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Message from the Chair

By Dorothy F. Easley



A. Introductions

As the new Chair of the Appellate Practice Section, I am proud to introduce to you the officers of our Section for 2009-10. These professionals will continue the tradition of excellent leadership and

service to our Section members, to The Bar and to the community. Our officers for the coming year are:

Chair-Elect, Former Florida Supreme Court Justice Raoul G. Cantero, III. Raoul left us as Section Vice Chair to serve on the Florida Supreme Court. Losing him made us both thrilled for him and sad for us. We were happy to have him back last year, resuming his position as Vice Chair, and he is now moving on to Chair-Elect and, in that role, making sure that I keep us on track.

Vice Chair, Matt Conigliaro. Matt has done a tremendous job for the Section as Treasurer and Secretary-Treasurer. No matter the position, Matt's work product is always superb. For years, he has worked tirelessly for the Section, doing everything from CLE to our Section bylaws and budget. He approaches our Section issues with the rigors of drafting an appellate brief, all while maintaining a collegial, modest demeanor.

Secretary-Treasurer, Jack Reiter. Jack came to us as a former Chair of the Appellate Court Rules Committee. Since

then, he has worked tirelessly for three years (what probably feels like ten years to Jack) as Editor-in-Chief of The Record, Journal of the Appellate Practice Section. We look forward to Jack filling Matt's very large shoes, to take command of our Section budget, conduct thorough bylaw analyses, and ensure strong Section recordkeeping.

I look forward to working with our Section leadership and all of our members to serve our members and enhance our visibility in The Bar and the larger legal community.

B. This year, frugality, innovation and education are the new black.

Let's be honest. We've watched our "401 Ks" dwindle "101 Ks," and seen upheavals in the credit and job markets. Now the dust is settling. I hear colleagues speak with anxiety over what the future holds for them. I suggest to them to look at history as one of the best predictors of our future. History teaches us that those who have prevailed during economic crises have shared three attributes: innovation, frugality and continuing education.

During the Depression, studies show that those who truly excelled took risks, educated themselves more, and learned and produced innovative products and services. Take, for example, my great-great grandfather, the second son of a tailor from southern Ireland, which is a nice way of saying that he was dirt poor. Objectively, he should have stayed put.

See "Message from the Chair" page 8

Outgoing Message from the Past-Appellate Section Chair

By Siobhan Helene Shea



The Appellate Practice Section has reorganized and reinvigorated its Appellate Pro Bono Committee. Under the leadership of Pro Bono Committee Chair, Bryan Gowdy the Pro Bono Committee has developed a network of appellate lawyers willing to undertake pro bono representation in all the DCA's and the Supreme Court. These appellate lawyers represent a diverse array of appellate expertise in all different areas of appellate practice. The clerks of all the appellate courts have been contacted to inform them of the availability of these volunteers for pro bono appellate representation.

We also voted as a Section to support Florida Law Related Education's Moot Court program, both with funding and volunteer appellate lawyers to serve as judges.

In the wake of continued tightened state court budgets, the Section has stepped up to the plate to encourage the continued participation of our judicial representatives and government lawyers. To continue the participation of judges after the courts' budgets froze their travel, the Section voted to allow a limited stipend for judges to attend

the Florida Bar's Annual meeting. The Section also approved scholarships for government and legal aid attorneys to attend the Advanced Appellate Advocacy CLE and reduced rates for other CLE.

We were honored to see our Judicial Representative, the Honorable Peggy A. Quince, installed as Chief Justice of the Supreme Court of Florida and the installation of many of our members to the appellate judiciary. Returning as Vice Chair of the Section, retiring Supreme Court Justice Raoul G. Cantero, III has been extremely active as an officer of the Section and as Liaison to the Supreme Court's Historical Society. Retiring Supreme Court Justice Kenneth Bell joined the Section and serves as our Liaison to the Real Property Section.

Appellate judges have been active in the Section, most notably in the area of continuing appellate legal education. This summer Second DCA Judges Chris Altenbernd, Fifth DCA Judge Jacqueline Griffin, Fourth DCA Judges, Larry Klein and Melanie May, Eleventh Circuit Judge Gerald Bard Tjoflat, and First DCA Judges William Van Nortwick, Jr. and Peter Webster taught in the Advanced Appellate Advocacy Seminar at the Florida Coastal Law School in Jacksonville. In October, the Section co-sponsored this year's Eleventh Circuit Appellate Prac-

tice Institute in Atlanta, at which Eleventh Circuit Judges Gerald Bard Tjoflat, Stanley Marcus, and Senior Judge James Hill, along with former Justice Raoul G. Cantero III, all spoke. In Tampa, Second DCA Judges Morris Silberman, Daryl Casanueva, Chris Altenbernd, Stevan Northcutt, and Nelly Khouzam, all volunteered for the Family Law Appeals Seminar, which is also available as a webinar. Chief of the Fourth DCA Judge Robert Gross, along with Fourth DCA Judges Dorian Damoorgian, Barry Stone and Larry Klein, and Third DCA Judge Frank Shepherd all spoke at our May Hot Topics in Appellate Practice Seminar in Broward. Finally, former Justice Cantero, First DCA Judge Peter D. Webster, and Fifth DCA Judge Jacqueline Griffin, taught our monthly telephonic CLE's, which provide continuing appellate education with little cost and no travel expense.

This year the Appellate Practice Section renovated our website and we are expanding ways of providing electronic access to the Section's information and CLE. We successfully completed our first CLE webinar and our monthly telephonic CLE's continue to be a way of providing continuing appellate legal education to lawyers and judges throughout the state. To reduce printing costs and make the Guide more accessible and up-to-date, we were able to finally produce the Appellate Practice Guide online, under the Editorship of Rebecca Creed. The Section also saved a tremendous amount of printing expenses by making The Record, our primary publication, entirely electronic. The Record, along with the Guide, is also online through our website, as is the Section's Pro Se Appellate Handbook, which our

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

Dorothy F. Easley, Miami.....	Chair
Raoul G. Cantero, III, Miami.....	Chair-Elect
Matthew J. Conigliaro, St. Petersburg.....	Vice-Chair
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Valerie Yarbrough, Tallahassee.....	Program Administrator
Clay Shaw, Tallahassee.....	Layout/Art Design

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

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OUTGOING MESSAGE

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volunteers continue to update and which is translated into Spanish and Creole with grant assistance from the Florida Bar Foundation.

Consistent with the Section's own cost saving measures, we have also adopted a resolution to restore plans for statewide electronic filings in appeals.

The Appellate Practice Section filed an *amicus* brief in *Pleus v. Christ*, SC09-565, in response to the unanimous request of the judges of the Fifth DCA. The Executive Council convened

on an expedited basis and approved, by a vote of 21 to 2, under the Section's bylaws, the filing of an *amicus* brief. Pursuant to its standing policy on *amicus curiae* positions, the Executive Committee of the Board of Governors of The Florida Bar approved the filing of the *amicus* brief. The agreed motion for leave to file the brief, granted by the Court, makes clear that the positions taken in the *amicus* brief are solely that of the Section and do not necessarily reflect the positions of either The Florida Bar or the judges of the Fifth DCA.

The Section also passed a bylaw allowing law students and law professors to join the Section's Affiliate

Membership as non-voting members.

It has been a great honor and big learning experience to serve as Chair. I have had the benefit of a great team of seasoned appellate lawyers and jurists on my board: Past Chair Steven Brannock, Chair-Elect Dorothy Easley, Vice Chair Raoul G. Cantero III, Secretary-Treasurer Matt Conigliaro, and Editor of the Record Jack Reiter. I am especially proud of the commitment the board has demonstrated to the Bar, to the administration of justice, and to the advancement of appellate practice in our State. I know I leave the Section in very able hands in their leadership.



Post Your CLE Credits *Online!*

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The Appellate Practice Retreat's New Motto: Divide and Conquer!

By: Hala Sandridge¹



Every three years, our Section holds a retreat for its members to plan for the future. Our past retreats were separate, stand-alone events, typically held in April or May at a conveniently located Florida resort. Retreats offer leadership training, comradery, and CLE opportunities. Attendance of our appellate judges was a highlight of this event.

This year, the Section leadership opted to incorporate the features of our tri-annual retreat into our regularly scheduled Florida Bar meetings. This

decision was founded on two significant concerns. Due to statewide budget cuts, our appellate judges are restricted in the events they can attend. Because the input of our judiciary is crucial to the retreat's success, the Section believed it best to hold the retreat when more appellate judges were likely to attend.

Likewise, attending a separate retreat can impose significant financial and time constraints on any practitioner. With these concerns in mind, rather than cancel the retreat, the Section decided to divide and conquer!

The critical components of our past retreats will now be incorporated into the Section's September 2009 and January 2010 Florida Bar meetings. The September meeting held in Tampa will

include a working lunch to plan for the future of our Section. The January meeting in Orlando will offer a dinner the night before the Section meeting and an afternoon "mini-retreat." More details about these events will follow in future communications.

If you are interested in participating in these events, calendar them now. Our new retreat format should give each Section member a better opportunity to get involved.

(Endnotes)

¹ Hala Sandridge heads the statewide Appellate Practice group at Fowler White Boggs. For over 25 years, she has directly handled hundreds of commercial appeals in both state and federal appeals courts. She is active in, and a past Chair of, the Appellate Practice Section, and routinely lectures and publishes on appellate topics.

AJEI Summit Conference

By Robert E. Biasotti¹



Each Fall, the Appellate Judges Education Institute "AJEI", sponsors a four-day educational summit conference for state and federal appellate judges, staff attorneys, and practitioners from throughout the country. In the past, hundreds of judges and lawyers who preside over, practice before, and work in federal and state appellate courts have attended these summits, creating a rich environment in which to exchange ideas and explore concepts.

This year, the summit conference will be held on November 19-22, in Orlando, Florida, and will be joined by Florida's Appellate Judge's Conference. The joint conference will feature an exciting array of educational programming and events, presented by professors, judges, and practitioners, addressing cutting-edge topics in an interesting and entertaining manner. The individual summit groups-

-appellate judges, staff attorneys, and practitioners--will join together for several of the substantive programs, but will also have separate programming directed to each group's particular needs.

