judged by appellate lawyers.

All Section members will soon receive letters asking them to serve as judges or brief graders. We hope that Section members – especially those in southeast Florida – will volunteer. If you can't spare the time but would be willing to contribute towards the cost of trophies and other awards, we would welcome your donation.

The Appellate Practice Section's committee assisting the competition includes Judge Gerald B. Cope, Jr., Prof. Michael Richmond, Robert S. Glazier, Jack Shaw, Robert Sturgess, and Angela Flowers. For further information, contact Robert Glazier at 305/372-5900, or glazier@fla-law.com.Appellate Practice and Advocacy Section

INSIDE:

Just What is a Civil Supersedeas Bond and Do I Need One?

by Angela C. Flowers[1]

The entry of a money judgment against a litigant creates a creditor debtor relationship. Appeal of a final judgment by the judgment debtor does not prevent the creditor from executing on the judgment.[2] However, Florida Rule of Appellate Procedure 9.310 (b)(1) provides for the automatic stay of execution on a money judgment upon the posting of a supersedeas bond during the appellate process.[3] The bond acts to supersede the judgment pending resolution of the appellate proceeding. This article discusses the when, where, how and why of superseding a money judgment during the pendency of an appeal.

A money judgment is subject to enforcement[4] when recorded and upon the passage of the time for serving a motion for rehearing or a motion for new trial.[5] If a timely motion for rehearing or motion for new trial is filed, no execution may issue until the motion is determined.[6] Once the motion is determined, a party wishing to appeal from the money judgment may automatically stay enforcement by filing a notice of appeal and posting "a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest."[7]

The provision for an automatic stay of a money judgment is an exception to the general rule that the stay of a final judgment must be sought by motion in the lower tribunal.[8] The exception applies only to judgments wherein the sole relief granted is for the payment of money.[9] The rule establishes a fixed formula for automatically staying enforcement of a money judgment.[10] The lower tribunal is without discretion to grant or deny a stay if the order under review is solely for the payment of money and the party invokes the automatic stay provisions of the rule.

While the right to appeal is not dependent upon obtaining a supersedeas bond,[11] a party who fails to secure such protection is subject to having to pay the judgment before the appeal is concluded.[12] An automatic stay can only be obtained by posting a supersedeas bond in the amount established by the rule.[13] Because it can take anywhere from one week to 30 days to process a bond request with a surety company, the appellant may want to file a motion to stay execution pending the posting of a supersedeas bond.[14] Alternatively, the attorneys involved in the case can simply agree informally to stay execution pending the posting of a supersedeas bond within a set time period.

Supersedeas bonds are issued by a surety company authorized to do business in the State of Florida.[15] Each circuit maintains a list of approved bonding companies. An insurance broker or surety underwriter is used to procure the bond. Almost all surety companies which issue supersedeas bonds require that security be given to protect them in the event the judgment debtor is unable to pay the sum due if the judgment is affirmed.[16] A bond may be "fully collateralized" or "not fully collateralized." A "fully collateralized" bond usually means one that is secured by money, government securities, or other type of securities that can be immediately converted into cash.[17] The premium for a "not fully collateralized" bond will be higher to account for the absence of liquid assets to back the bond.[18] A large corporate judgment debtor or insurance company may be able to obtain a bond based upon its financial statement alone. An individual or small company will usually be required to post collateral for the bond. An approved form of a civil supersedeas bond is located in the forms to the Rules of Appellate Procedure.[19] It is recommended that the appellate attorney draft the supersedeas bond since many out-of-state surety companies do not have access to Florida's prescribed form.

The bond amount is a combination of the final judgment amount plus two years of interest at the statutory rate.[20] Section 55.03 (1), Fla. Stat., requires the state comptroller to set the statutory rate of interest payable on judgments each year on December 1. The current statutory interest rate for 1999 is 10% per annum or .02740% per day.[21] By statute, the "interest rate established at the time a judgment is obtained shall remain the same until the judgment is paid."[22]

Once the bond is issued, it should be filed in the registry of the circuit court from which the judgment was rendered. Although some court clerks have been known to accept a supersedeas bond prior to the filing of a notice of appeal, most courts follow the requirement that the filing of the notice of appeal be attested to in the body of the bond document.[23] The court registry may charge a filing fee, however, procedures vary from court to court so it is best to inquire. The attorney should also enter a notice of filing the bond in the circuit court file. Acceptance of the bond will automatically stay execution on the judgment.[24]

The cost of procuring the supersedeas bond may be recoverable as a prevailing party cost at the conclusion of the appeal if the judgment debtor succeeds in setting aside the final judgment.[25] Rule 9.400 specifically refers to bond premiums as a taxable cost.[26] The ability to recover the cost, however, may be contingent upon several factors, including proof that the judgment debtor actually incurred a loss in obtaining the surety bond.[27] When the judgment debtor is an insurance company, a bond premium may not be recoverable unless an independent surety company issues the bond.[28] In addition, the court has discretion to limit the amount of premium that may be recovered.[29]

There are alternatives to posting a supersedeas bond. The rule itself defines a good and sufficient bond to include "cash deposited in the circuit

court clerk's office."[30] The deposit of cash in the court registry, however, does not automatically stay enforcement of the judgment.[31] In order to stay execution, the judgment debtor must seek a proper stay order in the trial court based on the cash deposit.[32]

In addition, the parties can stipulate to the conditions of a stay. For instance, the parties can enter an agreement to escrow the judgment amount in a mutually satisfactory account and allow the fund to earn interest during the pendency of the appeal. This approach can save the appellant the annual premium on a surety bond and can protect the appellee from taxable costs should the final judgment be reversed on appeal.

Rule 9.310 (e) provides that "a stay entered by a lower tribunal shall remain in effect during the pendency of all review proceedings in Florida courts until a mandate issues, or unless otherwise modified or vacated." An automatic stay terminates upon issuance of the appellate mandate.[33] Therefore, if the judgment is affirmed on appeal, the judgment creditor may execute on the judgment upon issuance of the appellate mandate returning jurisdiction to the trial court.[34] Alternatively, the judgment creditor may seek to recover on a bond if one was posted. Recovery on the bond must be sought by motion.[35] If further appellate review is contemplated, the appellant must move the court to withhold its mandate pending final resolution of the proceedings.[36]

Once the final judgment is reversed or satisfied, the appellant should file a motion to cancel the supersedeas bond and to discharge the principal and surety. The lower court will issue an order directing the clerk of the court registry to discharge the bond and return it to a specified designee, usually the attorney of record. The parties may wish to avoid a hearing and file a stipulated motion. The original discharged bond is then returned to the surety company.

In many instances, an appeal begins and ends with the processing of the supersedeas bond. As outlined, an appellant will need a supersedeas bond if a money judgment has been entered against him and he seeks to automatically stay enforcement of the judgment pending the outcome of the appeal. The bond should be obtained as soon as possible following entry of the final judgment. Because there is almost always a gap between the rendition of the judgment and the filing of a notice of appeal, counsel should obtain a temporary stay of execution by agreement or by motion to coordinate the procurement of the bond and the filing of the notice of appeal. With these basics in mind, the bonding process will proceed smoothly and provide appellant with protection from the enforcement of the final judgment until the appellate mandate issues.

Endnotes:

1. Ms. Flowers is the supervising partner of the appellate division at Kubicki Draper in Miami, Florida. She is board-certified in appellate practice. She currently serves as treasurer of the Appellate Practice and Advocacy Section, and is a former editor of The Record.

2. Campbell v. Jones, 648 So. 2d 208 (Fla. 3d DCA 1994). In addition, a plaintiff may proceed in garnishment against a judgment debtor's insurer "immediately upon the entry of a final judgment by the trial court, regardless of whether an appeal is taken, where the judgment is not superseded." See Grange Mut. Cas. Co. v. Stroud, 173 So. 2d 171 (Fla. 2d DCA 1965), cert. denied, 177 So. 2d 12 (Fla. 1965).

3. Rule 9.310 (b) (1), Fla. R. App. P., states:
(b) Exceptions.
(1) Money Judgments. If the order is a judgment solely for the payment of money, a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest. Multiple parties having common liability may file a single bond satisfying the above criteria.

4. Enforcement may take the form of a writ of execution, writ of garnishment, or discovery in aid of execution. See Finst Dev., Inc. v. Bemaor, 449 So. 2d 290 (Fla. 3d DCA 1993), and cases cited therein.

5. Rule 1.550 (a), Fla. R. Civ. P.

6. *Id*.

7. Rule 9.310 (b) (1), Fla. R. App. P.

8. Rule 9.310 (a), Fla. R. App. P., states:
Application. Except as provided by general law and in subdivision (b) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both.

9. *Florida Coast Bank of Pompano Beach v. Mayes*, 433 So. 2d 1033 (Fla. 4th DCA 1983), rev. dismissed, 453 So. 2d 43 (Fla. 1984).

10. Rule 9.310 (b), Fla. R. App. P.; *Taplin v. Salamone*, 422 So. 2d 92 (Fla. 4th DCA 1982).

11. *Campbell v. Jones*, 648 So. 2d at 209; *Palm Beach Heights Dev. & Sales Corp. v. Decillis*, 385 So. 2d 1170, 1171 (Fla. 3d DCA 1980).

12. *Campbell v. Jones*, 648 So. 2d at 209.

13. Rule 9.310 (b) (1), Fla. R. App. P.

14. Rule 1.550(b), Fla. R. Civ. P., provides the vehicle for seeking a brief stay of execution on a money judgment pending the filing of an appeal and supersedeas bond. *Barnett v. Barnett Bank of Jacksonville, N.A.*, 338 So. 2d 888 (Fla. 1st DCA 1976); *Chapman v. Rose*, 295 So. 2d 667 (Fla. 2d DCA 1974).

15. Section 627.751, Fla. Stat. (1997); R. 9.310 (c)(1), Fla. R. App. P.

16. *Melvin v. West*, 120 So. 2d 233, 235 (Fla. 2d DCA 1960).

17. *Melvin v. West*, 120 So. 2d at 234.

18. *Id.* at 235.

19. Rule 9.900, Fla. R. App. P.

20. Rule 9.310 (b) (1), Fla. R. App. P.

21. Office of the Comptroller, State of Florida, www.dbf.state.fl.us/interest.html.

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[22.] Section 55.03 (3), Fla. Stat. (1998).

[23.] The appellate rules form recites, as a condition of the obligation, that the principal "has entered an appeal . . . ." Rule 9.900, Fla. R. App. P.

[24.] Implementation of a stay pursuant to the rule is automatic. The rule eliminates the need for a motion, hearing or order. See *Taplin v. Salamone*, 422 So. 2d at 93.

[25.] *Melvin v. West*, 120 So. 2d at 235.

[26.] Rule 9.400 (a) (3), Fla. R. App. P.; *Melvin v. West*, 120 So. 2d at 235. By contrast, the lost interest on securities or cash deposited in lieu of a surety bond is not recoverable as costs. *See Rehman v. ECC International, Corp.*, 707 So. 2d 752 (Fla. 5th DCA 1998); *Baya v. Revitz*, 363 So. 2d 44 (Fla. 3d DCA 1978).

[27.] *Lone Star Industries, Inc. v. Liberty Mut. Ins. Co.*, 688 So. 2d 950 (Fla. 3d DCA), rev. denied, 698 So. 2d 839 (Fla. 1997).

