



# The Record

JOURNAL • OF • THE • APPELLATE • PRACTICE • SECTION

[www.flabarappellate.org](http://www.flabarappellate.org)

Volume XV, No. 1

THE FLORIDA BAR

Summer 2005

## INSIDE:

- Appellate Fest at the Annual Bar Meeting ... 4
- 2005 Adkins Award and Pro Bono Award Winners ..... 6
- The Third District Adds Three New Judges ..... 7
- Financial Statement .... 12
- The Annual Dessert Reception Sways in Key West Style ..... 13
- Second DCA/Stetson Partnership Provides Unique Benefit to Students ..... 14
- The New Robert Butler Gallery on the Second District's Website ..... 16
- The Backlog in Juvenile Appeals in Hillsborough County: What Appellate Lawyers Can Do to Help ..... 17

**Discussion  
With the  
Supreme Court  
page 4**

## Judge Anne C. Booth of the First District Court of Appeal Retires

by Linda Griffiths Bulecza



Judge Booth

The date is January 3, 2005, and the First District Court of Appeal will never be the same. Judge Anne Cawthon Booth has retired. She spurned the formal retirement party and courtroom ceremony, preferring to quietly slip away after the court honored

her with an informal coffee in the morning. She had been looking forward to retirement so she can spend her leisure hours with her husband, local attorney Edgar C. Booth, and her beloved dogs.

In contrast to the quiet departure, Judge Booth was a flamboyant figure

both in the courthouse and around town. Believing that the streets of Tallahassee were better off without her behind the wheel, Judge Booth preferred to walk, and she could be spotted daily at the lunch hour in her straw hat and Birkenstocks, walking briskly to Mike's Café or Chez Pierre to meet with friends and colleagues. Around the courthouse, her southern charm and great sense of humor livened any visit to her chambers. She was not shy in expressing her opinions, and you always knew where you stood with her.

Most importantly, Judge Booth was a pioneer for women in the law. She earned her bachelor's degree with high honors in agriculture from the University of Florida in 1956. In 1961, at a time when law

*See "Judge Booth," page 2*

## Message from the Chair

by Thomas D. Hall



As we start a new Bar year, it seems impossible that our Section has now been in existence for more than 10 years. I am a member of three sections of The Florida Bar and believe strongly that the sections do the "real"

work of the Bar. This Section is no exception, and we provide wonderful services

to large sections of the Bar - not just appellate lawyers.

There have been rifts between the "big" Bar and the sections in the past, but I am pleased to see that new President Alan Bookman is making a real effort to improve those relations. In late August, the Bar will be holding a joint retreat with the members of the Board of Governors and the chair and chair-elect of all sections. I am very hopeful that this will be a productive meeting and that relations between the Bar and the sections

*See "Chair's Message," page 3*

## JUDGE BOOTH

from page 1

schools were literally devoid of women, Judge Booth earned her law degree with high honors from the University of Florida, where she graduated number one in her class and was inducted into the Order of the Coif. For eleven years, she served as the legal aide to the justices of the Supreme Court of Florida. She practiced law for five years before being appointed in 1978 to the First District Court of Appeal, the first woman to be appointed to an appellate judgeship in the state of Florida. She served as chief judge of that court from 1985-1987, and was the first woman in a Florida appellate court to hold that position. Meanwhile, she married Edgar and raised two boys, Rainey and John, who are both successful lawyers in private practice. She is the epitome of the devoted wife and mother who also has a highly successful professional career.

The Southern Reporter is filled with opinions Judge Booth authored.

Are drugs or alcohol  
causing a problem in  
your life?

Are you overcome by  
depression?

Completely confidential  
help is available.

(ch. 397.482-486, Fla.Stat. 2002)

Call Florida Lawyers  
Assistance, Inc.

1-800-282-8981

Clear writing and sound legal reasoning are the hallmarks of her opinions. Her earliest reported opinion is *Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc.*, 354 So. 2d 446 (Fla. 1st DCA 1978), which involved a dispute over the bidding and award of a contract for the construction of a thermal discharge unit at the Jacksonville Northside Generating Station. Writing for the court, Judge Booth held that the trial court correctly determined that the Jacksonville Electric Authority could not arbitrarily disqualify the appellee's bid, and that the contract was correctly awarded to the appellee as the lowest responsible bidder. When later brought to the Supreme Court as a decision in conflict with another district court, the Supreme Court in *Envirogenics Systems Co. v. City of Cape Coral*, 529 So. 2d 279 (Fla. 1988), quoted Judge Booth's opinion with approval and quashed the conflict case.

In one of Judge Booth's more recent and hotly contested opinions, the court held in *Therrien v. State*, 859 So. 2d 585 (Fla. 1st DCA 2003), that the registration and notification requirements of the Sexual Predator Act do not violate procedural due process rights and that the Act can apply retroactively. The Supreme Court recently addressed these issues in *Milks v. State*, 894 So. 2d 924 (Fla. 2005), and adopted the result reached by Judge Booth in *Therrien*.

One of Judge Booth's favorite opin-

ions is *Marr v. State*, 470 So. 2d 703 (Fla. 1st DCA 1985) (*on rehearing en banc*), approved, 494 So. 2d 1139 (Fla. 1986), which she wrote that a jury instruction commonly given in sexual battery cases requiring the testimony of the victim to be "rigidly scrutinized" is an incorrect statement of Florida law. Judge Booth explained how the archaic instruction, dating back to Sir Matthew Hale (1609-76) and known as "the caution of Lord Hale," runs completely counter to Florida law that prohibits a trial court from commenting on the weight of the evidence, the credibility of the witnesses, or the guilt of the accused. The Supreme Court, in addressing the issue on a certified question, shamelessly lifted much of its opinion from Judge Booth's well-reasoned and thoroughly researched analysis.

Although we all wish Judge Booth well in her retirement, it is difficult to imagine her absence from the court. Few have her knowledge and appreciation for history, and none know the challenges and obstacles that she encountered as our first woman appellate judge. Women lawyers across the state should thank her and remember that our path is easier to walk because she paved the way for us.

Linda Griffiths Bulecza  
Director of Staff Attorneys,  
First District Court of Appeal  
Friend and admirer of  
Judge Anne C. Booth

### THE APPELLATE PRACTICE SECTION OF THE FLORIDA BAR PREPARES AND PUBLISHES THIS JOURNAL

Thomas D. Hall, Tallahassee .....	Chair
Susan Fox, Tampa .....	Chair-Elect
Steven L. Brannock, Tampa .....	Vice-Chair
Siobhan Helene Shea, Palm Beach .....	Secretary
Dorothy F. Easley, Hollywood .....	Treasurer
Betsy Ellwanger Gallagher, Tampa .....	Editor-in-Chief, The Record
Dorothy F. Easley, Hollywood .....	Co-Editor
Alina Alonso, Miami .....	Assistant Editor
Paul A. Avron, Miami .....	Assistant Editor
Cory W. Eichhorn, Boca Raton .....	Assistant Editor
Mark S. Sussman, Miami Beach .....	Assistant Editor
Austin Newberry, Tallahassee .....	Program Administrator
Danella Monteneri, Tallahassee .....	Layout/Art Design

Unless expressly stated otherwise, the Journal's articles reflect only the opinions and ideas of the Journal's authors.



## JOIN THE FLORIDA BAR'S LAWYER REFERRAL SERVICE

During 2004-05, The Florida Bar Lawyer Referral Staff made over 135,000 referrals to people seeking legal assistance. Lawyer Referral Service attorneys collected over \$7 million in fees from Lawyer Referral Service clients.

### The Florida Bar Lawyer Referral Service:

- Provides statewide advertising
- Provides a toll-free telephone number
- Matches attorneys with prospective clients
- Screens clients by geographical area and legal problem
- Allows the attorney to negotiate fees
- Provides a good source for new clients

**NOTE:** If your office is in Baker, Broward, Clay, Collier, Duval, Escambia, Franklin, Gadsden, Hillsborough, Jefferson, Leon, Liberty, Nassau, Okaloosa, Orange, Palm Beach, Pinellas, Santa Rosa, Wakulla, or Walton County, please contact your local bar association lawyer referral service for information.

## INTERESTED?

PLEASE COMPLETE, CLIP AND MAIL TODAY FOR MORE INFORMATION.

-----  
Please send me an application and information about The Florida Bar Lawyer Referral Service.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

MAIL TO: The Florida Bar Lawyer Referral Service, 651 E. Jefferson Street, Tallahassee, FL 32399-2300. The application can also be downloaded from The Florida Bar's website at [www.FloridaBar.org](http://www.FloridaBar.org); or call The Florida Bar Lawyer Referral Service at 1-800-342-8060, extension 5810 or e-mail your request to [kkelly@flabar.org](mailto:kkelly@flabar.org).

### CHAIR'S MESSAGE

*from page 1*

will improve.

Having been chair of a section before, I am acutely aware of how quickly the year can go by. I hope to accomplish three particular things this year. My first goal is to obtain more active involvement in the section by government lawyers who are appellate lawyers. The majority of appellate matters in Florida's appellate courts are handled by government lawyers, but very few are active in the Section. I think we need to

change that. I have appointed a committee to investigate and make recommendations to the Executive Counsel. Harvey Sepler has agreed to chair that committee.

My second goal is the publication of the self-represented party handbook this year. Most of the chapters have been written, although many will have to be rewritten because they were completed some time ago. I have been heading up this project for the last three years, but finally admitted to myself that I did not have the time necessary to deal with all the details as we got close to finishing. Dorothy Easley has agreed to take over, and I know she will do a great job.

My final goal is to have another successful retreat this year to evaluate what we have been doing, re-evaluate our goals if necessary and make a new plan to proceed ahead. Susan Fox and Hala Sandridge are co-chairing that event and they will keep everyone informed.

We are already getting close to the September meetings, so there is much work to be done. I know that each of those people who has volunteered will follow through, and we will get a lot accomplished this year. If you want to help, there is always room for more people; so please do not hesitate to contact me. I look forward to another successful year for our Section.

# Appellate Fest at the Annual Bar Meeting

by Alina Alonso<sup>1</sup>

During this year's Annual Meeting of The Florida Bar, two established traditions combined to showcase Florida's up and coming future lawyers and Florida's highest jurists. This year, for the first time, the Moot Court Program, presented by The Young Lawyers Division, and the "Discussion with the Florida Supreme Court," presented by the Appellate Section, were combined into an "appellate fest" of sorts.

The program began with the final round of the moot court competition, named after noted appellate attorney, Robert Orseck. The issues in this year's competition revolved around a reporter's First Amendment right to protect confidential sources and possible violations of rights against self-incrimination. After advancing through multiple rounds, where they competed against sixteen other teams from Florida's law schools, Reneka Redmond and Royce Bluitt from Stetson University and Nicholas Martino and Chelsea Russell from Florida Coastal, argued before a "hybrid" Florida Supreme Court composed of Chief Justice Pariente, Justices Wells and Cantero, and Fourth District Court of Appeal Judges Warner and Hazouri. The court then conferred for a brief time and rendered its decision, declaring the Florida Coastal team the winners of the competition and Martino the Best Oral Advocate in the Final Round. As

Chief Justice Pariente wittingly remarked, the court's record turnaround time was surely envied by the appellate practitioners in the room.

Earlier in the competition, Stetson student Alyson George received the Best Brief Award and Nova Southeastern student Sabaria Neelakantaswamy received the award for Best Oral Advocate in the Preliminary Rounds.

Following the presentation of the awards, the program turned to a discussion with the court. This discussion presented a unique opportunity for members of the Bar to "turn the podium" on the Justices.