For this year's event, the AJEI has obtained affordably priced rooms at the Regal Sun Resort, an official Walt Disney World® hotel. The conference registration fees include continental breakfasts, lunches, receptions, and admission to the AJEI annual dinner, making the 2009 Summit an exceptional CLE value.

If you would like to register for this event, or would like more information, go to <http://www.law.smu.edu/ajei/>

(Endnotes)

¹ Robert E. Biasotti is a shareholder in Carlton Fields' St. Petersburg office, concentrating on appellate litigation. He has argued appeals in the Florida Supreme Court and all of Florida's District Courts of Appeal, is board certified by The Florida Bar in Appellate Practice, and AV rated by Martindale-Hubbell. He is a member of the ABA Judicial Division's Council of Appellate Lawyers ("CAL"), serves on CAL's Long-Range Planning and Program Committees, and was a member of its Executive Board of from 2004-2006.

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Comments from Chief Justice Peggy A. Quince on Advocacy: for the Client, the Courts, and the Profession

By Amy L. Miles¹



Over the last year, there have been many articles published on Florida's Supreme Court Chief Justice Peggy A. Quince. Throughout Florida, Chief Justice Quince is well known as the first African-American woman to be appointed to one of Florida's District Courts of Appeal. Nearly five years after her appointment to the Second District Court of Appeal, Justice Quince was appointed to the Florida Supreme Court by both outgoing Governor Lawton Chiles and then-Governor-elect, Jeb Bush. Last year, Chief Justice Quince took on the role of Chief Justice during a period of great transition for the Supreme Court and a period of unprecedented crisis for court funding throughout Florida.

Due to this unique combination of a truly accomplished individual leading during challenging times, it is difficult to pick up a publication of the Florida Bar without seeing an article focusing on Chief Justice Quince and her activities. Because she is the chair of the Supreme Court Commission on Professionalism, the focus of this interview was to gain insight into the Chief Justice's views on professionalism and appropriate advocacy, including her comments on appellate practice specifically.

When asked about the quality of appellate advocacy before the Supreme Court, Chief Justice Quince reported that, overall, it is good. In response to what advice she would give to attorneys practicing before the Court, the Justice stated that it is important to read the record thoroughly. If the appeal includes an oral argument, the arguing attorney should be the most

prepared and knowledgeable person in the courtroom—on both the record and the law.

On brief writing, Chief Justice Quince recommends that the brief be as thorough as possible because it is the Court's first introduction to the issues. The majority of cases are decided on the briefs because oral argument is waived. The Chief Justice cautioned appellate attorneys should not overlook the importance of Reply Briefs. The Reply Brief is not to restate the arguments included in the Initial Brief; rather it should respond to the Answer Brief, especially if the appellee raised points not addressed in the Initial Brief. "The Court wants to hear from you on those issues," Justice Quince advised. The Chief Justice said that she finds *amicus* briefs can be helpful. However, they should not repeat the parties' arguments. The purpose of an *amicus* brief is not to advocate for a client, but for the entire system. Therefore, they should shed additional light on the issues presented.

On oral argument, Chief Justice Quince noted that it is important for lawyers who argue before the Supreme Court to listen and respond to the justices' questions. "The Supreme Court is a very active court," she said. "We don't sit and let attorneys talk for a very long time." Often, she said, attorneys come to the court with a plan or an outline of what to say, and, due to anxiety or nerves, talk over

the justices' questions. The justices, however, are already familiar with the attorney's points because they were made in the briefs. "So it isn't as important to get those points out." The Chief Justice stated, "What is important is to try to find out what it is that is of concern to the panel members." Oral argument should not be merely a recitation of the brief; the court has read the briefs and looked at the case law. Rather, attorneys would do well



to stop and listen, even if in the middle of making a point, and try to answer the justices' questions. "If there is a concern, it will come out in the form of a question." She advised that attorneys should anticipate the hard questions and questions focused on the weaknesses of their argument. "There are times

when the lawyers are not prepared for the hard questions," the Chief Justice stated, "but it is important to try to find out what is of concern to the Court." She recommends being prepared to explain why the party should win despite any weaknesses in the case. Chief Justice Quince commented that when she was an appellate attorney, she liked to answer the courts' questions. She felt more comfortable answering the questions than trying to go through a recitation of the case. "I think attorneys will do best just to relax and answer the questions as they come to them," she stated. "If you're listening carefully,

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COMMENTS FROM QUINCE

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you can adjust your argument to address the court's concerns."

Equally important to excellence in advocacy, Chief Justice Quince serves as an example and promoter of professionalism, especially in the areas of mentoring and serving through pro bono activities. Mentoring is an important responsibility for lawyers, says Chief Justice Quince, who leads by example. She encourages all experienced lawyers to lend a hand to those who have recently entered the profession. "There's nothing wrong with helping people out." The Chief Justice suggests sharing sample pleadings and taking time to mentor. Everyone, she said, can sit down with a young lawyer and explain things he or she has learned over years of practice. "This is a form of mentoring we can all do," she stated. Whether it is done formally or informally, mentoring is a great way to help the profession. Although as a young lawyer Justice Quince had no formal mentor, she recognizes that the experienced lawyers in the office where she first practiced were always willing to answer her questions and guide her on how to deal with issues. When, as a young attorney, Justice Quince began working in the Attorney General's office, there were 12-13 lawyers with many cumulative years of experience to share. She emphasized that it is important for young lawyers to know that they can call someone to find answers to their questions. That way, "they don't have to reinvent the wheel."

On professionalism, Chief Justice Quince recommends that attorneys regularly step back from their practice to remind themselves of the Creed of Professionalism. Judges should remind themselves of the principles that govern their conduct. "These outline how we should conduct ourselves both in and out of the courtroom." The Chief Justice has a framed copy of the creed of professional conduct in her office. She emphasized that it is important for the judicial branch of

the government to have the public's trust and confidence. "All lawyers are a part of this branch," she advises. "The public needs to know that we are professional and that we know how to treat them and each other." Justice Quince encourages lawyers to practice the creed daily and to pull aside those they notice are not practicing in a professional manner and speak to them. "Don't just let it go," she advises, "something that simple might be helpful," and the profession as a whole will benefit.

Chief Justice Quince stated that there is not one single aspect of professionalism that stands out from the others. The entire creed must be practiced each day. However, the Chief Justice took the time to point out one section of our Oath of Admission: "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice." "That's pro bono," she said, "which is part of professionalism." Chief Justice Quince calls on all attorneys who are currently doing pro bono work to encourage those who are not to join them. "If you get satisfaction out of it, you need to tell others who are not doing pro bono work." "It's easy to say, 'I don't have time,'" she says, "but those who are doing pro bono work are just as busy. You find the time to do what you want to do, and if you think it's important to give back to your community, you will find the time to

do it." Justice Quince suggests that lawyers contact the legal aid or legal services provider in their community; "they all need assistance." Legal aid providers have more cases than they can handle. Additionally, the guardian ad litem program needs volunteer lawyers. The Chief Justice would also like to see more lawyers involved in the Fostering Independence Program to help teenagers that are aging out of the foster care program. These youngsters need specific legal help in their transition from foster care to independence as legal adults. "This is a part of our professional obligation as lawyers."

Chief Justice Quince has spent her legal career serving Florida, both in the attorney general's office and in the courts. As attorneys we can do well by following her advice and her example. Without question, the Florida Supreme Court is in capable hands for the remainder of Justice Quince's term as Chief Justice, and Florida's legal community is in a better place because of her influence.

(Endnotes)

1 Amy L. Miles is an associate at Kubicki Draper's Tampa Office. She practices in Kubicki Draper's appellate and insurance coverage group, handling a variety of appellate and litigation matters. Prior to her work at Kubicki Draper, Ms. Miles served as a staff attorney to the Honorable Douglas A. Wallace on Florida's Second District Court of Appeal. Ms. Miles graduated *summa cum laude* from Stetson University College of Law, where she was a member of the Stetson Law Review and the Moot Court Board. Ms. Miles is a member of *Phi Delta Phi*.

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

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Miami, FL 33131-2114
aalonso@carltonfields.com

MESSAGE FROM THE CHAIR

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Instead, he traveled alone across the ocean to settle in Virginia during one of the many potato famines, and then turned south to North Carolina where he settled in a small Southern town and was burned in effigy his first year for being the first Catholic in North Carolina. A smart man would have promptly left. He proceeded to educate himself in the laws of the United States and, the next year, garnered the audacity to run for and be elected mayor of that small town. (He also had the chutzpah to name all the streets there after saints. Today, travelers still see the anomaly of street names like St. Patrick, St. Mary and St. Joseph as they drive through that Southern town.) And there's the example of my paternal grandfather during the Great Depression: he could not find work and refused to use what money he had left to make a profit off others' foreclosures. He played to his strengths instead: he was a strong saver and a fast learner. So he studied business and made his own jobs, creating three very profitable businesses, including tobacco auction warehouses across the Southeast and a business bringing oranges up from Florida to the Carolinas. There is also my maternal grandfather, who already had two jobs to take care of nine children and my maternal grandmother, a devout Catholic who by then was diagnosed as severely anemic from caring for their nine children. So my grandfather took a third job: teaching himself law to successfully earn his law degree on his own.

Each of us has our lessons learned from family and friends who looked at adversity under seemingly great odds as an opportunity to do things better and differently. While the pessimists were out there being ten times more accurate than the optimists, the optimists were busy being successful because they occupied their time not with being accurate, but with learning and trying new things. Excellent

lawyers with excellent analytical and writing skills will always be in demand. So, innovate, be frugal and educate are the three components of what will be our Section's exciting 2009-10 year.

Reviewing only a small sample of our Section Committee activities, thanks to Retreat Chair Hala Sandridge, we are revamping our Section Retreat to divide one large retreat, which cost everyone more money and took us away from work for days, into several "mini-retreats" that "tag along" with each of our Bar meetings. In so doing, we ensure the greatest number of Section members and the greatest judiciary attendance. We have more on our Section "mini-retreats" in this issue of *The Record*.

