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INSIDE:

Message from the Chair...2

Appellate Judges Education
Institute Summit An
Unqualified Success3

Appellate Inn of Court in
Miami Named for
Judge Barkett.....5

The Second District Court of
Appeal's Historic First All-
Woman Panel7

Judicial Profiles:

Judge Cory J. Ciklin, 4th
DCA9

Judge Spencer Levine, 4th
DCA10

Judge Bruce W. Jacobus,
5th DCA11

Appellate Practice Section's
Mini-Retreat "Part II" a
Success!14

Coming up:

CLE:
Practice
Before the
Fifth District
Court of Appeal

See page 16-17.

Federal Court Practice – Appellate Review of Orders Adverse to Attorney-Client Privilege

By Landis "Lance" V. Curry III

In *Mohawk Industries, Inc. v. Carpenter*,¹ the United States Supreme Court resolved a conflict amongst the Courts of Appeals by holding that prejudgment orders adverse to the attorney-client privilege are not immediately appealable under the collateral order doctrine. The collateral order doctrine includes within the orders immediately reviewable by the Courts of Appeals a "small class" of collateral rulings that do not terminate the action in the district courts.² "That small category includes only decisions that are conclusive, that resolve important questions separate from the merits, and that are effectively unreviewable on appeal from the final judgment in the underlying action."³

In *Mohawk*, the Court concluded that orders adverse to the attorney-client privilege are not effectively unreviewable on appeal from the final judgment.⁴ The Court did, however, identify other appellate mechanisms through which litigants may seek review of any such orders that are particularly injurious or novel.⁵ This article discusses the Court's decision precluding immediate review under the collateral order doctrine of orders adverse to the attorney-client privilege, and the options remaining to federal court practitioners for seeking appellate review of such orders.

The Collateral Order Doctrine and the Attorney- Client Privilege

Prior to the Court's decision in *Mohawk*, the Courts of Appeal were split as to whether orders adverse to the attorney-client privilege were reviewable under the collateral order doctrine. The Third, Ninth, and D.C. Circuits had permitted collateral appeals of attorney-client privilege rulings.⁶ The Second, Third, Seventh, Tenth, Eleventh, and Federal Circuits had, however, found such rulings nonappealable.⁷ The courts primarily disagreed on whether the third condition of the collateral order doctrine had been met; that is, whether orders adverse to the attorney-client privilege were effectively unreviewable on appeal from the final judgment.⁸

The collateral order doctrine's third condition focuses on whether delaying review until after the entry of final judgment "would imperil a substantial interest" or "some particular value of a high order."⁹ The federal appellate courts do not engage in an individualized jurisdictional inquiry, but rather focus on the "class of claims" for which appellate review is sought.¹⁰ If the class of claims can be adequately vindicated by other

See "*Mohawk*" page 5

Message from the Chair

The AJEI Summit, our Section's Presence There, and a Presentation on Some Features Our Attorneys Want from E-Filing Technology

by Dorothy F. Easley

As you know, the Florida Bar Appellate Practice Section, law firms and practitioners around the State of Florida sponsored in various forms the American Bar Association's Appellate Judges Institute Summit [AJEIS] in November, which our own Judge Martha Warner chaired this past year. The ABA's Appellate Judges Conference and Florida's Appellate Judges Conference have, for years, produced outstanding educational programs for our appellate judges, state and federal. The State Justice Institute was the AJEIS's primary source of education funding, and that was itself essentially defunded by the federal government. The Appellate Judges Conference decided to reinvigorate its educational efforts by establishing the Appellate Judges Education Institute (AJEI), as a 501(c)(3) non-profit corporation, housed at the SMU Dedman School of Law, which staffs the AJEI pro bono. The AJEI's primary mission is to provide quality education for the appellate judiciary, and this past year, more than 120 judges registered to attend the 2009 AJEI Summit. The AJEI also allows the attendance of appellate practitioners, who also greatly benefit from quality appellate education.

Many of these judges were able to attend the AJEI Summit on scholarships. Our Section also co-hosted with the AJEIS a Welcome Reception that warmly greeted our judges and practitioners from around the country. It was widely described as a very successful feature of this year's AJEI Summit. On behalf of the Section, I thank all of you who sponsored and attended the Summit in November 2009 to help make that such a success. And this issue of *The Record* has a special page recognizing those who

co-hosted the AJEIS-APS Welcome Reception.

Also at the AJEIS, Judge Phil Espinosa of the Arizona Court of Appeal, Judges Jim Kirsch and Margret Robb of the Indiana Court of Appeals, and our own Tom Hall, Clerk of the Florida Supreme Court were invited to speak on the topic of e-filing from



the various court and judge perspectives. I was also invited to speak on what appellate lawyers wanted from an e-filing system. To that end, I researched and presented written materials almost 40-pages in length that, despite the many pages, only hauntingly provided a superficial overview of all that courts around the country are doing in the e-filing arena. But, in light of the current e-filing efforts in Florida, I offer below some considerations that came out of the presentations regarding what our appellate attorneys want from our e-filing system.

In the materials for the AJEIS presentation, which are outlined in my written materials to the AJEIS for *Electronic Filing: The Sun Sets on the Paper Trail*, ABA-AJEI Panel Presentation (Fall 2009), I located at least 24 states that currently have e-filing in various forms.

Some mandatory. A few discretionary. As Florida's judicial system continues to develop its own e-filing construct, we offer the following on what these various states are doing, which point to basically eight areas of greatest importance to practitioners using e-filing, discussed below:^a

#1 Ease of e-filing: Appellate attorneys want their documents to quickly upload into the system, either through a portal or an emailed format. For example, Alabama, Oregon, Tennessee and Nevada (some states's systems being more expansive than others) allow the attorneys to upload documents into their court e-filing systems. Delaware and Colorado on the other hand use a LexisNexis system that allows direct filing. Beyond all of this, however, delays or glitches in uploading those documents affect our deadlines. This is especially true when we are completing a brief at 11 p.m. for an 11:59 p.m. cutoff filing time. Appellate practice is a heavy deadline-driven practice. As most appellate lawyers also provide trial support, we underscore that, from the moment an appealable order is entered, appellate is much more deadline driven than trial work. Additionally, our deadlines are driven by the happening of a preceding event, which renders our practice even more deadline driven. When documents are filed, we want to *know* that they'll be filed quickly.