The discussion included inquiries regarding traditional topics, *e.g.*, how do the Justices decide whether to grant oral argument, what do the DCA judges consider in certifying a question as one of great public importance. The discussion took a broader turn, however, when the issue of public hostility toward the judiciary was raised.

Justice Cantero poignantly noted a misuse and broadening of the term "judicial activism" to encompass any decision with which the litigants or public disagree. Justice Cantero specifically referenced the Terry Schiavo case, noting that in actuality the



court decisions in that case exemplified judicial restraint, not judicial activism. Specifically, he noted that the state trial court's initial decision turned on the credibility of witnesses and was later affirmed by the Second District Court of Appeal, evincing exercise of judicial deference. Justice Cantero further commented that, after Congress authorized involvement by the federal courts, the district judge's ruling that a preliminary injunction was not warranted also demonstrated exercise of judicial restraint, as did the Eleventh Circuit Court of Appeals' decision concluding that there had been no abuse of discretion by the district court.

Justice Wells added that attacks upon the judiciary based on allega-

tions of “judicial activism” have long been a part of our history, providing references to groups advocating the removal of Chief Justice Earl Warren as a result of the school desegregation cases and attacks upon the judiciary following cases involving regulation of minimum wage laws. He also made references to public notions that *Marbury v. Madison* was “wrongly decided,” light-heartedly noting that he could not be blamed for that one because “[he] wasn’t there.” All in all, Justice Wells commented that such criticism “comes

with the territory” and that there will always be discussion when courts decide the “tough issues,” concluding with a sentiment of optimism that “this too shall pass.”

Judge Hazouri provided further insight, noting that, in his opinion, public criticism “will get worse before it gets better.” He remarked that the opportunity for demagoguery toward the judiciary has increased with the proliferation and popularity of 24-hour news channels. Judge Hazouri concluded by commenting that dangerous damage is being done to the

notion of respect for the judiciary and encouraged members of the Bar to stand up and defend the work performed by the courts.

The Appellate Section and the Young Lawyers Division express their gratitude to the Justices and Judges for participating in this proud tradition during the Annual Meeting.

**(Endnotes)**

<sup>1</sup> Alina Alonso is an associate in the Appellate and Trial Support Practice Group at Carlton Fields, P.A. She is also a former law clerk to Florida Supreme Court Justice R. Fred Lewis.



## APPELLATE PRACTICE CERTIFICATION

The Board of Legal Specialization and Education *and* the Appellate Practice Certification Committee are pleased to announce the following attorneys are now Board Certified

**as of June 1, 2005:**

***Congratulations!***

*Katherine Eastmoore Giddings, Tallahassee*

*Celene Harrell Humphries, Tampa*

*Rebecca Mercier-Vargas, West Palm Beach*

*Diran Vahn Seropian, West Palm Beach*

### Make It Your Goal Too!

**Contact:**

**Carol Vaught**

**Legal Specialization and Education  
The Florida Bar**

**(800)342-8060, ext. 5738 or (850)561-5738**

**or for further information go to:**

**[www.flabar.org/member\\_services/certification](http://www.flabar.org/member_services/certification)**

**Then click on the “Certified Lawyer Directory and Specialization Area Resources” link.**

# 2005 Adkins Award and Pro Bono Award Winners

by John G. Crabtree

## James C. Adkins Award

The Appellate Practice Section presented its Eleventh Annual James C. Adkins Award to Sylvia Walbolt at this year's Dessert Reception at the Marriott World Center in Orlando. At the same time, it awarded its 2005 Pro Bono Award to John S. Mills.

The James C. Adkins Award is named for Florida Supreme Court Justice James Adkins, who passed away in 1994. Justice Adkins served on the court for eighteen years during the 1970s and 1980s, and was the Chief Justice during the mid-1970s. The Section annually presents the Award to a member of the Florida Bar who has made significant contributions to the field of appellate practice in Florida.



The winner of this year's award, Sylvia Walbolt, has been a member of Carlton Fields, P.A. in St. Petersburg for 40 years, and currently serves as the Chair of the firm's Board of

Directors. She is board certified by The Florida Bar in appellate practice, and has extensive experience handling appeals in both federal and state courts, appearing as counsel in over 250 published opinions. She has also appeared as *amici curiae* in multiple, significant appeals.

Mrs. Walbolt is a Fellow of the American College of Trial Lawyers, and a Member of the prestigious American Law Institute. She was selected by The National Law Journal as one of the nation's Top Ten Women Litigators in 2001; was the 2003 recipient of the George C. Carr Memorial Award; and was also an inaugural inductee to the Pinellas County Business Women's Hall of Fame in 2003. She was one of only five American lawyers to participate in the Anglo-American Exchange in 1999-2000, led by Justices Kennedy and

Thomas of the U.S. Supreme Court. She is also listed as one of *Florida Trend* magazine's "Legal Elite," in Chambers USA Guide to America's Leading Business Lawyers, and in *Best Lawyers in America*.

Mrs. Walbolt is a past President of the American Academy of Appellate Lawyers and was a member of the inaugural Appellate Certification Committee of The Florida Bar. She is a former President of The Florida Bar Foundation, Chairperson of the Business and Banking Section of The Florida Bar, and Vice-Chairperson of the Antitrust Section of the American Bar Association. She is also former Chair of the Florida Supreme Court's Committee on Standard Jury Instructions for Civil Cases. The Section congratulates Mrs. Walbolt on her many achievements.

## Pro Bono Award

The Appellate Practice Section awarded its 2005 Pro Bono Award to John S. Mills for his representation of individuals who would otherwise be forced to proceed without counsel. Mr. Mills practices with Mills & Carlin, P.A., in Jacksonville, a member of the Florida Appellate Alliance, PLC.

Mr. Mills has devoted a significant portion of his practice to handling pro bono appeals. As Chair of the

Jacksonville Bar Association's Appellate Practice Section, he strengthened the Association's support for the local legal aid organization by providing pro bono appellate representation and furthering a partnership program with legal aid trial attorneys to support and train them on appellate-related matters.

This year, Mr. Mills successfully challenged the federal government's indefinite detention of Cuban immigrant, Daniel Benitez, in the U.S. Supreme Court. Mr. Benitez came to the United States in 1980, along with over 125,000 others, during the Mariel Boatlift. Some of these aliens, including Mr. Benitez, had been convicted of crimes in the United States, but had fully paid their debt to society by completing their prison sentences. Nevertheless, the federal government had, in essence, imprisoned them for life because their home country would not take them back. By a 7-2 decision, the U.S. Supreme Court ruled in Mr. Benitez's favor. The time and emotional energy Mr. Mills devoted to Mr. Benitez's case is particularly remarkable, given that he accepted Mr. Benitez's case while his firm was in its infancy stage.

Mr. Mills continues to show an impressive dedication to public service and to representing the underprivileged. Currently, he is the coordina-

tor of pro bono services in North Florida for the Bar's Appellate Practice Section. In light of his long-standing commitment to pro bono work, and especially in light of his landmark accomplishment in the Supreme Court this year, the Section was pleased to present him with its annual Pro Bono Award.



# The Third District Adds Three New Judges

**The Third District Court of Appeal has recently welcomed three new Judges: Judge Richard J. Suarez, Judge Angel A. Cortiñas and Judge Leslie B. Rothenberg.**

## **The Honorable Richard J. Suarez: An Advocate for Ethics and Professionalism in the Appellate Arena**

by Cory W. Eichhorn<sup>1</sup>



J u d g e Suarez speaks of his appointment to the Third District Court of Appeal with humility and honor. Years ago, as a private practitioner, he recalls waiting for a

jury to render its verdict in a case pending in front of Judge David L. Levy, a Circuit Court Judge at the time and the current Chief Judge of Third District Court of Appeal. Judge Levy indicated to Judge Suarez that being a trial judge was the “best job in the world.” At the time, Judge Suarez agreed. In the fall of 2004, shortly after his appointment to the Third District Court of Appeal, Judge Suarez met Judge Levy and Judge Schwartz at the Court for his first tour. Upon his arrival at the Court, Judge Levy quipped to Judge Suarez that he had made a mistake in his statement to Judge Suarez years ago: “being a trial judge was not the best job in the world, it was the second best job in the world—being an appellate judge is the best job in the world.” Having now been on the bench for a number of months, Judge Suarez is convinced that Judge Levy has got it exactly right.

Judge Suarez has taken a unique and interesting path to the appellate bench—beginning his career not as an attorney, but as a musician. Judge Suarez received a Bachelor of Music degree from the University of Miami, concentrating on music performance. Upon his graduation, Judge Suarez toured with various musical groups and orchestras as a concert pianist, performing not only in South Florida,

but also on the international stage in South America and Puerto Rico. Judge Suarez went on to receive his Masters Degree in music at the University of Miami, and then taught music at Florida International University.

Although law had always interested Judge Suarez, he focused on music because of the many exciting opportunities that he had been given to perform. At some point, a friend of his recommended that he apply to law school. Seeking the intellectual challenge of the law, Judge Suarez enrolled at the University Miami School of Law. He told himself that he would give law school one year—twenty-three years later he is now an appellate judge.

Judge Suarez enjoyed his time in law school—especially his second and third years, where he was given an opportunity to focus on the areas of law that interested him, including commercial law, evidence and anti-trust. Judge Suarez thought that law school challenged him to compete with himself—it did not force competition among individual class members. Judge Suarez particularly enjoyed the trial advocacy program at the University of Miami, which provided a “real world” practical experience of trial, including exercises focusing on direct and cross examinations, opening and closing statements and trial objections. Judge Suarez would go on to become a moot court advisor in his third year of law school.

After his second year of law school, Judge Suarez clerked with Ryder System, Inc. in the Corporate Counsel Division. That experience crystallized Judge Suarez’s desire to become a lawyer. While a clerk, Judge Suarez wrote legal memos and negotiated contracts under the supervision of Ryder’s general counsel, and found the experience to be exciting and intellectually challenging.

After law school, Judge Suarez envisioned himself working in the capacity of in-house counsel, but his friends and family recommended

that he begin his career as a trial lawyer. With that goal in mind, Judge Suarez applied at Corlett, Killian, P.A., a well-respected Miami insurance defense firm. He was extremely fortunate to be offered a job and his experiences at that firm have shaped his career to this day. While with Corlett, Killian, Judge Suarez was initially exposed to the practice of law at a broad level—he had the opportunity to write trial memos, attend hearings and try cases as “second chair” with Ed Corlett, a well-respected trial lawyer. Along the way, he always conducted his own research and drafted his own motions. Judge Suarez primarily concentrated his practice in the civil arena, focusing on insurance coverage work and complex multi-district litigation. He also took on the role of an appellate lawyer with open arms, drafting briefs and attending oral argument on numerous matters in which he acted as trial counsel. Judge Suarez found appellate law combined the intellectual challenge of advocating in both the written papers and at oral argument—aspects of appellate law that he truly came to appreciate.

Judge Suarez embraced the opportunity to work with Ed Corlett and learned as much as could from him. On weekends, he would read case files in an attempt to learn the nuances of taking depositions and arguing hearings. According to Judge Suarez, Corlett, Killian had an “open door” policy, with each and every attorney willing to share his/her knowledge with him.

Judge Suarez recognized early in his career that litigation experience laid the foundation for understanding a case on appeal. In his estimation, what goes on in the courtroom at the trial level, from objections to cross examinations, to opening and closing statements, gives context to the foundation of that case on appeal, from the citations to the record on appeal, to the arguments presented to the appellate court.

