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Message From The Chair

Two Thoughts on Amicus

by Raymond T. (Tom) Elligett, Jr.
Schropp, Buell & Elligett, P.A.
Chair, Appellate Practice and Advocacy Section

One thought. When we hear "amicus" or "amicus curiae" we think of the expression "friend of the court," and about filing a brief in a case in which we do not represent an actual party. But even if we are representing a party in an appeal, shouldn't we still be friends of the court?

Won't our case be more likely to receive the attention we seek if we write a clear and concise brief? Won't our argument be better received if we respond directly to questions from the court?

As friends of the court, shouldn't we consider if the motion we are contemplating filing is a good use of our resources and the court's? Consider the classic opinion in *Dubowitz v. Century Village East, Inc.*, 381 So. 2d 252 (Fla. 4th DCA 1979). The Fourth District criticized the plethora of pleadings filed with it, stating they caused the court to suffer from motion sickness. The final straw prompting that opinion was a party's motion that included a cartoon of a judge telling one lawyer that another lawyer who was smoking could continue to smoke because he was a friend of the court.

As advocates we have a duty to vigorously advance our clients' positions. Wouldn't most experienced appellate lawyers agree that being a friend of the court is usually the best way to be an effective advocate?

A second thought. Last August at

continued on page 2...

The Supreme Court Series, Part III

The Jurisdiction of the Florida Supreme Court

by Gerald Kogan[1] and Robert Craig Waters[2]

Editor's Note: This article is an excerpt from "The Operation and Jurisdiction of the Florida Supreme Court," by Gerald Kogan and Robert Craig Waters. *It was originally published at 18 Nova L.Rev. 1151 (1994), and reprinted in 1995 by the Supreme Court of Florida. It is reprinted here with permission.*

I. An Overview of Jurisdiction

Another major aspect of the Court's day-to-day operations is the exercise of its jurisdiction.[3] It is through exercise of jurisdiction that the Court chooses the cases that it will hear and thus, the kinds of issues that will be decided. Florida's society is shaped by these decisions because the opinions that result from the exercise of jurisdiction create the precedent that will control future cases. Moreover, the bulk of the Florida Supreme Court's jurisdiction is discretionary, meaning that the Court may decline to hear cases falling into particular categories even if it has jurisdiction over them.[4] Accordingly, the Court has significant power to choose the issues it deems most important.

The membership of the Court has

continued on page 2...

INSIDE:

Message from the Chair 2
The Supreme Court Series 2
A Practical Overview 11
Interview—Judge Ryder 12
Updates—DCA 13
Committee Reports 17

CHAIR'S MESSAGE

from page 1

the ABA convention I had the pleasure of participating on an appellate practice panel with two other appellate lawyers and three appellate judges, including Justice Anstead of our Supreme Court.

One of the audience questions was how helpful the judges found amicus briefs. Even though I have authored several amicus briefs and had cases where others were filed, I was surprised on how strongly favorable the judges' comments were. They emphasized the contribution of amicus briefs in cases presenting policy issues. They also observed amicus briefs can be beneficial in cases where one or both sides are under-represented in the briefing.

Amicus briefs. Beneficial to the court. Beneficial to the appellate lawyer who has a paying client with an interest in the case. Beneficial to at least one side of the case. Something for almost everyone.

Amicus counsel may want to note the recent opinion admonishing against arguing the facts, as contrasted to presenting additional information the amicus believes will assist the court, *Ciba-Geigy Limited v. Fish Pedler, Inc.*, (Fla. 4th DCA 1996).

SUPREME COURT

from page 1

been diverse enough that no particular ideology is discernible in the way jurisdiction has been exercised. Jurisdiction in discretionary cases, for example, usually is put to a vote by a panel of five justices, with four votes being necessary to grant review.[5] No single justice can dominate the choice of cases because of this procedure. Moreover, in some discretionary categories such as certified questions of great public importance, the Court routinely grants jurisdiction in nearly every case brought for review by the parties.[6] This practice further mutes any ideological bias that might seek to influence the choice of cases.

A. The Nature of Jurisdiction

Jurisdiction always involves a deceptively simple question: Does the Court have the power to hear and to determine the case?[7] In discretionary cases, a second question must also be addressed: Why should the case be heard?[8] Most of the time the answers are obvious. But there are a significant number of cases that fall somewhere near the outer limits of the Court's jurisdiction. These can be exceedingly complicated, and opinions addressing them often take on the quality of theological abstraction. Yet such cases are highly important in the law because they draw the line between what the Court will and will not hear. Much of the discussion below necessarily involves such cases; for that reason, the remainder of this article is of primary interest to lawyers and persons who may ask the Florida Supreme Court to hear their cases.

To further complicate the issue, the Court's jurisdiction is not really a single unified concept. Rather, jurisdiction falls into five distinct categories, each of which involves somewhat different problems. These categories are: advisory opinions, mandatory appellate jurisdiction, discretionary review jurisdiction, discretionary original jurisdiction, and exclusive jurisdiction.[9] This portion of the article will address advisory opinions and mandatory appellate jurisdiction. Future segments will address the remaining categories.

The exact nature of the Court's jurisdiction is not entirely uniform, but rather, can vary among the categories. The variations are too numerous to include in anything less than a treatise. However, the most important are: (1) the presumptions circumscribing the Court's jurisdiction; (2) the precedential value of decisions and opinions within each category; and (3) the limits placed on the Court's discretion.

1. Presumptions

The presumptions circumscribing jurisdiction depend on a key question: Is the Court's jurisdiction limited or plenary? In a broad but imperfect sense, the Florida Supreme Court is a tribunal of limited jurisdiction.[10] This means that the court is forbidden to exercise any form of jurisdiction not expressly granted to it.[11] Unlike the circuit courts, the Florida Supreme Court does not have a general grant of plenary jurisdiction,[12] which would give the Court authority over any matter not expressly excluded from its jurisdiction.

This is an important distinction. It also is the reason why every well written opinion issued by the Florida Supreme Court begins with a statement establishing the basis of jurisdiction. The Florida Supreme Court cannot act until it finds, in the Florida Constitution, an express provision granting jurisdiction. The circuit court, to the contrary, is presumed to have jurisdiction unless the constitution or statutes say otherwise.[13] Put another way, the jurisdiction of the Florida Supreme Court, being limited, tends to be strictly construed. Unlike the supreme court, the jurisdiction of the circuit courts, being plenary, tends to be liberally construed.

Thus, in close cases, the presumptions would disfavor jurisdiction in a court of limited jurisdiction while favoring jurisdiction in a court of plenary jurisdiction. This has an important consequence. When parties invoke the jurisdiction of the Florida Supreme Court, they usually are fighting against a presumption that the Court cannot hear the case. For example, every petition seeking to establish jurisdiction based on an "express and direct conflict of decision" labors under this presumption, and it is one reason the bulk of these petitions are summarily denied.

However, these limitations are not entirely uniform. The Court's authority may verge on being plenary, at least within the context of certain types of cases. For example, the Court has mandatory exclusive appellate jurisdiction over every final judgment of a trial court imposing a sentence of death.[14] As a result, once the court finds that a case involves the death penalty, the Court, as a practical matter, probably has a form of plenary jurisdiction in that case and the presumption would favor taking the case, even if there is doubt remaining about some jurisdictional nicety.[15] This is particularly true in light of the Court's "all writs" jurisdiction.