#2 Accessibility of the court website, docket and documents therein: The Florida Supreme Court's website allows some access to briefs, orders and opinions and our appellate courts allow online review of the dockets, but attorneys, who

See "Chair's Message," page 14

Appellate Judges Education Institute Summit An Unqualified Success

By Dean A. Morande



D. MORANDE

On November 19, 2009, hundreds of appellate judges, staff attorneys, and appellate practitioners from around the country converged just outside of Walt Disney World in Orlando, Florida, for the long-awaited Appellate Judges Education Institute Summit. The annual four-day summit was developed and conducted by the American Bar Association's Appellate Judges' Conference, the Council of Appellate Staff Attorneys, and the Council of Appellate Lawyers.

This year's summit was chaired by Justice Elizabeth Lang-Miers of the Texas Court of Appeals, with Judge Martha Warner of our Fourth District Court of Appeal chairing the ABA Appellate Judges Conference. For those interested in exact numbers, there were 325 attendees, including state and federal appellate judges from Arkansas, Arizona, California, Colorado, Delaware, the District of Columbia, Florida, Indiana, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Oklahoma, Texas, Virginia, Washington, the Sixth, Seventh, Ninth, and Eleventh Circuit Courts of Appeals, and even Guam and Trinidad and Tobago. Needless to say, a very diverse group.

We had a particularly strong showing from our judges and justices here in Florida, including five of Florida's seven Supreme Court justices, and most of Florida's District Court of Appeal judges (including all 12 judges from the Fourth District, 11 of the 14 judges from the Second District, and more than half of the judges from the other Districts).

In addition to unprecedented ac-

cess to appellate judges from around the country, the summit boasted an impressive and innovative array of programs and speakers. For example, on the first day, Professor Jeffrey Rachlinski of the Cornell Law School conducted an interactive program on "How Judges Think." Various questions—from basic math to a ruling on a mock forgery case—were posed to the audience, who then punched their answers into handheld devices provided by the moderator. The results were immediately tabulated, and Professor Rachlinski, along with the appellate judges on the panel, gave some eye-opening insight as to how those numbers are reflective of how and why judges make their decisions.

The following morning, Dean Erwin Chemerisky of the University of California, Irvine School of Law, gave his take on the numerous weighty issues now pending before the U.S. Supreme Court. The next day we heard from Harvard Law Professor Michael Klarman about the backlash of judicial decisionmaking, and later from Kenneth Starr—former U.S. circuit judge and former independent prosecutor—on the "New" Supreme Court.

These are just a few of the remarkable speakers that only a program like the AJEI summit can draw. Other speakers of note at the event included Judge Diane Wood from the U.S. Court of Appeals for the Seventh Circuit, Professor Pamela Karlan from the Stanford Law School, ABA President-elect Stephen Zack, Justice Peggy Quince of the Florida Supreme Court, Judge Charles Wilson from the U.S. Court of Appeals for the Eleventh Circuit, Florida Supreme Court clerk Tom Hall, and dozens of other state and federal appellate judges, law professors, and attorneys from across the country.

The summit also offered break out sessions on all kinds of appellate topics, from general topics such as

writing in "Plain English" and "Moving From Briefs to Oral Argument," to more specific issues such as recent national security law developments, immigration law, interlocutory appeals, and the economic downturn.

Over the course of the four-day event, there were also several opportunities to interact with the judges and practitioners on a social level. In addition to two evening receptions, attendees had the opportunity to "dine around" at local restaurants with small groups or attend a pool-side dinner and "T-Shirt Exchange."

With everything the AJEI summit had to offer, the event was truly a success on all levels. As Judge Warner explained:

On behalf of the AJEI and the ABA Appellate Judges Conference, we were extremely pleased with the participation of the Florida judges and lawyers. The Appellate Practice Section was very generous in sponsoring our Thursday night reception, and we very much appreciated the lawyers and law firms who contributed to the reception, as well as the law firms who were sponsors for the entire Summit. The AJEI strives to provide excellent education together with an opportunity for lawyers and judges to mingle in an informal setting. The Orlando Summit achieved both goals in exemplary fashion.

With any luck, next year's summit will prove to be as outstanding as this year's was. The Honorable Margret G. Robb of the Indiana Court of Appeals is chairing the 2010 AJEI summit, which is scheduled to take place on November 18-21, 2010, at the Adolphus Hotel in Dallas, Texas.

Dean Morande practices with Carlton Fields, P.A. in West Palm Beach and is a member of the firm's appellate practice and trial support group.

Visit the Section web site: www.flabarappellate.org

Thank You!!!

The Appellate Practice Section recognizes and extends its deepest appreciation to the following sponsors of our November 2009 AJEIS-APS Welcome Reception in Orlando:

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Appellate Inn of Court in Miami Named for Judge Barkett

By the Honorable Vance E. Salter



JUDGE BARKETT



V. SALTER

A new American Inn of Court, one of over 400 such groups formed by judges, lawyers, law school faculty members, and law students throughout the United States, has been named for Eleventh Circuit Judge Rosemary Barkett. The Inn is based in Miami and will focus on appellate law, procedure, and practice.

Comprising about 90 charter members, the Barkett Inn will feature programs on appellate topics to assist law students and less experienced practitioners. Six teams of experienced practitioners, law school faculty members, less experienced practitioners, and law students will also be encouraged to work together to assist indigent, self-represented parties in civil appeals.

The new Inn's charter was presented at a ceremony on January 19, 2010 in Miami. A special video featuring music and sound clips was prepared for the event by Judge Barkett's niece Leslie, a recent graduate of Harvard College. The video featured highlights of Judge Barkett's early years, first career as teacher and Catholic nun, and later professional life as trial lawyer, circuit judge, state appellate judge, first woman to serve as Justice and as Chief Justice of the Florida Supreme Court, and U.S. Court of Appeals Judge.

In her remarks to Inn members (including 34 law students from the Florida International University, St. Thomas University, and University of Miami law schools), Judge Barkett described American justice as an evolution shaped by lawyers. As one example, she observed that the sequence of Supreme Court opinions in Dred Scott, Plessy v. Ferguson, and Brown v. Board of Education reflects progress, change, and justice forged by lawyers and judges over the course of a century. One of her mentors, the late Chesterfield Smith, always told her that "the right thing to do"

is sometimes difficult, but is nonetheless the path to be followed. She closed by expressing her deep appreciation for the use of her name in the Inn's official title and her designation as a role model for members.

The official charter bearing Judge Barkett's name and the new Inn's objectives—the enhancement of professionalism, civility, and ethics in the practice of law—was presented to Inn President Vance Salter, a Judge of the Third District Court of Appeal of Florida. Following the ceremony, Judge Barkett met the law student members and offered to participate in a later program on the "nuts and bolts" of successful appellate practice.