[28.] In *Lone Star Industries, Inc. v. Liberty Mut. Ins. Co.*, the court held that the mere transfer of monies on the judgment debtor's balance sheet from the claims department to the surety department did not give rise to a taxable cost under Rule 9.400. 688 So. 2d at 952.

[29.] *American Medical International, Inc. v. Scheller*, 484 So. 2d 593 (Fla. 4th DCA) (it was within the trial court's discretion to award a limited amount of the bond premium actually paid in light of evidence that bond premium was so high because appellant obtained extensions of time amounting to 400 days), *cert. denied*, 474 U.S. 947 (1985).

[30.] Rule 9.310 (c)(1), Fla. R. App. P.

[31.] *Waller v. DSA Group, Inc.*, 606 So. 2d 1234, 1235 (Fla. 2d DCA 1992).

[32.] *Id.*

[33.] Rule 9.310 (e), Fla. R. App. P.; *City of Miami v. Arostegui*, 616 So. 2d 1117 (Fla. 1st DCA 1993), *cert. denied*, 513 U.S. 927 (1994).

[34.] Rule 9.310 (e), Fla. R. App. P.

[35.] Rule 9.310 (d), Fla. R. App. P.

[36.] Rule 9.310, Fla. R. App. P., Committee Notes

Minutes of the Executive Council Meeting

June 24, 1999, Boca Raton Resort and Club

I. CALL TO ORDER

Chair, Roy Wasson, called the meeting to order at 10: 30 a.m. All persons present signed the attendance sheet.

II. APPROVAL OF MINUTES OF THE JANUARY MEETING

The minutes of the January 21, 1999 meeting of the Executive Council were approved unanimously.

III. COMMITTEE AND OTHER REPORTS

A. Amicus Curiae

John Crabtree presented the report of the Amicus Curiae Committee. A discussion ensued regarding a current matter brought before the committee related to a JQC proceeding involving certain comments made by a judge during appellate argument. The issue was left with the committee to investigate the matter and present a recommendation to the Executive Council for subsequent consideration.

B. Administrative Practice

Steven Stark presented the committee report. The committee is looking for greater involvement in the upcoming year and further definition of its focus.

C. Appellate Certification Liaison

Ben Kuehne presented the report of the committee. He advised that the Appellate Certification Committee is considering an oral argument component of the examination and requested input from the Council on this suggestion. He reported that the first group of Board Certified Appellate Lawyers came up for recertification this year with almost everyone seeking recertification. The Appellate Certification Committee is also considering a rule change that would permit attorneys who become judges to retain their certification status.

D. Appellate Court Liaison

Jack Shaw presented the report of the committee. The committee is working on a poll to be submitted to all Florida appellate judges regarding their views on the value of oral argument, the conduct of practitioners, and other pertinent issues.

E. Appellate Mediation

Tom Hall presented the report of the committee on behalf of Teresa Mussetto. The committee will be meeting in the afternoon. He was able to report at this time that the Florida Bar is considering a separate appellate mediation certification. To date, 62% of appellate cases submitted to mediation have settled.

F. Appellate Rules Committee

Roy Wasson presented the report of the committee on behalf of Raoul Cantero. A continuing issue before the appellate rules committee is whether to allow non-final appeals of issues determining liability in favor of a party seeking affirmative relief. It was noted that the four year reporting cycle comes up this year with all recommendations to be presented to the Supreme Court. It was also noted that the issue of fonts is still being discussed.

G. Federal Appellate Rules Committee

Steven Stark presented the report on behalf of Frederick Nelson. Everyone was reminded that the 11th Circuit Court of Appeals rule changes took effect June 1, 1999.

H. Civil Appeals

Bob Sturgess presented the report of the committee. This year the committee's focus will shift from the guardian ad litem program and concentrate on collecting information from the various District Courts of Appeal on their internal operating procedures.

I. Board of Governors Liaison

Morris Silberman presented the report. He announced that his two years of service as liaison to the Appellate Practice and Advocacy Section had come to an end and that he would like to continue to be actively involved as a member of the Appellate Practice and Advocacy Section. Roy Wasson extended the Section's many thanks to Morris for the great job he had done in serving the Section.

J. CLE Committee

Jack Aiello presented the

committee's report. The newly-developed seminar, co-sponsored with the Trial Lawyers Section, is to be held October 14, 1999 in Tampa. The Hot Topics Seminar is on the every other year schedule and will occur again in the Fall of the year 2000. The certification review course is schedule for January 28, 2000 in Tampa, Florida. The Federal Appellate Seminar is scheduled for Spring 2000. The committee needs to work on co-sponsoring CLE programs with other sections.

The appellate workshop which is scheduled for July 1999 at Stetson University has 24 attendees enrolled. The workshop will accommodate up to 40 participants. The plan for next year is to market the seminar to non-Section members. The committee is investigating whether to move the seminar to the winter months in order to attract national attendees. There are certain limitations with Stetson University and the availability of the campus facility during the winter.

K. Criminal Law Section

Harvey Sepler presented the report of the committee. They have currently been addressing county to circuit court appeals after a survey of defense attorneys revealed problems in this area. They are continuing with plans to put on a mock oral argument demonstration as a service to the membership.

L. Long-Range Planning Committee

Cindy Hofmann presented the report of the committee. The Appellate Practice and Advocacy Section is planning a retreat for April 28-30, 2000. The retreat is to be held at Indian River Plantation on Hutchinson Island. It will begin with a Friday 2:00p.m. CLE on ethics in appellate practice. Dinner will follow at which Judge Padovano will be the keynote speaker. Saturday will consist of an all day planning session with a facilitator. The weekend will conclude with a Sunday morning breakfast.

M. Council of Sections Liaison

The report was submitted by Anthony Musto. Tomorrow, the Council of Sections will be addressing existing conflicts for Section coordinators. In the future, Sections will automatically be placed into a set time slot in an attempt to avoid one coordinator having two Section meetings at the same time. In the past, the Appellate Practice and Advocacy Section has met on Thursday afternoons in September and January and on Thursday mornings in June. The consensus of the Executive Council is to retain those time slots. Anthony also noted that The Florida Bar is expected to move toward Saturday meetings as the number of committees and demands for space expand.

N. Membership Committee

Austin Newberry, Section coordinator, announced that the membership is currently at 1,047.

O. Programs Committee

Caryn Bellus-Lewis presented the report on behalf of Bonita Brown. The Discussion with the Court will occur this afternoon followed by the evening Desert Reception. There was a general discussion regarding ways to improve publicity of these programs next year. Announcements were distributed to the Executive Council to be passed out at other programs and meetings today. A suggestion was made regarding moving the time slot to 3:00 p.m., however, recognition was given to the fact that the existing time slot was the one determined to be most convenient to the Justices.

P. Publications Committee

Ben Kuehne presented the committee report. The committee was unable to meet during the Annual Convention and is planning on meeting two weeks after the Florida Bar meeting. The materials for The Appellate Practice Guide are due to be received by July 1 for editing. It will include many new features this year. Also, we can expect to see more advertisers.

IV. OLD BUSINESS

A. National Moot Court Competition

Michael Richmond reported that plans are going smoothly for the sponsorship of the National Moot Court Competition to be held at Nova Law School. Ten teams are expected for the November 12-14, 1999 event. There will be preliminary, semi-final, and final rounds for which the committee will seek appellate lawyers to act as judges. The committee members include Judge Cope, Robert Glazier, Jack Shaw, Bob Sturgess, and Angela Flowers.

In anticipation of the continuing hosting of this event on an every other year basis, a suggestion was made for the appointment of a standing Section committee. A motion to that effect passed unopposed.

B. By-Laws Amendment

The committee appointed to consider a by-law amendment to include past chairs as members on the Executive Council has been tabled. The consensus at this time is that there may not be a workable vehicle for reaching the Section's goal. The issue will now be referred to the Long Range Planning Committee and

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CERTIFIED
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APPELLATE PRACTICE

Appellate Practice Certification Review Course to be Held January 28, 2000

If you are planning to take the Appellate Certification Examination in March 2000, remember to set aside January 28, 2000 for the well-regarded Appellate Practice Certification Review Course to be held in Tampa, Florida. This comprehensive review course is designed to aid appellate practitioners in the studying process as well as provide them with an up-to-date overview of state and federal, civil and criminal, appellate practice and procedure.

placed on the agenda for the retreat.

C. Court Reporter Charges

At this time, the Appellate Practice and Advocacy Section has decided not to do anything independently, but will join with the rules committee to address this concern.

D. PCA Committee

Judge Cope reported that the PCA Committee will be voting to recommend the creation of a rule of appellate procedure that will give attorneys authority to request an opinion if they believe that it would provide a basis for Supreme Court review. He anticipates the creation of a consensus statement regarding when an opinion should be written and recommendations on the use of short form opinions. The committee will also be recommending that this issue be included in training for new judges and the DCA conference.

The PCA's study discovered that forty-five percent of PCA's consist of no merit criminal appeals and summary denials of post conviction relief. Fifty percent of the fully briefed cases that are affirmed are done so by PCA in both civil and criminal categories. The final committee report is to go to the judicial management council by the end of the year.

E. All Bar Conference

The biggest issue for the year is multi-disciplinary practices and ancillary businesses. It is reported that in Europe accounting firms own the majority of the law firms and are providing one stop shopping. The ABA is on the verge of recommending rules that would allow lawyers to work in multi-disciplinary practices. This raises ethical concerns and concerns regarding the regulation of lawyers. It has not been determined how rules regarding conflict of interest and privileges would be incorporated into these type of practices.

V. GENERAL MEETING OF THE APPELLATE PRACTICE SECTION

Roy Wasson opened the floor to the general meeting of the Appellate Practice and Advocacy Section.

A. Elections

The nominations committee presented nominations for officers and Executive Council members:

Officers:
Chair-elect - Ben Kuehne
Vice-chair - Hala Sandridge
Secretary - Angela Flowers
Treasurer - Jack Aiello

Executive Council:
Seats Expiring 2001
Tom Hall
(To fill the unexpired term in the seat vacated by Jack Aiello)

Seats Expiring 2002
Robert Glazier
Harvery Sepler
Jack Shaw
Steve Stark
Peter D. Webster

The slate was accepted by acclamation and the nominees voted in unanimously.

B. Name Change

A discussion ensued regarding the change of the Section's name from Appellate Practice and Advocacy Section to Appellate Practice Section. Jack Shaw moved that the name of the Section be changed to the Appellate Practice Section. The motion was seconded by Jack Aiello. A general discussion ensued. Those in favor noted that the name Appellate Practice and Advocacy Section was long and cumbersome. In fact, few people really use the full name, but opt instead for the shorter version Appellate Practice Section. The consensus of those in favor of the name change was that the Section was already known by the shortened version Appellate Practice Section. Tony Musto spoke in opposition to the proposal. He indicated that as a matter of precedent the name should remain the same. In his view, Appellate Practice and Advocacy Section is the name that we have become known by and it should be left as it is. Steve Stark also spoke in opposition to making the change. The question was called. The motion passed 16 in favor, 4 against.

VI. NEW BUSINESS

A. Treasurer's Report

Austin Newberry reported on the Section's revenues, expenses, and fund balance.

B. Acknowledgment and Presentations

Roy Wasson expressed his gratitude to those who have helped him during his year as Chair of the Section. Roy especially thanked Austin Newberry for the great job he had done since he had become Section coordinator and extended thanks to Jackie Werendli who had filled in throughout the year.