2. Precedential Value

Another factor that varies among the five categories is the precedential value of cases. Some types of opinions issued by the Court lack the dignity accorded others. This is especially true of advisory opinions, which, though they may be persuasive, do not establish precedent.[16] Opinions issued pursuant to the Court's exclusive jurisdiction also may lack the binding effect of precedent, but only to the extent that they deal with the Court's administrative and rulemaking functions. The Florida Supreme Court's exclusive jurisdiction to regulate the bench and the bar is somewhat different. Court opinions disciplining judges and lawyers for improprieties may establish a kind of precedent. In practice, however, such cases are so fact-bound that the precedent may be limited.

3. Discretion

Two categories of discretionary jurisdiction, discretionary review jurisdiction and discretionary original jurisdiction, involve a separate problem: the concept of "discretion."[17] Should the Court hear the case? Discretion loosely implies the authority to make a decision as one sees fit, but the term has a somewhat different meaning in the present context. In *The Florida Star v. B.J.F.*,[18] the Court noted that even when a form of discretionary jurisdiction is established, the discretion of the Court to act is not always boundless. Discretion itself can be limited by the applicable law, forbidding the Court to act even though jurisdiction might exist over the case.[19]

Restrictions on discretion are most obvious when the Court's discretionary original jurisdiction is invoked to issue one of the so-called "extraordinary writs." The fact that a petitioner merely asks for mandamus, for example, vests the Court with jurisdiction. However, that is not the end of the matter. Well established law severely restricts the Court's discretion to issue writs of mandamus, as is true of most of the extraordinary writs. Similar restrictions on discretion apply when a petitioner asks the Court to review a case decided by a district court of appeal that allegedly conflicts with another opinion of another Florida appellate court. However, the Court's discretion is generally much broader over the other subcategories of discretionary review jurisdiction.

As a practical matter, lack of jurisdiction and lack of discretion equate to the same thing: The case will not be heard by the Court. This explains the tendency of lawyers and judges to blur the two concepts together, because the distinction usually does not matter. However, there is one very important consequence that justifies the distinction. In some cases, the deadline by which appeals must be taken to the United States Supreme Court hinges on whether the Florida Supreme Court actually had jurisdiction of a case in which it has denied review.

If the Court had jurisdiction but did not exercise discretion, for whatever reason, then the time to take the further appeal is judged from the date the petition was dismissed by the Florida Supreme Court.[20] But if the Court lacked jurisdiction entirely, then the time to take the further appeal is judged from the date the lower court's opinion became final.[21] This is a crucial point for litigants seeking a further appeal to the United States Supreme Court. Thus, lawyers and litigants who hope to preserve all avenues of appeal must be mindful of the distinction between jurisdiction and discretion.

Finally, even when discretion is not limited by the law, the Court still can refuse to hear any case falling within a discretionary category.[22] Typically this occurs because the Court does not believe the case presents an important enough issue or the result was essentially just. For this reason, jurisdictional briefs should almost always argue why the case is significant enough to be heard. It is not enough merely to establish that jurisdiction exists and that discretion is unrestricted for present purposes, except perhaps where the importance of the case is obvious.

B. Invoking the Court's Jurisdiction

The jurisdiction of the Florida Supreme Court usually must be invoked by an affirmative act of one of the parties to the cause. This can occur in several ways. Jurisdiction to issue an advisory opinion is invoked by the Governor or Attorney General by the mere filing of a letter with the court outlining the issues.[23] In the mandatory appellate jurisdiction category, the Court's jurisdiction is automatic in death appeals,[24] and is invoked by notice of appeal and petition in the subcategories. Discretionary review jurisdiction is invoked by filing a petition seeking review. However, in some types of cases, briefing on jurisdiction is not allowed. Finally, the Court's exclusive original jurisdiction can be invoked by petition,[25] and in the case of the decennial review of legislative apportionment, the Attorney General must file the petition.[26]

By far, the largest single category of petitions for review allege that jurisdiction exists because the opinion under review conflicts with an opinion of another Florida appellate court. This category will be discussed in greater detail in a future installment of this article.

II. Advisory Opinions

Any discussion of advisory opinions must begin with the well established rule that they are disfavored.[27] This rule hinges on the nature of advisory opinions. As a broad rule, an advisory opinion is any conclusion of law stated by a court in the absence of a real controversy as to that particular issue.[28] The reasons for this rule are obvious: Courts exist to resolve disputes, not to address questions in the abstract. Thus, the rule against advisory opinions prohibits parties from bringing a spurious lawsuit in order to create precedent. The rule equally forbids judges to invest new law irrelevant to the matters at hand.[29] In this sense, the rule is probably derived, in part, from the doctrine of separation of powers,[30] because the most extreme advisory opinions come close to being acts of judicial legislation.

However, the rule is subject to broad and sometimes poorly defined exceptions, partly because real world controversies often do not fall into the neat categories the rule might suggest. The true extent of controversies may be blurry. Moreover, judicial opinions must be conveyed through the inherently inexact medium of human language, and sometimes it is useful for judges to forecast directions the law is likely to

continued...

take. Forecasting can give people throughout the state some degree of guidance on unresolved questions of law.

There is established precedent, for example, for judges to write what often are called "scholarly" opinions creating an entire analytic framework to resolve particular issues. Opinions of this type almost always go beyond the bare questions presented by the case and rest on thorough research and reasoning contained in the text. As recent cases from the United States Supreme Court have demonstrated, they often are admired, honored, and come in all ideological bents.[31] Thus, the rule against advisory opinions does not apply to scholarly opinions, though such opinions sometimes are criticized for violating the rule.

Florida law also has a long-standing tradition of *obiter dicta*, usually shortened to "dicta," which by definition are statements in a court's opinion that are extraneous or unnecessary to the resolution of the issues.[32] Scholarly opinions, almost by definition, are built on dicta. Moreover, dicta are so common in opinions that a well established body of cases govern their interpretation, and obviously, tolerate their continued use. Thus, dicta are extraneous statements of law that are permissible, though not always taken seriously. Here again, the rule against advisory opinions does not reach so far as to out-and-out prohibit the use of dicta.

In any event, dicta are subject to strong limitations. Courts sometimes say that dicta bind no none, not even the one who wrote them,[33] though this assertion may suggest too much. In actual practice, dicta can have persuasive force in much the same way that a concurring opinion can, at least when they are well reasoned. This is most apparent in scholarly opinions. In other words, dicta should be considered if relevant, can be ignored if poorly reasoned or distinguishable, and gain greater force with repetition. One district court of appeal has even suggested that a dictum stated by the Florida Supreme Court "is not without value as precedent."[34] But this may use the word "precedent" too loosely.

Whatever border separates dicta from advisory opinions has never been finely drawn, and there probably can be no bright line rule. Clearly, dicta can verge into an advisory opinion and thus, may be abused. In broad terms, however, statements that illuminate or place in context any relevant issue probably should continue to be tolerated as a useful feature of opinion writing, especially in forecasting the law's evolution. The rule against advisory opinions would be most applicable to attempts to address wholly irrelevant issues, especially where the effect is legislation.

Even then, other long standing exceptions to the rule against advisory opinions exist. In a few instances, even moot or completely abstract questions can be answered by the Court. For example, the moot-ness doctrine generally requires dismissal of a cause in which the issues have become so fully resolved that any decision will have no actual effect.[35] There is, however, an important exception for moot cases that present important questions capable of repetition yet likely to evade review because they are inherently fleeting in nature. This occurred in the case of *T.A.C.P.* discussed previously. If the Court finds this situation to exist, jurisdiction may be determined as though the controversy had never become moot.[36]

Likewise, the Florida Constitution itself expressly authorizes the Court to consider abstract questions of law and issue advisory opinions to the Governor and Attorney General in two narrow circumstances.[37] Like all advisory opinions, these opinions do not constitute binding precedent, though they can be persuasive.[38] They are authorized by the constitution to deal with situations in which the Court's opinion on an abstract question can advance public interests.