In 1991, Judge Suarez left Corlett,

*continued next page*

### THREE NEW JUDGES

*from preceding page*

Killian on amicable terms to form Hardeman & Suarez, P.A. with Don Hardeman, a partner and good friend at Corlett, Killian. Judge Suarez emphasizes the importance of a lawyer keeping professional relationships as he/she transitions from one job to the next, and always leaving the door open. In this regard, he sets a good example. Since his departure from Corlett, Killian, he has remained in close contact with Ed Corlett on a professional level. In fact, Mr. Corlett gave the keynote speech at Judge Suarez's investiture in the Third District Court of Appeal.

At Hardeman & Suarez, Judge Suarez coordinated multi-district litigation for sophisticated clients, from complex products liability actions to multi-faceted commercial disputes. He also continued to handle his own appeals at both the state and federal levels, honing his skills by practicing before Florida's district courts of appeal and the Eleventh Circuit Court of Appeals.

In 2002, Judge Suarez was appointed to the county court bench. He was initially assigned to the Richard E. Gerstein Justice Building in downtown Miami where he presided over only criminal cases. This was a new and exciting experience for Judge Suarez, as he had spent his entire career in the civil arena. To broaden his horizons with respect to criminal law, Judge Suarez worked tirelessly from attending criminal hearings and trials over which his colleagues were presiding, to spending his evenings at the University of Miami Law Library where he read cases, treatises and law review articles relating to criminal law. After three months at the Gerstein Building, he was transferred to the South Dade Justice Center where he presided over both criminal and civil matters.

Judge Suarez relished his experience as a trial judge. He always found that the attorneys practicing before him were well-prepared and professional. At the same time, he found it to be a friendly atmosphere where attorneys treated each other and the judiciary with the utmost respect. Judge Suarez is likewise impressed

with the professionalism and preparation of all attorneys that practice before the Third District Court of Appeal. He takes his role as an appellate judge (as he did on the county court bench) extremely seriously—with the goal to seek truth and justice, while at the same time making the correct decision under the law.

In the Fall of 2004, Judge Suarez was appointed to the Third District Court of Appeal. Although Judge Suarez has been on the appellate bench for a relatively short period, he feels extremely comfortable in this role. His fellow colleagues have helped to make his transition to the Third District Court of Appeal a smooth process and are always available to discuss any matter. He describes the experience of sitting on the Third District Court of Appeal as an "exchange of ideas," where his fellow judges may disagree with interpretations of the law, but hold each other's opinion in highest regard. In his role on the appellate bench, Judge Suarez emphasizes preparation—relying on input from his research assistants but also undertaking his own legal research to aid in the drafting of opinions.

Judge Suarez views oral argument as an integral part of the appellate process. As the only time in which a panel has an opportunity to resolve outstanding issues of law or fact through a discussion with counsel, oral argument is a "give and take" process that has an impact on the court's ultimate decision. For example, Judge Suarez recalls a recent appeal in which he had drawn a conclusion in favor of one party after reading the briefs and researching the law. At oral argument, however, the opposing party's position became much more crystallized. Through his questions to the opposing party's counsel, Judge Suarez was able to discern, in a much more detailed and refined manner, the position of that party. Ultimately, Judge Suarez reversed his original conclusion based on the oral argument.

As to his approach in analyzing an appellate brief, Judge Suarez focuses on the standard of review as to each case. The standard of review shapes the lens through which the panel reviews the appeal. Judge Suarez recently stressed the importance of standards of review at the Third Dis-

trict Court of Appeal Annual Seminar, along with fellow recently-appointed Judges Rothenberg and Cortiñas.

For practitioners just beginning their careers in appellate law, Judge Suarez stresses the importance of finding a mentor—an experienced attorney who will provide constructive criticism and positive feedback on briefs, as well as oral argument technique. Although sometimes overlooked, mentoring allows a young attorney to gain information and suggestions from those who have won and lost cases. Mentoring is a process that Judge Suarez recommends to all attorneys.

According to Judge Suarez, at the end of the day, all an attorney has is his/her integrity and reputation. Indeed, it is an appellate lawyer's duty to be truthful, not only with the court, but also with his or her clients. To further emphasize this point, Judge Suarez indicates that both appellate and trial level judges speak amongst themselves about the conduct of an attorney appearing before them and that being truthful and presenting an argument with integrity goes a long way with the court.

Above all, Judge Suarez takes a keen interest in ethics and professionalism in the practice of appellate law. He believes ethics and professionalism provide the foundation upon which an attorney's career is built; it is a base from which an attorney can grow and develop. In this regard, Judge Suarez stresses the importance of candor and truthfulness with brief writing as a panel will immediately recognize these two aspects in a brief. For example, in a recent Fifth District Court of Appeal opinion, Judge Harris illustrated the importance of ethics and professionalism in the practice of law:

"The rewards of professionalism, though they be substantial, are not tangible nor are they immediate. Such rewards are the well-deserved respect of one's peers and the heightened self-respect and increased self-confidence that come from knowing that one can perform at a high level of competence and within the bounds of ethics and decorum."<sup>2</sup>

These guiding principles of ethics and professionalism have been a major influence on Judge Suarez's career,

and will continue to shape the lens through which he views the law and the legal community in the future.

## **Introducing Judge Angel A. Cortiñas of the Third District Court of Appeal** by Roberta G. Mandel<sup>3</sup>



It has only been a few months since Judge Angel A. Cortiñas was sworn in to serve on the Third District Court of Appeal. However, to appellate practitioners

who have the pleasure of arguing before the Third District on a routine basis, it seems as though Judge Cortiñas has always served on the appellate court. His questions from the bench are thought-provoking, and he asks them with apparent ease.

Judge Cortiñas has dedicated most of his professional life to public service. He is used to working long hours serving his community and the State of Florida. That experience, among other things, prepared him for the demanding hours and dedication required to be a judge on the Third District Court of Appeal, which encompasses both Dade and Monroe Counties and historically has had one of the larger caseloads of any district court of appeal in Florida.

Judge Cortiñas served as the Chief of the Economic Crimes Section at the U.S. Attorney's Office for the Southern District of Florida from 2003-05. He also served as an Assistant U.S. Attorney in the Public Corruption, Economic Crime, Environmental Crimes and Appellate Sections from 1990-94 and 1995-2003, respectively. Judge Cortiñas has also spent time in private practice as a partner at Lehtinen, O'Donnell, Cortiñas, Vargas and Reiner. He also worked as an associate at Steel Hector & Davis. Although he found his work at the U.S. Attorney's Office challenging and fulfilling, he often thought about becoming a judge.

He has found his service as an appellate judge extremely rewarding

and he marvels at the impact that the appellate bench has on the local community and on the state of Florida as a whole.

Judge Cortiñas graduated from Brown University *magna cum laude*, where he was selected for membership in Phi Beta Kappa. He received his law degree from Harvard Law School in 1987. Judge Cortiñas has received numerous awards and honors over the years. He was honored as the recipient of the President's Council on Integrity and Efficiency Award for Successful Prosecution of Interstate Moving Company Cases in 2004. In 2001, he received the Attorney General's Award for Exceptional Service presented by Attorney General John Ashcroft. In 2000, Judge Cortiñas was awarded the National Crime Victims Award from Attorney General Janet Reno. He has served as a lecturer and instructor for the American Bar Association, White Collar Crime National Institute and The Florida Bar International Law Section. He has also taught courses on subjects including anti-corruption, trial advocacy, complex case management, and narcotics prosecution at the U.S. Department of Justice.

Family is very important to Judge Cortiñas. He and his wife are the parents of three young daughters. Judge Cortiñas also finds time to participate in civic and community activities. He has worked as a mentor in the Miami Senior High Legal and Public Affairs Program (2000-02). He also served as an officer and a member of the Board of Directors of Legal Services of Greater Miami (1991-2001). Judge Cortiñas was a member of the Governor's Commission for a Sustainable South Florida from 1994 to 1995, and a member of the Brown University Alumni Board of Governors at the same time. He was also elected President of the Brown University Club of Dade and Broward Counties (1989-95).

Judge Cortiñas refers to his position as a jurist on the Third District as "the best job in the world." This job "is as good as it gets." The thing that he enjoys most about the court is the collegiality between the judges. He and the other judges have lunch together on a daily basis. The fact that the judges have different backgrounds and work experience is extremely helpful since the court hears

a wide variety of issues: civil, criminal, probate, family, guardianship, and child service matters.

Judge Cortiñas reflected that there is an art to handling an appeal. When asked whether a trial attorney should argue in the appellate arena, Judge Cortiñas responded that sometimes a trial attorney is too close to his or her case; an appellate attorney should be involved at the trial level as preventative preparation. Judge Cortiñas compared a trial to a play, where all of the litigants have separate roles. An appeal, on the other hand, may take more preparation as it requires a good amount of time to write an effective brief.

When Judge Cortiñas isn't busy at the Third District Court of Appeal or participating in civic and community activities, he enjoys a game of dominoes, smoking cigars and traveling with his family. Judge Cortiñas has already proven himself an invaluable addition to the Third District Court of Appeal.

## **Judge Leslie B. Rothenberg-Looking Beyond the Gloss**

by Kathleen M. O'Connor<sup>4</sup>



Judge Leslie B. Rothenberg, the newest member of the Third District Court of Appeal, is a former prosecutor and trial judge, a wife, mother and grandmother, and a black belt Tae Kwon Do practitioner. Never one to shrink from a challenge, Judge Rothenberg relishes being an appellate judge. She began serving on the court in January of 2005, and already has earned a reputation as a dedicated and hardworking judge who stays late at night pouring over trial transcripts and appellate briefs.

Judge Rothenberg's passion for the law was obvious at a recent breakfast for appellate attorneys. Discussing her chosen topic of "Stare Decisis," she emphasized the importance of precedent in applying the common law, statutes and constitu-

*continued next page*

### THREE NEW JUDGES

from page 9

tions. In construing statutes and constitutions, Judge Rothenberg believes there is ordinarily a strong presumption in favor of precedent. She cites, however, to Justice Scalia's belief that it is the written law itself that must be applied consistently, not "the gloss" put on it by precedent. Judge Rothenberg believes it is important, therefore, to peel back the layers of gloss and focus on the written law itself.

As with many women lawyers of her generation, Judge Rothenberg's educational path did not lead straight to law school. When she attended high school in Indiana in the 1960s, becoming a lawyer was not considered a realistic career option for most women. During her high school years, however, Judge Rothenberg became a star debater, and she developed skills that would serve her well as an attorney. When her high school debate team attended an institute at the University of Denver, Judge Rothenberg swept the competition, winning first place in every event she entered. The University took notice, created a debate scholarship, and awarded it to Judge Rothenberg.

Debating in high school and college gave Judge Rothenberg the opportunity to enjoy the positive aspects of team competition. At the time, schools did not field teams of female athletes, so Judge Rothenberg competed intellectually. She recalls the exhilaration of debating: "I fell in love with debate. I loved the competition and when the event was over I always enjoyed the camaraderie with teammates and opponents." One key to Judge Rothenberg's success was her commitment to preparation. "I researched to win," she recalls. Her debate opponents were nearly always men, and she remembers with a smile that "most of them didn't know quite how to treat me." It is easy to imagine that Judge Rothenberg's diminutive physical stature and feminine good looks probably caused some of her opponents to underestimate her intellectual talents and debating skills. Presumably, that was a mistake they did not make twice.