Recognition was also extended to Kimberly Staffa Mello, Editor of *The Record*, who received a plaque recognizing her contributions to the Section throughout the year. Tom Hall was also presented with a plaque recognizing his accomplishments as Chair of the Appellate Practice Workshop.

Cindy Hofmann expressed the appreciation of the Section to Roy Wasson and presented him with an outgoing Chair plaque as a memento of his year.

Roy Wasson announced that the Adkins Award would be given to attorney and former clerk of the Second District Court of Appeal, Bill Haddad, at this evening's Dessert Reception.

VII. ADJOURNMENT

The meeting was adjourned at 12:10 p.m.

book review

Reviewed by Scott D. Makar

The Oxford Guide to United States Supreme Court Decisions

by Kermit L. Hall (Editor)

Are there times when you just can't think of the name of a major Supreme Court decision? Or, you may remember the name, but not the facts, holding, and historical context of the decision. Or, maybe you need to give a gift to the pre-law or law student who is a budding constitutional law aficionado.

Well, a recent addition to the category of useful and highly readable compendiums of court decisions is for you: "The Oxford Guide To United States Supreme Court Decisions" (Oxford University Press, 1999, $35.00, 428 pages) ("*Supreme Court Decisions*"). The guide is an outgrowth of "The Oxford Companion To The United States Supreme Court (Oxford University Press, 1992, $60.00, 1032 pages) ("*Companion*"). Dean Kermit L. Hall of the College of Humanities at Ohio State University served as editor of both books. Many Florida practitioners may remember Dean Hall, who is one of the nation's premier legal historians, from the days when he taught at the University of Florida.

A prolific writer in his own right, Dean Hall edited the submissions of over 100 legal scholars – predominantly law professors but also including a few practitioners and a state supreme court justice. The result is an engaging summary of over 400 of the Supreme Court's most important decisions from 1789 to the present.

The bulk of the book is arranged alphabetically by case name, from *Abington School District v. Schempp*, 374 U.S. 203 (1963) to *Zurcher v. The Stanford Daily*, 436 U.S. 547 (1978). The summary of each decision includes the date it was argued and decided as well as the vote composition. For example, the summary of the *Zurcher* decision indicates it was decided by a "vote of 5 to 3; White for the Court, Stewart, Marshall, and Stevens in dissent, Brennan not participating." A detailed appendix provides useful tables and charts that show the nominations and succession of the Justices over time, so readers can quickly determine the then-existing membership of the Court.

The case summaries, which are typically about a page (but in a small font size), provide the context of each case and the specific issue confronting the Court. The holding and reasoning of the majority and dissenting opinions are synthesized, as well as the impact of the decision on the development of the Court's jurisprudence.

A handy glossary is provided for those readers who are not steeped in the special language of the high court's precedents. Case and topical indexes are also included, which direct readers directly to the relevant entries.

For those who have the 1992 *Companion* volume, you should still consider adding *Supreme Court Decisions* to your collection. The collection includes 47 new entries including cases such as *Clinton v. Jones* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.

Those of you who do not have the 1992 *Companion* should consider investing in it. The *Companion* has been termed a "goldmine of information" because it includes a succinct exposition on the major cases, biographies of every justice (including rejected nominees and other prominent judges), and discussion of every major issue and concept that the Court has faced. Maybe ask for it this holiday season.

New and Recent Periodicals

Appellate practitioners may find a new periodical of interest. The law school at the University of Arkansas at Little Rock recently published its inaugural issue of "The Journal of Appellate Practice and Process." The featured articles were written by Chief Justice William Rehnquist, Judge Patricia Wald of the D.C. Circuit, Justice Stanley Mosk of the California Supreme Court, Senior Judge Myron Bright of the U.S. Court of Appeals, Eighth Circuit, and Professor William Richman of the University of Toledo. The articles by the judicial authors are of particular interest to practitioners because they focus on topics such as "19 Tips from 19 Years on the Appellate Bench" (by Judge Wald) and "Focus on the Crucial Issue" (by Judge Bright). Subscriptions are $20.00 annually for two issues.

Likewise, the Winter 1999 edition of "Litigation" – the Journal of The Section of Litigation of the American Bar Association – is dedicated to appellate matters. It is highly recommended. It delivers on its stated purpose, which is to provide "observations and insights that will make both the expert and neophyte better appellate advocates[.]" Submissions include excellent articles by Judge Richard Posner of the U.S. Court of Appeals, Seventh Circuit ("Convincing a Federal Court of Appeals"), FSU President Talbot "Sandy" D'Alemberte ("Oral Argument: The Continuing Conversation"), and Carlton Fields partner Sylvia Walbot and senior staff attorney Susan Landy of the Second District Court of Appeal ("Pointers on Preserving the Record"). This edition is a "must read" – copies can be obtained from the ABA for $12.

Scott D. Makar *is a partner in the Jacksonville office of Holland & Knight LLP. His practice includes trial and appellate litigation as well as administrative and legislative matters.*

A Few Words with Judge Altenbernd

Judge Chris Altenbernd joined the Second District Court of Appeal in January, 1989. He graciously agreed to the following interview in March, 1999, with Tom Elligett of Schropp, Buell & Elligett.

Q You grew up in Iowa and attended Harvard Law School in Massachusetts. How did you get to Tampa?

A By car. Actually, I was raised in a small town and saw little opportunity available if I returned home. I wanted to practice in a nice location that had a bar large enough to allow specialization, but not so large as to be overwhelming. My grandparents had spent winters in St. Petersburg and my sister was in the first graduating class of what was then Florida Presbyterian College (now Eckerd). Thus, I was familiar with the Tampa Bay area and decided to take a summer job here. After a summer at Fowler, White, I decided that both Tampa and the law firm were good long-terms bets for me. I have never regretted either decision.

Q Has your college major in psychology assisted in any cases you have decided?

A No, but it helps me deal with motions for rehearing. Actually, I received extensive undergraduate training in the overall problem of applying the scientific method to an inherently soft science. Often, judges approach the law as a soft science and face similar problems concerning the methodology to prove or disprove a thesis. It is also helpful in understanding the problems associated with the admissibility of scientific evidence.

Q Judge Fulmer described in her interview how all panel opinions circulate to the full court. How often do you make a comment on a case or go and visit with the writing judge?

A We all make frequent telephone calls to correct small editing issues. I probably call or visit with a judge concerning the substance of the opinion about four times a month. Usually this results in a clarification of the facts or the legal argument. It is fairly unusual that the panels recommend outcome changes during the circulation process.

Q Some who knew your practice included insurance defense might have assumed they could predict how you would decide certain coverage cases. If so, they were likely surprised by some of your opinions. Was it difficult to transform from advocate to judge?

A I am just glad you think I have made the transformation. In a sense, I was an advocate for a client and now I advocate for justice. A court's opinion normally is written to persuade the reader that its outcome is legally correct. I did not find it too difficult to make this transformation. When you represent a client, you do not always believe the position you must maintain. As an appellate judge, you almost always are able to vote for an outcome that you believe is correct — even if that means that you dissent.

Q Do you have a favorite type of appellate case?

A There probably are some issues that are more exciting than others. At this point, I do not have a category of law, such as civil, domestic or criminal that I prefer. The job is most exciting when you have a case that presents a problem that really needs a solution and you are convinced [perhaps mistakenly] that you can contribute to the solution.

Q How often do you find your preliminary view of a case changed by oral argument?

I like oral argument. It usually is fun.

A Besides it lets me talk to someone other than a judge and my staff. About 80% of the time, it is useful because it makes me more certain that my preliminary sense of the case was correct. About 20% of the time, it disrupts my preliminary assessment, and at least 10% of time, I completely change my view of the case. It is more likely that I will change my view of the facts of the case or my view of a question of preservation than I will change a legal approach to the case.

Q When I arrived at the court for an oral argument a few years ago, you sent both sides into the library to look at a statute before the argument. Do you often arrange such surprises for counsel before argument?

A No, I only do that to you. Actually, if there is a legal question or a factual matter that the panel knows they wish to address during oral argument and the panel suspects that the lawyers will be unprepared to address the matter, we try to give the lawyers advance notice in writing. If we bring it up just before oral, it probably means that we just realized the problem sometime in the last two or three days.

Q We know that even if a party can show error in the trial below, the appellate court must decide if it was harmful error. How would you respond to the suggestion that attempting to predict whether a jury would have decided the case differently without the error requires speculation?

A I would probably respond by suggesting that "speculation" is a loaded word. In general, you are asking about the thorny question of which errors should entitle an appellant to an automatic reversal because they are "per se" or "structural" errors and which errors should require the appellant to at least persuade the ap-

pellate court that the error probably or possibly resulted in harm. There is value in finality. Both the courts and the legislature have tended to favor a structure in which the appellant must demonstrate that an error produced or contributed to harm. I suppose, in the final analysis, the system trusts three experienced judges to make an educated estimate of whether the error is sufficiently likely to have tainted the trial so that the finality of the proceeding should be disrupted by a new trial.

Q What do you think of the increase in appellate specialists?

A I suppose it is inevitable because an increase in lawyers tends to generate specialization. I do not have strong feelings on the subject. Although my own reputation as a lawyer was probably based on my work as an appellate lawyer, I was and am very proud of my jury trial experience and my membership in ABOTA.

Q Do you have a reaction to the initial committee recommendations for adding additional district courts of appeal?

A More inter-district conflict! Actually, I hope I can avoid taking a public position on the need for or the location of any additional districts. If they come, they will almost certainly affect the structure of the Second District. Plans to close the Lakeland courthouse will not be met with smiles from this court. Those of us who love the convenience of the Tampa branch office will pray for its preservation. Lawyers may have more at stake in this debate than they realize. Hopefully, the bar will watch this process very carefully. My personal instincts are that change is most likely to occur during the 2001 legislative session.

Q You are a past president of the William Glenn Terrell American Inn of Court and a member of the Canakaris Inn. The legal profession is showing increased attention to civility and professionalism. Based on your observations on the appellate bench during the last ten years, do you think the situation has improved or deteriorated?

A I think that it is easier to be professional in an appellate practice than in a trial practice. Our appellate bar is generally a model of professionalism. That was true ten years ago and it is true today. Keep it up!

Q Could you comment on the Public Defender appellate caseload?

A Over the last fifteen years, we have sometimes worked with and sometimes prodded the public defender of the Tenth Circuit to solve the persistent problem of backlog in that office. I think there is a mistaken perception that our court has a feud with the public defender. There are many capable lawyers in that office, and more than a handful of truly outstanding lawyers. Some of them have dedicated many years of their lives to the defense of clients who would have no defense but for them. Sometimes it is the job and the duty of those lawyers to test our patience, and they do it well! We understand that the backlog has been as distressing, and sometimes as demoralizing, for these lawyers as it has been for the members of this court. With a little luck, the backlog will soon be over. We thank all of the lawyers who have made that possible, but we especially thank the many public defenders who should know that theirs is not a thankless job.

Thanks for taking the time to visit with us.

You're welcome.

* * *

This article was originally published in the May 1999 issue of the Hillsborough County Association *Lawyer*.

Appellate Court Rules Liaison Committee

The Appellate Rules Committee last met on June 25, 1999 at the annual Florida Bar Meeting. The Committee proposed several new rules to the Florida Supreme Court. Most of the proposal concerned extensive revisions and additions to the Criminal Appellate Rules, Rule 9.140 and new Rule 9.141. In addition, the Committee recommended that Rule 9.100, concerning petitions for writs, be amended to establish a 50-page limitation for petitions and responses, as well as a 15-page limitation on replies.