We are also revamping our Pro Bono Appeals Committee, reworking Website, improving the Self-Represented Handbook, becoming even more ambitious with our Publications and our CLEs, including our Telephonic Appellate Seminar Series, and putting Outreach (the marketing arm of our Section) into overdrive.

Pro Bono Appeals Committee Chair Bryan Gowdy is building an impressive statewide network of high quality appellate lawyers and legal professionals to meet the growing need of those desperately needing pro bono appellate services. Pro Se Handbook Committee Chair Kimberly Jones is bringing to the table a wealth of appellate and "plain English" writing expertise and an uncanny ability to diplomatically shepherd a lot of appellate brain power into a very thick, very readable book. The Handbook is being elevated to be more user-friendly for indigent parties and the incarcerated statewide.

Website Committee Chair Jonathan Streisfeld is working on new ways to keep the website fresh and relevant, and to elevate our site to a timely information center for our members. We are also working on ways to make our site more accessible for searching our members by "criteria," including the substantive areas in which we practice, as a better source for the general public to locate the appellate attorneys in our Section.

The Section's email blasts and ever-more-frequently updated Website will hopefully further advance the sharing of information, ideas, scholarship and appellate law events.

Our Section CLE Committee Chair Ceci Berman and, under the CLE umbrella, Telephonic Appellate Seminar Series Chair Henry Gyden, are working to pack our CLE portfolio this year with cutting edge topics, as well as up-to-date seminars for appellate certification. Their energy is only overshadowed by their expertise. We are very excited about the appellate education that they will be harnessing and coordinating this year.

Thanks to Publications Committee Chair Caryn Bellus and The Florida Bar Journal Appellate Practice Editor Tracy Gunn and The Record Editor Alina Alonso under the Publications umbrella, we continue to look for and secure high-quality content that is of substantial interest to appellate practitioners. In addition to directing our publications to the needs of appellate experts, we are also targeting our content at less experienced appellate practitioners.

Outreach Committee Co-Chairs Gwendolyn Braswell and Betsy Gallagher, neither of whom has ever met a stranger, have turned up the volume on our Outreach Committee, such that we now have a liaison from our Section for most Sections of The Bar. These liaisons will reach out to the respective Sections and attend the respective Section meetings and exchange valuable information about how our Sections may work together, including CLEs, to enhance our Section visibility and networking across The Bar.

In that same vein, we have a Joint ABA-APS Liaison Committee this year. That Committee's Co-Chairs Siobhan Shea and Harvey Sepler and their Committee members are working to reach out to the ABA so that our Section has a presence at the national level. Because of the 2009 ABA Appellate Judges Education Institute ("AJEI") Appellate Summit in Orlando this year, the Appellate Prac-

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MESSAGE FROM THE CHAIR

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tice Section is delighted to co-host with the ABA the Welcome Reception at the national 2009 AJEI Appellate Summit in Orlando this November. In addition to the Welcome Reception, we encourage all to register for the Summit, which is a wonderful educational and networking opportunity for our appellate lawyers to attend and participate. We have more on our AJEI Appellate Summit in this Issue of *The Record*.

Also to that end, Programs Committee Chair June Hoffman is leading the way for our Appellate Practice

Section co-hosting of the Welcome Reception with the ABA AJEI. Your participation in the Welcome Reception is an opportunity to highlight your firm to a national audience of prestigious federal and state appellate jurists, staff attorneys and practitioners. Your participation also demonstrates that we take an active role to fund educational programming and scholarships to increase judicial attendance at a time when court budgets are very restricted.

Appellate lawyers and judges share the same desire to make appellate justice more effective for themselves, the parties, and society in general. Our members have been active in scholarship and service in appellate law, and

we remain dedicated to advancing appellate practice and supporting our appellate judiciary. I thank each of you for sharing your professional activities with us for inclusion in *The Florida Bar Journal* and *The Record*, and for your continued commitment to advancing high-quality appellate practice and pro bono service to the larger community. Through doing more with less, thinking “outside the box,” and aggressive commitment to appellate education, the coming year promises to be an expansion of our Section, to promote greater services for our members and the community, and to capitalize on the expertise of all involved.

An Overview of the Selection of Florida's Judiciary

By Diana L. Martin¹ and Donna M. Krusbe²



Whoever said appellate law is boring hasn't been paying attention to the judicial appointment process in the past several months. The political tug of war between the governor, the judicial nominating commissions, and the appellate courts is as exciting as it gets. Well, maybe not as exciting as it gets, but at least interesting enough to prompt a review and discussion of the relevant constitutional and statutory provisions that form the backdrop for this recent political wrangling.



As appellate practitioners, we know that the governor appoints both the justices that sit on Florida's Supreme Court and the judges that sit on Florida's District Courts of Appeal. The governor's authority to make these appointments originates in Article V, §11 of the state constitution, which provides: “Whenever a

vacancy occurs in a judicial office to which election for retention applies [i.e., appellate judges],³ the governor shall fill the vacancy by appointing... one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.”⁴ This provision expressly limits the governor's authority by allowing appointment of only nominees first certified by the JNC for the appropriate jurisdiction. Because this is a relatively recent development in Florida law, it is important to understand the historical and constitutional basis for the governor's authority, the role of the JNCs, and the interplay between the two in selecting Florida's judiciary.

History of Judicial Election/Selection in Florida

Florida's first constitution called for the election of supreme court justices and circuit court judges “by the concurrent vote of a majority of both houses of the general assembly.”⁵ Circuit judges were elected for an initial term of five years, while supreme court justices were “elected for the term of and during their good behavior.”⁶ In an effort to create an

independent supreme court, the constitution was amended in 1851 to create eight-year terms for both judges and justices.⁷

The 1865 Constitution provided for gubernatorial appointment of supreme court justices, with senate consent⁸ and election of circuit judges “by the qualified electors of each of the respective judicial circuits.”⁹ Just three years later, the constitution was amended to enlarge the power of Florida's governor so that he could appoint both supreme court justices and circuit court judges.¹⁰ The supreme court justices could hold office for life, but, again, only “during good behavior.”¹¹ This broad grant of power and influence over Florida's judiciary was criticized by proponents of judicial independence.¹²

The governor's power was again limited in Florida's Constitution of 1885, which provided that supreme court justices would be elected by the people.¹³ But the governor retained the authority to appoint circuit court judges until 1942 when the constitution was amended to require the election of circuit court judges as well.¹⁴

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Justice Canady: A Wealth of Diverse Experience, A Deep Respect For the Law

By Sarah Pellenbarg¹



I had the pleasure recently of speaking with Justice Charles Canady, who spoke to me from his vacation cabin in North Carolina about his appointment to the Florida Supreme Court. I must admit, I knew little about Justice Canady when I agreed to conduct the interview, but what I learned is that Justice Canady has a very diverse background and brings a wealth of unique experience to the Court.

Justice Canady, who is from Lakeland, Florida, became interested in the law early on in life, working on behalf of various political campaigns with his father, even going door to door passing out fliers for various political candidates. He then cemented his interest in the law by attending Yale Law School. After getting his feet wet at several law firms, Justice Canady took his first step into the political world, running for a seat at the Florida State House of Representatives in 1984, where he served for six years. Later he would serve four terms as United States representative (from 1993 to 2001), as general counsel to former Florida Governor Jeb Bush, and then on the Second District Court of Appeal beginning in November, 2002. Interestingly, Justice Canady brings experience from all three branches of government to his new job as Florida Supreme Court Justice.

Justice Canady's unique experience should be a good fit for the Court. He understands first-hand how the legislative process works, which he believes gives him a well-rounded view of the law and a depth from which he can understand and apply what he terms a "reasonable constructionist" view of the law – in other words, he takes a common-sense approach to the law;

applying what he believes is the most reasonable and logical construction of the particular rule of law at issue.

Having just watched the Sotomayer confirmation hearings, I couldn't help but follow up. I would be remiss in ignoring the fact that as an active legislator, Justice Canady was known to be a vocal, socially conservative Republican. No one can deny that Justice Canady is clearly a man with strong moral roots in traditional conservative ideology.

In comparing his judicial philosophy to Judge Sotomayer's philosophy, I asked him: "How can judges with such different political backgrounds honestly say that they apply the strict letter of the law without being influenced by their political background, when they obviously reach such drastically different conclusions on the same issues of law? Are you saying that you are not influenced at all by your political background as you consider the merits of a particular case?"

Justice Canady was direct and overwhelmingly sincere. "My political background plays no part in my decisions. If someone has a political agenda they should really pursue a career with the legislature, but there's no place for that in the judiciary. And I encourage anyone to examine my record at the Second District Court of Appeal where I always ruled according to the letter of the law, even where my political leanings would have had me reach an opposite result."

This is a man who lives by his strong morals, and he clearly ranks the sancti-

ty of the law over all else. He explained his "reasonable constructionist" theory of the law: "there are many ways to apply the law. If I wanted to, I could easily come up with a seemingly logical explanation to achieve the result that I wanted, but that is not my job. My job is to apply the most reasonable interpretation of the law at issue."

With that judicial philosophy, Justice Canady began serving with the Florida

Supreme Court in September, 2008. His told me that his transition has been smooth, and the informal orientation process as to the internal operating procedures of the Florida Supreme Court has been helpful. He said that his involvement as a Justice on the Court has not been unlike his role as a judge on the Second District Court



of Appeal, though he is surprised at the amount of time devoted to cases in which the sentence of death has been imposed on a criminal defendant.

He was also remarkably open regarding Supreme Court procedures. He explained that in addition to the briefs, the staff puts together a memorandum which summarizes the facts and issues of each case, and often offers a suggested conclusion, though it may propose an "either this or that" conclusion. As for oral argument, Justice Canady adopts an "open ears" attitude towards oral argument, but agrees that when hearing seasoned appellate practitioners, usually the issues are well-addressed in the briefs and most judges certainly have an inclination one way or the other prior to oral argument.