Nationally, the American Inns of Court Foundation (based in Alexandria, Virginia) has over 25,000 active members and over 80,000 alumni. The Foundation modified the principles of apprenticeship and mentoring found in traditional English Inns of Court to conform them to the U.S. legal system.

For more information regarding the new Inn, please contact the Inn Administrator, Mercy Prieto, at BarkettAppellateInn@gmail.com or 2001 S.W. 117 Avenue, Miami, FL 33175.

MOHAWK

from page 1

means of appellate review, review under the collateral order doctrine is inappropriate.¹¹

The *Mohawk* Court rejected the argument that deferring review of rulings adverse to the attorney-client privilege until final judgment so imperils the interests involved as to justify the cost of allowing immediate appeal of these types of orders.¹² According to the Court:

[P]ostjudgment appeals generally suffice to protect the rights of litigants and assure the vitality of the attorney-client privilege. Appellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host

of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence.¹³

Although the Court acknowledged that "an order to disclose privileged information intrudes on the confidentiality of attorney client communications," it concluded that requiring litigants to wait until after final judgment to remedy any alleged intrusion does not meaningfully reduce the incentives for clients and counsel to engage in full and frank consultations.¹⁴ The Court noted that clients and their counsel "are unlikely to

focus on the remote prospect of an erroneous disclosure order" when deciding how freely to communicate with one another.¹⁵

Furthermore, the Court found that most district court rulings involving the attorney-client privilege are unlikely to be reversed because they are based upon the application of settled legal principles to factual determinations, "for which judicial deference is the norm."¹⁶ This finding evidences respect for the district court judges' responsibility to manage the prejudgment tactics of the litigants. Indeed, the Court noted that "[p]erhaps the situation would be different if district courts were systematically underen-

forcing the privilege, but we have no indication that this is the case.”¹⁷

The Court’s holding ultimately underscores its preference for preventing piecemeal appeals that would “unduly delay the resolution of district court litigation and needlessly burden the Courts of Appeals.”¹⁸ In applying the collateral order doctrine, the Court has stressed that it must “never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered.”¹⁹ The Court reiterated that “the class of collaterally appealable orders must remain ‘narrow and selective in its membership.’”²⁰ This is particularly true, the Court stated, given the enactment of legislation designating rulemaking “as the preferred means for determining whether and when prejudgment orders should be immediately appealable.”²¹ Accordingly, any additional means of appellate review of orders adverse to the attorney-client privilege, other than the established alternative mechanisms discussed below, should be created through the rulemaking process—complete with input from the bench and bar—rather than through judicial decisions.²²

Alternative Appellate Mechanisms for Orders Adverse to Attorney-Client Privilege

Although the Court firmly rejected the notion that prejudgment orders adverse to the attorney-client privilege are immediately appealable under the collateral order doctrine, the Court discussed other review mechanisms (in addition to postjudgment appeals) for “litigants confronted with a particularly injurious or novel privilege ruling.”²³ First, the Court stated that a party can ask the district court to certify, and the court of appeals to accept, an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), which requires “a controlling question of law,” the resolution of which “may materially advance the ultimate termination of the litigation.”²⁴ The Court stated

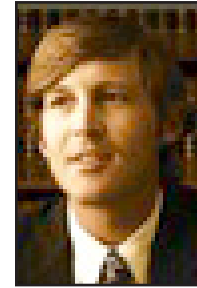
that if a privilege ruling involves a new legal question or is of special significance, the “district courts should not hesitate to certify an interlocutory appeal in such cases.”²⁵ Second, in extraordinary circumstances, a party may petition the court of appeals for a writ of mandamus.²⁶ Such extraordinary circumstances include “when a disclosure order ‘amount[s] to a judicial usurpation of power or a clear abuse of discretion,’ or otherwise works a manifest injustice.”²⁷

Third, the Court noted that “[a]nother long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions.”²⁸ Some sanctions (e.g., striking pleadings) will allow a party to obtain postjudgment review without having to reveal the privileged information.²⁹ If the sanction is contempt of court, the party can “appeal directly from that ruling, at least when the contempt citation can be characterized as criminal punishment.”³⁰

The *Mohawk* Court concluded that these mechanisms for appellate review “not only provide assurances to clients and counsel about the security of their confidential communications,” but also address concerns about litigants experiencing severe hardship by being denied review under the collateral order doctrine.³¹ The Court acknowledged that the disclosure of privileged information “may, in some situation, have implications beyond the case at hand.”³² But the Court countered that “the same can be said about many categories of pretrial discovery orders for which collateral order appeals are unavailable.”³³ The Court noted that “[a]s with these other orders, rulings adverse to the privilege vary in their significance; some may be momentous, but others are more mundane. Section 1292(b) appeals, mandamus, and appeals from contempt citations facilitate immediate review of some of the more consequential attorney-client privilege rulings.”³⁴ The Court also mentioned that the district courts have the power to enter protective orders to limit the spillover effects of disclosing sensitive information.³⁵

Attorneys and litigants considering these alternative mechanisms for appellate review must be mindful of their limited scope as well as their potential repercussions (particularly when pursuing the sanctions alter-

native). As the *Mohawk* Court mentioned, these alternative mechanisms are appropriate only for reviewing “more consequential attorney-client privilege rulings” that involve a “particularly injurious or novel privilege” determinations.³⁶ Litigants and their counsel must therefore think long and hard about whether prejudgment disclosure orders are so legally flawed and prejudicial as to justify pursuing the limited prejudgment options that remain.



L. CURRY

Lance Curry practices commercial litigation and appellate practice at Hill Ward Henderson in Tampa, Florida. Prior to joining Hill Ward Henderson in 2003, Lance served as a staff attorney to Justice Charles T. Wells at the Florida

Supreme Court. Lance is an honors graduate of the University of Florida College of Law, where he served as a member of the *Florida Law Review*.

Endnotes:

1 *Mohawk Indus., Inc. v. Carpenter*, 130 S. Ct. 599, 603 (2009). Justice Sotomayor wrote the opinion for the Court. Justice Thomas issued an opinion concurring in part and concurring in the judgment.

2 *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). The collateral order doctrine is also known as the “Cohen doctrine.”

3 *Swint v. Chambers County Comm’n*, 514 U.S. 35, 42 (1995).

4 *Mohawk*, 130 S. Ct. at 606. The Court declined to decide whether the other requirements of the collateral order doctrine were met.