At the September 17 meeting, the Committee will be considering, among other things, whether appendices to briefs on jurisdiction to the Florida Supreme Court should contain only the conformed copy of the decision of the District Court of Appeal, and whether the rule allowing non-final review of orders concerning arbitration should be amended. If you have any comments or suggestions regarding these issues, contact the Chair of the Appellate Rules Liaison Committee, Raoul Cantero.

Long-Range Planning Committee

The Long-Range Planning Committee met at 2:30 p.m. on Thursday June 24, 1999 to continue planning the April 2000 Section Retreat. In attendance were Chair, Cindy Hofmann, Angela Flowers, Judge Mark Polen, Roy Wasson, Jack Aiello, Tom Hall, Tony Musto, and Steve Stark.

The committee first discussed the topic that we would like Judge Padovano to speak on at Friday night's dinner. It was decided that we would ask the Judge to speak for 20-30 minutes on the uniqueness and specialness of appellate practice. Jack then announced that a subcommittee of the CLE committee had been formed with Tom Elligett in the lead to work with Paul Remillard at the Florida Bar to develop a professionalism CLE seminar geared to appellate practice. It was also discussed and decided that there would be no charge to Section members for the Friday afternoon CLE seminar. CLE credit will be arranged through the Bar. Next, the committee decided to charge a small registration fee to offset some of the cost of the Friday dinner and Saturday breakfast and lunch that will be provided "free" to Section members. The fee will be set somewhere between $40.00 and $75.00. There will be a $30.00 charge for spouses/guests attending the Friday night dinner.

The final order of business was discussion of the pros and cons of three potential facilitators for Saturday's planning and goal-setting session. One of the three possibilities was eliminated, and there were several questions about the costs associated with a second one. Cindy will get more cost information and provide it to the committee members before the next meeting, which will be held by teleconference on July 23, 1999. At that meeting a final decision about the facilitator will be made.

CLE Committee

- **Joint Seminar with Trial Lawyers Section**

This program will be a joint seminar with the Trial Lawyers Section, to be held on October 14, 1999. The program will address some aspects of appellate practice and procedure for trial lawyers, including an analysis of the various phases of a trial from an appellate perspective. The program will be of interest to both trial lawyers and appellate lawyers. Scheduled topics include 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 post-trial motions. An impressive slate of speakers has been 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. This seminar will be held in alternate years from the "Hot Topics" seminar. The Steering Committee includes co-chairs Steve Starke and Robert Glazier, Tom Elligett, Susan Fox, Allison Hochman, and Steve Wisotsky.

- **Appellate Practice Certification Exam Review Course**

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

- **Federal Appellate Seminar**

The Federal Appellate Seminar, which will be held every other year, was held in 1998 and will be held again in the year 2000. A Steering Committee is presently being assembled.

- **Appellate Practice Workshop**

The 1998 Appellate Practice Workshop, which was held in July, was very successful. The Section has received its share of the proceeds. The program is being held again this year at Stetson University during the last week of July. 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 1998 program, is again working on this program.

• Co-Sponsorships

The Appellate Section and the Family Law Section will co-sponsor an appellate seminar scheduled for September 23 and 24, 1999, in Miami and Tampa, respectively. Debra Sutton is coordinating the program on behalf of the Appellate Section. The Appellate Section and the Family Law Section will split the proceeds of the program. The program will include five segments on appellate topics with a focus upon family law practitioners. The Committee is presently inviting speakers and anticipates that at least one Supreme Court justice will participate. The Section is exploring the possibility of co-sponsoring seminars with other sections of The Florida Bar, including the Government Lawyers Sections.

• Committee Membership

The CLE Committee is seeking a few new members who are willing to play an assisting role with respect to one of our seminars for the 1999-2000 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 Florida Bar's General Meeting on September 16, 1999 in Tampa, Florida. The exact time and place will be announced shortly.

Mark your calendars!

Section to RETREAT in Spring of 2000

The Appellate Practice and Advocacy Section's First Retreat!

Open to Section members and their families.

Indian River Plantation Marriott
on Hutchinson Island
(near Stuart, Florida)

April 28-30, 2000

(Rooms will be $119.00 per night single/double room rate.)

A Florida Bar accredited seminar will be offered on Friday afternoon. Judge Padovano of the First District will be our keynote speaker at dinner Friday evening, and Saturday will be dedicated to developing a long-range plan for the Section. The Retreat should be fun and rewarding. Look for further information in the December issue of *The Record.*

The Florida Bar Continuing Legal Education Committee and the Appellate Practice and Advocacy & Trial Lawyer Sections present

What Do You Mean I Didn't Preserve the Issue?:

What Every Trial Lawyer Needs to Know About Preservation of Error and Appeals

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

One Location
October 14, 1999
Airport Marriott Hotel, Tampa International Airport, 813/879-5151

Course No. 4726R

9:00 a.m. – 9:15 a.m.
Introduction and Late Registration

9:15 a.m. – 9:45 a.m.
Jury Selection
Judge Nelly Khouzam, 6th Judicial Circuit

9:45 a.m. – 10:45 a.m.
Pleadings, Discovery, Pre-Trial Motions, and Interlocutory Review
Judge Gerald B. Cope, Jr., Third DCA

10:45 a.m. – 11:00 a.m.
Break

11:00 a.m. – 11:30 a.m.
Evidentiary Issues
Judge Jeffrey E. Streitfeld, 17th Judicial Circuit

11:30 a.m. – 12:15 p.m.
Working with Appellate Lawyers at the Trial Level
R. Thomas Elligett, Esq., Tampa
Cody F. Davis, Esq., Tampa

12:15 p.m. – 1:45 p.m.
Lunch (on your own)

1:45 p.m. – 2:15 p.m.
Closing Arguments
Judge Larry Klein, Fourth DCA

2:15 p.m. – 3:00 p.m.
Jury Instructions, Verdict Forms, Jury Questions, Jury Conduct, and Jury Verdicts
Judge Carolyn Fulmer, Second DCA

3:00 p.m. – 3:15 p.m.
Break

3:15 p.m. – 3:45 p.m.
Motions for Directed Verdict and for Judgment, and Post-Trial Motions
Judge Chris W. Altenbernd, Second DCA

3:45 p.m. – 4:15 p.m.
Ethics and the Trial Practice
Judge Alan R. Schwartz, Third DCA

CLER PROGRAM
(Maximum Credit: 6.0 hours)
General: 6.0 hours
Ethics: .5 hours

CERTIFICATION PROGRAM
(Maximum Credit: 4.5 hours)
Appellate Practice: 3.0 hours
Civil Trial: 4.5 hours
Criminal Appellate: 4.5 hours
Criminal Trial: 4.5 hours

Credit may be applied to more than one of the programs above but cannot exceed the maximum for any given program. Please keep a record of credit hours earned. RETURN YOUR COMPLETED CLER AFFIDAVIT PRIOR TO CLER REPORTING DATE (see Bar *News* label). (Rule Regulating The Florida Bar 6-10.5).

REFUND POLICY: Requests for refund or credit toward the purchase of the course book/tapes of this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. A $15 service fee applies to refund requests.

Register me for "What Do You Mean I Didn't Preserve the Issue?" Seminar

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Name _____ Florida Bar # _____

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(AN/CS) **Course No. 4726R**

❑ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

REGISTRATION FEE (check one):

- ❑ Member of the Appellate Practice and Advocacy or Trial Lawyers Section: $105
- ❑ Non-section member: $120
- ❑ Full-time law college faculty or full-time law student: $60
- ❑ Persons attending under the policy of fee waivers: $0

  Includes Supreme Court, DCA, Circuit and County Judges, General Masters, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. *(We reserve the right to verify employment.)*

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Inside the Fourth District Court of Appeal

by Ilene L. Pabian

Introduction

So deluged is the Fourth District Court by the steady stream of appellate matters from circuit courts and agencies in six diverse counties, that the Court conducted two, and even three oral argument calendars simultaneously during the weeks that this article was being prepared. Nonetheless, each and every one of the judges of the Fourth District still cheerfully gave of their "spare" time to participate in the interviews and information-gathering process that this series requires. While the judges themselves generally were disinclined to offer conclusory characterizations of the "personality" of their Court, the willingness of all the judges to participate in this project should offer the readers some insight into the Fourth District's makeup.

This installment in the series offers an informational and entertaining history of the Fourth DCA, a fairly comprehensive look at the internal workings of the Court, many practical tips for practice before the Fourth District, from basic pointers to matters of fine-tuning, and glimpses into the backgrounds of the members of the Court. My collaborative author from the Court is Marilyn N. Beuttenmuller, who received her M.B.A. from the University of Florida in 1972 and her J.D. from the University of Miami School of Law in 1977. She was a Fourth District Court of Appeal Staff Attorney for Judge Gavin Letts for 13 years before being appointed Clerk of the Fourth District Court of Appeal on July 1, 1991.

History and Jurisdiction of the Fourth District

"For some time, Florida, like all Gaul, was divided into three parts: the First, Second and Third District Courts of Appeal. As Florida grew, so did the incidents of crime and civil disputes and, with it, the number of appeals escalated until, in the latter part of 1964 and early 1965 the legal field knew that a new district would need to be formed. This was to be done by dividing the Second District to make up the Fourth District Court

of [A]ppeal encompassing ten counties right in the middle of the central east coast of Florida." Kathryn DeForest, The Fourth District Court of Appeal 25 Years Young at 1 (1990). (This article draws so heavily upon the Court's history as recounted in the 18-page pamphlet, that the balance of this historical discussion should be considered directly attributable to it, at least for information up to 1990.) A constitutional amendment was approved by voters at a special election in 1965 to create the new court, which originally was headquartered in Vero Beach, in Indian River County. The original jurisdiction of the Fourth District encompassed Brevard, Broward, Indian River, Martin, Okeechobee, Orange, Osceola, Palm Beach, St. Lucie, and Seminole Counties.

Using borrowed books for its library until a new budget was enacted to provide basic research tools, the Fourth District set up shop in a building on South Dixie Avenue in Vero Beach that formerly had been used as a lock factory. Reminiscing about the first days of the Court in late November and early December 1965, one of the secretaries of one of the first judges wrote on the occasion of the Fourth District's 25th Anniversary: "[T]he court started out with a backlog of 480 cases, and, as far as I can remember, has never had that low a backlog since." *Id.* at 4.

Oral argument sessions were held at first in the Vero Beach City Hall Council chambers. In the early part of 1966, the Court moved its operations to offices on the second floor of the Vero Beach City Hall, while a site was sought for a permanent headquarters for the Court on the shore of the Indian River. The first three judges on the newly created Fourth District were Sherman Smith, Jr., Charles O. Andrews, Jr., and James H. Walden. Characteristic of the fierce independence of all the judges who would sit on the Fourth District, the first decision issued by the Court, "a two sentence per curiam affirmed, citing one authority, also had a two-page dissent!" *See id.* at 5 (citing *Culyer v. Elliot*, 182 So. 2d 55 (Fla. 4th DCA 1965) (Barns, A.J., dissenting)).

Early in 1967, Judge Smith returned to private practice and Judge Spencer C. Cross became a member of the Court. Then Judge Andrews left the Court to return to private practice and was replaced by John A. Reed, Jr. The number of judges was increased to five during 1967 when David L. McCain from Fort Pierce and William C. Owen, Jr. from West Palm Beach joined the Court. Also in 1967, the Florida Legislature voted to move the headquarters of the Fourth District from Vero Beach to West Palm Beach. The move was another chapter in the saga of political wrangling between a faction that wanted the Court situated in Orlando and the Palm Beach County faction, which had resulted in the Court's original location being selected as a compromise. In December of 1967, the City of West Palm Beach deeded property for the Court headquarters at its present location on Palm Beach Lakes Boulevard.