See "Justice Canady" page 22

Reflections from the Florida Supreme Court: *An Interview with Justice Ricky Polston*

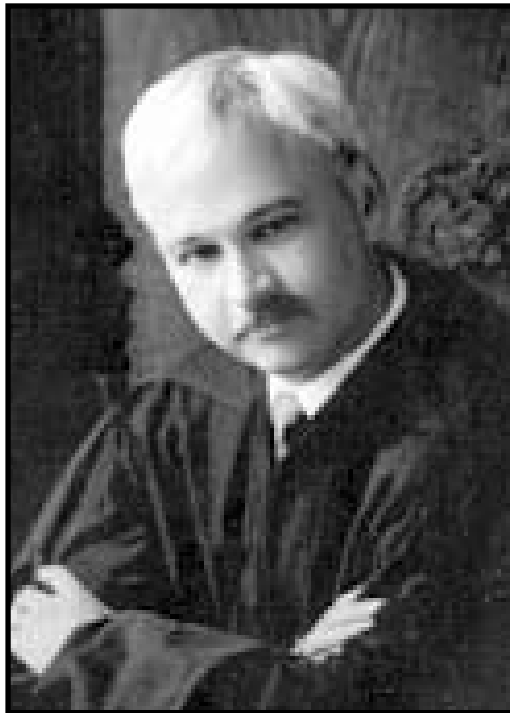
By Jeanette Bellon¹

On October 2, 2008, Ricky Polston was sworn in as a Florida Supreme Court Justice. Prior to law school, Justice Polston successfully practiced accounting as a CPA for seven years. Thereafter, in 1986, Justice Polston began his legal career by obtaining his J.D. with high honors from Florida State University. It was while he considered attending law school that he first aspired to become a judge. Upon graduation from law school, Justice Polston practiced commercial litigation. Reflecting upon his career in private practice, Justice Polston stated the most memorable case he handled involved the receivership proceedings for a Miami based HMO, International Medical Centers, Inc., because it was by far the largest and longest litigation he was ever involved in.

In 2001, Governor Jeb Bush appointed him to the First District Court of Appeal, ending his fourteen year career as a commercial litigator. For eight years he resided on the First District Court of Appeal's bench and presided over 6,000 appellate cases. Governor Charlie Crist then appointed him to the Florida Supreme Court to replace Justice Kenneth Bell.

Justice Polston is a self-described family man. Born and raised in Florida, his hobbies and personal interests involve traveling and being with his family. He has been married to Deborah Ehler Polston for thirty-two years. Deborah shares her husband's passion for family by penning children's books and advocating for children and adoption issues. Justice Polston and Deborah have ten children - four adult daughters and six boys, ranging in ages from two to sixteen years of age, whom they adopted from Florida's foster care system.

As a judge, he most enjoys the



intellectual challenges of working through cases with difficult issues. That being the said, the most memorable decision he has been involved in is *Bush v. Holmes*, 886 So. 2d 340, 376 (Fla. 1st DCA 2004) (en banc) (Polston, J., dissenting), because the decision addressed the difficult issue of whether the Opportunity Scholarship Program was constitutional under the Florida and United States Constitutions. Thus, it comes as no surprise to hear that even though his tenure on the Florida Supreme Court has been short, he states that the most rewarding aspect to sitting on the Florida Supreme Court's bench is the intellectual challenges relating to the difficult legal issues that come before the Court.

In describing the difference between sitting as a judge on the First District and now sitting as a Justice on the Florida Supreme Court, Justice Polston states the experiences are more similar than different. Although there are nuances that are posed to the Supreme Court in regard

to death penalty cases, even those decisions come to the Supreme Court as an appellate review of circuit court judgments, the same as at the DCA. He also points out that at the Supreme Court there is more competition to ask questions during oral argument than at the First DCA because there are four more questioners.

Justice Polston advises young appellate attorneys to write and speak with integrity and never mischaracterize the record or the law. For seasoned appellate attorneys, he recommends they stay focused on the important facts of the appeal and do not include facts that are irrelevant to the case - otherwise the important facts are overshadowed. He states that effective brief writing involves good organization that avoids repetition and further advises to always verify that record and legal citations are correct. Finally, when appearing before the Supreme Court, an appellate attorney should answer the question that is asked and always start with the best issue first, because one can't assume that there will be time to address it later.

When not sitting on the bench or spending time with his family, Justice Polston teaches at Florida State University's Law School. An adjunct professor since 2003, he teaches: Alternative Dispute Resolution, focusing on the substantive Federal and Florida law regarding arbitration and mediation, Florida Constitutional Law, Accounting for Lawyers, and Insurance Law. He states the reward behind teaching is that the students are very engaging and they keep him thinking on his feet while speaking.

(Endnotes)

¹ Jeanette Bellon is an associate in the Miami office of Kubicki Draper, P.A. and is a member of the Florida Bar Appellate Practice Section. She currently practices insurance defense focusing on state and federal appellate practice and litigation support.

Florida Supreme Court Historical Society An Important Player in the Independence of the Judiciary

By Andrew Manko ¹



Though the Florida Supreme Court has been at the center (often times the *epicenter*) of attention throughout the past decade, many Floridians may be unaware of the great work of the Florida Supreme Court Historical Society (the “Society”), which works in tandem with the Court to promote and preserve the independence of Florida’s judicial system. The Society is an independent non-profit organization that has been, one might argue, the Court’s biggest promoter since it was incorporated in 1977. Indeed, for every case the Court decides, there is a historical record that must be preserved. As the Society recently held its annual dinner in Tallahassee in January, it seems a fitting time to discuss the Society, its mission, and the work it has so far accomplished.

With over 700 members, including judges, attorneys, business professionals, educators, public officials and many others, the Society casts a fairly wide and diverse net across the State. One could spend only a few minutes at the annual dinner to notice the Society garners support from a varied group of people from college students to Florida Bar officials to current and retired Florida Supreme Court Justices. This should not be too surprising considering the Society appeals for participation from anyone who recognizes the need to protect and maintain a strong and independent justice system. Indeed, the undertaking of the Society is not tailored to only those who are members of the legal profession, but is aimed at educating the general public and preserving the history of the third branch of state government for future generations.

As outlined on its website and in its marketing materials, the Society’s

mission is two-fold: (1) “Educating the public about the critically important work of the courts in protecting personal rights and freedoms, as well as in resolving the myriad of disputes that arise within the state,” and (2) “Preserving the rich history of Florida’s judiciary system.” To accomplish these broad mandates, the Society conducts many activities designed to provide valuable information to the community at large, including various publications, programs, and even tours of the Florida Supreme Court for adults and students alike.

In the area of publications, the Society has released two volumes chronicling the evolution of Florida’s judicial system from the mid 19th century through the late 1900’s. Each book is not simply a collection of decisions, but in actuality offers a detailed historical analysis of the state through the eyes of the judicial branch. The first book, published in 1997, is entitled The Supreme Court of Florida and Its Predecessor Courts, 1821-1917 and is essentially a compilation of articles describing the development of Florida’s judiciary from its beginning stages as a territory under the rule of Andrew Jackson to its eventual statehood in 1845. The second volume, The Supreme Court of Florida, 1917-1972, was published in 2006 and essentially begins where the first volume left off, discussing various eras and policies of the Supreme Court through the early 1970’s. The books are incredibly well-written and offer a remarkable glimpse into the progress of our state’s court system. Stay tuned—it appears a third volume is on the way.

For those interested in a shorter read, the Society also circulates a newsletter, entitled “Historia Juris,” which is released approximately twice per year. The newsletter, much like The Record, provides information to the

Society’s members about news-worthy happenings and various upcoming events. Each issue also features a message from the President of the Society and an article by the Chief Justice of the Florida Supreme Court on a topic of choice. For instance, in the November 2008 edition, Chief Justice Quince wrote an article, “Under the Dome,” which applauded the Court’s decision to allow video cameras in state courtrooms about thirty years ago. Prior to “Historia Juris,” the Society published several volumes of a similar newsletter called “Review.”²

Beyond written publications, the Society also conducts Oral History Programs in various locations throughout the state. So far, the Society has put together about twenty programs recognizing the achievements of individuals who have meaningfully contributed to Florida’s judiciary. Most of the recipients have been past Justices of the Florida Supreme Court, but the first Oral History Program ever conducted in 1985 honored Senator Claude Pepper. In many cases, the Florida Supreme Court has held a ceremonial session for the program, which clearly indicates its importance to the Court and the judicial branch. However, don’t fret if you have been unable to attend; the Society offers DVD versions of all of its programs that can be purchased for \$15 a piece.

Another service provided by the Society, one that is near and dear to my heart, is the Supreme Court Docents Program, which provides both historical tours of the Supreme Court building and mock oral arguments in the courtroom. The Society works hand-in-hand with the Justice’s staff attorneys who conduct mock oral arguments for students who come to the Court while visiting Tallahassee. Although Court staff conduct many of

continued, next page

HISTORICAL SOCIETY

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the tours and mock oral arguments, members of the Society also volunteer their time for this worthwhile cause. The tours lead student groups through the library, the courtroom, and other parts of the public access areas at the Court. The mock oral arguments include a short discussion about Florida's court system and the judicial branch in general and thereafter allow the participants to engage in an oral argument where they get to play the part of the attorneys, the Clerk of the Court, the Marshall, and even the Justices. The docents program is an extremely useful teaching tool because it provides the students with a hands-on experience in appellate advocacy and how an appellate court functions. If you would like to volunteer or possibly set up a tour at the Court, the Society website contains a link to get involved or make a reservation.

Finally, as it was the impetus for writing this article, it seems appropriate to discuss the Society's annual dinner that is typically held in January. The dinner is a significant fundraiser for the Society and offers attendees from all over the state the opportunity to socialize with its members and other distinguished guests. This year, the dinner was held at the University Club at Florida State University and the keynote speaker was Judge Rosemary Barkett, Florida's first female Supreme Court Justice and currently a Judge of the Eleventh Circuit Court of Appeals. Judge Barkett gave a compelling address on civil liberties and how the judiciary must be responsible for enforcing and maintaining the freedoms of the Constitution. Among those in attendance were then-current Florida Supreme Court Justices, including Chief Justice Quince, Justices Pariente, Lewis, Canady and Polston, and retired Justices Wells, Anstead, Bell, Overton, Grimes, Hackett and England. Former President of the Florida Bar, Henry Coxe, III, acted as the primary emcee and resident

comedian, literally bringing the room to tears with laughter on several occasions. All in all, the event was apparently a huge success as it drew a larger crowd than any previous dinner. The large number in attendance is also further evidence that the Society is inspiring various members of our legal and civic community to both contribute and participate in the good work it seeks to accomplish.