Judge Rothenberg's educational plans were put on hold after her fam-

ily relocated to Florida, and she joined them in the Sunshine State. She took a job at a stock brokerage firm, where she met Stephen Rothenberg and knew immediately that he was the man she would marry. After they wed and had their first son, Stephen was accepted at NYU's dental school, and the young family moved to New York for three years. Their second son was born there, and after Stephen's graduation from dental school, the family returned to Florida. Judge Rothenberg has always taken great pleasure and pride in her close-knit family. To that end, the Rothenbergs recently celebrated their 35th wedding anniversary. The Rothenbergs' oldest son is an attorney in South Florida, and their younger son is an orthodontist who now practices with his father. The Rothenbergs also have two grandchildren and a third one "on the way."

After her husband set up his dental practice in South Florida, Judge Rothenberg had the opportunity to complete her college education. She chose Florida Atlantic University in Boca Raton because the school had a strong communications program. She was later accepted at Nova Southeastern Law School and began studying for a law degree at the age of thirty-five.

Shortly before starting law school, Judge Rothenberg, a marathon distance and competitive 10-K runner, was attacked while on a training run. Jumped from behind, thrown down and pinned to the ground, she ultimately succeeded in fighting off her assailant, who escaped and was never caught. The experience rattled her and gave her a keen appreciation for the plight of crime victims, especially their feelings of lost dignity, fear and vulnerability.

While in law school, Judge Rothenberg spent a summer as an intern at the State Attorney's Office and knew then she would become a prosecutor herself. She joined the Miami-Dade County State Attorney's Office after graduation from law school in 1986. She began by prosecuting drunk drivers and was rapidly promoted to positions of greater responsibility. During her last two years in the State Attorney's Office she served as a Felony Division Chief where she supervised approximately 2,500 felony cases per year and the

lawyers prosecuting those cases, while trying first degree murder and sexual battery cases.

Once Judge Rothenberg became a prosecutor, she was assigned her own interns. She was quite surprised one summer when her new intern was one of her former law professors. When Judge Rothenberg had been his student, he advised her that if she wanted to be a successful attorney, she would have to cut her long hair and nails. It was advice she did not follow. After a few weeks of observing Judge Rothenberg in action as a prosecutor, the professor told her to stay just the way she was because once she opened her mouth and began to speak in a courtroom, her looks became immaterial.

As a prosecutor, Judge Rothenberg had a ninety-seven percent conviction rate, but she believes that the role of a prosecutor goes beyond simply putting guilty people in jail. Judge Rothenberg believes strongly that a prosecutor has an obligation to crime victims to do everything possible to protect them from being revictimized by the system, and to give them back their dignity and sense of well-being. She believes that a prosecutor's duties involve not just protecting individual crime victims, but the community as a whole from being victimized in the future.

Two cases stand out when Judge Rothenberg recalls her years in the State Attorney's Office. Early in her career she encountered a young girl who was the victim of sexual abuse. At their first meeting, the girl was timid and dressed like a boy so as not to call attention to herself. It took six meetings before the child would even talk about the abuse she suffered. Then the story poured out. The abuser was ultimately convicted and after the trial, Judge Rothenberg gave the young girl a necklace with a crystal. "I told her she would grow up and go through hard times and when that happened, she should rub the crystal and remember what a brave girl she had been and that she could overcome anything life threw her way." Years later, when Judge Rothenberg ran for circuit court judge, the young girl's mother wrote a letter to The Miami Herald, supporting Judge Rothenberg. The mother pointed out that although nothing could undo what had hap-

pened, Rothenberg's dedication and compassion had truly made a difference in her daughter's life.

Another case involved the murder of an African-American man, who was a father of three, and a local success story. He was known in his neighborhood as "the Fix-It-Man" because he could repair anything. One day while the Fix-It-Man was walking home, he was confronted and murdered by a young robber. People in the neighborhood were afraid to come forward. Only a homeless man gave a statement and then he disappeared. Unable to locate her only eye witness, Judge Rothenberg obtained continuances until the trial judge finally said "no more." Judge Rothenberg, who refused to give up and allow the murder to go unpunished, contacted the detective on the case and asked him to walk with her through Liberty City and Overtown to find the witness. After three days of searching they discovered the witness had gone to central Florida to pick oranges. He agreed to return and testify and Judge Rothenberg obtained a conviction.

Toward the end of her tenure at the State Attorney's Office, Judge Rothenberg took a leave to serve as a volunteer in the Israeli Army during Operation Desert Storm (the first Gulf War). She was met at the airport in Tel Aviv by soldiers who gave her three things: a daisy to symbolize peace, a flag to symbolize nationalism, and a gas mask, which she was required to have with her at all times. Assigned to a base just outside Tel Aviv, she made gauges for tanks, served in the kitchen, and tore down guns.

After six years as a prosecutor, Judge Rothenberg decided she could contribute more to the community by serving as a member of the judiciary. In 1992, she successfully ran for the circuit court and ultimately served for nine and a half years on the criminal bench and one and a half years on the civil bench. In October 2003, she resigned her position to run for State Attorney and joined the firm of Steel, Hector & Davis as a partner. After she was defeated in the primary election, Judge Rothenberg applied for one of three vacancies on the Third District Court of Appeal, and in December of 2004, Governor Jeb Bush appointed

her to the court.

Judge Rothenberg began serving on January 4, 2005. Her appointment brought the total number of women on the 11-member court to three, and soon thereafter, the court's random assignment system generated the first all-female argument panel in the court's 48-year history. Joining Judge Rothenberg on the historic panel on February 16, 2005, were presiding Judge Melvia Green and Judge Linda Ann Wells. Judge Rothenberg deemed it a "wonderful experience" and remarked that she was "honored to be a colleague of two such incredible women."

Judge Rothenberg is particularly impressed by the court's diversity, not just as to gender and race, but also as to the judges' different backgrounds. Judge Rothenberg believes: "Diversity gives credibility to the court and to the judicial process. People in the community need to feel comfortable with who is on the court."

In reviewing briefs, Judge Rothenberg knows what to look for and if it is not in the briefs, she will search the record for pertinent information and look at additional cases to determine points of law. When she is the designated primary judge, she reads the transcripts. She is guided by the principle that: "Preparation is critical especially when the litigants and the courts are depending on us to get it right."

When asked what advice she would give to attorneys, Judge Rothenberg says: "No case is worth more than your reputation and in-

tegrity. Attorneys should not make arguments unsupported by the law or assert facts unsupported by the record." In regard to oral arguments, Judge Rothenberg smiles and gives this advice: "Try to relax. We're just people sitting on different sides of the room."

Judge Rothenberg's inspirational life story reveals a dynamic, dedicated and driven woman. Her experiences remind us all to look beyond "the gloss," discard stereotypes, and take an in-depth look at the people we meet and the legal issues we confront.

#### (Endnotes)

<sup>1</sup> Cory W. Eichhorn is an associate at Proskauer Rose LLP in Boca Raton, Florida. He is a member of Proskauer's litigation department, where he focuses his practice on commercial litigation and appellate law. Mr. Eichhorn is a member of the Appellate Practice Section's Publication Committee and serves as an Associate Editor of *The Record*.  
<sup>2</sup> *D'Ambrosio v. State*, 736 So.2d 44, 48 n.1 (Fla. 5th DCA 1999) (J. Harris, specially concurring). For a discussion of the judiciary's role in upholding ethics and professionalism, see *Borden, Inc. v. Young*, 479 So.2d 850 (Fla. 3d DCA 1985).

<sup>3</sup> Roberta Mandel is the head of the appellate department of Houck, Hamilton & Anderson P.A. and a member of the firm. She served as an Assistant Attorney General for the State of Florida and has successfully argued more than 500 appeals in the state and federal court systems.

<sup>4</sup> Ms. O'Connor is a partner with Thornton, Davis & Fein, P.A., and is Board certified in Appellate Practice. She is immediate past Chair of the Dade County Bar Association Appellate Court Committee and Co-Chair of the Third District Court of Appeal 50th Anniversary Committee. She serves on the Appellate Court Rules Committee of The Florida Bar and the Board of Directors of Miami-Dade FAWL.

## Appellate Practice Section Telephonic Seminars

The Third Tuesday of Every Month  
(Except June and December)  
12:15 p.m. – 1:00 p.m.

Please Check the Appellate Practice Section  
Website For Registration Information

and

Updates on Topics and Speakers  
[www.flabarappellate.org](http://www.flabarappellate.org)



**2004 - 2005 Final Budget / 2005 - 2006 Budget  
(Approved, January 2005)  
Appellate Practice Section**

<u>Income</u>	<u>Actual</u>	<u>Budget</u>	<u>05-06 Budget</u>
Dues	17,234	16,875	17,500
Cert. Review	4,100	7,100	0
CLE	431	3,000	3,060
Audio Tapes	5,196	3,500	4,500
Videotapes	14	0	0
Materials	19	0	0
Book Sales	535	0	0
Sponsorships (Stetson)	0	0	1,500
Sponsorships (Reception)	7,540	5,000	4,000
Sponsorships (The Guide)	0	1,000	1,000
Member Service Program	3,130	1,000	2,000
Retreat	0	0	4,000
Allowances	(44)	0	0
Credit Card Fees	(90)	0	(45)
Investments	3,897	4,637	6,352
<b>Total</b>	<b>41,962</b>	<b>42,112</b>	<b>43,867</b>

<u>Expenses</u>	<u>Actual</u>	<u>Budget</u>	<u>04-05 Budget</u>
Cert. Review	4,013	5,826	0
Employee Travel	727	999	1,159
Postage	384	500	500
Printing	314	200	200
Newsletter	5,454	3,000	3,000
Membership	718	250	250
Photocopies	88	300	300
Officer Travel	590	700	1,000
Committee Exp.	884	600	800
Public Info	0	0	5,000
General Mtg.	0	1,300	1,500
Annual Mtg.	9,072	7,500	8,000
Midyear Mtg.	7,260	1,500	1,700
Section Service	4,257	1,500	5,000
Retreat	0	0	12,000
Directory	5,011	5,000	5,100
Awards	311	600	600
Scholarships	0	2,000	0
Website	2,297	4,000	4,000
Legislative Travel	0	200	200
Council of Sections	300	300	300
Reserve	0	3,055	5,071
Misc.	53	100	100
<b>Total</b>	<b>41,733</b>	<b>39,430</b>	<b>55,780</b>
<b>Net</b>	<b>229</b>	<b>2,682</b>	<b>(11,913)</b>
<b>Fund Balance</b>	<b>83,339</b>	<b>95,417</b>	<b>83,504</b>

# The Annual Dessert Reception Sways in Key West Style!

by June G. Hoffman<sup>1</sup>

The Appellate Practice Section hosted its signature Dessert Reception during the Annual Meeting of The Florida Bar, in fun Key West style! Attendees were transported to Jimmy Buffet's "Margaritaville," complete with beach balls, novelty beach hats, parrots, sunglasses and hibiscus leis, as well as other goodies in the treasure trunk. Members of the bench and bar and their families enthusiastically enjoyed gourmet dessert specialties, ice cream and a stroll down Jimmy Buffet Drive (a/k/a the open bar).

As the festivities wound down, attendees over the age of 21 departed with mementos of their evening, consisting of a colorful margarita glass with margarita fixings, a pair of novelty sunglasses and a refrigerator magnet with the Section's logo and marketing slogan "Who's Your Appellate Lawyer?"

The turnout for this year's Dessert Reception by appellate judges and appellate and trial practitioners was extraordinary, and perhaps motivated by the success and fun of last year's Tenth Anniversary celebration, which was held Mardi Gras style. Make your plans to join the fun and network at next year's event!

The Appellate Practice Section gratefully acknowledges and appreciates the support of the following firms that generously supported this year's reception:

## Endnotes:

<sup>1</sup> June Hoffman is a shareholder of Fowler White Burnett, P.A. in its Appellate Practice Group and is Board Certified in Appellate Practice.