A. Advisory Opinions Requested by the Governor

The Florida Supreme Court may issue advisory opinions to the Governor on any question affecting the latter's constitutional powers and duties.[39] By tradition, the question or matter to the Court on the Governor's stationery.[40] Often, the letter is quite detailed and usually contains an in-depth briefing on the relevant law, including reasons why the Governor believes the questions should be answered in a particular way.

Jurisdiction is mandatory; the Court must hear the case and issue an opinion.[41] Upon receipt, the letter is immediately routed to the chief justice, who will call a court conference to determine if the question can be answered and if oral argument is desired.[42] If the case is accepted, the chief justice then will assign it to an office.[43] In practice, oral argument is usually granted, except where at least four justices determine that the question is unanswerable.[44] Any person whose substantial interest may be affected by the advisory opinion may be permitted to make argument, to file a brief, or both.[45] Time limitations and scheduling of argument lie within the Court's discretion.[46]

An opinion is then issued on an expedited basis after argument can be heard, subject to one exception: The constitution provides that the opinion must be rendered "not earlier than ten days from the filing and docketing of the request, unless in [the Court's] judgment the delay would cause public injury."[47] The opinion is also written in the form of a letter addressed to the Governor and signed by the concurring justices, although the letter will be publish-ed like any other court opinion and included in West Publishing Company's Southern Second series. Any separate concurring or dissenting views are written in the form of a separate letter to the Governor signed by the justices agreeing with that particular viewpoint, and are appended to the majority's letter.

Under the constitution's requirements, in the strictest sense, the Court's discretion to answer a request for an advisory opinion is confined solely to questions of the Governor's constitutional powers.[48] Accordingly, the first issue that must be addressed in each instance is whether the Governor's questions can be answered as framed. If the questions stray beyond constitutional concerns, then the Court lacks discretion and must refuse to answer. There

cannot address issues of the Governor's purely statutory powers.[49]

Over the years, however, the distinction between constitutional and statutory concerns had become fuzzy. In a number of cases, the Court's majority has answered questions about statutory matters if there was some significant and identifiable nexus with the Governor's constitutional powers or duties. For example, the Court has held that the

authority on the meaning of the state constitution, subject to the people's power of amendment.[56] Advisory opinions confined to a question of pure Florida constitutional law are thus far more persuasive than ones that delve into the validity of statutes or into matters regulated by federal law. A "constitutional" advisory opinion genuinely may be able to resolve a future controversy before it can occur, but a "statutory" advisory opin-

quired by law to petition the Court once certain threshold requirements are met.[64] The enabling legislation provides that members of the citizen petition drive must register as a political committee; must submit the ballot title, substance, and text to the Secretary of State; and must obtain a letter from the state Division of Elections that a certain number of verified signatures have been obtained on the petition.[65] At this juncture, the

determining the applicable law. However, the fact that this new form of jurisdiction is only advisory means that any opinion issued by the Court is highly persuasive but not binding. The Court still can entertain a later petition for mandamus provided that it does not attempt to relitigate issues already addressed in the advisory opinion.[72]

The standard for addressing the "single-subject" requirement wavered during the early 1980s but has become more stable recently. All that is required is that the proposed amendment have a logical and natural oneness of purpose, which occurs if all parts of the amendment may be viewed as having a natural relation and connection as components or aspects of a single dominant plan or scheme.[73] The Court also has held that it is not necessarily relevant that the proposed amendment affects more than one provision of the Florida Constitution or more than one branch of government provided it meets the "oneness" standard.[74] This test has been criticized for its subjectivity but remains the applicable standard of review.[75]

The standard for addressing the ballot summary issue has a more stable history. The Court has consistently held that the summary must state in clear and unambiguous language the chief purpose of the measure, but need not explain every detail or ramification.[76] The chief evil addressed by this standard of review is to prevent the voters from being misled and to allow votes to be cast intelligently.[77] For example, the Court has held ballot summaries defective for suggesting that new rights were to be given to the people, when in fact rights were being taken away.[78] Moreover, the failure to include an adequate ballot summary cannot be cured by the fact that public information about the amendment was widely available.[79]

For reasons not entirely clear, the Court has not adopted the practice of answering the Attorney General's questions in the form of a letter signed by the concurring justices, as happens with gubernatorial advisory opinions. Instead, the Court has issued its conclusions in the form of an opinion, possibly because this always was done in the earlier mandamus actions. However, the letter format has the grace of emphasizing the advisory nature of the opinion and the fact that the opinion comes from the justices and individuals and not from the Court as a tribunal. The Court, at some point, might wish to return to the letter format. In any event, this is a matter of sheer form and does not alter the purely advisory nature of the opinion.[80]

III. Mandatory Appellate Jurisdiction

The Florida Supreme Court is vested with mandatory appellate jurisdiction over four narrow categories of cases. These are: (1) death appeals;[81] (2) appeals involving the validity of public-revenue bonds;[82] (3) appeals from the Florida Public Service Commission;[83] and (4) appeals from opinions of a district court declaring a state statute or provision of the Florida Constitution invalid.[84] Jurisdiction in the first three subcategories is exclusive, meaning that no other appellate court can hear the case.[85] All cases brought under the Court's mandatory jurisdiction are called "appeals" as distinguished from "reviews."[86]

The reasons for vesting the Court with some limited forms of mandatory, exclusive appellate jurisdiction are evident. In death appeals, for example, the Court has noted that its mandatory appellate jurisdiction rests in part on the need to ensure uniformity of the applicable law throughout Florida.[87] A lack of uniformity might occur if the various district courts of appeal had jurisdiction subject only to discretionary review in the Florida Supreme Court.[88] Uniformity is essential in death cases because of a variety of federal constitutional restrictions.

The same reasoning applies to bond validations and appeals from the Public Service Commission. Enormous amounts of public money and great potential liability often are at stake in these cases. A determination by the state's highest court is necessary to dispel questions as to whether publicly issued bonds are valid and whether utility regulations and rates are lawful. Without such finality, bonds might be considered a poor risk by investors who might suddenly be cast in doubt by new Court decisions; and, utility services might be impeded by protracted appellate litigation or unresolved doubts in the law. Thus, the framers of the constitution vested the Florida Supreme Court with mandatory appellate jurisdiction to resolve these matters.[89]

A. Death Appeals

The Court's authority over death appeals is one of the most straightforward. Very simply, the Court has exclusive, mandatory jurisdiction over any final judgment imposing a sentence of death[90] and all other matters arising from the same trial and sentencing.[91] Moreover, jurisdiction is automatic, meaning the Court must hear the case even if the inmate sentenced to death does not wish to appeal.[92] This is the only type of supreme court jurisdiction that is automatic. In all others, failure to bring an appeal or to seek review deprives the Court of jurisdiction.[93] A murder conviction resulting in any penalty less than death is appealed to the appropriate district court, with possible discretionary review later in the Florida Supreme Court.

The rare disputes over this form of jurisdiction often relate to the collateral proceedings that almost always follow the conclusion of the appeal. Nevertheless, the Court commonly cites its constitutional jurisdiction over death appeals as a basis for hearing collateral challenges,[94] even though the latter technically do not constitute "appeals" at all. This suggests the plenary nature of the jurisdiction granted once the Court finds there is a final judgment of death in the case, a conclusion reinforced by the Court's habeas corpus and "all writs" jurisdiction.