In short, the Society serves a vital role in the education of our community and the preservation of the records of the court system. It is essential that Florida lawyers recognize the importance of our independent judiciary and work to preserve the records documenting its legacy, so

future generations will understand from whence we came and the ideals upon which our system is built. And what a great job the Society has done with these worthwhile causes. Given the importance of the mission and the stellar results the Society has had in accomplishing its goals, there are few judicial organizations more worthy of our time and support.

(Endnotes)

1 Andrew Manko is an associate in the Appellate and Trial Support Practice Group at Carlton Fields in Miami. Mr. Manko graduated from Emory Law School in 2004 and was a staff attorney for Justice Barbara J. Pariente of the Florida Supreme Court before coming to Carlton Fields in 2008.

2 If you are not yet a member and would like access to past newsletters, they are available on the Society's website at www.flcourthistory.org.

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Justice Labarga: An Appellate Practitioner Now “Simply Doing ‘Justice’”

By Anne Sullivan¹



“This is another landmark day here at the Florida Supreme Court. Today, Jorge Labarga formally joins us as the 84th justice since Florida was granted statehood in 1845.” So began Chief Justice Peggy A. Quince at the April 6, 2009 investiture of Jorge Labarga as a Florida Supreme Court Justice. Indeed, for at least a few reasons, the swearing in of Justice Labarga as one of the newest members of the Florida Supreme Court was steeped in history. Certainly, every time a new member joins the highest court of the State of Florida it is an occasion for ceremony. But in the case of Justice Labarga, the history books must make room for a few unique footnotes.

To begin with, as touched upon by several speakers at Justice Labarga’s public investiture, he experienced a somewhat accelerated appointment to the Florida Supreme Court. As the Justice himself recalled, some weeks before his swearing in, “January fourth I was a circuit judge, January fifth I was a DCA judge, and January sixth I was Supreme Court Justice. I don’t know what else is in store for me.” In fact, Justice Labarga, who was at that time a Circuit Court judge on the Palm Beach County Circuit Court bench, was tapped by Governor Charlie Crist to move up to the Fourth District Court of Appeal in early 2009. Days later, he was on his way to Tallahassee, having been appointed to an even higher position.

As the current Chief Justice noted at Justice Labarga’s investiture, “Justice Labarga is unique in the annals of the Florida Supreme Court history, in that he was technically a member of the Fourth District Court of Appeal at the time of his appointment, and I think he has a commission to prove it. In fact, he served on the Fourth District for a single day, without hearing a single case.” Not-

ing lightly Chief Justice Quince’s reference to Justice Labarga’s short tenure on the Fourth District Court of Appeal, John G. “Jay” White, III, Esq., President of the Florida Bar, told the crowd, “Although Chief Justice Quince says that he never decided a case [for the Fourth District Court of Appeal], one of the things that Justice Labarga pointed out to me is that the Florida Supreme Court has never, ever reversed him.” It is that type of humor, about himself and about life, that permeates any conversation with the new Justice.

Contemplating his successive appointments a few weeks before his investiture at the Florida Supreme Court, Justice Labarga himself recounted, “In fact I jokingly called the Chief Judge in the Fourth DCA and told him, you know, when they retire from that court their portrait is put up in the library and I’m demanding that my picture be there. I was a member of that court.”

Reflecting on Justice Labarga’s quick ascension to the highest court in the state of Florida, Governor Charlie Crist declared at Justice Labarga’s investiture ceremony that “To have Jorge Labarga as a double pick is really a high honor for me.”

As a side note, it is worth mentioning that Justice Labarga has another “double” to his name: he is a “double Gator,” so called because he matriculated twice at the University of Florida, once for undergraduate studies, once for law school. Touching humorously upon that fact, Jay White told the onlookers at the Florida Supreme Court on the day

of the new Justice’s swearing-in that of all the things he could tell them about Justice Labarga, “I shouldn’t say *first* and foremost, but pretty high up there, is the fact that he’s a double Gator, and that would be the National Championship Gators.”

Indeed, it was in Gainesville that Justice Labarga met his future wife. In fact, it was on one of his last days in that town, at a party celebrating his graduation from law school, that Justice Labarga and his wife, Zulma, met. Recalling that night, Justice Labarga recounted,



“My wife and I met at Florida, and it’s interesting because when I graduated from law school, the night before graduation, the ceremony, the Dean threw a party at his house and invited all the graduate students and one of my best friends in law school was married and his wife was best friends with my [future] wife so they brought my wife to the party. I

met her the last day in Gainesville, and she was graduating from undergraduate at Florida. So I wasn’t even planning on going to that party. I was planning to just go home and not even participate in graduation because I just wanted to go home and my roommate talked me into it. ‘Oh you have to go to graduation. This is law school.’ So, I stayed just for him and as fate has it I met my wife that day. We’ve been married now for 28 years.”

Switching voices from loving husband to proud father, Justice Labarga related that there is reason to anticipate that the Labarga family tree will yield another attorney. “My oldest daughter,

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Item # 8020015

Justice Perry: Making Lives Better For All Floridians

By Jessie Harrell¹



Anyone interested in learning more about Justice James E. C. Perry can easily read a few snippets about his life and accomplishments on the Florida Supreme Court website. His bio reveals that he has been a devoted husband since 1971 and is father to three grown children. He is a community advocate, having founded a youth association for at-risk children and singing in his church choir. He is also a trail blazer, being the first African American to sit as a circuit court judge in the Eighteenth Judicial Circuit. But there is more to the man than his long list of accolades. Indeed, it is perhaps Justice Perry's heart that will leave the biggest mark on the Court.

*"Justice is the crowning glory of virtues."
– Marcus Tullius Cicero*

Justice Perry has a profound desire to see justice done in each and every case that comes before him. He has stated that his guiding principles are "to abide by the rule of law in all my decisions and to ensure that fairness, justice and integrity are my abiding hallmarks." And when asked if he had intentions to take on any "pet" causes as a new Justice, he responded, "My cause as a judge has always been to try to make a difference for the betterment of the lives of the good people of the State of Florida." Perhaps it is living by this philosophy that led Governor Crist to say: "Throughout his career as an attorney and circuit judge, Justice Perry has demonstrated an extraordinary commitment to justice and equality. His expertise, professionalism and humanitarian spirit make him exceptionally qualified to serve on Florida's highest court." The Governor also said of Justice Perry, "I trust he will have the courage to make decisions that preserve the integrity and equality of our justice system."

Justice Perry's pursuit of justice in the legal arena began on the night Dr. Martin Luther King was assassinated. Although

he had been the first from his family to come out of a small town in eastern rural North Carolina and go to college, and although he had served in the Army as a First Lieutenant, Justice Perry knew he could do more. He saw in Dr. King's death a path to justice led not by preachers, but by lawyers. Determined to become a lawyer himself, Justice Perry attended Columbia Law School in New York City on scholarship and graduated in 1972.

*"Sometimes it is the smallest decisions
that change your life forever." – Keri
Russell*

While at Columbia, Justice Perry found more than a love of the law. He found the love of his life. It was while at law school that Justice Perry met his wife, Adrienne M. Perry. After graduating in 1972, Justice Perry and his wife headed to Georgia where it was his dream to fight for civil rights as an attorney. However, of the fifty African Americans who took the Georgia Bar examination that fall, not a single one passed. (At that time, the Georgia Bar required a photograph with the application.) Convinced that racism was at the heart of the 100% failure rate, Justice Perry called together all of his fellow black test takers and asked them to join him in a lawsuit against the Georgia Bar. While only sixteen others were courageous enough to join in the lawsuit, their statement was made. When Justice Perry retook the exam the following February, he and twenty-three other African Americans passed. At the following testing six months later, another 24 blacks passed. Although his lawsuit was ultimately dismissed, African American membership in the Georgia

Bar doubled the following year.

In 1973, Justice Perry moved to Florida, where he has lived since. Here, the Perrys raised three children, sons Willis and Jaimon, and daughter Kamilah. Committed to his children, Justice Perry actively supported all of their pursuits, which included coaching his sons' AAU basketball team, the *SanLando Greyhounds* (which required cross-country trips for playoffs), and participating in Kamilah's piano, ballet and cheerleading activities. As a testament to how good of a role model Justice Perry was to his children, two of the three have followed in his footsteps and now practice law in central Florida.

While busy raising his family, Justice Perry was also busy growing his law firm, Perry & Hicks, P.A. There, he specialized in civil and business law and served as



general counsel for the Florida Chapter Branches of the NAACP. In 1995, Justice Perry received the NAACP Humanitarian Award for Seminole County and thereafter won the award for Orange County in 1998.

While a busy family and work life might have been enough for most people, it wasn't for Justice Perry. He saw a need in his community and founded the Jackie Robinson Sports Association. The association was a baseball league that served 650 disadvantaged children through coaching, tutoring and mentoring. Unfortunately, when Justice Perry was appointed to the circuit court and could no longer function as its President, the league ceased to exist. As Justice Perry remarked, "The Court is a very jealous companion...." However, the association will always hold a special place

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in his heart. "Like all efforts to make this world a better place, it has brought me a sense of accomplishment that means more to me than any monetary gain. In helping others, you receive the greatest benefit. You receive by giving, but you don't give to receive."

"If at first you don't succeed, try, try again." – Thomas H. Palmer

Eventually, Justice Perry decided he would like to be judge. Not convinced that his community would elect a black judge, Justice Perry began seeking a circuit court appointment to the Eighteenth Judicial Circuit. The appointment took ten years in coming, until Governor Jeb Bush selected him 2000. However, when he had to run an election to retain his seat, he ran unopposed—a testament to the respect he engendered while on the bench. In July 2003, he

served as chief judge of the circuit for three years. Justice Perry was then named the 2006 Outstanding Jurist by the Seminole County Bar Association and in 2005 he received the Martin Luther King Jr. Drum Major Award for Social Justice.