5 *Id.* at 607-08.

6 See *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1087-88 (9th Cir. 2007); *United States v. Philip Morris Inc.*, 314 F.3d 612, 617-21 (D.C. Cir. 2003); *In re Ford Motor Co.*, 110 F.3d 954, 957-64 (3d Cir. 1997).

7 See *Mohawk Indus., Inc. v. Carpenter*, 541 F.3d 1048, 1052 (11th Cir. 2008); *Boughton v. Cotter Corp.*, 10 F.3d 746, 749-50 (10th Cir. 1993); *Texaco Inc. v. Louisiana Land & Exploration Co.*, 995 F.2d 43, 44 (5th Cir. 1993); *Reise v. Bd. of Regents*, 957 F.2d 293, 295 (7th Cir. 1992); *Chase Manhattan Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159, 162-63 (2d Cir.

continued, next page

1992); *Quantum Corp. v. Tandon Corp.*, 940 F.2d 642, 643-44 (Fed. Cir. 1991).

8 See, e.g., *Philip Morris*, 314 F.3d at 962-63.

9 *Will v. Hallock*, 546 U.S. 863, 868 (2006).

10 *Mohawk*, 130 S. Ct. at 605.

11 *Id.*

12 *Mohawk*, 130 S. Ct. at 606.

13 *Id.* at 606-07. Interestingly, Florida appellate courts have long held that pre-judgment orders requiring the disclosure of attorney-client privilege can cause "irreparable harm" that warrants immediate certiorari review. See, e.g., *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1100 (Fla. 1987) (characterizing privileged information as "cat out of the bag" material).

14 *Mohawk*, 130 S. Ct. at 607.

15 *Id.*

16 *Id.*

17 *Id.* at 607 n.2.

18 *Id.* at 608.

19 *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994) (citation omitted).

20 *Will*, 546 U.S. at 350.

21 *Mohawk*, 130 S. Ct. at 609.

22 *Id.*

23 *Id.* at 607-08.

24 *Id.* at 607.

25 *Id.*

26 *Id.*

27 *Id.* (quoting *Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 390 (2004)).

28 *Id.* at 608.

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.* Indeed, as Justice Thomas noted in his concurring opinion, the disclosure order in the *Mohawk* case was likely to affect a separate class action case involving *Mohawk Industries, Inc.* *Id.* at 611 n.* (Thomas, J., concurring in part and concurring judgment).

33 *Id.* at 608.

34 *Id.*

35 *Id.*

36 *Id.* at 607-08.

The Second District Court of Appeal's Historic First All-Woman Panel

By Anne C. Sullivan



JUDGE KELLY



JUDGE CRENSHAW



JUDGE KHOUZAM

The Second District Court of Appeal's Lakeland headquarters witnessed an historical event on April 28, 2009, when that court's first all-woman panel of three judges heard oral arguments. The panel that memorable day was composed of Judge Patricia J. Kelly, who presided over the arguments, with Judge Marva L. Crenshaw and Judge Nelly N. Khouzam rounding out the group.

As Judge Kelly observed, "It took a little over 50 years [from the court's inception in 1956] for our court to reach this milestone, and I am pleased to have been a member of the panel." Noting that the court currently includes more women jurists than at any time in its history, Judge Kelly added, "I am looking forward to the day that an all woman panel is no longer viewed as something out of the ordinary."

Echoing Judge Kelly's words, Judge Khouzam remarked, looking back on the event, "It was an honor to sit on the first all-woman panel of the Second District. But even more significantly, it is amazing to look at how our profession has changed over the years with more women practicing law, serving in leadership roles in the profession, and sitting on the bench. With the increase in women serving throughout the judiciary, including on appellate courts, there will soon be a

time that an all-woman panel will not be considered a rarity."

Judge Kelly's and Judge Khouzam's experiences as staff attorneys at the Second District Court no doubt gave them a unique insight into the workings and history of the court where they, along with Judge Crenshaw (a former state prosecutor and circuit court judge) helped to make a little piece of Florida history in April 2009.

Reflecting on what special or unique attributes or characteristics a woman may bring to the bench, Judge Khouzam put the focus firmly back on the importance of all types of diversity, noting, "Each person's unique experience shapes that individual's perspective and their contribution to the court. Gender is one of the factors that comes into play. Here at the Second District, we are fortunate to have a diverse court. We have former trial judges and judges who came straight from private practice, where they specialized in various areas of the law. This range of experiences contributes positively to a great court."

Judge Kelly remarked in a similar vein that, "I think every judge brings different skills to the job," joking, however, that "being a mother certainly helps to keep you humble, which of course is a desirable quality in a judge."

As for words of advice for practitioners appearing before the court in oral argument, Judge Kelly stressed preparation, candor and flexibility: "Be prepared; know the record; be candid; answer the questions you are being asked by the panel - view the questions as an opportunity to assist the panel in understanding your position; it helps to be flexible because sometimes the things the panel is most interested in are not the things you might expect."

Judge Khouzam, a former circuit court judge, offered these equally invaluable insights into what judges

continued, next page



pared to what happens at the trial court level. Fortunately, we have very many lawyers who come before us that are well-prepared and able to convey their view of the case while also addressing the other side's arguments and the questions asked by the court."

Judge Crenshaw added, "All of the attributes pointed out by my colleagues are essential to

would like to see at oral argument:

"When appearing in any court, preparation is key. The advocate who comes to the Second District is likely to get a number of questions from the bench, and the members of this court are well-prepared for oral argument. We are going to be familiar with the facts and the applicable law, and will often focus in on the details of the case that might distinguish the case from authority cited in the briefs. The attorneys need to be well-prepared as to the facts in the record, the legal arguments, preservation issues, and our standard of review. Know the record and do not go outside the record. It is disappointing when attorneys come to the oral argument without being sufficiently prepared or without having given enough thought as to the appellate court's role as com-

obtaining the maximum benefit from your twenty minutes before the court. Although there is a stark contrast between the work of trial and appellate courts, professionalism and preparation are key to success at any level."



A. SULLIVAN

Anne C. Sullivan is an associate at *Gaeb Mullen Antonelli & DiMatteo*, a full-service civil law firm that specializes in trial, appellate, and transactional matters throughout South Florida. Ms. Sullivan concentrates her practice in trial support and appellate work. She serves as an Assistant Editor of *The Record*. She can be reached by email at: asullivan@gaebemullen.com.