Interlocutory appeals in ongoing trials that might result in a death penalty are more problematic, and the law in this area remains unsettled. The argument against the Court hearing these cases rests chiefly on the fact that the constitution grants jurisdiction only where there is a final judgment imposing the death penalty.[95] Moreover, in 1979, the Court stated that there is no reason

interlocutory appeals in death cases should not go to a district court of appeal when they involve matters routinely reviewed there, as most do.[96] The Court's 1979 analysis of this issue came prior to the jurisdictional reforms of 1980s and can be questioned on that basis, but the rationale remains sound.

Nevertheless, the argument against interlocutory jurisdiction cannot be called compelling as matters now stand. In 1988, the Court appeared to hold that interlocutory appeals to a district court in a death case become "law of the case" perhaps even when no further appeal to the Florida Supreme Court was possible at the time.[97] This suggestion contradicted, and thus may have overruled, a 1984 holding saying the opposite.[98] The possible result is that the Florida Supreme Court could be deprived of its ability to consider an interlocutory issue that very well might reflect on the validity of a later death sentence; a result obviously contrary to the principle of automatic and full review in death cases.[99] Defense counsel also might deprive the client of a full appeal in the Florida Supreme Court simply by exercising the right to an interlocutory appeal to the district court.

The only reasonable solutions to this problem are to recognize some form of obligatory Supreme Court jurisdiction in interlocutory appeals or to hold, once again, that the law of the case doctrine does not apply in this context. Obligatory jurisdiction could be premised on the Court's jurisdiction over judgments of death or its all writs power. However, either of these approaches strains the constitution's language and risks burdening the Florida Supreme Court's docket with interlocutory appeals from cases that may or may not result in a death penalty. Limiting the law of the case doctrine seems more consistent both with the pre-1988 case law and the language of the constitution itself. Supreme Court jurisdiction requires a final judgment of death, not mere speculation that such a judgment will be entered.[100] Moreover, interlocutory appeals in death cases rarely involve matters the district courts do not routinely consider.

There is a separate method by which non-final orders of trial courts sometimes are directly reviewed by the Florida Supreme Court. On rare occasions the Court has agreed to review such matters by way of writ of prohibition.[101] However, these cases involve the trial court's effort to restrict prosecutorial discretion to seek the death penalty. It is highly unlikely that prohibition would be allowed over more routine issues.

B. Bond Validation

The second form of mandatory, exclusive appellate jurisdiction deals with the validation of bond issues made for some public purpose. Typically, the bonds are issued by governmental units to build infrastructure, to finance public projects, or to advance the public welfare. This type of jurisdiction authorized by the constitution requires enabling legislation,[102] that has now been enacted.[103]

The jurisdictional grant is narrow. The Court has said that is sole function in such cases is to determine whether the governmental agency issuing the bonds had the power to act as it did, and whether the agency exercised its power in accordance with the law.[104] Some procedural time limits are abbreviated in bond cases to allow expedited review.[105]

The determination of legality can include questions that might impugn the bond issue, such as the propriety of an election in which voters approved a funding source securing the issue.[106] Moreover, many types of bonds are proper only if issued for public, municipal, or other specific purposes.[107] But these restrictions are sometimes broadly construed. "Public purpose," for instance, has been found to include even some projects of primary benefit to relatively small segments of the public[108] or even private enterprise.[109] The most famous of these cases involved the validation of bonds for reclamation and water control in the vicinity of Walt Disney World.[110]

C. Public Service Commission Appeals

The third form of mandatory, exclusive jurisdiction governs appeals from orders of the Florida Public Service Commission affecting rates or services of electric, gas, or telephone utilities.[111] Jurisdiction requires enabling legislation, which has been enacted.[112] It deserves emphasis that the orders under appeal must relate to rates or services.[113] Other types of issues often arise in Public Service Commission cases and, therefore, do not fall within the Florida Supreme Court's exclusive jurisdiction.[114]

The enabling legislation adds only a few insights into the Court's jurisdiction. For instance, it specifies that appeal is obtained "upon petition."[115] Additionally, one statute equates the term "telephone service"[116] with "telecommunications company,"[117] thus defining the Florida Supreme Court's jurisdiction to reach most forms of two-way communication for hire within the state.[118] There appear to be no cases addressing whether this statutory definition comports with the strict language of the constitution, which only uses the word "telephone."[119]

D. Statutory/Constitutional Invalidity

The final form of mandatory jurisdiction differs from the other three because it is not exclusive. By definition, cases involving statutory or constitutional invalidity are appealed from a district court decision that has stricken a provision of the Florida Statutes or state constitution.[120] The plain language of the constitution requires that this decision must actually and expressly hold the statutory or constitutional provision invalid.[121] Apparently, it is not enough that the opinion can merely be construed to have reached the same result tacitly.[122] However, commentators have suggested that the Florida Supreme Court might properly exercise this type of jurisdiction in the rare event that a district court has summarily affirmed a lower court's ruling expressly invalidating a statute.[123] One possible basis for doing so could be the Court's all writs jurisdiction.

There was some concern at one point that this form of jurisdiction might only apply when a statutory or constitutional provision is declared facially invalid and not where invalidity was "as applied."[124] However, the Court has not recognized this distinction. "As applied" invalidity has been used as the basis for jurisdiction, though the Court apparently has done so without comment by extension from earlier case law.[125] Before the

continued...

1980s reforms, "as applied" jurisdiction had proven controversial, being disallowed in 1961,[126] but then authorized again in 1963 by a divided court.[127] The practice was reaffirmed in 1979 shortly before the most recent jurisdictional reforms, again by a fragmented court.[128]

Earlier criticisms may still have some merit in that an "as applied" decision invalidates a statute or constitutional provision only in cases with similar facts. Thus, there is a less pressing reason for mandatory review, because the decision under appeal essentially leaves the statute or provision in effect but subject to a fact-specific exception. However, much of the earlier criticism arose from the fact that trial court orders declaring a statute invalid were directly appealable to the Florida Supreme Court.[129] This is no longer the case. In any event, "as applied" cases have been relatively few and probably serve a useful function in settling partial doubts about a statute's enforcement.

In this vein, it also its worth noting that the apparent purpose of mandecided differently by some federal courts. Thus, the Florida Supreme Court's determination of the case would not necessarily be the final word.

Next Issue:

The Supreme Court Series, Part IV—The Discretionary Jurisdiction of the Supreme Court

Endnotes:

[1] Justice, Supreme Court of Florida 1987 to present; J.D., University of Miami, 1955; B.A., University of Miami, 1955. Justice Kogan is currently the Chief Justice of the Supreme Court of Florida.

[2] Law Clerk, Supreme Court of Florida, 1987 to present; J.D., University of Florida, 1986; A.B., Brown University, 1979. The authors express gratitude to the following persons for reviewing drafts of this article, providing information, or suggesting helpful revision: Clerk of the Florida Supreme Court Sid White and Chief Deputy Clerk Debbie Casseaux; Florida Supreme Court Librarian Joan Cannon and her staff; Florida Supreme Court Marshal Wilson Barnes and his Administrative Assistant, Linda Alexander; the Office of State Courts Administrator; Nancy Shuford and Deborah Meyer of Justice Kogan's staff; Jim Logue of the Florida Supreme Court staff; Susan Turner, and the law firm of Holland & Knight. Special thanks to Karl Schultz of the court Administrators staff for providing statistical help on the Florida Supreme Court's docket. General research assistance was provided by

1 So.2d 278 (Fla. 1941).

[8] *See generally The Florida Star v. B.J.F.*, 530 So.2d 286 (Fla. 1988) (holding that Florida Supreme Court has subject matter jurisdiction over appeal of decision of intermediate appellate court expressly citing a statute).