Interestingly, while it took Justice Perry ten years to be appointed to the circuit court bench, he was elevated to the Florida Supreme Court on his first try. Ironically, Justice Perry initially had not planned to throw his hat into the ring, but his wife, children and a small circle of friends convinced him to submit his application. Apparently, Governor Crist agreed with Justice Perry's friends and family that he was the right man for the job. The Governor believed that Justice Perry was not only an ideal candidate, but also one who would help make the Court more diverse. Governor Crist said, "We have a very diverse state, and I think it's important that the court understand all the different perspectives that make Florida a great place to live." And Justice Perry truly does

understand. "I believe that diversity is of crucial importance to our state and our nation – it enriches the experience of each of us," he said.

However, taking the position of a Justice on the Florida Supreme Court, while a coveted position of prestige for most, did not come without sacrifice for Justice Perry. The hardest part of the job for him has been leaving his familiar surrounds and comfort zone. Indeed, Justice Perry's wife will be continuing to honor her teaching contract at Stetson University in Deland, Florida, meaning his wife has not been able to fully relocate to Tallahassee. Justice Perry said the position "has caused a complete upheaval in my own life and my family's life. But this appointment was never about me; it has always been about service to the people of the great state of Florida."

*"The nice thing about team work is that you always have others on your side."
– Margaret Carty*

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JUSTICE PERRY

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Putting his personal sacrifices aside, and the unending work, Justice Perry says he has been enjoying his appointment “immensely.” He has also been pleasantly surprised with the level of congeniality on the Court and the warmth of his reception. Perhaps as we would expect from members of the State’s highest court, even when the Justices take different positions on the issues before them, Justice Perry says the Court retains a congenial and civil atmosphere. He said, “members of the Court are ordinary people with ordinary concerns about family, health, happiness and faith.” Like a member of a family, Justice Perry has a high level of respect for the current- and past-Justices, and hopes that he can emulate the best characteristics of each of them.

“Quality means doing it right when no one is looking.” – Henry Ford

Aside from an unwavering passion for justice and service to the community, what else can appellate lawyers expect from Florida’s newest Justice? For one thing, you can expect to have to be on top of your game. Justice Perry looks for quality in the form of being clear and succinct in both brief writing and oral argument. He expects practitioners “to do their homework” and not “expect the courts to do it for them.” One particular criticism he has of Supreme Court practitioners is an apparent cutting and pasting of briefs. He also disapproves of raising unmeritorious issues. The one notable exception, of course, is in death penalty cases, where practitioners understandably must preserve “all issues for review just in case there is a change in the law or in the forensic sciences or in case their investigators come up with newly discovered evidence.” Where someone’s life is literally at stake, he allows practitioners a little more leeway.

Justice Perry also expects clarity, conciseness and logic during oral argument. If an argument “doesn’t make sense, it probably isn’t the law,” he said in an interview for Columbia Law School. He said that oral argument can be very helpful to the Court “when the practitioner focuses on issues that cannot be dealt with fully in the briefs

or when the Justices have specific questions that are not covered in the briefs.” The bottom line for practitioners is that they will capture Justice Perry’s attention with clarity and succinctness (a key ingredient that the Justice couldn’t emphasize enough). He believes that “[t]hese are indispensable tools in the search for the truth.”

And why wouldn’t he expect quality from those practicing before him, when quality is what you’ll get from this Justice? While noting that the pace on the high court is deliberate, he also remarked that the position of Justice “requires reading without end.” In fact, he not only takes his work home with him, but you’ll find Justice Perry toting work with him virtually everywhere he goes. He said that he is literally a Justice twenty-four hours a day. When not having to read for cases, he is also spending time on “jurisdictional matters, attorney and Bar related matters, administrative and educational matters and public speaking.” That’s a full plate for anyone.

And not only is Justice Perry devoted to his work, but he takes full responsibility for everything that comes out of his office. While his three relatively-permanent law clerks are instrumental in researching and drafting memoranda, Justice Perry knows

that the “buck stops” with him. The bottom line: don’t expect to take short-cuts with this Justice and you certainly won’t be short-changed in return.

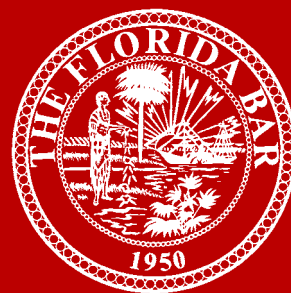
“The measure of a man is what he does with power.” -- Plato

While much of Justice Perry’s future may yet be unwritten, the history books will undoubtedly describe him as a philanthropist. The word “philanthropy” derives from Ancient Greek and means “to love people.” Indeed, Justice Perry’s life shows just how much he loves his fellow man: by demonstrating goodwill, generosity and an unwavering desire to make life better for all the citizens of Florida. Governor Crist foresaw that: “Judge Perry will rule with restraint, fairness and humility. He has shown throughout his personal and professional life the ability to balance justice with humanity.” There is no doubt that Justice Perry will continue to use his position on the bench not for any selfish means, but for the betterment of all Floridians. For that, we all owe Justice Perry a debt of thanks.

(Endnotes)

1 Jessie Harrell is an associate at the Jacksonville law firm of Mills, Creed & Gowdy, P.A. Along with the firm’s partners, Ms. Harrell exclusively practices appellate law.

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An Afternoon With The Supreme Court

By Michael C. Greenberg¹



Former Supreme Court Justice Raoul G. Cantero, III, current Chair-Elect of the Appellate Practice Section, served as the panel moderator. For the “Discussion with the Florida Supreme Court” at the 2009 Annual Florida Bar Convention in Orlando. Now in its fourteenth year, the Discussion has become a tradition during the Annual Meeting. Former Justice Cantero expressed his gratitude for the accessibility that the members of the Court offered to the attendees.

Known for his wit and humor, he noted that with the four new appointees [and without him] it was an “improved court.” He also inquired of Chief Justice Quince as to the Court’s collegiality. Chief Justice Quince, in her own demonstration of wit and humor, quickly retorted to former Justice Cantero, “when some people left...” Justice Canady then noted that the justices frequently had lunch together, resulting in an opportunity to visit with one another and building a good working relationship. Justice Lewis noted that there was a “wonderful chemistry” among them, and that it was nice waking up in the morning and looking forward to going into work. Justice Lewis added that he looked forward and wanted to hear what the others [new justices] had to say.

Miami-Dade Assistant Public Defender Harvey Sepler inquired whether the appointment of the four new Justices affected the cases already briefed. Justice Polston responded that the new justices usually did not participate in cases in which oral argument had been heard without them and that the outgoing Justices sped up their work pace to close out the cases they were involved in. Additionally, Justice Polston advised that since many cases were reassigned, he had a difficult time figuring out what a “normal” workload was.

Appellate Court Rules Committee Chairman John Mills inquired whether, with all the new statutes, there has been an improvement with the way the rules committees have done business and whether the Court had any suggestions. Justice Pariente responded that some rules committees take a while to process rules and that it was difficult to have active liaisons since the Court needed to avoid ex parte communications. When asked if Mr. Mills had any suggestions, he noted that Justice Wells had communicated very effectively with the committee and requested that the present Court do the same.

Justice Labarga noted that at times the rulemaking committees seem too big, making it more difficult to process rules, and wondered what the optimum size should be for such committees. Mr. Mills responded that an optimum size could be twenty people and also noted the importance of having “new blood.” He noted that committees are broken down into subcommittees that draft and review proposed rules and present them to the committees as a whole for approval. In jest, Justice Labarga agreed with the suggestion from the audience that a “small” committee should be formed to review the size of the committees.

Chief Justice Quince questioned whether a rule should mirror the statute and just how much language of the statute should be in the rule. To demonstrate just how bogged down some rule committees are, Justice Pariente noted that a Traffic Committee just submitted a proposed rule which was from a change in the 1984 statutes.

During the conversation, Justice Polston noted that although he had seen some great lawyers while at the Supreme Court, he was somewhat surprised, if not disappointed, with the quality of practice of some attorneys before the Court compared to the quality he observed at the First District Court of Appeal. After the discussion, this writer followed up with Justice

Polston regarding his comment, and Justice Polston explained that his disappointment was with trial attorneys who believed that because they were good trial attorneys they could also be good appellate attorneys. It was not so. [Appellate practitioners please enlarge the previous comment and hang up on your office wall for your potential clients to see]. Justice LaBarga noted along the same issue that Justice Sandra Day O’Connor had recently commented that even briefs to the U.S. Supreme Court seemed to be declining in quality. Commenting that at times the briefs did not seem to be consistent in their flow, Justice Labarga noted that attorneys may be doing too much “cut and paste.”

Miami-Dade Assistant Public Defender Howard Blumberg noted that he had gone almost ten years without having an oral argument before the Court and wondered whether the Court should open up their jurisdiction to hear more cases. Justice Lewis responded that although the Court was busy in hearing other types of cases within their jurisdiction, i.e., disciplinary cases, constitutional questions and death penalty cases, he believed the Court was taking fewer cases due to how the District Courts of Appeal were writing their opinions.

Overall the discussion was enjoyed by all. A true sense of collegiality among the members of “our” Court was felt. The members of the Court did not shirk from their responsibility to tell us their perspectives as leaders of the judiciary. We thank them for their time and their sacrifice in leaving their families and their homes to spend time with us. Whether we represent governments, the accused, big businesses or the lone victim of inequity, let us all strive to be better practitioners. Thank you Supreme Court members!

(Endnotes)

¹ Mr. Greenberg is a member of the Criminal Appeals Section of the Miami Office of the Office of the Attorney General and Co-Chair of the Government Lawyer Committee of the Appellate Practice Section.



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JUSTICE CANADY

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Justice Canady did admit, however, that he had gone into an oral argument session in the past with a preconceived notion of the case and then completely changed his mind based on the oral argument. Usually, he said, this occurs where the particularly relevant issue is somehow hidden in the brief, or where a trial lawyer appears before the appellate court and may have better oral advocacy skills than written skills.