**Platinum Sponsor**  
Carlton Fields  
The Florida Appellate Alliance, PLC  
Fowler White Burnett, PA  
Kubicki Draper, PA

**Gold Sponsor**  
Gunster Yoakley & Stewart, PA

**Silver Sponsor**  
Adorno & Yoss, LLP  
Fox & Loquasto  
Hersch & Talisman, PA  
Holland & Knight, LLP  
Kynes Markman & Felman, PA



# Second DCA/Stetson Partnership Provides Unique Benefit to Students

by Jan Majewski<sup>1</sup>



When the Second District Court of Appeal and Stetson University College of Law agreed to share space at Stetson's Tampa Law Center, many wondered why a law school and a courthouse had not been combined before. The fact is this public-private partnership between Stetson and the Second DCA is very unique. It is the first of its kind in Florida, and one of a handful in the nation.

The Stetson Tampa Law Center opened in January 2004. Located on Tampa Street, the building sits on a ridge overlooking the Hillsborough River and Tampa's Water Works Park, where a fresh water spring is still bubbling. Then-Chief Judge Chris Altenbernd spoke about the relationship between the spring and the Law Center on this site at the building's dedication. More on this later...

The building contains six class-

rooms of various sizes, a law library, administrative and faculty offices, a small break room and a catering kitchen. Some of the traditional first year classes that part-time students must take are held at the Law Center in the evenings. This Fall, a few day classes will be added to the schedule.

One classroom is the Wm. Reece Smith Jr. Courtroom. It is the "center stage" for DCA activity at the Law Center. The courtroom is designed to accommodate both trial and appellate hearings. It features the latest in courtroom design, including technology for displaying electronic evidence, cameras for observing court participants and jury deliberations, plasma TVs with drop down screens for the jury and audience to clearly view proceedings, and network connections at every seat in the audience. Microphones and speakers are embedded throughout the room to ensure clear communication. Two jury rooms and an 18-seat jury box provide the ability for students and lawyers to compare the influence of demographic difference on jury deliberations. The court-

room is where most of the classes are scheduled and where the DCA holds oral arguments about five days per month.

The presence of the judges in itself (their chambers and staff offices occupy the third floor) is a wonderful complement to the students' legal education. The Chief Judge participates in the new student orientation, giving them an overview of the DCA. Throughout each semester, the DCA judges provide special lectures one hour before class on topics such as jurisdiction or scope of review. Some professors have invited members of the court to address their classes as guest lecturers. Judges also routinely serve as panel members at special student presentations, such as the Law Review Scholarship Dinner held each semester. Stetson's award-winning moot court teams have even benefited by being able to hold practice sessions in the Smith Courtroom before a panel of active appellate judges.

Importantly, many of the part-time students are the first in their families to be able to attend law school. Most have never been in a courtroom or have never met a judge. Now, it is not unusual for these students to greet a judge in the hallway or in the law library.

Also, because many of the part-time students work during the day and are therefore unable to attend the morning DCA oral arguments, once a month the DCA schedules an oral argument session in the late afternoon so these students have an opportunity to observe before class. The briefs in the case are distributed in advance so many of the students are well-versed in the issues being argued. While some appellate attorneys initially find it overwhelming to have a room full of observers, they have all been very helpful and often remain after their arguments to answer questions from the students.

The court's presence also attracts the practicing bar, which helps to bring a "real world" element to the study of law. The Tampa Law Center



has become the site for several CLE seminars and conferences, some sponsored by Stetson's Office for CLE which occupies space on the second floor. Also, because the law school receives many visiting scholars and other legal dignitaries, when their itinerary includes a stop at Tampa Law Center, a visit with the DCA judges is now routinely included on the schedule.

With so many joint endeavors, the relationship between the Second DCA and Stetson will only grow and strengthen at Tampa Law Center.

### **History Teaches Us . . .**

As previously noted, during the Center's dedication ceremony, Judge Altenbernd related a centuries-old story about the area where the Law Center is located.

Before European settlers arrived, the inhabitants of the Tampa Bay area were Timucua and Calusa Indians — many of whom drank from the spring located on the property. It is believed that Ulele, a courageous, young Indian woman, who was the daughter of Chief Hirrihugua, visited and drank from this spring. During his remarks, Judge Altenbernd related the story of this young woman, as told by Gloria Jahoda in *RIVER OF THE GOLDEN IBIS* (Univ. Pr. of Fla. 2000).

The following is from Judge Altenbernd's remarks with additional information provided from an Internet search: In the early 1500s, Panfilio de Narvaez led a Spanish expedition into the area now known as Tampa Bay. A young man named Juan Ortiz was on the expedition and had the misfortune of being left behind when the expedition moved on. The local tribe accepted Juan, but his life was not easy. Chief Hirrihugua felt threatened by Juan because he was a foreigner and seemed to understand many things that Chief Hirrihugua did not. The Chief often abused Juan, and ultimately planned to burn him in a "barbacoa" — a word that survives to this day as barbecue.

Contrary to her father's feelings, Ulele was not afraid of Juan Ortiz and respected his knowledge. Indeed, the literature suggests that she likely had romantic feelings toward this mysterious man. She helped him escape through the Hillsborough River and arranged for him to live in a vil-



lage upstream.

Ortiz lived there in relative peace until he joined Hernando de Soto's expedition eleven years later. Ortiz and de Soto died during the winter of 1541-42 near the Mississippi River. But the story of Ulele was documented in de Soto's records which survived the trip back to Spain and were published for all to read.

If this story sounds familiar, it is because John Smith read the records of de Soto before he traveled to Virginia. It may be that John Smith was really saved by Pocohantas, but many historians believe John Smith knew a good story when he read one and he was willing to make Juan Ortiz's story his own.

During the dedication, Judge Altenbernd concluded:

"Common law judges are similar to ministers, priests and rabbis in that we find meaning and rules for life hidden within good stories. Ulele was a young woman with the courage to confront an abuse of power — even when the abuser was her own father. Ulele was perhaps the first citizen of this community to recognize that we cannot have the rule of law unless we give equal protection to all of our residents. Ulele did not fear new ideas or new peoples and was willing to listen and ob-

serve to help her community benefit from the new ideas. Ulele was willing not just to talk about her concerns, but also to take action on her convictions even at great risk to herself.

This young, courageous woman, in undertaking the defense of Juan Ortiz, may have been this country's first international lawyer.

We have built a school and a court of law at the spring that gave life to Ulele. I hope that she will inspire the students of this school to have her courage, her wisdom, and her thirst for knowledge. I hope that the judges of my court will learn from her commitment to equal justice for all."

The next time you are on the Tampa Law Center grounds, take the time to walk over to the River Works Park and look for the spring. Think about the history behind this natural phenomenon, the centuries that have passed since the time of the Timucuas and Calusas, and then think about its relation to the study of the practice of law today.

### **(Endnotes)**

<sup>1</sup> Jan Majewski is the Associate Dean, Tampa Law Center for Stetson University College of Law. He received his BA from the University of Bridgeport and his JD from George Washington University Law School.

# The New Robert Butler Gallery on the Second District's Website

by Judge Chris W. Altenbernd, Second District Court of Appeal

Those of you who visit the Second District's website—either to check for recent opinions or to look up your case on our docket—may have noticed a recent addition to the site. We have gone into competition with the Louvre and the Metropolitan Museum of Fine Art with our own gallery of fine paintings, The Robert Butler Gallery. There is a great story behind this little fine arts display.

In the early 1980s, the Second District's courthouse in Lakeland was renovated. The building was doubled in size. We built a new entrance and a new courtroom. The walls were bare, and the new facilities were in need of some public art. Fortunately, the court received a grant from the Florida Arts Council to commission and display paintings by Robert Butler.

Mr. Butler was an artist who lived in our district. He had developed his painting skills as a member of a loosely knit group of African-American artists known as the Florida Highwaymen. These artists, usually self-taught, painted Florida outdoor scenes and marketed their paintings from the trunks of their cars along

Florida's highways. By 1985, Mr. Butler had developed a local following and was a promising up-and-coming artist. A local art selection committee established by the Council was responsible for selecting him to be the artist who would bring some Florida life and color to our courthouse.

The Florida Arts Council granted the court \$8,150 for this project. We were required to purchase paintings that would range in size from 16" x 20" to 40" x 58" and be of various Florida ecological systems of marshlands, rivers, cypress, pine lands and oak hammocks. The grant contemplated that Mr. Butler would provide twelve paintings. Judge Herboth Ryder was Chief Judge of the court in 1985. He selected Judge Monterey Campbell as a "committee of one" to oversee the selection of these paintings. The court selected some paintings that Mr. Butler had already completed and then asked him to paint some additional scenes. Mr. Butler rarely paints scenes that actually exist in nature. He creates imaginary scenes based on Florida ecology. Most of the paintings on display at the

court were painted in this manner.

After most of the paintings had been selected, the court had still not selected a large painting to display in the entrance to the courthouse. Something truly special was required for that spot. Robert Butler's recollection and Judge Campbell's recollection of the selection of this special painting differ slightly.

In a recent letter to me from Judge Campbell, he explains:

I understand that Robert's recollection regarding the large painting of Kissengen Springs that hangs in the lobby of the Headquarters Building may be a little bit different from mine. My recollection is that as Robert and I discussed the work that he was to perform he indicated to me that he had always heard of Kissengen Springs, which by that time had dried up, and had wanted to do a painting of that area. Mr. and Mrs. Martin Haas were long-time managers of Kissengen Springs when it was active and thriving and, at the time Robert was doing the painting, still lived in Bartow and owned and operated an art framing studio. I put Robert in touch with them because they had numerous photographs from the time when the "Springs" was active that would be useful to him in accurately depicting the "Springs." I also put him in touch with the executives of the phosphate company that owned the land where the "Springs" had been located. They agreed to take Robert on a tour of the property so that he could observe the dried up spring bed and all of the old oak hammocks around the "Springs" that were still there. That is how the painting came into existence.

Robert Butler generally agrees about the process of interviewing people before he painted Kissengen Springs. He recalls that the quality



# The Backlog in Juvenile Appeals in Hillsborough County: What Appellate Lawyers Can Do To Help

by Katherine Earle Yanes<sup>1</sup>



The Second District Court of Appeal presently faces a backlog of juvenile dependency and termination of parental rights appeals originating from the Thirteenth Judicial Circuit.

*S.T.<sup>2</sup> was twelve at the time her father's rights were terminated. S.T.'s mother is dead. Because her father has been in and out of prison and jail her entire life, she has lived with her father for a total of less than a year of her life. She has bad memories of the time she spent with her father, during which he exposed her to domestic violence and his drug use. S.T. has found happiness with a foster family that wishes to adopt her. S.T.'s anxiety increased as the months went by while she waited for her father's appeal from the order terminating his parental rights to be decided, and as a result, she sought counseling.*

*E.H., J.H., M.H., and S.H. are teen and preteen siblings. Their parents' rights have been terminated, but the appeal of the termination of parental rights order remains pending. No adoptive placement has been found for the siblings. Older children are more likely to find adoptive placements if they are legally available for adoption, which will not occur until the appeal of the termination of their parents' rights is final. Older children such as E.H., J.H., M.H., and S.H. are generally aware of the termination of parental rights proceedings and the uncertainty of their situa-*

*tion often causes them emotional and adjustment problems. Some children wish to return to their parents despite their parents' inability to care for them. The ongoing pendency of the termination of parental rights process can give them false hope that they will be reunited with their parents.*

*A.S. is the natural mother of G.S., a seven-year-old boy who was removed from A.S.'s custody when he was four years old. A.S. has a long history of drug and alcohol abuse, but is now doing her best to stay sober. Although A.S.'s parental rights to G.S. were terminated, she visits G.S. regularly and continues to hope that she will eventually regain custody of him. A.S. is concerned that the longer G.S. remains with his foster family, the more difficult it will be for him to re-establish a bond with her if they are, as she hopes, reunited.*

*M.W. and J.W. were both under the age of three when their parents' rights were terminated. They are both now in adoptive placements, but the adoptions cannot be finalized until the appeal from the termination of parental rights order is concluded. Although neither one is aware of the proceedings, the lack of finality is very hard for the parents who hope to adopt them.*

The delay caused by this backlog of these kinds of cases often creates problems for the children involved, their care providers, and the parents whose rights are affected. This is particularly so when the case involves the termination of a parent's rights to a child. The appellate delay leaves the children involved in limbo until their futures are decided. Their parents wait longer than necessary to obtain a final determina-

tion of their parental rights. Likewise, prospective adoptive parents face uncertainty until the decision freeing a child for adoption is final. Sadly, the chances of finding an adoptive home diminish as a child grows older.