[9] *See* Fla. Const. art. V, §3(b).

[10] *See Mystan Marine, Inc. v. Harrington*, 339 So.2d 200 (Fla. 1976); *Lake v. Lake*, 103 So.2d 639 (Fla. 1958).

[11] *See generally Mystan Marine, Inc.*, 339 So.2d at 201.

[12] *Compare* Fla. Const. art. V, §3(b) *with* Fla. Const. art. V, §5(b).

[13] *See* Fla. Const. art. V., §5(b).

[14] Fla. Const. art. V, §3(b)(1).

[15] *See Tillman v. State*, 591 So.2d 167 (Fla. 1991).

[16] *E.g., Florida League of Cities v. Smith*, 607 So.2d 397, 399 (Fla. 1992).

[17] Discretion can be involved to a lesser extent in other categories of jurisdiction, but the restriction usually is so obvious as to merit little discussion. For example, the Court has no discretion to refuse to hear a proper appeal pursuant to its mandatory jurisdiction. *See* Fla. Const. art. V, §3(b)(1), (2).

[18] 530 So.2d 286 (Fla. 1988).

[19] *Id.*

[20] *Id.*

[21] *Id.* This problem sometimes has been addressed by saying that a court has "jurisdiction to determine jurisdiction." However, the Florida Supreme Court has avoided this type of analysis, which does not really solve the problem. If a court has jurisdiction, then the decision not to hear a case could be construed as retroactively depriving the court of actual jurisdiction over the controversy.

[38] *See Florida League of Cities*, 607 So.2d at 399.

[39] *See* Fla. Const. art. IV, §1(c).

[40] This is consistent with the applicable Rule of Court, which only requires that the Governor's request be in writing. *See* Fla. R. App. P. 9.500(a).

[41] *Id.*

[42] *See* Sup. Ct. Manual of Internal Operating Procedures §II(G)(1).

[43] *Id.* Advisory opinions almost always fall into the "special" category of case assignments.

[44] Fla. R. App. P. 9.500(b)(1).

[45] Fla. R. App. P. 9.500(b)(2); Sup. Ct. Manual of Internal Operating Procedures §II(G)(1).

[46] Fla. R. App. P. 9.500(b)(2).

[47] Fla. Const. art. IV, §1(c).

[48] *Id.*

[49] *See In re Advisory Opinion to the Governor*, 225 So.2d 512 (Fla. 1969).

[50] *See In re Advisory Opinion to the Governor*, 509 So.2d 292, 301 (Fla. 1987) (citing *In re Advisory Opinion to the Governor*, 243 So.2d 573, 576 (Fla. 1971)).

[51] *In re Advisory Opinion to the Governor Request of June 29, 1979*, 374 So.2d 959 (Fla. 1979).

[52] *Id.* at 962.

[53] *In re Advisory Opinion to the Governor*, 509 So.2d at 301-02.

[54] This restriction is self-evident. Advisory opinions deal with abstract questions of law, not the concerns of single individuals not present in the court. "As applied" challenges, by their very nature, require a controversy raised by individuals. *See id.*

[55] *Id.* at 319-20 (Barkett, J., declining to answer questions).

[56] *See The Florida Star*, 530 So.2d at 288; *see also* Fla. Const. art. XI, §3.

[57] *See* Fla. Const. art. IV, §10; *see also id.* art V, §3(b)(10).

[58] The relevant constitutional amendment creating this form of jurisdiction was adopted by the voters of Florida on November 4, 1986, and enabling legislation was approved the following year.

[59] *See* Fla. Const. art. XI, §3.

[60] *See* Fla. Stat. §101.161 (1991).

[61] *See Advisory Opinion to the Attorney General—Limited Political Terms in Certain Elective Offices*, 592 So.2d 225, 227 (Fla. 1991). In early 1994, a case was pending before the Florida Supreme Court in which several parties argued that advisory opinions to the Attorney General may properly address federal constitutional questions. *In re Advisory Opinion to the Attorney General—Restricts Laws Related to Discrimination*, No. 82,674 (Fla. argued Jan. 7, 1994). In effect, these petitions asked the Court to recede from its earlier decision that the constitutional issues are not justiciable. *Advisory Opinion to the Attorney General—Limited Political Terms in Certain Elective Offices*, 592 So.2d at 227. At the time this article was being finalized, no decision had yet been rendered on these petitions.

[62] *Smith v. American Air Lines, Inc.*, 606

continued...

So.2d 618, 621-22 (Fla. 1992).

[63] *See* Fla. HB 195 (1993); Fla. SB 1278 (1993).

[64] Fla. Const. art. IV, §10.

[65] Fla. Stat. §15.21 (1991). The number required is determined by a formula contained in this statute. *Id.*

[66] *Id.*

[67] Fla. Stat. §16.061 (1991).

[68] Sup. Ct. Manual of Internal Operating Procedures §II(G)(2).

[69] *See In re Advisory Opinion to the Attorney General—English the Official Language of Florida*, 520 So.2d 11, 12 (Fla. 1988) (noting case was submitted by letter).

[70] *See Florida League of Cities*, 607 So.2d at 397.

[71] *Id.* at 399.

[72] *Id.* at 398-99.

[73] *Advisory Opinion to the Attorney General—Limited Political Terms in Certain Elective Offices*, 592 So.2d 225, 227 (Fla. 1991) (quoting *Fine v. Firestone*, 448 So.2d 984, 990 (Fla. 1984)).

[74] *Id.* (citing *Weber v. Smathers*, 338 So.2d 819 (Fla. 1976)).

[75] *Id.* at 231 (Kogan, J., concurring in part, dissenting in part).

[76] *Id.* at 228 (quoting *Carroll v. Firestone*, 497 So.2d 1204, 1204-06 (Fla. 1986)).

[77] *Id.*

[78] *Evans v. Firestone*, 457 So.2d 1351 (Fla. 1984); *accord People against Tax Revenue Mismanagement, Inc. v. County of Leon*, 583 So.2d 1373, 1376 (Fla. 1991).

[79] *Wadhams v. Board of County Comm'rs.*, 567 So.2d 414, 416-17 (Fla. 1990).

[80] *See Smith*, 607 So.2d at 399.

[81] Fla. Const. art. V, §3(b)(1).

[82] *Id.*, §3(b)(2).

[83] *Id.*

[84] *Id.*, §3(b).

[85] *Id.*

[86] *See* Fla. Const. art. V, §3(b)(1)(using terms "appeal" and "review" in contradistinction). The distinction apparently has a long history in Florida, where courts sometimes have said that the word "appeal" denotes an appellate proceeding that may be had as a matter of right. *See Sirin v. Charles Pfizer & Co.*, 128 So.2d 594, 597 (Fla. 1961).

[87] *Tillman v. State*, 591 So.2d 167, 169 (Fla. 1991).

[88] *Id.*

[89] *See* Fla. Const. art. V, §3(b)(1), (2).

[90] *Id.*, §3(b)(1).

[91] *See Savoie v. State*, 422 So.2d 308 (Fla. 1982).

[92] *Muehlman v. State*, 503 So.2d 310, 312-13 (Fla.) (citing Fla. Stat. §921.141(4) (1985)), *cert. denied*, 484 U.S. 882 (1987).

[93] There are limited but rare exceptions when the Court exercises its administrative jurisdiction *sua sponte* to make rules and regulate The Florida Bar. Moreover, administrative acts of the Court are not judicial acts, properly speaking.