Justice Canady explained that following oral argument, the Justices immediately retire to a room located right behind the bench, where they discuss the case that they just heard. Each justice has a turn to speak. The assigned justice speaks first, and then they proceed in order of seniority, and the Chief Justice usually speaks last. Justice Canady emphasized the collegiality between the Justices, but I

gathered from the tone of his voice that that back room had seen many, many heated (but professional) arguments over the years..

We spent the rest of the interview discussing more lighthearted things. Justice Canady fondly recalled meeting his wife, Jennifer, when she was a science teacher at Carlton Palmore Elementary in Lakeland. He was a guest reader at the annual Young Authors Conference there, and he was assigned to her classroom. Thirteen years later, he and Jennifer continue to live in Lakeland with their two daughters, Julia (10), and Anna (8), and their two dogs and two guinea pigs. Interestingly, Justice Canady, too, has been affected by this horrible economy. Because he hasn't been able to sell his house in Lakeland, his family still lives there, and he's been commuting to the Florida Supreme Court during the week, working out of the Second District Court of Appeal offices in Lakeland while at home.

On a personal level, he's what I

would label a "man's man"; he enjoys reading biographies of famous political figures (he just finished the "First American," the biography of Ben Franklin), notes his favorite movie of late as "No Country for Old Men," and is currently watching the MI-5 series on television, which follows the British Secret Service as they tackle threats to the security of the U.K. He is also extremely dedicated to his family. He described a hike he had just taken with his daughters from his mountain cabin, and noted how he enjoyed "family movie night" with the kids. If he could have lunch with anyone, dead or alive, he would dine with John Updike (he was clearly inspired having recently read Updike's "My Father's Tears"), and explained that if he wasn't involved in politics, he would probably be a teacher.

(Endnotes)

1 Sarah Pellenbarg is currently an associate at the appellate boutique firm of Brannock & Humphries. Previously, she was an appellate associate at Holland & Knight.

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Stephanie, was singing the law school tune for a while, but now she is majoring in literature, English, at the Florida Atlantic University in Boca. She wants to be a teacher. She's fading away from the law school, but that could come back." The Justice added that he hopes to influence at least one of his offspring to follow in his footsteps: "My youngest one, Caroline, who's a sophomore at a community college, she hasn't decided quite what she wants to do. I am working on her. I think she'd be a great lawyer. There is still hope."

Perhaps somewhat more historically than being a "double Gator," Justice Labarga is also only the second Cuban-American—and the first Cuban-born—Justice of the Florida Supreme Court, following Justice Raoul G. Cantero, III (who was born in Spain to Cuban parents). Referring to this notable fact, the Governor told the crowd on April 6th that "Our newest justice was born in Cuba, and *es muy importante* to me,

because my grandfather emigrated to this country from an island, also, but it was an island called Cyprus, and so there is a similar pattern here, that I see at least, and I certainly felt during the interview process, of a tremendous love of freedom, and justice, and great courage, and a heart for the people."

Observing that Justice Labarga's immigration experience echoes that of numerous Floridians, Roland Sanchez-Medina, the president of the Cuban-American Bar Association, said at Justice Labarga's investiture that his story "is the story of many of the members of the Cuban-American Bar Association and I really couldn't be prouder here today to be sharing that with members of the court and everyone else." Mr. Sanchez-Medina presented Justice Labarga with a bust of Cuban poet Jose Marti, remarking: "There is an inscription that I found that I think fits you perfectly. In Spanish it is '*Es el deber de Hombre de levantar a Hombre.*' The translation is 'It is the duty of Man to raise up Man.' Justice Labarga, you indeed have achieved this calling in your life."

Noting proudly that he was the first

Cuban-born Florida Supreme Court Justice, and reflecting that he was following in Justice Cantero's footsteps in changing the face of the Florida Supreme Court, Justice Labarga reflected, "Diversity is very important and I think Governor Crist should be commended for taking such a high interest in diversity. I think it is important that our institutions look like the face of America and I can just see a lot of young Hispanic children around the State of Florida saying 'You know, this guy made it to the Florida Supreme Court. You know, if I work hard I can do that too.' And the same thing goes for all members of minority groups and I think that the more diversified our institutions are the more credibility they have with our communities. I think it is extremely important."

Justice Labarga, who is known as somewhat of a conversationalist, has also inherited the mantle of raconteur from Justice Cantero. Speaking on the occasion of Justice Labarga's investiture—which followed several months of him actively sitting at the Florida

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Supreme Court—Justice Barbara J. Pariente noted, “What I have also observed, which makes him a great colleague, is Justice Labarga’s sense of humor, in Justice Cantero’s tradition, and his talent for storytelling.” Justice Labarga himself anticipated Justice Pariente’s remarks on collegiality, relating “Yesterday, for example, I had lunch with Justice Polston and Justice Lewis and the week before Justice Canady and I went to lunch. Justice Pariente and I go to lunch a lot and Justice Wells as well. So, we all go to lunch and we do talk about football, basketball. I have found this to be extremely collegial. You know, we disagree on a lot of things but it’s very friendly.” Harkening back to his remarks on football and basketball being a topic of lunchtime conversation, Justice Labarga ruefully noted that “When Justice Wells leaves in about fifteen days I will be the only Gator left in the Florida Supreme Court and everybody else is from someplace else. Justice Polston is the only one who is a Seminole. But from what I’m told that’s unheard of. At one point in time, you had to be a Gator fan to be in this Court. But I’m learning to live with FSU just being down the block. It’s okay. I’ve learned to live with it. But I am a double Gator. I’m a die-hard, and I’m going to have to take over Justice Wells’ enthusiasm here in the Court for that.”

As for the work of the court itself, Justice Labarga gave this insight into how the Justices interact and influence each other: “When I showed up for my first conference and the Judge who is assigned the case presented the case to the other Justices and presented his or her view and everybody else put in their opinions, I was very impressed with the level of preparation by the presenting Justices. I mean, they knew the transcript inside out. They knew the issues. They read the case law, and they added cases that were not discussed in the briefs. I was extremely impressed and I make it a point that when it is my turn to prepare cases you have to really be prepared because the other Justices

really work very hard on these things. I mean, the effort that I’ve seen here to arrive at the best decision possible is incredible. It is just a big effort in that regard.”

This level of preparation, though, has been a hallmark of Justice Labarga’s career from the beginning. Recounting his experiences before then-circuit-Judge Labarga, President of the Florida Bar Jay White told the onlookers at Justice Labarga’s investiture, “I can tell you also as a lawyer that practiced in front of him regularly, he was a judge that was always thoroughly prepared. He read everything you sent him, he read the cases, and you had better be prepared, because when you went in there, he had a lot of tough questions. But he was really good at taking complex matters and cases and just reducing them to the nut, the core of the case, and determining the right result.” Added Justice Labarga’s former law partner, Douglas Duncan, “Justice Labarga... began his legal career in the public defender’s office, beginning in the appellate division, where his research and writing skills were first developed.” Justice Labarga, then, is a Justice who knows the work of an appellate practitioner inside and out. Indeed, recounting that first year in the public defender’s office, in which he was assigned to the appellate division, Justice Labarga said, “that’s all I did was appeals and argue cases before the Fourth DCA and before the Fifth DCA at the time.” Recalling that, in later years, he often sat as an associate judge on the Fourth District Court of Appeal during his tenure as a Circuit Court judge in Palm Beach County, Justice Labarga revealed, “I sat at the Fourth DCA and heard oral arguments over and over again so I pretty much have a perspective on what the approach is and I love the interchange between the justices and the lawyers during the oral arguments.”

Finally, the Justice added these words of advice to appellate practitioners in general, and, in particular, those who practice before the Florida Supreme Court: “Briefs should be as succinct as possible. As far as the oral arguments are concerned, just make your argument and answer and make every

effort to answer the Justices’ questions. The questions are not being asked just for the sake of asking them. The Justices really do have questions and some of us ask more questions than others, obviously. Pay attention to what the Justice is asking you and be prepared to answer it. And just be prepared. Be really prepared. But keep the briefs as succinct on the issue as possible bearing in mind that we are going to look into everything.”

Weeks later, at his investiture, Justice Labarga himself pondered what experiences had brought him to the pinnacle of a lawyer’s career. Reflecting on his parents’ example to and influence upon their children, he noted to the crowd who watched him be sworn in as a Florida Supreme Court Justice that his Cuban parents “raised children who were taught the importance of living in freedom, children who were taught firsthand about the beauty of our constitutional form of government, and children who learned through the experiences of their parents what it is like to live without the basic guarantees of human rights afforded to every citizen in this country.” Justice Labarga continued, “Having been tempered by these experiences, I bring to this great institution an appreciation for our constitutional way of life. As I embark on this chapter of my career, I do so fully understanding the enormity of the difficulties and responsibilities of my position. Although there will be occasions when many of you may disagree with my decisions, I sincerely hope that you will disagree while fully believing that I gave the question at hand every consideration possible. As simply said by President Theodore Roosevelt many years ago, ‘We can best get justice by simply doing justice.’”

It is a sentiment that many who know him or have had experience with him as a lawyer or judge are trusting Justice Labarga can put into action in Tallahassee.

(Endnotes)

1 Anne Sullivan is an associate at Gaebe Mullen Antonelli Esco & DiMatteo, a full-service civil law firm that specializes in trial, appellate, and transactional matters throughout South Florida. Ms. Sullivan concentrates her practice in trial support and appellate work.

OVERVIEW

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In 1957, Florida's district courts were created to provide an intermediate level of appellate review.¹⁵ The first judges for the district courts of appeal were appointed by the governor.¹⁶ Subsequent vacancies on the district courts were filled by general election in the same way supreme court justices and circuit court judges were elected.¹⁷

The direct election of all justices and judges in Florida led to abuses within the judicial system.¹⁸ "Within [a period of] four years, four out of seven justices on the Florida Supreme Court left office through resignation or retirement after a scandal involving extensive investigations, public exposure, and threats of impeachment."¹⁹ This prompted constitutional amendments in the 1970s that resulted in a merit selection and retention system for appellate judges.