But it was not until 1970 that the Fourth District moved from Vero Beach to its new headquarters, where the first open session of court was held on June 11, 1970. Also in 1970, Judge McCain was elevated to the Florida Supreme Court and became the youngest justice on that Court at the time. Governor Claude Kirk appointed Gerald Mager to replace Judge McCain.

In 1973, Judge Reed left the Fourth District to become a United States District Judge for the Middle District of Florida. Judge James C.

Downey, a native of West Palm Beach and judge of the Fifteenth Judicial Circuit, was appointed to fill Judge Reed's position and joined the Court on October 1, 1973.

Things remained relatively stable at the Fourth District for three years, when a series of changes occurred in 1976. Judge Owen retired from the Court to go back into private practice. Two new judgeships were created for the Fourth District, which were filled by Judges Anstead and Letts. Judge Owen's seat was filled by James E. Alderman, who had been a circuit judge on the 19th Judicial Circuit. Judge Walden left the Court to resume a six-year period in private practice in 1976 and Judge Mager reentered private practice in that year as well. In 1977, Judge James C. Dauksch, Jr., and Judge John R. Moore joined the Court to fill the vacancies left by Judge Walden and Judge Mager. It was to be little more than one year until the complexion of the Court changed again. In April of 1978, Judge Alderman was elevated to the Florida Supreme Court. John R. Beranek, a circuit judge from the Palm Beach Circuit Court, was appointed to replace Judge Alderman.

The ever-growing case load of the Fourth District resulted in an eighth judgeship being approved by the Legislature in 1979. Also in 1979, the Legislature voted to create the Fifth District Court of Appeal, to be comprised of the counties within the Fifth, Seventh, Ninth, and Eighteenth Judicial Circuits. Judge Dauksch and Judge Cross left the Fourth District to start the new Fifth District Court of Appeal, and their positions and the newly created position were filled by Judge George W. Hersey, Judge Daniel Hurley, and Judge Hugh Glickstein.

In 1981, the Legislature approved a ninth judgeship on the Fourth District, which was filled by Judge John W. Dell. Now three times larger than the early Fourth District, the Court with its growing caseload was seriously overcrowded and plans were made to enlarge the courthouse itself. In 1982, Judge Moore followed Judge Reed to the U.S. District Court for the Middle District of Florida. Having enjoyed private practice for six years, one of the original three judges on the Fourth District, James A. Walden, returned to the bench in April 1982 to fill Judge Moore's position. In October of 1983, a new two-story addition to the Fourth District's building was completed and put into use. The new facilities permitted enlargement of the library, the Clerk's offices, and aesthetic amenities not previously enjoyed by the judges and staff of the Court.

Judge Rosemary Barkett joined the Fourth District in 1984, when Judge Beranek retired from the bench and resumed private practice. Judge Barkett was the Fourth District's first female judge. Only on the bench with the Fourth District for 16 months, Judge Barkett was elevated to the Florida Supreme Court in November of 1985, where she became the state's first female Chief Justice. She has since left the Supreme Court to join the United States Court of Appeals for the Eleventh Circuit.

Judge Bobby Gunther, a circuit judge from the Seventeenth Judicial Circuit, was appointed to replace Judge Barkett and joined the Fourth District in January of 1986. Also in 1986, Judge Hurley sought a transfer to the Fifteenth Judicial Circuit, and was replaced on the Fourth District by Judge Barry Stone, who had been a circuit judge in Broward County. Judge Hurley now sits on the United States District Court for the Southern District of Florida in West Palm Beach.

Significant changes occurred in the Court's support staff structure, technological facilities, and operating procedures over the next several years. Notwithstanding such measures taken to increase efficiency and handle the burgeoning caseload, more judges were needed still. In 1989, three new judicial positions were approved by the Legislature. Judge Mark Polen, Judge Eugene Garrett, and Judge Martha Warner were sworn in as members of the Fourth District in 1989. Changes on the bench continued with the retirement of Judge Downey and Judge Walden and the passing of Judge Letts. Judge Gary Farmer joined the Court in 1991. Three new judges joined the court in 1993: Larry Klein, Barbara Pariente, and Matthew Stevenson.

Two Fourth District judges have been elevated to the Florida Supreme Court in recent years. Judge Anstead filled the seat left by Chief Justice Barkett's move to the Eleventh Circuit, and Judge George A. Shahood, from the Broward County Circuit Court, was appointed as his successor. In 1998, Judge Pariente was elevated to the Supreme Court, and Judge Carole Taylor, a circuit judge in Broward County, was appointed to replace her. Most recently, Judge Glickstein retired from the bench, and Judge Frederick Hazouri, from the Palm Beach County Circuit Court, has joined the Court as his successor.

Six counties now compose the jurisdiction of the Fourth District Court of Appeal: Broward, Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie. Although the geographical size of the district is as small as it ever has been, and the number of judgeships on the Court is larger than ever, due to the overwhelming crush of new appeals being filed, each judge is as busy as ever before. Therefore, it is incumbent upon the practitioner appearing before the Fourth District to familiarize himself or herself with the required procedures to be followed in practice before the Court, to assist the Fourth District in coping with its workload.

Practice Before the Fourth District

"[O]ne staple in the upper left hand corner, without any brief covers," is where the Fourth District stands on the "great brief-binding controversy" which has taken up so much time and attention at meetings of the Appellate Court Rules Committee over the last several years and in other quarters. When asked whether he was familiar with the kind of brief covers lauded by other appellate judges for its ability to securely bind the brief while permitting the brief to remain open at a selected page, Judge Dell expressed familiarity with that style of covers, but wasted no time in communicating the Court's position regarding the design vis-a-vis all others: "We rip them off when the briefs come in, and staple the briefs back together."

continued, next page

At least the Fourth District does not return all nonconforming briefs bearing offensive covers, although the idea was somewhat interesting to Court Clerk Marilyn Beuttenmuller. However, demonstrating her pragmatic style as a manager, Clerk Beuttenmuller quickly concluded that the personnel time required in removing and discarding unwanted covers is significantly less than that which would be required to package and mail sets of briefs back to lawyers. Hopefully, after publication of this article, the Clerk's office will detect a measurable decrease in the number of briefs enclosed in binders, of whatever color, in recognition of this distinctive practice requirement of the Fourth District Court of Appeal.

From Deputy Sheriff Joe Blakely— who greets the public from his station just inside the security checkpoint at the Court's front door— to the Chief Judge, the judges and staff members offered tips for practitioners appearing before the Court. "Leave your weapons in your car," Deputy Blakely advised, recounting at least a few lawyers who have returned briefly to their cars upon seeing an armed deputy just inside the courthouse. He could only speculate whether they were returning something that should have been left outside to begin with.

Any discussion of tips for practice before a court needs to include an overview of the Court's total caseload and procedures for managing that load. The caseload at the Fourth District is tremendous. During the 1998 calendar year, 4,511 appeals were filed (48% civil and 52% criminal). The number of appeals disposed of was 4,383, of which 1,202 were by written opinions, including PCA's, PC opinions, and opinions authored by specific judges. Thus, there was an average disposition of 365 cases for each of the twelve judges on the Court. The Court issued 17,717 orders on motions filed; it also received 818 motions for rehearing and disposed of 817. It is no wonder that the Court reminds counsel in an information sheet sent out at the beginning of every new case not to file unnecessary motions. The Fourth District has suffered from "motion sickness" for at least twenty years. *See Dubowitz v. Century Village East, Inc.*, 381 So. 2d 252 (Fla. 4th DCA 1979).

The caseload statistics for the first four months of 1999 are similarly staggering— 1,525 appeals have been filed and 1,613 have been disposed of. Extrapolating over a twelve-month period, 4,575 new appeals will have been filed by the end of 1999. The actual disposition figures will no doubt be greater than these projections, in light of the multiple simultaneous argument panels being used.

The Fourth District's efforts at controlling its tremendous caseload have for years included screening newly filed notices of appeal for jurisdictional defects that necessitate dismissal. Prior the amendment to the Rules of Appellate Procedure requiring attachment of a conformed copy of the order being appealed to the notice of appeal, the Fourth District required attachment of a certified copy of the order so its appealability and the timeliness of the appeal could be determined sua sponte.

Therefore, the appellant's attorney would be wise always to attach a date-stamped conformed copy of the order on appeal that reflects when it was filed (and hence, "rendered" within the meaning of Rule 9.020(g)), especially where the order was signed more than thirty days prior to filing the notice. While clerks of the lower tribunals frequently do not file final orders for several days after they are signed, thereby extending the time for filing the notice to well after thirty days from the time an order is signed by the judge, where the notice is filed more than thirty days after the order is signed, the Fourth DCA will not wait for a motion to dismiss your appeal from the appellee before ordering you to show cause why the case should not be dismissed as untimely. Nothing can ruin your day like scrambling to obtain a date-stamped judgment from an out-of-town clerk in response to an order to show cause. The same advice holds true for attaching date-stamped copies of post-judgment orders on motions that suspend rendition.

A final tip on filing the notice of appeal is the following directive from the Court: "The full name of the trial court judge who entered the order(s) sought to be reviewed shall be on the notice of appeal." The 4th DCA Notice to Attorneys that contains that directive is not sent out to the appellant's counsel until after the notice of appeal is received, so if you are new to practice before the Court you should add this requirement to your pre-filing checklist now.

Once the notice has been properly filed and the appellant has survived the initial screening, the time for ordering the record and transcript has arrived. The 4th DCA Notice to Attorneys and Parties that is sent to both sides contains two items that pertain to preparation of the record. First, do not direct the clerk of the lower tribunal to include any physical (non-documentary) evidence in the record without prior permission of the Fourth District. Second, "[m]otions that pertain to preparation of the record . . . shall contain a certificate that opposing counsel has been consulted and state whether there is an objection to the motion."

The Fourth DCA also requires the appellant to file a docketing statement. Among other things, this docketing statement must contain a Certificate of Interested Persons, which is required for recusal purposes. (The Certificate is no longer required in appellate briefs filed with the Court, but is still required to be included in petitions or answers to petitions filed by any party.) In the docketing statement, the appellant must list all cases which are or have been pending before the Court involving issues arising from the same lower tribunal case. The appellant must also include information about arrangements for preparation of the court transcript, and provide a short recitation of the issues anticipated to be raised on appeal.

Attorneys should double-check the record before briefing to make sure that all key documents are included. Where documents are filed in discovery or as attachments to notices of filing, they will not be included in the record unless counsel expressly directs the clerk to do so.

There is no excuse for many of the motions filed in the Fourth District, prompting the Court to call upon the members of the Bar to police themselves and to file motions only where

really necessary. Where motions must be filed, additional requirements of the Court should be followed. In addition to requiring counsel's certificate that opposing counsel has been contacted on motions for enlargement of time (as required by Rule 9.300) and on "[m]otions that pertain to preparation of the record or briefs," as discussed above, the Notice to Attorneys requires a certificate on motions to re-schedule oral argument. Better practice dictates that such a certificate be included in most if not all motions filed in any appellate court, but it is a requirement on these three types of motions in the 4th DCA. And please note that your certificate must reflect the other side's position, not just that efforts were made to discern it: "[a]ttempts to contact opposing counsel are not sufficient."