[94] *E.g., Johnson v. Singletary*, 612 So.2d 575, 576 (Fla.), *cert. denied*, 113 S.Ct. 2049 (1993).

[95] *See* Fla. Const. art. V, §3(b)(1).

[96] *State v. Preston*, 376 So.2d 3, 4 (Fla. 1979).

[97] *LeCroy v. State*, 533 So.2d 750, 754 (Fla. 1988), *cert. denied*, 492 U.S. 925 (1989). *But see Preston v. State*, 444 So.2d 939, 942 (Fla. 1984).

[98] *Preston*, 444 So.2d at 942.

[99] *See id.*

[100] *See* Fla. Const. art. V, §3(b)(1).

[101] *E.g., State v. Donner*, 500 So.2d 532 (Fla. 1987); *State v. Bloom*, 497 So.2d 2 (Fla. 1986).

[102] *See* Fla. Const. art. V, §3(b)(2).

[103] Fla. Stat. §75.08 (1991).

[104] *State v. Leon County*, 400 So.2d 949, 950 (Fla. 1981).

[105] Fla. R. App. P. 9.110(1)(i); *id.* 9.330(c).

[106] *People Against Tax Revenue Mismanagement, Inc. v. County of Leon*, 583 So.2d 1373 (Fla. 1991).

[107] *E.g., State v. City of Orlando*, 576 So.2d 1315, 1316-18 (Fla. 1991), *receding from State v. City of Panama City Beach*, 529 So.2d 250 (Fla. 1988); *see* Fla. Const. art. VII, §§2, 10-17; Fla. Stat. §§75.01-.17 (1991).

[108] *Northern Palm Beach County Water Control Dist. v. State*, 604 So.2d 440 (Fla. 1992).

[109] *E.g., Linscott v. Orange County Indus. Dev. Auth.*, 43 So.2d 97 (Fla. 1983); *State v. Osceola County Indus. Dev. Auth.*, 424, So.2d 739 (Fla. 1982).

[110] *State v. Reedy Creek Improvement Dist.*, 216 So.2d 202 (Fla. 1968) (case arose prior to adoption of the 1968 Constitution).

[111] *See* Fla. Const. art. V, §3(b)(2).

[112] Fla. Stat. §§364.381, 366.10 (1991).

[113] *See id.* §364.381.

[114] *E.g., State v. Lindahl*, 613 So.2d 63 (Fla. 2d DCA 1993). For a discussion of jurisdiction in other types of cases, see *One Year Later*, *supra* note 3, at 230.

[115] Fla. Stat. §366.10 (1991).

[116] *See* Fla. Const. art. V, §3(b)(2).

[117] Fla. Stat. §364.381 (1991).

[118] *See id.* §364.02(7).

[119] *See* Fla. Const. art. V, §3(b)(2).

[120] *See id.*, §3(b)(1).

[121] *Id.* Any direct statement by a district court that a statute or constitutional provision is invalid almost certainly would be construed as a holding and thus part of the decision, even if unnecessary to the case. Review then could be had on that basis. However, the Florida Supreme Court did decline review in one case with peculiar facts. In *Hanft v. Phelan*, 488 So.2d 531 (Fla. 1986), the Court dismissed jurisdiction where invalidity was only one of several alternative holdings and the district court had remanded for an evidentiary hearing to determine which of the holdings was proper in the specific case. *Id.* at 532. Absent the remand for an evidentiary hearing, it seems unlikely that *Hanft* would have been dismissed merely because there were alternative holdings. *Id.*

[122] For a discussion of this "inherent invalidity" argument, see *One Year Later*, *supra* note 3, at 229. As this article notes, the first "inherent invalidity" case in which jurisdiction was denied apparently was *Southern Gold Citrus v. Dunnigan*, 399 So.2d 1145 (Fla. 1981).

[123] *Jurisdiction*, *supra* note 3, at 169-70.

[124] *See id.* at 170.

[125] *See Psychiatric Assoc. v. Siegel*, 610 So.2d 419, 421-22 (Fla. 1992) (accepting jurisdiction for "as applied" invalidity).

[126] *Stein v. Darby*, 134 So.2d 232 (Fla. 1961).

[127] *Snedeker v. Vernmar, Ltd.*, 151 So.2d 439 (Fla. 1963).

[128] *Cross v. State*, 374 So.2d 519 (Fla. 1979).

[129] *See Jurisdiction*, *supra* note 3, at 166.

[130] U.S.Const. art. VI, cl. 2.

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A Practical Overview of Appellate Mediation at the First District Court of Appeal

by Thomas D. Hall

The pilot mediation program at the 1st DCA gives attorneys and their clients an opportunity to attempt to negotiate a mutually satisfactory settlement of their dispute, while simultaneously pursuing their appellate rights. The program does not operate under a set of formal rules, but operates pursuant to general administrative orders adopted by the Florida Supreme Court and the First District Court of Appeal. Eligible cases include all fully counseled civil, administrative, and workers' compensation cases. Counsel for appellants and appellees in eligible cases receive a request for preliminary mediation information shortly after filing their notice of appeal. This request is designed to elicit responses that do not require more than 30 minutes, providing the mediation officer with enough information to enable her to select cases appropriate for the process. The responses from both appellant and appellee are due within 10 days from the date of the request. Appellant must respond to all of the questions. Appellees are required to respond only to the question that asks that they inform the mediation officer whether they feel that mediation would be appropriate and beneficial. The response to that question may be made confidentially to the mediation officer and need not be provided to opposing counsel. Upon receipt, the responses are reviewed by the Court Mediation Officer, who then selects cases that she determines are appropriate for mediation. When a case is selected for mediation, counsel for both parties receive written notification of the selection, advising the date and time of the initial conference and providing instructions on how to proceed. Mediation conducted by the Court Mediation Officer will be at no cost to the parties. Unless all parties and their counsel are located within 70 miles of Tallahassee, mediation will be conducted by telephone conference call, with all calls being initiated by the Court Mediation Officer, utilizing the sophisticated phone system that was purchased for that purpose. This will eliminate any toll charges to the parties. Upon notification that a case has been selected for mediation, the parties' participation in the process is mandatory. The case then proceeds *in tandem* on two separate tracks; attempts to facilitate a mediated settlement of the dispute occur simultaneously with the uninterrupted appeals process. It is important to stress that the Court is completely unaware of which cases have been selected for mediation. The Mediation Office operates independently of the court, and everything related to the mediation process is completely confidential. All attempts are made to schedule initial mediation conferences prior to the time briefs are due to maximize the economic benefit of mediation. The fact that mediation has been scheduled in a case does not operate to alter or extend the briefing schedule. Mediation must never be mentioned in any pleading or communication that is filed with the clerk for any reason, including as the basis for an extension of time to file a brief. Mediation attempts may continue throughout the appellate process, up to and after oral argument, but prior to judicial decision. The Mediation Officer has ex parte communications with both parties as she deems necessary to attempt to resolve the dispute. The Mediation Officer attempts to resolve the entire dispute between the parties, not just appellate issues.

The role of the Mediation Officer is to facilitate communications between the parties during joint mediation sessions and then assist the parties in evaluating the merits of their cases and their positions during separate sessions. During separate sessions the Mediation Officer focuses the parties and their counsel on the evaluation of their positions in consideration of the standard of review that will be employed by the Court and the resultant scope of appellate review. The success and effectiveness of the process is facilitated by the mediator having a clear concept of the position each of the parties takes prior to the mediation conference. For that reason, counsel for the parties are required to submit a mediation summary to the mediator prior to the initial conference, setting forth the facts of the case and identifying the statutory and case law authority upon which they rely in support of their positions. The mediator reviews each mediation summary carefully and reads and becomes thoroughly familiar with all statutory authority and case law cited in support of each party's position prior to the initial mediation conference. Because the objective of mediation is to provide the parties with an opportunity to reach their own decision about the resolution of their dispute, active party participation in the process is essential and is required.