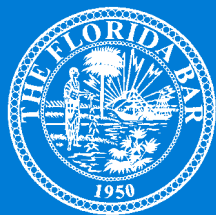
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JUDICIAL PROFILES

Judge Cory J. Ciklin, 4th DCA

By Robin Bresky

Judge Ciklin is passionate about being a member of the Fourth District Court of Appeal, a position he has held for a little over one year. Appointed in December of 2008, Judge Ciklin was at that time the presiding Judge at the North County Courthouse. In fact, he may be the only judge to continue to preside over county court matters after appointment to the Fourth. You see at the time of Judge Ciklin's appointment, the North County Courthouse in Palm Beach was understaffed and he was still needed, so of course he filled in. Judge Ciklin says it was awe inspiring to preside over litigation. He enthusiastically presided over jury and non-jury trials. Actually, he has presided over two hundred and forty eight jury trials. Alas, Judge Ciklin also loves to write, so as a result he authored one hundred opinions during his fourteen years as a trial judge. His love of writing, in his own words, was to the chagrin of litigators in his court room, as many of the matters he wrote about concerned "mundane matters."

There is nothing mundane about sitting on the Fourth District Court of Appeal. The difference between being a trial judge and a DCA judge is like night and day, says Ciklin. For someone who loves to write, to actually have the time to write and rewrite is fantastic. However, he was given cautionary yet sage advice when he first began as an appellate judge. Another judge at the Fourth DCA told Ciklin that here one could be lulled into a sense that there is all the time in the world to write, but there is no such thing as perfection. Furthermore, while the system supports the freedom to write and rewrite, you must have the discipline to draw the line. After all, the Fourth DCA sees approximately five thousand appeals per year. Judge Ciklin thinks it was wise advice he



was given and incorporates it into his practice as a DCA judge.

Some interesting background about Judge Ciklin includes the fact that he has lived in Florida for over forty years. His family moved to Florida from Connecticut in 1969 when he was entering the eighth grade at Lantana Junior High school. He graduated from Lake Worth High School in 1974. He attended Florida State University, graduating in 1978. He then went on to Cumberland School of Law, with his good friend Charlie Crist. For his last two years of law school, Judge Ciklin transferred back to Florida State University, graduating with his J.D. in 1981. It is noteworthy to mention that in order to make this transfer, it was required that he be in the top fifteen percent of his class in Cumberland.

Judge Ciklin's first job after graduating law school was Vice President and Counsel of the Florida Sheriff's Youth Fund, an organization for children facing problems at home and in school, but not necessarily delinquent. He then went to work for Ciklin, Lubitz, Martens, McBane

& O'Connell with his brother, Alan Ciklin. During Judge Ciklin's years there, he worked on litigation in almost every area of the law, including appellate work. In 1991 a head hunter contacted him for the position of Litigation Chief of the Palm Beach County Attorney's Office. He took the job, and took a pay cut. When he told his brother, Alan said, "You're leaving to do what?" Judge Ciklin had a great impact on the Palm Beach County Attorney's office. When he took the position, the office was outsourcing sixty percent of its cases. Judge Ciklin hired people from private practice and turned the office around to where they were only outsourcing three percent of the litigation. In January of 1995, Judge Ciklin took his seat on the Palm Beach County Court Bench. He served in many divisions including criminal, domestic violence, and as an administrative and presiding judge. In addition to many years of service on the bench, he participated in many judicial and bar activities including membership and committee work with the American Bar Association, the Palm Beach County Bar Association, Trial Lawyers of America, and Academy of Florida Trial Lawyers. He also served in various roles of organizations including but not limited to, past Chairman of the Palm Beach County Elections Canvassing Board, Volunteer Judge for Palm Beach County School Board Youth Court Program, Florida Court Education Council ("FCEC") Dean Selection Committee and Subcommittee on Mandatory Judicial Education for Domestic Violence, Supreme Court Statistics and Workload Committee, Founder and Chairman of the Florida Council of Domestic Violence Division, Conference Manager for Conference of County Court Judges of Florida, Office of State Courts Administrator Subcommittee on Revenue Enhancement, Ex-Offender Reentry Workgroup, Administrator for Palm Beach Lakes Community High School Pre-Law



JUDICIAL PROFILES

Magnet Program, Palm Beach County Substance Abuse Coalition, Palm Beach County Corrections Task Force, 15th Judicial Circuit Legislative Visit Planning Group, and the Palm Beach County Homeless Advisory Board. His other civic activities are numerous, and notably include President of SunFest of Palm Beach County. Judge Ciklin's published work includes, *The Search for Accountability in an Overburdened Court System* published in Full Court Press, Vol. 4, Number 5, September-October, 1997.

Judge Ciklin has been married to his wife Kimberly for 22 years. They first met when Kimberly she was a paralegal and Judge Ciklin was a new attorney with Ciklin, Lubitz, Martens, McBane & O'Connell. They have one seventeen year old daughter. Kimberly is currently a Senior Administrative Assistant to Palm Beach County Commissioner Jeff Koons.

In his free time, Judge Ciklin enjoys boating in Jupiter. His favorite reading material, while boating and otherwise is *Florida Law Weekly*. He says he learns a lot from reading other opinions to help improve his own writing style! Clearly, Judge Ciklin is passionate about his position on the Fourth DCA!



R. BRESKY

Robin Bresky is the founder of the Law Offices of Robin Bresky, P.A., an appellate law and litigation support law firm located in Boca Raton. The firm handles complex litigation support as well as criminal and civil appeals

including family law, probate, commercial litigation, and personal injury. Prior to the founding of the firm, Ms. Bresky worked as a Prosecutor in the Broward County State Attorney's Office and is currently active with both state and local bar committees.



Judge Spencer Levine, 4th DCA

By Philip M. Burlington, Esq.

Any attorney who appears before Judge Levine should take comfort from the fact that whatever type of law practice he or she engages in, Judge Levine has personally experienced it as well. Judge Levine has worked as a government attorney and in private practice. He has litigated at the trial level, in the appellate courts, and in administrative proceedings as well. He has been a prosecutor, but has also defended clients in both criminal and civil cases. He has also been employed as in-house counsel to large governmental organizations. Attorneys should also be comforted by the fact that Judge Levine exhibits a modest demeanor, which was reinforced, no doubt, when none of his three daughters were the least bit impressed by his appointment to the Fourth District Court of Appeal.