On a motion to supplement record or other motion that requires attachment of exhibits or supporting papers, do not merely staple the documents to the motion. Instead, follow the Court's requirement that [a]ll record material supporting a motion shall be contained in an appendix with the motion. As the readers no doubt are aware, an appendix must contain an index of its contents, and motions have been denied for failure to follow the foregoing filing requirement.

The motion for enlargement of time for the service of a brief is, of course, a category of frequently filed motions in appellate courts. In the Fourth District, the Clerk of the Court has been delegated the authority to grant unopposed motions for a first extension of up to thirty days for a principal brief, and subsequent extensions not exceeding an aggregate of fifty days. Extensions for reply briefs shall be similarly granted by the Clerk for a period of up to fifteen days. Additional extensions and opposed requests for extension are decided by judges.

When a new final appeal is filed, the case is assigned to a motions panel, which remains on the case until all briefs and the record have been filed and the case is calendared for disposition, at which time the case is assigned to a merits panel. Most motions requiring judicial attention can be granted by a single judge. More substantive motions require two judges to concur, and case-dispositive motions require the attention of three judges, two of whom must concur.

One area in which the attorney should proceed with caution is in relying upon the automatic tolling provision of Rule 9.300 after filing of motions. While the Court recognizes that "[e]xtensions of time for preparation of the transcript or the record on appeal automatically extend the time for service of the initial brief," the Court imposes a limitation upon the automatic tolling provision by providing "that a motion to supplement the record filed by a party who has received an extension for a brief shall not toll the time for the brief."

On the subject of motions filed with the Fourth District: If you represent the movant, do not file a reply memorandum after receipt of the response in opposition to your motion. Such a reply is unauthorized and will be stricken without consideration.

Not only are too many motions filed in the Fourth District, far too many so-called "emergency" motions are filed, as well as so-called emergency petitions for certiorari and other writs. If you have a true "emergency" requiring immediate action, be sure to deliver a copy of your petition or motion to opposing counsel by hand delivery or facsimile so that it reaches your adversary as fast as it reaches the Court. Doubts are raised about the appropriateness of labeling a petition an "emergency," where it is hand-delivered to the Clerk's office on the Friday morning before a long weekend, but served by ordinary mail on the Respondent's counsel, to be received four days later at the earliest.

Most cases characterized as emergencies do not involve true emergency situations warranting application of the emergency procedures employed at the Court. Those procedures bring to a halt other work by the involved personnel, as the purported emergency is addressed. Judicial time and attention is often inappropriately consumed by matters mischaracterized as emergencies.

Clerk Beuttenmuller and Judge Dell suggest that the level of seeming urgency of most so-called emergencies could be appropriately conveyed to the Court— and the level of disruption kept to a minimum— if in such cases the Petitioner or movant requested that the matter be handled on an expedited basis, rather than call the matter an "emergency," when it is not an emergency.

Certain matters receive expedited handling as a matter of course. The Fourth District has a policy of expediting, upon proper motion, appeals which concern child custody, visitation privileges, or other substantial interests of children. The Court also has an automatic expedited procedure for adoption and termination proceedings. Judge Glickstein, long active in all manner of groups involved in children's issues, explained in an interview for this piece that expediting such cases is important because "time to a child is very different than to an adult."

Successful brief writing in the Fourth District is no different than that practiced before any appellate court. Judge Farmer advises appellate attorneys to keep briefs short to hold the judges' attention, and reminds the readers to focus their arguments on a few strong issues (usually no more than three) rather than to use the shotgun approach. Many judges on the Court dislike the use of footnotes in briefs.

Judge Klein advises that "candor is the most important thing in the presentation of an advocate's position. Admit your weak points" in the beginning, Judge Klein counsels, and you will gain the trust of the judges in advancing your strong points. Judge Warner warns that the Court will strike briefs that are single spaced, and that a committee is looking at other rule violations which may warrant the sua sponte striking of a brief, such as exceeding the page limitation.

In addition to the usual number of hard copies, please send to the Court a 3½- inch diskette of the briefs on the merits. Unless your word processor is WordPerfect (or one that can save in WordPerfect format), you should check with the Clerk as to the format that can be read by the Court's system. This procedure is voluntary, but compliance if feasible will be greatly appreciated. Also, label the diskette and envelope containing the

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diskette to avoid erasure.

Once the briefs are completed, all motions are decided or carried with the case, and the record is filed, the appeal is assigned to a merits panel. One of the three judges on the merits panel is designated as the "assigned judge," with initial responsibility for the disposition of the case, and whose identity is not disclosed to persons outside the Court. The decision-making process of the merits panel is assisted by the efforts of Staff Attorneys. Each judge on the Court is assigned two Staff Attorneys. One of the jobs of a Staff Attorney is to review the briefs and, where necessary, resolve conflicts in the statement of the facts by resort to the record on appeal. More than one of the judges emphasized the need for absolute accuracy in stating the facts and other matters of record in briefs. A misstated factual representation will not succeed in the first place, and the attorney's loss of credibility from such a misstatement (whether intentionally made or the result of carelessness) will remain beyond the case in which it occurs.

Staff Attorneys read all authorities cited by the parties in their briefs. A representation that a certain case stands for a certain proposition will not be accepted without verification by a Staff Attorney, a trained lawyer who checks cited authorities every day. The Staff Attorney's job does not stop there, however. The Staff Attorney performs independent research on important points of law in every case, and prepares a memorandum for use by the merits panel.

The memorandum contains an introduction, a statement of the issues as phrased by the parties (and as may be necessary, restated by the Staff Attorney in light of research), a statement of the facts, and an analysis section. In the analysis, the Staff Attorney discusses the dispositive cases, applies them to the facts, and makes a recommendation for the decision in the case.

The assigned judge on the merits panel is charged with the responsibility of preparing and distributing this detailed written preliminary analysis of the case to the other panel members. All panel members review the briefs and that preliminary analysis, and conduct such other research as they see fit.

The Fourth District has a distinctive personality when it comes to oral arguments. The Court now screens all requests for oral argument in final appeals, and requires the request to state a specific, but brief, reason why oral argument is necessary. This request may contain a designation of 10, 15, or 20 minutes as the amount of time requested for oral argument. The request must be made on a separate paper or document, clearly designated as such, and may not contain any other subject. In some cases the Court completely dispenses with oral argument, and in others it limits the time for argument. Also, oral arguments at the Fourth District are tape-recorded. The tapes are kept until a decision is rendered and becomes final, and copies may be purchased from the Clerk's office. Unlike the Third District, the Fourth has a timed-light system to signal the advocate when argument time is running low and has expired. Judge Dell relates that the purpose of the signal lights is to serve as a visual reminder to the panel as much as to the attorneys. Apparently some panels of the Court have in the past disapproved of the use of physical evidence as demonstrative aids during argument. It would therefore be prudent to seek prior approval instead of setting up a display in the courtroom without warning. Oral argument is not granted in a non-final appeal, extraordinary writ, or on a motion, except in exceptional circumstances. The time for oral argument in final appeals is decided by the judges, but is limited to not more than 20 minutes for each side. If a case is set for oral argument, at any time prior to oral argument, the Court in its discretion may dispense with, limit, or expand the time for oral argument as it deems appropriate to the issues raised. Judge Gunther advises the advocate to spend his or her oral argument time on the stronger issues, rather than arguing points that the briefing process has revealed are comparatively insubstantial. Where all else seems equal, the attorney presenting oral argument should be sensitive to questioning from the bench to disclose the areas on which more time should be spent. Other judges also counsel attorneys not to view questions as an interruption of their canned speech, only to return to the prepared text as soon as the question is directly answered, but as a means to move to the issue of interest to the questioner.

Judge Stone advises attorneys presenting oral argument to view the matter as your chance to get "our attention" as to the principal reason why your case has merit. Judge Stone emphasized that the key word in his advice was attention. Judge Farmer advises the advocate to quit while he or she is ahead, recalling one argument in which an attorney for one side was seemingly on the verge of winning the panel over, "and then he talked himself out of it." Especially where the panel has given your adversary a tough time you should consider limiting yourself to a few choice words, invite questions, and then sit down.

Immediately after oral argument, the panel has a preliminary decision conference at which the judges express their views. If in the majority, the assigned judge drafts and circulates the initial opinion. If the assigned judge is in the minority, the junior member of the majority prepares the initial opinion. In cases in which oral argument is denied or not requested, the merits panel meets each Thursday to conduct its decision conference and all other procedures are the same as in cases orally argued.

In addition to the two Staff Attorneys assigned to each judge, the Court also utilizes Central Staff Attorneys. Central Staff at the Fourth District Court of Appeal is a six-attorney office, which is responsible for screening and making recommendations on all extraordinary writ petitions, and for making recommendations on all non-final appeals, adoption terminations, final appeals in summary criminal proceedings (filed under Fla. R. Crim. P. 3.800(a) and Fla. R. Crim. P. 3.850) and criminal appeals in which defense counsel has moved to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). The Central Staff Attorneys prepare memoranda for the benefit of the merits panels much like the Staff Attorneys do for final appeals. They also assist the judges in collat-

eral research questions as requested. These types of petitions and appeals, by their very nature, often call for expedited review and consideration. By concentrating on these cases, Central Staff facilitate their prompt screening and processing through the Court, and allow the judges and their own staffs to focus on the final appeals.

Section 11 of the Court's Manual of Internal Operating Procedures contains the procedures for en banc determination of cases, both prior to circulation of an opinion and on rehearing. Rule 9.331 prohibits requests for initial en banc hearings, and insofar as the Internal Operating Procedure section pertains to such pre-decision en banc review, it is offered for informational purposes only.

The Court now has a home page on the internet at: www.flcourts.org/4dca. As the Fourth District develops its computer capabilities, it hopes to expand the scope of materials provided to the public on its internet site.

Most recently, the Fourth District Court of Appeal implemented an Appellate Mediation Program for final, civil appeals. Pursuant to this program, the Court can direct the parties and their counsel to appear before a Court-appointed mediator to consider the possibility of settlement, simplification of the issues, and any other matters that may aid the parties or the Court in disposing of the case. But the selection and setting of a case for appellate mediation does not toll the time for compliance with any of the time frames set forth in the Florida Rules of Appellate Procedure. Requests for extensions of time should be made through the Fourth District Clerk's office. In determining which cases to select for mediation, the mediators review the docketing statement, which now contains a required mediation summary. Once selected for mediation, appearance and participation by counsel and the parties is mandatory. The Court may impose sanctions on parties who do not attend the mediation conference without good cause. The mediation services are provided free of charge, and may be conducted in person at the court mediation office, located just west of the Fourth District courthouse, or by telephone conference, at the discretion of the mediator. All appellate mediation sessions are confidential in a manner consistent with Chapter 44, Florida Statutes. The mediation office will report to the Court whether the case has reached full or partial settlement or impasse.

Finally, the Court still has available a "Fastrack Method" of handling single-issue appeals. Instead of a record, the parties in Fastrack appeals execute an agreed statement of the case and facts, may attach a short appendix, and are limited to fifteen-page briefs. The Clerk's office can provide further information concerning the Fastrack. However, Judge Warner reports that this procedure is rarely used anymore.

The Judges of the Fourth District

This section of the article will introduce readers to the judges of the Fourth District and provide glimpses of each judge's background. Space constraints prohibit the listing of numerous significant accomplishments in the life of each judge. This is simply a sampling of activities and attainments to help readers to a better understanding of each judge. The author apologizes in advance for omitting many material matters. The judges are listed in alphabetical order.