Anyone desirous of obtaining more information about the program is encouraged to contact Donna Riselli Gebhart at the Court Mediation Office of the First District Court of Appeal. Ms. Gebhart will be pleased to respond to your individual questions or to address your group.

Interview

A Few Words With Judge Ryder

Judge Herboth Ryder retired from the Second District Court of Appeals in December. Judge Ryder agreed to a role reversal and was questioned by Donna Koch and Tom Elligett of Schropp, Buell & Elligett in the following interview from October 1995.

Q. *We know from your resume that you served as a special agent in the Office of Special Investigations in the Air Force during the Korean War. Did that prepare you for what you were to face as an appellate judge?*
A. While I did work in the counter-intelligence branch of the OSI, my undergraduate training in journalism at FSU really prepared me for the OSI and a career in law. As a journalism student, I was trained to ferret out information. Journalists and lawyers are both taught to be somewhat skeptical.

Q. *On a more serious note, what are your plans once you retire from the Court?*
A. Mary Lou, my wife, and I have about eight acres on the Santa Fe River in north central Florida. We have made a lot of friends over the years in that area and plan to build a house next to our cabin and relocate there.

We'll continue to visit in Tampa where we have family and friends. I will go on senior status with the court and be available when needed there.

Q. *Were there any types of cases you especially enjoyed hearing on the court?*
A. Yes, I particularly enjoyed criminal cases and tort cases. My first four years as a county judge were spent in the Court of Record which heard only criminal cases.

Q. *What differences did you notice when you moved from the trial bench to the appellate bench?*
A. There is a big difference between being a trial and appellate judge. At the appellate level, as I was so counselled by now Justice Grimes during my early days on this Court, you don't have to decide the facts anymore. This allows the appellate court to focus on the legal issues.

Judge Ryder receives a plaque presented on behalf of the Section by Chair Tom Elligett and Council member Bonnie Kneeland.

Q. *Do you have a favorite case that came before you on the Court?*
A. There have been many interesting cases. One case in particular where the Court's decision had a huge effect on two peoples' lives was the Miller/Jent case involving access to public records. The case involved the criminal records of two men who were sentenced to die. The sheriff's office had refused to release the records to the men and the media who wanted access to these records. The Court allowed access on the grounds the convictions had occurred and the case was no longer ongoing. As it turned out, this eventually showed these defendants had not committed the crime and they were released. This decision had a tremendous effect on these men's lives and justice was served.

Q. *What advice would you give to a lawyer with regard to her or his first appellate case before the Second District?*
A. Sit and observe an oral argument prior to your argument to see how it is done and to get the feel of the Court. See how the questions are asked and answered and notice the Court's reaction to the answers. Observe the dress of the lawyers. Have respect for the Court.

Q. *How often did you find your preliminary view of a case changed by oral argument?*
A. It depends on the briefs. If the briefs are well written with succinct points, oral argument will not likely change the judge's opinion. However, if there are complicated facts, oral argument can help. Oral argument can also help where the brief fails to cover certain points. I have had cases where my mind was changed by oral argument.

Q. *Could you describe the growth in the Second District's case load?*
A. In 1995 we had the largest appellate case load in Florida with 5,300 cases filed. We have over 4,200 cases filed through October 16, 1996. The Second DCA has 30% of the population of the state. We have fourteen judges and cover fourteen counties.

Q. *How is the Court doing on coping with that case load?*
A. Even with this case load the Second District keeps pace with the files. We have not yet violated the 180 day rule. In fact, we have our own 90 day rule and cases which still have not been decided are placed on a list. Believe me, no one wants to see their name on that list.

Q. *What is the civil / criminal mix in the case load?*
A. Interestingly, we are the only district with a 60% criminal, 40% civil case load. Every other district is the reverse.

Q. *Do you favor curtailing arguments to address the case load?*
A. I would never limit oral argument in final appeals and I do not think the Second District will ever curtail oral argument. Of course, oral argument in nonfinal appeals and writs is rare.

Q. *What is your reaction to the increase in appellate specialists?*
A. I don't want my answer to sound elitist, and I am not trying to be so. People who specialize in appellate practice do a better job. A trial lawyer often thinks something was in the record because he or she remembers it from trial, but many times it was not part of the record. An appellate specialist knows more about the rules, the procedure and what might be of concern to the judges. The judges that see the same attorneys get to know them better. Plenty of trial lawyers can do the job well, but because they don't appear often, their clients' interests could be better

served with a specialist.

Q. *What significant developments have you seen in appellate practice and appellate courts during your tenure on the Court?*
A. The advent of computer research, going online. Several years ago the state legislature funded a state computer system for the courts making research faster and more detailed.

The passage of sentencing guidelines has had a tremendous impact on the criminal area. And the guidelines keep changing.

Q. *To what extent do judges on the Second District discuss the cases before oral argument?*
A. When I first became a member of the Court, we never discussed the cases. Now there may be some talk before oral argument, but not on the merits. It would only be about whether a cited case stood for the proposition for which it was cited.

Q. *Could you describe the discussions after oral argument?*
A. Immediately following oral argument, we caucus around the table in chambers behind the bench. The senior judge on the panel calls the cases. The assigned judge speaks first and opines on how she or he would rule. The assigned judge has often done additional research beyond the briefs. The assigned judge recommends a decision with or without a written opinion. Then the least senior judge of the three gives her or his analysis and if it differs, justifies the reason. The most senior judge speaks last and is also the last to sign off the case once the opinion is written.

Q. *What follows the discussions, with regard to opinion writing?*
A. Assuming she or he is in the majority, the assigned judge writes the opinion and circulates it to the two other panelists. If the judges do not agree, they may write a dissent immediately. Any dissent is also circulated. The judge with the primary assignment might request another meeting, but any member of the panel may request one. Sometimes a dissent can change the opinion and sometimes the dissent disappears. Collegiality is important, but not so important that the opinions are compromised.

Q. *In recent years the legal profession has shown an increased attention to civility and professionalism. Have you found a decrease in these qualities in lawyers appearing before the Court?*
A. There has been a decrease in civility among lawyers, but not to a great extent. Actually, among appellate lawyers, I have not seen a decrease in civility. We are blessed. The lawyers know they are going to be back in front of us and they know each other better.

Q. *What do you consider the most significant development in the practice of law in Hillsborough County since you served as Hillsborough County Bar Association President in 1969?*
A. The influx of women and minorities in the practice of law. This change reflects real life more fairly. There are also more women and minority judges which is also fairer.

Q. *You are known for a good sense of humor and appreciation of a good joke. Could you share a favorite legal anecdote?*
A. Yes, I do enjoy humorous stories regarding our profession. In fact, I keep a file of amusing legal anecdotes. Did you hear the one about. . . .

Updates—Inside the District Courts of Appeal

First District

Judge Earl E. Zehmer died in May 1996. Judge Edward T. Barfield has been elected chief judge of the First District to fill the vacancy left by Judge Zehmer's death. He will serve until June 30, 1997.