Judge Levine attended New York University and graduated cum laude in 1979, with a degree in Political Science and History. He received his

Juris Doctorate from the University of Miami in 1982. Upon graduation he accepted a position as an associate with the firm of Entin, Schwartz, Dion & Sclafani, P.A. During his five years with that firm, Judge Levine practiced primarily criminal defense law at both the trial and appellate levels. He handled over twenty-five appeals in both state and federal courts, and enjoyed some success in the very difficult area of criminal defense appeals. One example out of many was a case that ultimately resulted in the decision of *United States v. Pintado*, 715 F.2d 1501 (11th Cir. 1983).

In 1987, Judge Levine transitioned from private practice to government work when he became an assistant state attorney with the Palm Beach County State Attorney's Office. He worked there for nine years and during that time span he was Chief of the Organized Crime and Official Corruption Unit, Chief of the Economic Crimes Division, Chief of the First Appearance Division, and Chief of a Felony Trial Division.

In 1996, Judge Levine accepted the position of General Counsel with the Palm Beach County Sheriff's Office, under Sheriff Bob Newman. In that role he provided in-house counsel with a significant portion of his time spent dealing with employment and liability issues. When Sheriff Newman's term concluded in 2000, Judge Levine returned to private practice, accepting a job with Adorno & Zeder. At that firm he engaged in trial practice, doing primarily insurance defense work.

Judge Levine returned to government work in 2002, when he accepted a position with the Attorney General's Office for the State of Florida. He was candid enough to admit that his enthusiasm for the position overcame his common sense, as he forgot to ask what the salary would be. However, he overcame that disappointment and remained with the Attorney General's Office for four years. During that time he was the Director of the Medicaid Fraud Control Unit, which participated in both criminal prosecutions and

continued, next page



JUDICIAL PROFILES

civil proceedings to recover Medicaid funds. During his time with that unit it increased in size by 50 percent and, at one point, he was managing 230 attorneys, investigators, analysts and staff throughout the State of Florida. In addition to overseeing work in this State, he participated with other state attorney general offices in pursuing national cases, including one which culminated in a global settlement returning 250 million dollars to the government. During his time with the Florida Attorney General's Office he also participated in the prosecution of health care providers who indiscriminately prescribed pain medications and engaged in other misconduct.

While with the Attorney General's Office, Judge Levine was also the legal advisor to the Criminal Justice Standards and Training Commission. That governmental entity establishes employment and disciplinary standards for criminal justice professionals throughout the state, and enforces them through administrative proceedings.

In 2006, Judge Levine wanted to return to South Florida, so he accept-

ed a position as Senior Vice-President and Chief Administrative, Compliance and Ethics Officer with Broward Health. Two years later, he was elevated to Chief Operating Officer of Broward Health. During that time he oversaw programs and systems designed to comply with state law governing Medicaid billing, quality assurance, and other matters subject to state regulation. In his capacity as Chief Operating Officer of Broward Health, he primarily engaged in negotiating contracts with the various medical groups, as well as other management functions.

Judge Levine's exposure to the law is not limited to his professional activities, as his wife, Judy, is also an attorney. She has extensive experience as a public defender, and is currently general counsel to the Broward County Sheriff's Office.

Judge Levine's broad experience in the legal profession apparently caught the attention of Governor Charlie Crist, who stated when he appointed him "Spencer brings to the bench a unique perspective from his diverse experience . . . his broad

knowledge of civil, regulatory, administrative and criminal law will be especially important to the court."

Other people saw additional reasons for Judge Levine to be appointed. His former employer Alvin Entin stated, "Spencer is very bright and both fair minded and honest." Attorneys who practiced with him at the State Attorney's Office expressed similar sentiments to this author.

Judge Levine admits that he is still adjusting to his new position, especially his "new first name." But it is doubtful that being called "Judge" will go to his head, because he will always have his daughters around to keep him grounded.



P. BURLINGTON

Philip M. Burlington is a partner in the law firm of Burlington & Rockenbach, P.A. in West Palm Beach, Florida. He is a Board Certified appellate attorney, whose practice is limited to civil appeals and trial support.

Judge Bruce W. Jacobus, 5th DCA

By Jeff Gillen

Despite being in the midst of wrapping up his responsibilities as a circuit judge in the Eighteenth Circuit while simultaneously assuming duties as the newest member of the Fifth District Court of Appeal, Judge Bruce W. Jacobus was kind enough to give me almost an hour of his time in October to talk informally about his experiences, impressions and beliefs.

There was moderately heavy fog along I-95 for most of my drive north from northern Palm Beach County to Daytona Beach. That fog was the natural launching point for discussion among Judge Jacobus, his gracious assistant Marianne and me. I



learned to my surprise that Judge Jacobus carools with Judges Torpy and Evander and some support staff.

I noted that the official biography

posted on the Fifth's web site shows that the Judge has a degree in electrical engineering. Curious how such a degree led him to law, I asked. His answer reflected the pragmatic bent to all of his responses to come. He was interested in engineering because his father had been an engineer and after obtaining his degree from the University of Florida, he went to work for a military contractor. When the contractor started feeling the pressure of then-decreased demand and began laying folks off, then-engineer Jacobus made the practical decision to go to law school back at the University of Florida. He noted that his education in engineering later served him well as a trial judge when it came to processing testimony from expert witnesses.

After obtaining his law degree, the
continued, next page



JUDICIAL PROFILES

Judge was in private practice until 1995. His practice was in civil law in the areas of personal injury, construction, condominiums, real estate and general litigation. When asked what prompted him to become a judge, he replied he felt he was possessed of a judicial temperament and he relished the idea of making decisions on a variety of legal issues. Besides, he said, the business side of law practice was not much fun!

Given the nature of my practice, I was particularly curious about the portion of the Judge's biography mentioning his work with the Children's Services Council and dependency court. He explained that he was in essence the liaison between the court system the sheriff's office, the school superintendant, the Department of Children and Families and the community-based care providers under the umbrella of C.S.C.. As is often the case across state and the country, the first judicial assignment for Judge Jacobus was in dependency. The Judge found the work on the one hand depressing and yet, on the other, satisfying. It was depressing because of the high volume and seeming hopelessness. Yet it was at times satisfying because occasionally he could make an immediate, favorable impact for children and families.

Prior to assuming the appellate bench, Judge Jacobus sat as an associate judge three times in the Fifth and once in the Fourth. He also had enjoyed serving in an appellate capacity in circuit court over county-

court matters.

When I suggested to the Judge that some feel comparing and contrasting trial judges and lawyers to appellate judges and lawyers is like comparing apples to oranges, he agreed with the notion. Consistent with his practical analysis, he said a trial judge has to think differently than an appellate judge, by which he meant the former has a limited audience and authority whereas the latter – at least to the extent that their thoughts are reduced to writing – has a much larger audience and impact. Relishing the opportunity to wear the heavier mantle, when the opportunity to become an appellate judge arose, he jumped at it.