Judge Chris Altenbernd of the Second District Court of Appeal and Judge Martha Cook of the Hillsborough County Juvenile Dependency Court recently asked the Appellate Practice Section of the Hillsborough County Bar Association to help address this backlog. Both believe that a significant factor contributing to the backlog is a shortage of attorneys available for appointment to handle juvenile appeals. This article will provide an overview of the juvenile dependency and termination of parental rights process, discuss the present backlog in juvenile appeals in Hillsborough County, and explain what attorneys can do to help alleviate this problem.

While this article focuses on the effort in the Thirteenth Judicial Circuit and the Second District Court of Appeal, it is the author's hope that attorneys in other circuit and district courts will undertake a similar effort, where necessary. The Appellate Practice Section of The Florida Bar is presently working on a statewide effort to mobilize attorneys to respond to similar appellate delays in other circuits.

## Overview of the Juvenile Dependency and Termination of Parental Rights Process

An appeal can generally be taken from an order adjudicating a child dependent or terminating parental rights. While dependency proceedings often involve the removal of a child from a parent's custody, the goal of a dependency proceeding is generally reunification of the family. Termination of parental rights proceedings, by contrast, result in a child being freed for adoption.<sup>3</sup> Indigent

*continued next page*

## BACKLOG IN APPEALS

*from previous page*

parents are entitled to appointed counsel in either type of proceeding if the proceeding involves “the possibility of permanent termination of parental rights to a child.”<sup>4</sup>

### Juvenile Dependency Proceedings

A child is “dependent” under Florida law if that child: (1) has been abused, neglected, or abandoned by the child’s parents or guardians; (2) is at “substantial risk of imminent abuse, abandonment, or neglect;” (3) has no parent or guardian capable of caring for the child; or (4) has been given up for adoption.<sup>5</sup> Typical dependency cases involve allegations of physical or sexual abuse, domestic violence in the presence of the children, mental health issues, drug or alcohol abuse, or a parent’s incarceration.

Dependency cases often begin when a child is removed from his/her home. A child may be taken into custody if there is probable cause to show abuse, neglect, or abandonment of the child; the child is in imminent danger of injury from abuse, neglect, or abandonment; or there is no parent or guardian capable of caring for the child.<sup>6</sup> A child may not be removed from a parent’s custody if the child could safely remain in the home.<sup>7</sup> When it is not possible for the child to remain in the home safely, the child may be “sheltered,” meaning placed with a relative or in the foster care system.<sup>8</sup> In cases in which the Department of Children and Family Services [DCFS] determines a child must be sheltered, a “shelter hearing” must be held within 24 hours, at which DCFS must establish that there is probable cause to support removal.<sup>9</sup>

The court may appoint a guardian ad litem in any judicial proceeding involving child abuse, abandonment, or neglect.<sup>10</sup> The guardian ad litem reviews all disposition recommendations and changes in placements, and must either “be present at all critical stages in dependency proceedings or submit a written report of recommendations to the court.”<sup>11</sup> The guardian ad litem’s role is to advocate for the interests

of the child, although that is not always the same as the wishes of the child.

Before or after a child is taken into custody, DCFS may initiate a dependency proceeding by filing a petition to have the child adjudicated dependent.<sup>12</sup> The purpose of a dependency proceeding is not to punish the offending parent but to protect and care for a child who has been neglected, abandoned, or abused.<sup>13</sup> If the parent denies the allegations in a dependency petition, the trial court will hold an adjudicatory hearing at which DCFS must establish dependency by the preponderance of the evidence.<sup>14</sup> “An adjudication of dependency must be based on a finding of abuse, abandonment, or neglect”<sup>15</sup> or a finding that the child is at “substantial risk of imminent abuse, neglect, or abandonment.”<sup>16</sup>

Where the parent admits the allegations in a dependency petition or the court finds after an adjudicatory hearing that the facts alleged in the dependency hearing were proven, the court must hold a disposition hearing, at which the parent will be provided a case plan.<sup>17</sup> The services set out in the case plan “must be designed either to improve the conditions in the home and aid in maintaining the child in the home, to facilitate the safe return of the child to the home, or to facilitate the permanent placement of the child.”<sup>18</sup> Case plans generally set forth a visitation plan, require a parent to maintain stable housing and finances, and provide for parenting classes and individual or family counseling. Depending on the circumstances of the case, a case plan may also require domestic violence classes, substance abuse evaluation and treatment, sexual offender evaluation and treatment for offenders, or sexual abuse classes for non-offenders.

### Termination of Parental Rights Proceedings

In some cases, reunification of the family is determined not possible or not in the best interests of the child, and the goal for the child becomes placement for adoption rather than reunification with the parents. This may occur because the parents consistently fail or refuse to take the

steps required by their case plan, such as participating in required treatment;<sup>19</sup> because the parent has abandoned the child;<sup>20</sup> or because the parent’s situation or conduct is such that reunification is not an appropriate goal.<sup>21</sup>

A termination of parental rights proceeding is initiated by the filing of a petition by DCFS, the guardian ad litem, “or any other person who has knowledge of the facts alleged or is informed of them and believes they are true.”<sup>22</sup> An advisory hearing must be held on the petition as soon as possible, at which the parties must be informed of their rights and counsel must be appointed for indigent parents.<sup>23</sup>

An adjudicatory hearing, essentially a bench trial, must be scheduled within 45 days of the advisory hearing, although continuances may be granted if necessary.<sup>24</sup> At the hearing, the burden is on DCFS to prove the allegations supporting termination by clear and convincing evidence.<sup>25</sup> The court must first find that one of the grounds for termination, as set forth in section 39.806, Florida Statutes, exists.<sup>26</sup> Under section 39.810, Florida Statutes, the court must then consider whether termination is in the “manifest best interest” of the child.<sup>27</sup> Finally, “termination of parental rights is subject to a constitutional requirement,” that termination is the least restrictive means to protect the child from harm.<sup>28</sup>

### Grounds for Termination

The grounds on which parental rights may be terminated are set forth in section 39.806(1). The most common grounds on which termination is sought are that the parent’s “continuing involvement” with the child “threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services;”<sup>29</sup> that the parent has failed to “substantially comply” with a case plan for a period of 12 months;<sup>30</sup> or that the parent has engaged in “egregious conduct” or failed to prevent egregious conduct “that threatens the life, safety, or physical, mental, or emotional health of the child or the child’s sibling.”<sup>31</sup> Other grounds for termination include voluntary surrender of parental rights;<sup>32</sup> abandonment;<sup>33</sup> the

parent's incarceration;<sup>34</sup> aggravated child abuse, sexual abuse, or chronic abuse;<sup>35</sup> murder or manslaughter of another child or felony assault that results in serious bodily injury on that or another child;<sup>36</sup> or termination of parental rights as to a sibling of the child.<sup>37</sup>

As to the "continuing involvement" ground, a parent's rights may be terminated only if the trial court finds that "the child's life, safety, or health would be threatened by continued interaction with the parent regardless of any services provided to the parent."<sup>38</sup> "Continuing involvement" cases might involve situations in which the parent has a substance abuse problem and will not participate in treatment or has not benefited from treatment, or a parent who refuses to believe the other parent or a significant other has physically or sexually abused the child and refuses to participate in or has not benefited from services. Termination is appropriate on this ground only if "any provision of services would be futile or the child would be threatened with harm despite any services provided to the parent."<sup>39</sup> "Where the record demonstrates a reasonable basis exists to find the parent's problems could be improved, parental rights cannot be terminated."<sup>40</sup>

Parental rights may be terminated for failure to substantially comply with a case plan over a period of 12 months because failure to comply with a case plan is treated as "evidence of continuing abuse, neglect, or abandonment."<sup>41</sup> Parental rights may not be terminated on this ground if "the failure to substantially comply with the case plan was due either to the lack of financial resources of the parents or the failure of [DCFS] to make reasonable efforts to reunify the parent and child."<sup>42</sup>

"Egregious conduct" justifying termination of parental rights "means abuse, abandonment, neglect, or other conduct of the parent or parents that is deplorable or outrageous by a normal standard of conduct."<sup>43</sup> Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.<sup>44</sup> Typical "egregious conduct" cases involve very serious

abuse resulting in fatal or life-threatening injuries, such as shaken baby syndrome.<sup>45</sup>

### **Manifest Best Interests**

Parental rights may be terminated only upon "clear and convincing evidence" both that there is a ground for termination under section 39.806 and that termination is in the manifest best interests of the child pursuant to section 39.810.<sup>46</sup> Determination of the "manifest best interests of the child" requires consideration of "all relevant factors," including such factors as: the availability of a relative able to care for the child; the child's needs; the bond between the child and the child's parents, siblings, and relatives; the likelihood that a child will remain in foster care; the likelihood that a child will "enter a more stable and permanent family relationship" if parental rights are terminated; the relationship between the child and the child's present caretakers; the preferences of the child; and the recommendations of the child's guardian ad litem.<sup>47</sup>

Even if one of these statutory grounds for termination of parental rights exists, the court may find termination is not in the child's best interests. Examples of this include: where there is a relative available to care for the child,<sup>48</sup> where termination would cut off responsibility for financial support of a child and leave the child without a parent,<sup>49</sup> or where a child was not impacted by the abuse of a sibling and is closely bonded to a parents.<sup>50</sup> Where multiple children are involved, "the trial court cannot treat the children as an amorphous group in which the best interests of one will meet the interests of all."<sup>51</sup> Instead, the court "must individually determine whether the termination of parental rights" as to each child "is in that child's best interests."<sup>52</sup>

### **Least Restrictive Means**

Finally, termination is appropriate only if it is shown by clear and convincing evidence that no less restrictive means of protecting the child is available.<sup>53</sup> "The least restrictive means test requires that those measures short of termination be utilized if such can permit the safe reestablishment of the parent-child bond."<sup>54</sup> Less restrictive means than termination might include measures such as

placement with a relative<sup>55</sup> or gradual reunification to allow the parents to adjust to their parental responsibilities.<sup>56</sup>

### **Appeals from Juvenile Dependency and Termination of Parental Rights Proceedings**

Appeals in juvenile dependency and termination of parental rights cases are governed by Florida Rule of Appellate Procedure 9.146. Under that rule, such appeals are required to receive expedited treatment.<sup>57</sup> The records on appeal in termination of parental rights cases "are often extensive and are extremely fact-based."<sup>58</sup> While some termination of parental rights cases involve only a half-day trial, other cases involve multi-day trials and voluminous records. Some cases involve as many as 15 volumes of records.