Judicial Nominating Commissions

In 1971, Governor Reubin O'D. Askew created, by Executive Order, judicial nominating councils to assist in judicial selection.²⁰ Subsequently, by constitutional revision in 1973, the councils were supplanted by separate JNCs, one for the supreme court and one for each district and circuit court.²¹ The JNCs were created "to screen applicants for judicial appointments within their respective jurisdictions and to nominate the . . . best qualified persons to the Governor for his appointment."²² They are an arm of the executive branch, established "to insure that politics would not be the only criteria in the selection of judges, and to increase generally the efficiency of the judicial appointive process."²³ "The purpose of the [JNC] is to take the judiciary out of the field of political patronage and provide a method of checking the qualifications of persons seeking the office of judge."²⁴ As the Florida Supreme Court explained early on, "The purpose of

such nominating commission . . . was to eliminate that kind of selection which some people referred to as 'picking a judge merely because he was a friend or political supporter of the Governor' thereby providing this desirable restraint upon such appointment and assuring a 'merit selection' of judicial officers."²⁵

The 1973 revision to the Florida Constitution elevated JNCs to "constitutional statu[s] and permanence," making their nominations "binding upon the Governor, as he is under a constitutional mandate to appoint 'one of [the] persons nominated by the appropriate [JNC].'"²⁶ Since 1976, the governor has been required to make all judicial appointments from a list of nominees presented by the appropriate JNC.²⁷

The Legislature is charged with the task of establishing the makeup of the JNCs.²⁸ Currently, each JNC is to consist of nine members, all of whom are appointed by the governor.²⁹ The Florida Bar Board of Governors submits to the governor three recommended nominees each for four of the nine spots, but "the Governor may reject all of the nominees recommended for a position and request that the Board of Governors submit a new list of three different recommended nominees for that position who have not been previously recommended by the Board of Governors."³⁰ In appointing members to a JNC, the governor "shall seek to ensure that, to the extent possible, the membership . . . reflects the racial, ethnic, and gender diversity, as well as the geographic distribution, of the population within the territorial jurisdiction of the court for which nominations will be considered."³¹

Prior to 2001, each JNC was composed of three members of the Florida Bar who were appointed by the Board of Governors; three electors appointed by the governor; and three electors not members of the Florida Bar that were selected and appointed by the other six members of the commission.³² Because the

JNCs were originally conceived as a way to place a check on the governor's power to appoint members of the judiciary, there was some concern in the legislature that amending the statute so that the governor appoints all members of each JNC would blur the lines between the executive and judicial branches of government,³³ contrary to the very purpose behind Florida's judicial reform movement in the 1970s.

Currently, JNCs are required to provide the governor with at least three but no more than six nominees for every vacancy on the supreme court and district courts of appeal.³⁴ "The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor *shall* make the appointment within sixty days after the nominations have been certified to the governor."³⁵

Prior to January 2009, the governor's authority to reject the nominees submitted by the JNC and request a new slate of nominees had not been challenged. Recently, however, events unfolded in Florida's fifth judicial district that raised the question of whether the governor has the authority to do so.

Fifth District Court of Appeal Vacancy

In January 2009, the Honorable Robert J. Pleus Jr. retired from the Fifth District Court of Appeal.³⁶ He notified Governor Crist in September 2008, of his impending retirement in order to begin the process of selecting his replacement in a manner that would maintain continuity in the operations of the court.³⁷ The JNC for the Fifth DCA met in November 2008 and certified six nominees for the upcoming vacancy.³⁸

Governor Crist rejected the list of nominees "[i]n the interest of diversity on [Florida's] courts" and requested that the JNC reconvene, reconsider the nominations, and provide a new list of nominees.³⁹ The commission responded by recom-

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OVERVIEW

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mending the same six nominees, assuring the Governor that the nominees were the most qualified applicants.⁴⁰ The Governor, again, asked for new nominees,⁴¹ and the Commission responded that it is without the authority to withdraw the nominees previously certified or submit additional nominees in excess of the six permitted by the constitution.⁴² When Governor Crist did not appoint a replacement within the sixty-day time period mandated by the constitution, Judge Pleus filed a petition for writ of mandamus in the Florida Supreme Court requesting an order requiring the Governor to appoint a judge to the Fifth District Court of Appeal from the list of nominees certified by the JNC.⁴³

The supreme court recently decided this dispute by ruling “the Florida Constitution mandates that the Governor appoint a judicial nominee within sixty days of the certification of nominees by the Judicial Nominating Commission for the Fifth Appellate District [and that] within this process, the Governor is not provided the authority under the constitution to reject the certified list and request that a new list be certified.”⁴⁴

Conclusion

Florida has run the gamut between giving the governor complete discretion in appointing members of the judiciary and allowing the people to choose all their judges by popular vote. In an effort to curb the abuses that developed under both systems, the legislature adopted a merit selection and retention system to ensure that gubernatorial appointees are first vetted by JNCs that narrow the governor’s options to those most qualified to serve on Florida’s judiciary. Although current statutory law gives the governor the power to appoint all members of each JNC, current events demonstrate that it has not eliminated the possibility of conflict between the governor, the

JNCs, and Florida’s courts. (Endnotes)

- 1 Diana L. Martin is appellate counsel at Leopold-Kuvin, P.A. in Palm Beach Gardens. Her practice focuses on state and federal civil appeals and complex litigation support. Ms. Martin is a 2002 high-honors graduate of the University of Florida Levin College of Law where she was inducted into the Order of the Coif. Before entering private practice, she was law clerk to the Honorable Martha Warner at the Fourth District Court of Appeal.
- 2 Donna M. Krusbe is appellate counsel at Billing, Cochran, Lyles, Mauro & Ramsey in West Palm Beach. Her practice focuses on state and federal civil appeals and civil litigation support. Ms. Krusbe was previously a law clerk to the Honorable George A. Shahood at the Fourth District Court of Appeal and is a graduate of the University of Miami School of Law where she was an assistant editor of the *Entertainment and Sports Law Review*.
- 3 Art. V, § 10(a), Fla. Const. County and circuit judges are also subject to merit retention if the merit selection/retention method was chosen by the people of the applicable jurisdiction in a general election. *Id.* at §10(b).
- 4 Art. V, §11(a), Fla. Const.
- 5 Art. V, §11, Fla. Const. (1838).
- 6 *Id.* at § 12.
- 7 Amendment, Fifth General Assembly, 1850: Judicial Elections (Article V, Sections 11, 12, 17), §§ 1 & 3; WALTER W. MANLEY II ET AL., *THE SUPREME COURT OF FLORIDA AND ITS PREDECESSOR COURTS, 1821-1917, 137-40 & 154* (1998).
- 8 Art. V, §10, Fla. Const. (1865)
- 9 *Id.* at §11.
- 10 Art. VI, §§3 & 7, Fla. Const. (1868).
- 11 *Id.* at §3.
- 12 WALTER W. MANLEY II ET AL., *THE SUPREME COURT OF FLORIDA AND ITS PREDECESSOR COURTS, 1821-1917, 213-14* (1998).
- 13 Art. V, §8, Fla. Const. (1885).
- 14 Art. V, §46, Fla. Const. (1942); *see also* 1941 Florida Committee Substitute For Senate Joint Resolution No. 334.
- 15 Art. V, §5, Fla. Const. (1957).
- 16 *Id.*
- 17 *Id.* at §5(b).
- 18 Gerald F. Richman, *The Case for Merit Selection and Retention of Trial Judges*, *FLA. BAR JOURNAL*, Oct. 1998, at 71.
- 19 *Id.*
- 20 *In re Advisory Opinion to Governor*, 276 So. 2d 25, 28 (Fla. 1973).
- 21 Art. V, § 11(d), Fla. Const. (1973).
- 22 *Id.* at 29.
- 23 *Id.* (citation omitted).

24 *Id.* at 30.

25 *Spector v. Glisson*, 305 So. 2d 777, 783 (Fla. 1974).

26 *In re Advisory Opinion to Governor*, 276 So. 2d at 30.

27 Art. V, §11(a)-(b), Fla. Const. (1976).

28 *Id.*

29 § 43.291(1), Fla. Stat.

30 § 43.291(1)(a).

31 § 43.291(4).

32 §43.29, Fla. Stat. (2000).

33 Representative Doug Wiles made the following statement when voting against the amendment, “I fear that this legislation will blur the lines that separate the judicial branch of government with the executive branch of government. I hope that I will one day be proven wrong, however the risk of unintended consequences far out weigh the potential for good reforms. In the spirit of political theorist Baron de Montesquieu, who said ‘there is no liberty if the power of judging be not separated from the legislative and executive powers,’ I cast a no vote.” *Journal of the House of Representatives*, 2001 Regular Session, Number 6, FL H.R. Jour., 2001 Reg. Sess., No. 6, March 22, 2001, p. 332.

34 Art. V, §11(a), Fla. Const.

35 Art. V, §11(c), Fla. Const. (emphasis added).

36 February 13, 2009 Letter by William D. Palmer, Chief Judge of Fifth District Court of Appeal, <http://www.5dca.org/Judges/Palmer/GovCrist%20letterOverdueAppointment.pdf>

37 September 2, 2008 letter by Judge Robert J. Pleus, Jr., <http://tinyurl.com/pleuspetsition1>, p.8.

38 November 6, 2008 letter by James H. Fallace, Chair of Judicial Nominating Commission for Fifth District Court of Appeal, <http://tinyurl.com/pleuspetsition1>, p. 10.

39 December 1, 2008 letter by Governor Charlie Crist, <http://tinyurl.com/pleuspetsition1>, p. 11.

40 November 4, 2008 letter by James H. Fallace, Chair of Judicial Nominating Commission for Fifth District Court of Appeal, <http://tinyurl.com/pleuspetsition1>, p. 12-13.

41 January 13, 2009 letter by Governor Charlie Crist, <http://tinyurl.com/pleuspetsition2>, p. 3.

42 January 21, 2009 letter by James H. Fallace, Chair of Judicial Nominating Commission for Fifth District Court of Appeal, <http://tinyurl.com/pleuspetsition2>, 4-5.

43 Petition for Writ of Mandamus, p. 10, <http://tinyurl.com/pleuspetsition1>.

44 *Pleus v. Crist*, 34 Fla. L. Weekly S389 (July 02, 2009).

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