While he was still finishing up with the transition when we met, he did not feel my question about whether the new position met his expectations was unfair or premature. He replied that he enjoys the new-found ability to read, ponder and study issues before him. He also enjoys being able to do some of that studying at home where his wife and dog look at him with apparent curiosity about just why he is invading their space at that time of the day and week. Also on the positive side, he finds the Court very collegial, extremely well-organized, and full of support staff with incredible institutional knowledge. He added that "despite the importance of the job, some of us don't take ourselves too seriously." On the negative side --- well there's really nothing, he said! He even enjoys the

discussions during carpooling. In fact, he said, "being a trial judge is more demanding." Keep that in mind readers!

When I asked about pointers he'd like to offer practitioners before the Fifth, he responded "Wasn't it Mark Twain who said something like 'I didn't have time to write a short letter.' We call the document a brief for a reason. Cut to the chase. While O.A. is important, too many lawyers seem to labor under the impression that the judges have not yet read the briefs and transcripts or examined the record, when in fact, we have." Most of us have heard these sentiments echoed by judges and justices before.

Finally, when we discussed what he does for fun it became readily apparent why the Judge and I hit it off. We both lament not having the time to fly airplanes any longer or to do many of the other things we once did for recreation and sanity-preservation. The Judge (as do I) enjoys tinkering on autos and boats. We both enjoy time in the higher elevations (although I more in the West) and we both heartily endorse a visit to the Biltmore Estate near Ashville, North Carolina for a tour of a huge castle built by the son of an nineteenth century railroad baron. The Judge's interest in the Castle is for its incredible technological amenities, many of which would remain unheard of for nearly a century. The son's interests were expansive and included his being a primary benefactor of Vanderbilt University which school has taken on his nickname, the Commodore, as that of their athletic teams. And that is a good transition to

the Judge's answer to my last question. Although he and his entire family (except his son) are U.F. graduates, he says his wife is more of a dyed-in-the-wool Gator than he. Oh, and by the way, his son went to Alabama!



J. GILLEN

Appellate Practice Section Annual Meeting

June 2010, Boca Raton Resort & Club

[Exact dates and times to be determined.]

***More information and registration forms
will be available at: www.floridabbar.org***

Appellate Practice Section's Mini-Retreat "Part II" a Success!

By: Hala Sandridge



H. SANDRIDGE

Because of time and economic constraints, the Appellate Practice Section divided our tri-annual retreat into a two part mini-retreat coinciding with our regular meetings. Our goal was to encourage our appellate practitioners and judiciary to engage in vision-building for the future of our Section without the time and costs attendant to a stand-alone retreat.

On September 10, 2009, we held Part I of the Mini-Retreat at the mid-year meeting in Tampa. It was an incredible success, with a great mix of appellate judges and appellate practitioners. After a delicious buffet lunch, three prior Section chairs facilitated a discussion of the hottest issues facing our Section: (1) Susan Fox led our Section Leadership and Goals; (2) Tom Hall led Section Finances; and (3) Hala Sandridge led Technology and E-filing. A frank and lively conversation ensued, from which we obtained detailed feedback from the judiciary and attorneys about these specific issues.

On January 21, 2010, Part II of the Mini-Retreat continued at the Bar's Mid-Year meeting in Orlando. We had an amazing turnout of Section members and each attendee received CLE credit. During an Italian lunch buffet, Section Chair Dorothy Easley outlined the format and goals for the day. After a roundtable introduction of the attendees, former chair and mini-retreat facilitator Hala Sandridge summarized the ideas generated at the earlier mini-retreat. Each participant was then assigned to one of three break-out groups to vet these ideas and choose the ones the Section would pursue.

Because of the myriad topics involved, the Leadership, Ethics and Professionalism group was divided and led by Susan Fox and Tracy Gunn. They tackled mainstay topics, such as increasing membership, updating our bylaws, mentoring younger

attorneys, and improving appellate advocacy, as well as the "hot topic" of Judicial Nominating Commissions. Tasks were assigned and follow-up dates set, the results of which will be reported at the June Annual Meeting convention.

Section Secretary-Treasurer Jack Reiter led the Section Finance and Fiscal independence group. His group addressed numerous ways to improve Section's finances, such as innovative and web-based CLE programs, and website advertising. Hala Sandridge and Dorothy Easley led the E-Filing group. Recognizing the ongoing Florida Bar and Legislative e-filing efforts, they assigned information gathering tasks to be reported at the June Annual Meeting convention.

After this productive work session, all attendees were invited to relax and enjoy each other's company at Seasons 52 restaurant. The food was, in a word, extraordinary and the conversation productive, stimulating and fun. Given your positive feedback, the Section will likely recycle this format for future retreats, which we hope you will attend.

Hala Sandridge heads the statewide Appellate Practice group at Fowler White Boggs. Over 25 years, she has directly handled hundreds of commercial appeals in both state and federal appeals courts. She is active in and a past Chair of the Appellate Practice Section, and routinely lectures and publishes on appellate topics

Appellate Practice Section Celebrates Following Successful Mini-Retreat



CHAIR'S MESSAGE

from page 2

now work from anywhere, want to be able to access their files and all the documents in them, from anywhere. Many of our trial courts, Lee County for example, allow registered attorneys with passwords to access the court file obtain documents. Tennessee allows free access, except parental termination appeals, juvenile appeals and certain criminal appeals where an entire record is sealed. Appellate attorneys want that same level of on-line access to permit frequent review their appeals so that they can closely monitor them, especially in time-sensitive matters such as extraordinary writs or expedited appeals.

#3 Security [e.g. the website being *too* accessible]: At the same time that attorneys want access, they also want file security from hackers and trawlers. We inherit our records. While sensitive financial, HIPPA, proprietary and other confidential information is being increasingly monitored and managed at the trial level, appellate attorneys do not have control over the documents and data that trial lawyers and pro se litigants have placed into the public court record. We want to be sure that our electronic records are safe. Alabama, Connecticut, Nevada and Oregon, for example, have various systems to address that: lawyers-only, no pro se litigant access and registration and password requirements. While Florida has a right of access to public records, we also have a competing Constitutional right to privacy. We need to be able to assure our clients that their records in Florida's e-filing court system are secure and we need to be able to specify the amount of time that those files will be maintained in electronic format.