JOHN W. DELL has sat on the bench of the Fourth District Court of Appeal since 1981 when he was appointed by Governor Bob Graham. During his eighteen years as an appellate judge, he has served as Chair of the Conference of Appellate Judges Committee on Statistics and Workload from 1986 to 1987, and President of the Florida Conference of District Court of Appeal Judges from 1993 to 1994. Judge Dell has also served as an ad hoc member of the Judicial Qualifications Commission. His Bar activities include service on the Rules of Judicial Administration Committee and the Supreme Court Judicial Ethics Advisory Committee. Judge Dell was a member of the Judicial Management Council of Florida from 1995 to 1998, the Conference of Appellate Judges Executive Committee from 1992 to 1994, and the Appellate Rules Committee from 1986 to 1992. Judge Dell served as Chief Judge of the Fourth District from 1993 to 1995. As a lawyer, he served on the Florida Bar Grievance Committee, and was active with the Palm Beach County Bar Association in several committee posts. Born and raised in Dubuque, Iowa, Judge Dell received his LL.B. from the University of Notre Dame in 1962, converted to a J.D. Degree in 1967. From 1962 to 1971, he practiced with the firm of Miller, Cone, Owen, Wagner & Nugent. In 1971, he formed the law firm of John W. Dell, P.A., later known as Dell & Casey, P.A. Judge Dell's publications include the "Professional Corporation Litigation," 37 *Notre Dame Lawyer* 545 (1962) and "Crop Damage Cases," 1967 Leading Cases, Trials and Techniques 211, American Trial Lawyers Association (1968). Judge Dell also received the Msgr. Jeremiah P. Mahoney Award for Outstanding Catholic Lawyer in 1986.

GARY M. FARMER, who enjoys his duties as an appellate judge so much that his wife says he would do the job for free, refers to the position as "an intellectual banquet." Judge Farmer preceded his higher education with three years of service in the United States Marine Corp. He received his Associate of Arts degree from Broward Junior College in 1968 with Highest Honors. Judge Farmer's baccalaureate decree was bestowed by Florida Atlantic University in 1970, where he was the Woodrow Wilson Fellow runner-up. Judge Farmer received his law degree from the University of Toledo in 1973. After graduation from law school, Judge Farmer served as a clerk for a United States District Court judge until 1975. From 1975 to 1991, he practiced law in Broward County, Florida and became active in Florida Bar activities including serving for several years on the Appellate Rules Committee, the Broward County Grievance Committee, and the Civil Rules Committee. Judge Farmer has sat on the Fourth District since 1991.

ROBERT M. GROSS was born and raised in Washington, D.C. He is married and the father of two sons. Judge Gross received his under-

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graduate degree from Williams College in 1973 (Phi Beta Kappa, Magna Cum Laude), and his law degree from Cornell Law School in 1976. It was in law school that Judge Gross met Professor Irving Younger , who ignited his interest in evidence and trial practice. He was appointed to the Fourth District Court of Appeal in November 1995 by Governor Lawton Chiles. Prior to his appointment, he served four years as a circuit judge in the civil and family divisions. Before his elevation to the circuit court, he was a county court judge for seven years, serving as the Administrative Judge from 1988 to 1990. Judge Gross began his legal career as an Assistant District Attorney under Robert Morgenthau in New York County. He served as an Assistant State Attorney in Palm Beach County and worked as an associate attorney with the West Palm Beach Law Firm of Moyle, Jones & Flanigan from 1981 through 1984. Judge Gross served on Governor Lawton Chiles' Task Force on Criminal Justice and Corrections, which issued its final report in 1995. He has been a faculty member of the Florida Judicial College since 1989, teaching evidence and building a judicial style. He has also taught at numerous continuing legal education seminars and made guest appearances at elementary and secondary schools.

BOBBY W. GUNTHER received her B.A. and J.D. degrees from the University of Florida in 1963 and 1965, respectively. A native Floridian, she was in private practice handling civil litigation until 1973, when she joined the Broward County Court. She served for four years as Administrative Judge of that court. In 1981, Judge Gunther was elevated to the circuit court bench in the 17th Judicial Circuit. Throughout her tenure as a trial judge in both county and circuit courts, Judge Gunther was very active with Bar committees and programs, serving as Chair of the Legal Aid Committee in 1975, on the Judicial Poll Committee in 1977, on the Bench-BarLiaison Committee from 1978 to 1981, on the Courts Committee, and on the Judicial Selection and Tenure Committee. Her Florida Bar activities include service as Vice Chair of the Summary Procedure Rules Committee, service as a member and Vice Chair of the Judicial Evaluation Committee (formerly Judicial Polls Committee) and service on the Judicial Nominating Commission. Judge Gunther's civic activities include service as an instructor for Nova University's College Accelerated Program for Police Officers, service as Secretary and member of the Broward Commission on the Status of Women, membership on the Women's Detention Center Advisory Committee, Faculty Advisor for the general section of the National Judicial College, Instructor at the Florida College for New Judges, appointment by Chief Justice Sundberg as a member of the Judicial Coordinating Counsel, appointment by Governor Graham as a member of the Governor's Task force on Criminal Justice System Reform, and appointment by Justice McDonald as a member of the Gender Bias Steering Committee and Gender Bias Commission. Judge Gunther is a member of the Education Committee Council of Chief Judges of Courts of Appeal 1995 to 1996. Judge Gunther was also the Chief Judge for the Fourth District Court of Appeal from July 1, 1995 to June 30, 1997.

FREDERICK A. HAZOURI, the Court's newest member, received his J.D. from the University of Florida Cum Laude in 1967. He is the past President of the Academy of Florida Trial Lawyers and was a Board Certified Trial Lawyer certified by the Florida Bar and the National Board of Trial Advocacy. Judge Hazouri is a Diplomate of the American College of Trial Lawyers and was listed in the *Best Lawyers of America* until he took the bench. He served on the Fourth District Court of Appeal nominating committee while still in private practice. In August of 1995, Judge Hazouri was appointed to the Fifteenth Judicial Circuit in and for Palm Beach County by Governor Lawton Chiles. While a circuit court judge, Judge Hazouri presided over a general civil division. He participated as an instructor at the 1998 Florida College of Advanced Judicial Studies by teaching courses in "Civil: Becoming an Expert on Experts and Civil Trial Management/Trial Anatomy 501-Lab." On November 19, 1998, Governor Chiles appointed Judge Hazouri to the Fourth District Court of Appeal, where he joined two of his former law partners, Judge Klein and Judge Dell. Judge Hazouri is married to Florida Supreme Court Justice Barbara Pariente, who formerly served on the Fourth District Court of Appeal. He was born and raised in Jacksonville, Florida and moved to West Palm Beach in December of 1967. His first employment out of law school was as a law clerk at the Fourth District Court of Appeal for the now-retired Senior Judge William C. Owen. Judge Hazouri feels that Judge Owen should be prepared to accept either the credit or the blame for Judge Hazouri's performance as an appellate court judge.

LARRY A. KLEIN, born in Cincinnati, Ohio in 1939, is one of those rare people named "Larry" instead of being a "Lawrence" with a nickname. Married and the father of three children, Judge Klein took the bench at the Fourth District in 1993. Prior to becoming a judge, he practiced appellate law as a solo practitioner and a partner with the appellate law firm of Klein and Walsh, following ten years as a partner with the Cone, Wagner, Nugent law firm in West Palm Beach. Judge Klein received his B.A. degree from the University of Michigan in 1962. He attended law school at the University of Florida School of Law, where he received his J.D. in 1964. Upon graduation from law school, Judge Klein became a research aide with the Second District Court of Appeal. Judge Klein's many Bar activities include service of a three-year term as Chair of the Florida Bar Appellate Rules Committee. He was a member of the Supreme Court Rules Advisory Committee from 1978 to 1982, and was a member of a special committee appointed by the Florida Supreme Court to examine criminal appeals. Judge Klein served as Chair of a special committee appointed by the Florida Supreme Court to make recommendations on reducing appeals. On a local level, Judge Klein served as President of the Palm Beach Bar Association from 1975 to 1976. Judge Klein's honors and awards include membership on the Editorial Board of the University of Florida Law Review,

listing in the *Best Lawyers in America* publication in four editions over the past 11 years, and listing in the "Best Lawyers in the United States" of *Town & Country Magazine,* June 1985 edition. He is also a fellow of the American College of Trial Lawyers, the American Academy of Appellate Lawyers, and the American Bar Foundation. Judge Klein's many civic activities include service on the Board of Directors of the United Way of Palm Beach County, the Board of Directors of the Florida Rural Legal Services, and the Board of Directors of the Palm Beach County Legal Aid Society, where he was President in 1974. He has served as a member of the Fifteenth Circuit Judicial Nominating Commission, and he has been a member and Chair of the Fourth District Court of Appeal Judicial Nominating Commission. Judge Klein's many publications include works on brief writing and other issues in appellate practice, as well as works on subjects as diverse as damages in injury to property cases to sovereign immunity. From 1967 to 1970, Judge Klein was the editor of the *Academy of Florida Trial Lawyers Journal.*

MARK E. POLEN, a married father of six children, was born in 1945 in Aurora, Illinois. He received his Bachelor of Business Administration Degree from the University of Iowa in 1966. Judge Polen left Iowa immediately after graduation to attend the University of Miami School of Law, where he received his Juris Doctor in 1969. Upon graduation from law school, Judge Polen worked as a staff attorney, and later head attorney, for the Economic Opportunity Legal Services Program, Inc., in Miami. Thereafter, Judge Polen entered private practice, engaging in general civil practice with an emphasis on workers' compensation claimant's practice and appellate practice. Governor Askew appointed Judge Polen to be a Judge of Industrial Claims for Broward County in March of 1977. He served as an Associate Commissioner of the Industrial Relations Commission in Tallahassee for a period during 1978, then returned to his seat as a Judge of Industrial Claims on the county level until being appointed to the circuit court by Governor Graham in 1979. During his ten years as a Circuit Judge in Broward County, Judge Polen served in the Civil Division, Criminal Division, and Juvenile Division, where he also served as Administrative Judge. He gained experience as an appellate judge, serving two periods as an Associate Judge at the Fourth District in 1986 and 1988. Judge Polen has been very active in Bar and community organizations and activities. He has served on the Rules of Civil Procedure Committee, the Family Court Rules of Procedure Committee, the Rules of Judicial Administration, Selection & Tenure Committee, and as a member of the Executive Council, Chair-elect, and Chair of the Family Law Section. He is active with the Florida Conference of Appellate Judges, and has served on the Florida Conference of Circuit Court Judges. He is also a past President of the B'nai B'rith Justice Unit. Somehow he has also arranged his busy schedule to remain active in the Boca Raton Dog Club. Awards and honors bestowed on Judge Polen include an award for the Freshman Moot Court Competition at the University of Miami School of Law, election to the Bar and Gavel Honorary Society, and status as a founder of the International Law Society Journal: *Lawyers of the Americas.* He received the Gavin K. Letts Memorial Jurist of the Year Award from the American Academy of Matrimonial Lawyers in 1994. Judge Polen was appointed to the Fourth District by Governor Martinez in January 1989. In addition to his responsibilities on the Court, Judge Polen served as an adjunct professor at Nova Law School's Family Law Litigation Workshop from 1988 to 1996.