Any party to a dependency or termination of parental rights proceeding may appeal the trial court's order.<sup>59</sup> The taking of an appeal does not automatically stay the trial court's decision "unless the order directs that a child be placed for subsequent adoption."<sup>60</sup>

Although there is a right to counsel in a termination of parental rights case, *Anders*<sup>61</sup> procedures are not required in termination cases in which appointed counsel determines there are no non-frivolous grounds for appeal.<sup>62</sup> Instead, when appointed counsel seeks to withdraw in a termination case, the motion must "contain a certification that after a conscientious review of the record the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal" and the parent must be served with the motion and provided an opportunity to file a brief him/herself.<sup>63</sup>

Counsel should be aware that reversal of an order terminating parental rights does not mean the child is automatically returned to the parent's custody. Instead, DCFS generally resumes providing services to the parents and taking any steps available to reunify the family.

### **Hillsborough County's Juvenile Dependency System and Backlog in Juvenile Appeals**

A tremendous number of Hillsborough County children are within the child protective system.

*continued next page*

## BACKLOG IN APPEALS

from previous page

Foster care in Hillsborough County is provided by Hillsborough Kids Incorporated [HKI], a non-profit agency. Approximately 4800 children are under HKI's care at present, including over 1600 children living in

their homes under protective supervision and over 3100 in foster care or placed with relative or non-relative caregivers.<sup>64</sup> Hillsborough County has three judges and two general masters assigned to the Juvenile Dependency Division. The Office of the Guardian Ad Litem is involved in about one-third of the juvenile dependency and termination of parental rights cases in

Hillsborough County.

While the goal of Florida's child welfare system is that no child should be in foster care for more than one year,<sup>65</sup> a number of factors can lengthen a child's stay in foster care. In many Hillsborough County cases, a child has been involved in the juvenile dependency system for years by the time termination of parental rights proceedings are initiated. Further, termination of parental rights trials often do not take place within the statutory time frame of 45 days because of the heavy dockets in the Juvenile Dependency Division.

As explained at the outset of this article, the Thirteenth Judicial Circuit is currently experiencing a large backlog in juvenile appeals. Unfortunately, the present backlog in juvenile appeals is lengthening the time some Hillsborough County children remain in foster care or delaying their adoptive placements or adoptions. The Office of the Attorney General-Children's Legal Services Division, which represents DCF is in Hillsborough County cases, tracks the number of pending juvenile appeals in which the office is involved. The Children's Legal Services Division reports there were 58 pending juvenile appeals in April 2003. That number had increased to 65 in April 2004 and 74 in April 2005. On average, five notices of appeal are filed in Hillsborough County juvenile cases per month. While most cases take six to nine months to move through the appellate process, recently some cases have taken up to one year.

The increasing number of juvenile appeals exacerbates the effects of the shortage of counsel available to accept appointments in these cases. Although appointed counsel are necessary in the vast majority of termination of parental rights cases, recently there have been only six attorneys on Hillsborough County's appellate contract attorney list for juvenile appeals, with five of those attorneys also handling cases at the trial level.

### What You Can Do To Help

Hillsborough County has recently modified the minimum qualifications necessary to be appointed to handle juvenile dependency and termination of parental rights appeals.<sup>66</sup> The newly revised guidelines require that

# Volunteers Needed



## The Florida Bar Young Lawyers Division FEMA Disaster Legal Assistance Hotline

send the following info to [mailings@flabar.org](mailto:mailings@flabar.org):

Name: \_\_\_\_\_

Bar Number: \_\_\_\_\_

Address: \_\_\_\_\_

County: \_\_\_\_\_

Judicial Circuit: \_\_\_\_\_

Work Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Area(s) of Practice: \_\_\_\_\_

Additional languages spoken: \_\_\_\_\_

Legal Areas in which I will render assistance (Please pick 1 or more of the following):

- 1. Property Claims (Landlord/Tenant; Creditor/ Debtor/Foreclosure; Real Property)
- 2. Insurance and Injury Claims
- 3. General Consumer Help (Contract/Contractor Repair Problems; Consumer Protection; Employment)

Since all information regarding your assistance, including basic information on the case, will be sent via e-mail using the email address on record with The Florida Bar, please take a moment to update your email address at [www.floridabar.org](http://www.floridabar.org).

the attorney:

- Must have practiced law for at least five years or have handled five appellate cases;
- Must **either**: (1) have experience as lead trial counsel or trial co-counsel in two termination of parental rights trials and two juvenile dependency trials; **or** (2) have demonstrated knowledge through experience in the area of family or appellate law, such as board certified appellate attorneys or former appellate staff attorneys with at least 18 months of experience in a position where the staff attorney worked on dependency and termination appeals; and
- Must obtain 5 CLE hours approved by the Florida Bar in juvenile dependency law and 5 CLE hours in appellate law.<sup>67</sup>

An attorney who does not meet these guidelines may qualify for appointment if he or she is supervised by an attorney who does meet the necessary qualifications.<sup>68</sup>

Any attorney who feels he or she may be qualified and is interested in being appointed to handle Hillsborough County juvenile appeals can download an application directly from the Thirteenth Judicial Circuit's website. Click on [www.fljud13.org/indweb/casecats.htm](http://www.fljud13.org/indweb/casecats.htm), then "Application" in the box on the left of the screen. **There is no requirement that the applying attorney practice in Hillsborough County.** Attorneys submitting applications should include a cover letter indicating whether they intend for their name to be added to the list of qualified attorneys only for purposes of addressing the present backlog or whether they would like to be placed on the list to take court-appointed cases on a regular basis. The letter should also describe the attorney's qualifications, including: (1) certification in appellate practice; (2) significant family law experience (trial or appellate); (3) experience with juvenile dependency and termination of parental rights cases as a staff attorney at a trial or appellate court; (4) if the attorney has been lead counsel on more than twenty-five appeals, the number of appeals handled, the appellate courts, and the approximate years in which the cases were handled; and

(5) CLE credits in juvenile dependency law and appellate law. Attorneys who plan to take the CLE the HCBA Appellate Practice Section will be offering on handling juvenile appeals (more information below) may also wish to indicate that in the cover letter. Applications should be submitted to the Indigent Services Committee, c/o Rick Melendi, 13th Judicial Circuit, 800 E. Twiggs St., Room 605, Tampa, FL 33602. For more information, contact Rick Melendi of the Court Administrator's Office at 813-272-5371.

Attorneys can take juvenile appeals on a pro bono basis or contract to handle them at the rate set by the Thirteenth Judicial Circuit. At present, attorneys who take court-appointed appeals in Hillsborough County cases are compensated at the rate of \$60 per hour.

You can learn more about handling juvenile appeals at the CLE seminar that the HCBA Appellate Practice Section will be offering this Fall. The CLE seminar is tentatively set for the afternoon of the September general membership lunch, which is scheduled to be held at the Downtown Tampa Hyatt on September 22, 2005.

Further, The Florida Bar Appellate Practice Section hopes, as part of its statewide initiative to mobilize attorneys to represent parents in juvenile appeals, to organize a CLE seminar addressing the unique aspects of these types of appeals before each district court of appeal. Questions about this initiative by The Florida Bar Appellate Practice Section or the planned CLE should be directed to Celene Humphries at 813-273-0017 or [CeleneH@swopelaw.com](mailto:CeleneH@swopelaw.com).

## Conclusion

Our abilities as appellate lawyers are desperately needed to help address this problem. Children are in limbo, waiting to learn their futures. Parents need to be zealously and competently represented on appeal to defend their rights to parent their children. Prospective adoptive parents are waiting to adopt children who need parenting. This article is written with the hope that we, as a group, can come forward to help alleviate this unnecessary and harmful delay in the functioning of Florida's appellate courts.

## (Endnotes)

<sup>1</sup> Katherine Earle Yanes specializes in appellate law and criminal defense with Kynes, Markman & Felman, P.A., in Tampa. She is the Co-Chair of the Hillsborough County Bar Association Appellate Practice Section. The author wishes to thank Laura Lawson, Lead Program Attorney for the Guardian Ad Litem Program for the Thirteenth Judicial Circuit and Tanya DiFilipo of the Office of the Attorney General for their generous assistance in the preparation of this article.

<sup>2</sup> The situations described are fictionalized and/or identifying details have been changed to protect the privacy of the individuals involved.

<sup>3</sup> The "overlying philosophy" of the child protection system "is the requirement that every reasonable effort to reunite the child with the family should be taken." *In the Interest of K.H.*, 444 So. 2d 547, 549 (Fla. 1st DCA 1984). "However, when those efforts have been exhausted and it is determined that the child should be permanently removed from parental custody, then adoption of the child by a suitable family becomes the goal."

<sup>4</sup> *In the Interest of L.N.*, 814 So. 2d 1142, 1144 (Fla. 2d DCA 2002).

<sup>5</sup> § 39.01(14), Fla. Stat.

<sup>6</sup> § 39.401(1)(b), Fla. Stat.

<sup>7</sup> § 39.402(7), Fla. Stat.

<sup>8</sup> § 39.01(64), 39.401(3), Fla. Stat.

<sup>9</sup> § 39.402(8)(a), (c), Fla. Stat.

<sup>10</sup> § 39.822(1), Fla. Stat.

<sup>11</sup> § 39.822(3), Fla. Stat.

<sup>12</sup> § 39.501(1), Fla. Stat.

<sup>13</sup> *In re M.F.*, 770 So. 2d 1189, 1193 (Fla. 2000); § 39.501(2), Fla. Stat.

<sup>14</sup> § 39.507(1)(b), Fla. Stat.

<sup>15</sup> *C.M. v. Dep't of Children & Family Servs.*, 823 So. 2d 182, 183 (Fla. 5th DCA 2002); see also § 39.01(14)(a), Fla. Stat.

<sup>16</sup> § 39.01(14)(f) Fla. Stat.; see also *B.D. v. Dep't of Children and Families*, 797 So. 2d 1261, 1262 (Fla. 1st DCA 2001). In this regard, "[d]ependency may be adjudicated even in the absence of the abuse, abandonment, or neglect of the child at issue; a finding of dependency of a child may be based on proof of neglect or abuse of other children." *M.N. v. Dep't of Children & Families*, 826 So. 2d 445, 447 (Fla. 5th DCA 2002).

<sup>17</sup> § 39.521(1)(a), 39.601, Fla. Stat.

<sup>18</sup> § 39.601(5), Fla. Stat.; see also *F.M. v. Dep't of Children & Families*, 807 So. 2d 200, 201-02 (Fla. 4th DCA 2002).

<sup>19</sup> See *J.R. v. Dep't of Children & Family Servs.*, 754 So. 2d 714, 717 (Fla. 4th DCA 1998); *In the Interest of M.F.G.*, 723 So. 2d 290, 291-92 (Fla. 3d DCA 1999).

<sup>20</sup> Fla. Stat. § 39.806(b).

<sup>21</sup> See e.g. *In the Interest of J.A.C.*, 634 So. 2d 1087, 1088 (Fla. 2d DCA 1993) (termination of father's parental rights and subsequent adoption were appropriate goals where father had confessed to killing mother).

<sup>22</sup> § 39.802(1) Fla. Stat.; see also *Cashion v. Dep't of Health & Rehab. Servs.*, 630 So. 2d 1244, 1245 (Fla. 3d DCA 1994).

<sup>23</sup> § 39.807, 39.808, Fla. Stat.

<sup>24</sup> § 39.809(2), (3), Fla. Stat.

<sup>25</sup> *In the Interest of G.C.A.*, 863 So. 2d 476, 479 (Fla. 2d DCA 2004).