#4 Confirmation of e-filing and, if e-service is permitted, then confirmation of e-service receipt: Attorneys also want "confirmatories" because our practices are built on those. We need written proof that our document was recognized as filed. Florida currently has an email confirmation system that a document

was received. Alabama, Nevada, Oregon, and Tennessee, for example, have systems developing in various forms that allow uploading into court systems, and the document is then deemed filed upon uploading and the e-confirmation that it's filed. Alabama has what it terms a "transaction confirmation". Iowa even sends email notifications to service subscribers when court opinions, orders or news releases issue. We want similar options in Florida's e-filing system.

#5 Clearly articulated appellate rules that incorporate e-filing:

Attorneys also need a documented set of rules that lets us know deadlines, what is due next, the form and method in which it is due, the form and method of service on the opposing party, and how e-service may affect other deadlines (for example, Florida's 5-day service rule). Florida now has a rule on the filing of electronic transcripts. North Carolina is promulgating appellate rules on electronic transcripts, electronic records and electronic appellate pleadings. The Florida Rules of Judicial Administration Committee, the Appellate Court Rules Committee, and

continued, next page

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CHAIR'S MESSAGE

from preceding page

lower tribunal Rules Committees are continuing to work in tandem on this aspect. These rules will be vital to a robust appellate e-filing system.

#6 e-Service options: Our current private technology that relies on email raises reliability and confidence concerns. Some documents sent via email either get caught in a law firm spam filter or do not arrive at all. Those concerns are a potential minefield for appellate motions practice. Alabama, California and Tennessee have systems in various forms for e-service and electronic dissemination. We need our e-filing system to also have a reliable system for electronic dissemination to obviate those concerns.

#7 Information Technology ("IT") support: Florida has many appellate sole and small appellate firm practitioners, and it appears from American Bar Association materials that this is typical. Our small and sole practitioners have very limited IT support. Even fewer have in-house IT support. So, Florida's e-filing system needs to include IT support for learning the system and for consulting court personnel in the event of uploading or other IT problems. Connecticut, for example, has live interactive training for attorneys/firms for explanations in how to file electronically. Oregon

even requires training to use its e-filing system. The Eleventh Circuit Court of Appeal has a strong (and patient) IT support system to walk attorneys through the electronic filing of briefs.

#8 Costs: Florida's current e-filing (email) system is free. Any e-filing should be a cost-saving-for-clients, not cost-shifting-to-clients, measure. We've increased filing fees at all levels. Transcript costs continue to go up; for example, a five-day trial can carry a transcript cost of roughly \$8000.00. These costs can be so high that they preclude the middle- and lower-income sectors from being able to afford appeals, and even more so in today's climate. For a single parent of two on slightly-above-minimum wage, seeking to appeal child support and alimony rulings, or for lower- and middle-income groups working two jobs to keep ahead of foreclosure, the costs of an appeal are already prohibitive and already preclude a Constitutional right to an appeal. If e-filing is made mandatory and if it adds additional fees, those two components constitute cost-shifting that Florida citizens will bear. In this economic climate, attorneys, already unable to bear additional costs, are hardly in a position to bear these added costs. The layering of additional e-filing fees raises serious access to court issues, by pricing out lower-income clients and pro bono appeals, and for that sector not poor enough to qualify for Legal Aid but with no disposable income to pay appellate costs, let alone

even-heavily-reduced appellate fees retainers. This also impacts Legal Aid and Legal Services of Florida organizations, already operating on extremely limited resources.

Conclusion: Appellate practitioners are strong supporters of the use of technology, much of which we already employ in our practices. We use electronic records to ensure the accuracy of our record citations and to securely store them internally. E-filing is a key part of that structure. We also support the savings and file security that our already-over-burdened courts stand to gain from the reduced costs of document storage and management. We also save time in document filing and dissemination and, therefore, save our clients money as well. The reluctance to embrace new technology needs to be set aside. Whether we like it or not, we are moving into an electronic age and, rather than clinging to the way we've filed and served for the last 20 years, we have to adapt, aggressively educate ourselves in the best way to address the technology, and collaboratively advance rules to address the myriad of issues that arise. Appellate attorneys want to be, and can be, part of Florida's e-filing technology solution.

** This discussion intentionally does not describe the First District Court of Appeal's newly implemented e-filing system, because that system merits its own, full discussion. It will be highlighted in future presentations.*

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9:00 a.m. — 9:50 a.m.

**Meet the Fifth District — Nuts & Bolts of Fifth
District Practice**

*The Honorable C. Alan Lawson, Fifth District Court
of Appeal*

9:50 a.m. – 10:35 a.m.

Meet the Clerk — Clerk's Office Fundamentals

*The Honorable Susan Wright, Clerk of Court,
Fifth District Court of Appeal*

10:35 a.m. – 10:50 a.m. **Break**

10:50 a.m. – 12:00 p.m.

Motion Practice in the Fifth District

Panel Discussion

*The Honorable Jay P. Cohen, Fifth District Court of
Appeal*

Sharon M. Serra, Fifth District Court of Appeal

Angela C. Flowers, Ocala

Moderator: Kimberly A. Ashby, Orlando

12:00 p.m.— 1:00 p.m.

**Lunch Served/Professionalism Presentation &
Panel Discussion**

*The Honorable William D. Palmer, Fifth District
Court of Appeal*

*The Honorable Richard B. Orfinger, Fifth District
Court of Appeal*

Barbara A. Eagan, Orlando

Moderator: Michael M. Giel, Jacksonville

1:00 p.m. – 1:15 p.m. **Break**

1:15 p.m. — 2:05 p.m.

Oral Arguments in the Fifth District

Panel Discussion

*The Honorable Richard B. Orfinger, Fifth District
Court of Appeal*

*The Honorable Thomas D. Sawaya, Fifth District
Court of Appeal*

Elizabeth C. Wheeler, Orlando

Moderator: Marcia K. Lippincott, Lake Mary

2:05 p.m. – 3:00 p.m.

Brief Writing in the Fifth District

Panel Discussion

*The Honorable Kerry I. Evander, Fifth District
Court of Appeal*

*The Honorable C. Alan Lawson, Fifth District
Court of Appeal*

John R. Hamilton, Orlando

Moderator: Nicholas A. Shannin, Orlando

3:00 p.m. – 4:10 p.m.

Important Lessons For Practitioners To Learn

Panel Discussion

*The Honorable Jay P. Cohen, Fifth District Court
of Appeal*

*The Honorable Kerry I. Evander, Fifth District
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