GEORGE A. SHAHOOD was appointed to the Court late in 1994 by Governor Lawton Chiles to fill the vacancy left by the elevation of Justice Anstead to the Supreme Court. Before taking the bench at the Fourth District, Judge Shahood sat as a county court judge from 1978 through 1981. That year, he was appointed to be a circuit court judge at the Broward County Circuit Court by Governor Bob Graham. He was subsequently elected and re-elected to that position. Judge Shahood received his law degree from Mercer University's Walter F. George School of Law in 1968. He received his Bachelor of Arts degree in political science from Emory University in 1959. Between college and law school, Judge Shahood served in the United States Army for two years and worked for three years in the accounting department of a major manufacturing corporation. He attended the National Judicial College in Reno, Nevada. Among his many bench and Bar activities, Judge Shahood has served as Chairman of the Code and Rules of Evidence Committee of The Florida Bar, as a member of the Judicial Nominating Procedure Committee, a State Delegate to the American Bar Association Convention from the Conference of County Court Judges, and as an active member of many other state, local, and national professional community organizations.

W. MATTHEW STEVENSON was appointed to the Fourth District in November 1993 by the late Governor Lawton Chiles. He previously served for four years on the Palm Beach County Circuit Court bench where he was assigned to the civil and juvenile divisions. Prior to his initial appointment to the bench, Judge Stevenson served as a Chapter 120 Administrative Hearing Officer with the Division of Administrative Hearings in Tallahassee, worked in private practice as a certified circuit court mediator and was a trial attorney and commissioned officer in the United States Navy Judge Advocate General's (JAG) Corps. In addition, he has served as a law clerk for the Honorable Joseph W. Hatchett on both the Florida Supreme Court and the United States Court of Appeals for the Fifth Circuit. Among his many Bar activities, Judge Stevenson has served on the Juvenile Court Rules Committee and on the Professionalism Committee for the Fifteenth Judicial Circuit. Judge Stevenson's past and present professional associations include membership in the F. Malcolm Cunningham Sr. Bar Association, the Craig F. Barnard American Inn of Court, the Florida Chapter of the National Bar Association, the National Council of Family and Juvenile Court Judges, the Florida

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Conference of Circuit Judges, and the Florida Conference of District Court of Appeal Judges. Judge Stevenson is active in the community and serves on the Board of Trustees of Palm Beach Atlantic College and on the Advisory Board of the Palm Beach Lakes Community High School Pre-Law Magnet Program.

BARRY J. STONE, married and the father of three children, was born in Los Angeles in 1939. Judge Stone received his undergraduate degree from the University of Florida in 1960, and his law degree from the University of Florida in 1963. Judge Stone has served on the Fourth District since 1986, following appointment by Governor Bob Graham. Prior to becoming an appellate judge, Judge Stone sat on the circuit court bench in Broward County, having been appointed by Governor Graham in 1979 and re-elected without opposition in 1980. He is currently President of the Conference of District Court of Appeal Judges. On the circuit court, Judge Stone served as Administrative Judge of the Criminal Division from 1985 to 1986. He has previously taught law students as an adjunct professor at Nova University. Prior to becoming a judge, Judge Stone engaged in the private practice of law in Fort Lauderdale and Pompano Beach. His many past and present bench and Bar activities include membership on the Executive Committee of the Florida Conference of Circuit Court Judges, Presidency of the North Broward Bar Association, membership on the Executive Committee of the Broward County Bar Association, service on the Bench-Bar Commission and Bench-Bar Implementation Committee of the Supreme Court and Florida Bar, among other committees and groups too numerous to mention. Judge Stone's many civic and community activities have included service of several terms as Chair of the Pompano Beach Planning Board, several terms as Chair of the Pompano Beach Local Planning Agency, membership on the Broward County Criminal Justice Task Force, the Broward County Criminal Justice Planning Council, the Broward County Mental Health Board, the United States Selective Service Board, and civic organizations including the Board of Trade, Chamber of Commerce, and Kiwanis. Judge Stone is formerly the President of the B'nai B'rith Justice Unit and the Stephen R. Booher Chapter of the American Inns of Court. He has also served as a synagogue president.

CAROLE Y. TAYLOR, one of the Court's newest members, was born in Raleigh, North Carolina. She is married and the mother of two daughters. Judge Taylor received her undergraduate degree from the University of North Carolina at Chapel Hill in 1971, and her law degree from the University of North Carolina in 1974. Upon graduating, Judge Taylor worked as a Staff Attorney for the Legal Aid Society of Durham County, North Carolina, and The New Hanover Legal Services, Inc. of Wilmington, North Carolina. Thereafter, Judge Taylor continued her career as an Associate University Attorney for the University of Florida, Assistant Public Defender for Broward County, and Assistant United States Attorney for the Southern District of Florida. She entered private practice with the firm of Sams, Ward, Newman, Beckham & Elser, P.A., and later formed Carole Yvonne Taylor, P.A. Judge Taylor served on the county and circuit benches for seven years. She was appointed to the Fourth District Court of Appeal in February 1998 by Governor Lawton Chiles. Among her many bench and Bar activities, Judge Taylor has served as Vice President of the Florida Chapter of the National Bar Association, member of the Association of Trial Lawyers of America, Florida Association of Women Lawyers, the Womens' Trial Lawyer Caucus, Broward County Criminal Defense Attorney Association, Vice President of the T.J. Reddick Bar Association, member of the Broward County Association of Women Lawyers, Florida Academy of Trial Lawyers, National Association of Women Judges and the F. Malcolm Cunningham Sr. Bar Association. Judge Taylor has served on the Board of Directors of such civic and charitable organizations as Boys and Girls Clubs of Broward County, Jack and Jill Nursery, Inc., and the Urban League of Broward County. She also served on the Budget Committee of the United Way, and as a member of NAACP, National Conference of Christians and Jews, Leadership Broward IV, Gwen Cherry Women's Political Caucus, and the Junior League. Judge Taylor was recently inducted into the Broward County Women's Hall of Fame.

MARTHA C. WARNER has served as a judge on the Fourth District Court of Appeal since 1989 and is currently the Chief Judge. From 1986 to 1988, Judge Warner sat on the Circuit Court bench of the 19th Judicial Circuit. She was engaged in the private practice of law from 1974 to 1985. Born in Saint Louis, Missouri, Judge Warner is married and the mother of three children. She graduated in 1971, Magna Cum Laude, from Colorado College in Colorado Springs, Colorado where she received her Bachelor of Arts Degree, and was awarded Phi Beta Kappa. Judge Warner commenced her legal education at the University of Chicago Law School, which she attended from 1971 to 1972. Thereafter, Judge Warner transferred to the University of Florida School of Law, where she received her J.D. degree with high honors in 1974. Judge Warner was a member of the Phi Kappa Phi Honorary Social Science Fraternity and was elected to the Order of the Coif while at law school. She was a member of the editorial board at the University of Florida Law Review. Judge Warner has continued her legal studies while on the bench, participating in the University of Virginia's Masters of the Judicial Process Program, from which she received her L.L.M. in 1995. Judge Warner's Bar and bench activities include membership on the Florida Supreme Court's Standard Jury Instruction Committee from 1987 to 1998, the Faculty of the Florida College of Advanced Judicial Studies from 1992 to the present, the Appellate Rules Committee from 1990 to 1993, the Appellate Judges Conference Education Committee, and the Court Education Trust Fund from 1992 to 1995. She is also a member and the recruitment coordinator of the ABA Committee on the Masters of Judicial Process program, and is a member of the Subcommittee on the

Judicial Appellate Workload of the Judicial Management Council and the Committee on Trial Court Performance and Accountability. Judge Warner currently chairs the Committee on District Court of Appeal Performance and Accountability and the FCEC Special Committee on Evaluation and Administration of Florida's Judicial Education Programs, and chaired the Committee on Legislative Reform of Judicial Administration in 1998. She is also involved in her community, serving on the Board of Directors for the Martin County Council for the Arts from 1996 to the present, and as the Chair of the 1997, 1998, and 1999 High School Juried Art Shows.

Conclusion

We hope this article has been of interest to the readers and will be of assistance to the Court as the practice preferences of the Fourth District become more well-known to the appellate practitioner.

The original version of this article appeared in the December 1994 edition of The Record *and was prepared by Roy D. Wasson of Miami with assistance from Marilyn Beuttenmuller, Clerk of the Court. This version of the article was updated by Ilene L. Pabian, an associate in the Miami office of Holland & Knight LLP practicing appellate law. Before joining Holland & Knight LLP, Ilene served as a judicial clerk for Judge Martha C. Warner at the Fourth District Court of Appeal.*

FOURTH APPELLATE DISTRICT: Broward, Indian River, Okeechobee, Palm Beach, St. Lucie, and Martin. Counties comprising the 15th, 17th and 19th Circuits.

JUDGES OF THE FOURTH DISTRICT COURT OF APPEAL

NAME	TERM OF OFFICE
Charles O. Andrews, Jr.	1965-1967
Sherman N. Smith, Jr.	1965-1967
James H. Walden	1965-1976, 1982-1990
Spencer C. Cross	1967-1979
David L. McCain	1967-1970
John L. Reed, Jr.	1967-1973
William C. Owen, Jr.	1967-1976
Gerald Mager	1970-1977
James C. Downey	1973-1992
James E. Alderman	1976-1978
James C. Dauksch	1977-1979
Harry Lee Anstead	1977-1994
Gavin K. Letts	1977-1993
John J. Moore, II	1977-1981
John R. Beranek	1978-1984
George W. Hersey	1979-1995
Hugh S. Glickstein	1979-1998
Daniel T. K. Hurley	1979-1986
JOHN W. DELL	1981 to Present
Rosemary Barkett	1984-1985
BOBBY W. GUNTHER	1986 to Present
BARRY J. STONE	1986 to Present
MARTHA C. WARNER	1989 to Present
MARK E. POLEN	1989 to Present
Eugene Garrett	1989-1993
GARY M. FARMER	1991 to Present
LARRY A. KLEIN	1993 to Present
Barbara Pariente	1993-1997
W. MATTHEW STEVENSON	1993 to Present
GEORGE A. SHAHOOD	1994 to Present
ROBERT M. GROSS	1995 to Present
CAROLE Y. TAYLOR	1998 to Present
FREDERICK A. HAZOURI	1998 to Present

Message from the Chair
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treat in the Spring of 2000. Mark your calendar now for the weekend of April 28-30, 2000. The Retreat is open to Section members and their families. It will begin around noon on Friday and end by 4:00 p.m. on Saturday, unless you are interested in attending the final breakfast on Sunday morning. We will convene at the Indian River Plantation Marriott on Hutchinson Island, which is fairly close to I-95 near Stuart, Florida. We have negotiated a $119.00 per night single/double room rate. A Florida Bar accredited seminar will be offered on Friday afternoon. Judge Padovano of the First District will be our keynote speaker at dinner Friday evening, and we will put our heads together all day Saturday to hammer out a long-range plan for the Section. The Retreat will be fun and rewarding. I promise!

And last, but not least, one of the best things about being a member of a relatively new, relatively small Section is the wealth of opportunities for getting involved in Section activities and committee work. So if you haven't filled out a Committee Preference Form, just call, write, or e-mail me, and I will appoint you to one of our committees. If that doesn't appeal to you or other commitments prevent you from joining a committee, we always welcome articles, book reviews, interviews, and the like for publication in *The Record* or *The Florida Bar Journal*. Whatever you choose to do, it will benefit you as well as Section members.

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