<sup>26</sup> *C.M. v. Dep't of Children & Family Servs.*, 854 So. 2d 777, 780 (Fla. 4th DCA 2003).

<sup>27</sup> *Id.*

<sup>28</sup> *In the Interest of L.B.W.*, 863 So. 2d 480, 483 (Fla. 2d DCA 2004) (citing *Padgett v. Dep't of*

*continued next page*

## BACKLOG IN APPEALS

from previous page

*Health & Rehab. Servs.*, 577 So. 2d 565, 571 (Fla. 1991)).

<sup>29</sup> § 39.806(1)(c), Fla. Stat.

<sup>30</sup> § 39.806(1)(e), Fla. Stat.

<sup>31</sup> § 39.806(1)(f), Fla. Stat.

<sup>32</sup> § 39.806(1)(a), Fla. Stat.

<sup>33</sup> § 39.806(1)(b), Fla. Stat.

<sup>34</sup> § 39.806(1)(d), Fla. Stat.; see also *In the Interest of E.I.F.*, 872 So. 2d 924, 927-28 (Fla. 2d DCA 2004).

<sup>35</sup> § 39.806(1)(g), Fla. Stat.

<sup>36</sup> § 39.806(1)(h), Fla. Stat.

<sup>37</sup> § 39.806(1)(i), Fla. Stat.; see also *Florida Dep't of Children & Families v. F.L.*, 880 So. 2d 602, 609-11 (Fla. 2004); *Padgett v. Dep't of Health & Rehabilitative Servs.*, 577 So. 2d 565, 571 (Fla. 1991).

<sup>38</sup> *In the Interest of C.W.W.*, 788 So. 2d 1020, 1023 (Fla. 2d DCA 2001).

<sup>39</sup> *Id.*

<sup>40</sup> *In the Interest of G.C.A.*, 863 So. 2d 476, 479

(Fla. 2d DCA 2004) (quoting *M.H. v. Dep't of Children & Families*, (Fla. 1st DCA 2003)).

<sup>41</sup> *J.R. v. Dep't of Children & Family Servs.*, 754 So. 2d 714, 717 (Fla. 4th DCA 1998).

<sup>42</sup> § 39.806(e) Fla. Stat.; see also *In the Interest of K.C.C.*, 750 So. 2d 38, 40 (Fla. 1999).

<sup>43</sup> § 39.806(1)(f)2, Fla. Stat.

<sup>44</sup> § 39.806(1)(f)2, Fla. Stat.

<sup>45</sup> See *In the Interest of K.A.*, 880 So. 2d 705, 707-09 (Fla. 2d DCA 2004).

<sup>46</sup> *In the Interest of L.B.W.*, 863 So. 2d 480, 482-83 (Fla. 2d DCA 2004); Fla. Stat. § 39.810.

<sup>47</sup> § 39.810, Fla. Stat.

<sup>48</sup> See *In the Interest of L.B.W.*, 863 So.2d at 483.

<sup>49</sup> See *Rathburn v. Dep't of Children & Family Servs.*, 826 So. 2d 521, 523 (Fla. 4th DCA 2002).

<sup>50</sup> See *In the Interest of K.A.*, 880 So. 2d 705, 710 (Fla. 2d DCA 2004).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *In the Interest of G.C.A.*, 863 So.2d 476, 480 (Fla. 2d DCA 2003).

<sup>55</sup> *In the Interest of D.A., J.H., and M.H.*, 846 So. 2d 1250, 1252 (Fla. 2d DCA 2003).

<sup>56</sup> *In the Interest of G.C.A.*, 863 So. 2d at 480.

<sup>57</sup> Fla. R. App. P. 9.146(g); see also *C.M. v. Dep't of Children & Family Servs.*, 854 So. 2d 777, 779 (Fla. 4th DCA 2003).

<sup>58</sup> *N.S.H. v. Florida Dep't of Children & Family Servs.*, 843 So. 2d 898, 902 (Fla. 2003).

<sup>59</sup> § 39.510, 39.815(1), Fla. Stat.

<sup>60</sup> *In the Interest of M.A.D.*, 812 So. 2d 509, 511 (Fla. 2d DCA 2002); see also § 39.510(3) & 39.815(3), Fla. Stat.

<sup>61</sup> *Anders v. California*, 386 U.S. 738, 744 (1967). *Anders* sets forth the procedures to be followed where appointed counsel determines there are no non-frivolous grounds for appeal in a criminal case. *Id.*

<sup>62</sup> *N.S.H. v. Florida Dep't of Children & Family Servs.*, 843 So. 2d 898, 903 (Fla. 2003).

<sup>63</sup> *Id.* at 904.

<sup>64</sup> "About HKI," at

<http://www.hillsboroughkids.org/news.asp>.

<sup>65</sup> § 39.001(1)(h), Fla. Stat.

<sup>66</sup> *Case Categories and Minimum Qualifications for Article V Due Process Counsel*, Admin. Order S-2005-100 (Fla. 13th Cir. July 6, 2005).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

## NEW ROBERT BUTLER GALLERY

from page 16

of the photographs shown to him left a lot to be desired and that he relied extensively upon the verbal descriptions of the people he interviewed. The discrepancy between the two men's recollection revolves around the person who suggested that Robert Butler paint Kissengen Springs. Mr. Butler claims that Judge Campbell told him about a spring where he used to swim as a child. The spring had since dried up, and Judge Campbell wished that he had a painting to remember the spring. Thus, he claims that the person who selected the theme for the paintings was Judge Campbell.

Judge Campbell's letter further explains:

I might remark that the painting depicts the Springs exactly as I remembered. Kissengen Springs was located about two miles south of Bartow and about a mile east of U.S. Highway 17 between Bartow and Ft. Meade. During all the time that I was growing up and until the time that I was in college, the "Springs" was very active and visited by hundreds of people on the weekends. As you look at the painting, the screened-in area of the building behind the diving platform was a dance hall that had an old

Wurlitzer record player in it and I have always stated that what little dancing I ever learned I learned in that dance hall at Kissengen Springs. The part of the building to the very left of the building housed male and female locker rooms for changing into bathing suits and between changing rooms and the screened-in dance hall was a small snack and concession area where tickets were sold and refreshments were available. I can even remember one time when I was in high school that the Bartow High School, then Summerlin Institute, swim team held its swim meets at Kissengen Springs due to the fact that the pool at the Civic Center in Bartow had been closed. The wooded area as you look at the painting to the left of the building and the "Springs" was the scene of numerous political rallies during every political season. The "Springs" seemed to be a favorite spot for people who were interested in running for office to kick off their campaigns. I can recall that when Spessard Holland first ran for governor he held political rallies there and on many occasions during the time when he was United States Senator he also did the same.

If I am called upon to be the judge of this small dispute, I think Robert Butler has it right; Judge Campbell wanted a painting of the place where he went skinny-dipping as a kid.

Robert Butler was so pleased to display his paintings in our courthouse that he gave us fourteen paintings instead of twelve. For the next eighteen years, those paintings brightened our entrance, the lawyers' lounge, and the judges' conference room. Over those years, Robert Butler's reputation as an artist continued to grow. He earned international fame for his extraordinary landscapes. There is no question that our \$8,150 investment was a prudent investment for the people of Florida. I have long regretted that these paintings did not have a broader audience. When I became chief judge, I suggested to the judges that we obtain good digital photographs of the paintings and place them on our website. Judge Thomas Stringer owned several Butler paintings and knew him well enough to ask his permission for this public display. Robert Butler not only agreed to the display, but also asked if he might come to the court to help us photograph his paintings.

Our court has a longstanding relationship with Jerry Perkins of Perkins Photography in Lakeland. He agreed to photograph the paintings for an extremely reasonable price. Thus, on July 3, 2003, Judge Stringer, Robert Butler, Jerry

continued page 24



# Thinking About Becoming Board Certified in Appellate Practice?

If you would like to become Board Certified in Appellate Practice or would like more complete information, please contact the area's staff liaison below:

**Carol Vaught**  
*Legal Specialization  
& Education*  
**The Florida Bar**  
651 East Jefferson Street  
Tallahassee, FL 32399-2300  
800/342-8060, ext. 5738 or  
850/561-5738

[cvaught@flabar.org](mailto:cvaught@flabar.org)

Certification is granted for five years. To be recertified, requirements similar to those for initial certification must be met.



THE FLORIDA BAR

For more information,  
visit our website at

[www.FloridaBar.org](http://www.FloridaBar.org)

Click "member services,"  
then "certification."

**Certification can help you by giving you a way to make known your experience to the public and other lawyers. Certification also improves competence by requiring continuing legal education in a specialty field.**

There are many benefits to becoming Board Certified in Appellate Practice such as:

- ★ Malpractice carriers discounts.
- ★ Advances the importance and significance of certification to large malpractice carriers.
- ★ Good source of referrals from both attorneys and the general public.
- ★ Ability to advertise yourself as a "certified specialist" in your chosen area of practice.
- ★ Young lawyers are seeking certification as a means of expediting their professional advancement.
- ★ Name is listed in the Directory issue of The Florida Bar *Journal* in the Certified Lawyers' section.

The application filing period is July 1 - August 31 of each year. Applications may be requested year-round, but only filed during this two month period.

All requirements must be met by the August 31st filing deadline of the year in which you apply.

Your application must be approved before you become eligible to sit for the examination, usually given in March.

## What are the requirements?

- ➔ Have been engaged in the practice of law for at least five years prior to the date of the application.
- ➔ Demonstrate substantial involvement in the practice of appellate practice during the three years immediately preceding the date of application. (Substantial involvement is defined as devoting not less than 30% in direct participation and sole or primary responsibility for 25 appellate actions including 5 oral arguments.)
- ➔ Complete at least 45 hours of continuing legal education (CLE) in appellate practice activities within the three year period immediately preceding the date of application.
- ➔ Submit the names of four attorneys and two judges who can attest to your reputation for knowledge, skills, proficiency and substantial involvement as well as your character, ethics and reputation for professionalism in the field of appellate practice.
- ➔ Pass a written examination demonstrating special knowledge, skills and proficiency in appellate practice.

## Certification Statistics

**There are currently 149 attorneys Board Certified in Appellate Practice. The area was started in 1993. Certified attorneys make up approximately 6% of The Florida Bar's total membership.**

**NEW ROBERT BUTLER GALLERY**

*from page 22*

Perkins, and I spent the day meticulously removing the paintings from the walls and carefully photographing them in the proper light. Mr. Butler had not seen these paintings in eighteen years. His style, like any true artist, had evolved over that time. He treated each painting like a prodigal son that he had not seen for a generation. He told us stories about the paintings and his life. I have never had a more enjoyable day as a

judge.

As a result of the asbestos remediation project in our Lakeland courthouse and hurricanes overhead in 2004, it has taken the court some time to create the website gallery. We are very proud to finally present these paintings to the world. When you go to the website, [www.2dca.org](http://www.2dca.org), the paintings are displayed as thumbnails in a row. If you click on a painting, you see an enlarged version of the painting. If you click to the right of the visible paintings, several more paintings will appear. My favorites are the last three paintings. One

is a river scene that hangs in the judges' conference room. The next is a picture of that painting with Robert Butler sitting on the couch next to it. The final picture is Kissengen Springs. If you click on an enlarged version of any painting you can save it as your computer's desktop image. These images are not the same quality as the real paintings, but they give you a sense of the paintings' strength and beauty.

I am sure that you will join with the judges of the Second District in thanking Robert Butler for these works.

---

**The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300**

PRESORTED  
FIRST CLASS  
U.S. POSTAGE  
PAID  
TALLAHASSEE, FL  
Permit No. 43