William A. Van Nortwick, Jr. Judge Van Nortwick was appointed to the First District in 1994 after 24 years in private practice in Jacksonville. A native of North Carolina, Judge Van Nortwick received his undergraduate degree from Duke University before earning his law degree with honors from the University of Florida. As a recipient of the American Bar Association Pro Bono Publico Award, The Florida Bar Pro Bono Award for the Fourth Judicial Circuit, and The Florida Bar Presi-dent's Award of Merit, Judge Van Nortwick's dedication to public service is evident. He has served as a member and President of the Board of Directors, Florida Legal Services, Inc., Chair of The Florida Bar/Florida Bar Foundation Joint Committee on the Delivery of Legal Services to the Indigent in Florida, as well as many other state and local Bar committees including The Florida Bar Committee on Pro Bono Legal Services.

Second District

Since the original article was written in 1994, Judge Frank has stepped down as Chief Judge and Judge Threadgill has assumed the responsibilities of Chief Judge. Judge James W. Whatley was appointed to the court in January 1995 to fill the vacancy left by the retirement of Judge Vincent T. Hall. In September of 1996, the Governor appointed Stevan T. Northcutt to fill the vacancy left by the retirement of Judge Herboth S. Ryder.

In 1994, there were 4,648 new filings and 4,430 dispositions. The number of filings increased again in 1995 with 5,288 new filings and 5,270 dispositions. The percentage of criminal filings remained at approximately 60%.

James W. Whatley. Judge Whatley

was born in Miami, Florida on May 12, 1947. He is married to Pamela Fewell, and they have two children—Angela and Derek.

He received his B.B.A. degree in Management from the University of Miami in 1969 and his J.D. from the University of Miami in 1972.

From 1972 to 1981, he was a partner in the Miami firm of Manners, Amoon, Whatley & Tucker. From 1982 to 1988, he was a partner in the Sarasota County firm of Kanetsky, Moore, DeBoer & Whatley.

Judge Whatley was Board Certified in Civil Trial Law by The Florida Bar and is past president of the Venice-Englewood Bar Association. He was also a founding member of the John Scheb American Inn of Court in Sarasota.

Governor Martinez appointed Judge Whatley to the Twelfth Judicial Circuit in January 1989, where he remained in office until he was appointed to the Second District Court of Appeal in January 1995 by Governor Chiles.

Judge Whatley presently serves on the Education Committee of the Court and is the Chairman of the Memorials and Retirement Committee.

Family, and Probate Law; and its Subcommittee on Court Systems. During that period Judge Northcutt was also selected to staff the House Select Subcommittee on the Florida Evidence Code, the House Select Subcommittee on the Impeachment of Circuit Judge Sam Smith, and the House Board of Managers, which prosecuted the resulting impeachment action before the Florida Senate.

Judge Northcutt entered the private practice of law in November 1978, as an associate at Levine, Freedman, Hirsch & Levinson, P.A., in Tampa. He attained partnership in that firm in 1984. Two years later, he helped form Levine, Hirsch, Segall & Northcutt, P.A., and practiced as a shareholder in that firm until his appointment to the bench.

Throughout his career as an attorney, Judge Northcutt concentrated his practice in the field of appellate advocacy, both civil and criminal, state and federal. He developed a statewide practice, and lectured and published often on topics related to appellate practice and family law. He is a long-standing member of The Florida Bar Appellate Court Rules Committee, and also serves on its Subcommittee on Family Law. He was a charter member of The Florida Bar Appellate Practice and Advocacy Section, and was the first chairman

County communities. The Hillsborough County Commission has appointed him to the County's Charter Review Board, its Citizen's Advisory Committee to the Hillsborough County Commission, and the Arts Council of Hillsborough County. By gubernatorial appointment, Judge Northcutt served on the Hillsborough County Law Library Board.

In the private sector, Judge Northcutt has devoted his energies to organizations involved in aging and end-of-life issues. He once served on the board of directors and was president of Older Adult Services, a Tampa-based private non-profit organization that furnished a variety of services to the frail elderly. For many years, Judge Northcutt has volunteered his time to the Hospice of Hillsborough, Inc. He sits on its board of directors, and was its chairman from 1994 to 1996.

In September 1996, Governor Lawton Chiles appointed Judge Northcutt to the Second District Court of Appeal beginning January 6, 1997, to fill a vacancy left by the retirement of Hon. Herboth S. Ryder.

Third District

In 1994, there were 3,102 new filings and 3,023 dispositions. The number of filings increased in 1995 with 3,772 new filings and 3,484 disposi-

place, pause to reflect upon the life and career of Judge Natalie Baskin:

Natalie Baskin was born on August 12, 1930, in Brooklyn, New York. She grew up during the Depression. She moved to Miami with her parents in 1948. She attended the University of Miami and received her Bachelor of Arts degree in 1951. While at the University, she met Leonard Baskin, who would become her husband. After successfully owning and operating an art gallery for a number of years, Natalie Baskin became one of the first women to attend law school; she graduated from the University of Miami School of Law in 1965.

After nine years of practicing civil and criminal law in Dade County, Natalie Baskin was elected to the Eleventh Judicial Circuit Court in November 1974, and was appointed by Governor Reubin Askew to fill an unexpired term. Her service as a trial judge was marked by her fairness and impartiality.

Judge Natalie Baskin was appointed to the Third District Court of Appeal by Governor Bob Graham in January 1980. She was the first woman to serve on this Court. Judge Baskin was retained by the electorate in 1982, 1988, and 1994. During her tenure, Judge Baskin was appointed by Justice Parker Lee McDonald to serve on the Gender Bias Study Commission. She was an Ad Hoc Member of the Judicial Qualifications Commission, was voted President-Elect of the Florida Conference of District Court of Appeal Judges in 1991, and was President of the Conference in 1992-1993. Judge Baskin was the author of numerous legal articles.

Judge Baskin was a kind and gentle woman. She was a caring individual who treated all persons equally well, regardless of their background, or station in life. Judge Baskin always strove to ensure that the law was applied fairly and justly; her sensitivity for observation of human rights and due process were well known.

Judge Natalie Baskin authored many opinions during the sixteen years she served on the Third District Court of Appeal. These opinions are printed in Volumes 380 through 668, in the Southern Reporter, Second Series, of the National Reporter System. Judge Baskin was an asset to the court, a person who could be relied on to maintain the collegiality and dignity of the court. She was a friend and colleague whom we were honored and privileged to know. She will be missed.

NOW, THEREFORE, BE IT RESOLVED, by the Judges of the District Court of Appeal, Third District of Florida, at this ceremonial session held in Miami, Florida, on the 28th day of June, 1996, that we adopt this Resolution to memorialize the great contributions made to humankind by the late Judge Natalie Baskin in her lifetime, and to express our profound sense of personal and official loss at her passing.

BE IT FURTHER RESOLVED that the Clerk of this court be and he is hereby directed to spread this Resolution upon the permanent records of this Court, and to present a certified copy to the Baskin family.

John G. Fletcher. After release from active military duty in March 1963, Judge John G. Fletcher, who had been admitted to The Florida Bar in 1962, joined the Pinellas County Attorney's office where he practiced as an assistant county attorney (and chief assistant) until August 1967. While in the Pinellas County Attorney's office, he was admitted to the United States District Court for the Middle District of Florida and the Florida Public Service Commission. In August 1967, he joined the Dade County Attorney's office as an assistant county attorney (later a first assistant), practicing there until August 1973. While there, he was admitted to the United States District Court for the Southern District of Florida, the United States Fifth Circuit Court of Appeals and the United States Supreme Court.

Judge Fletcher began his own private practice in 1973, remaining a sole practitioner until Governor Lawton Chiles appointed him to the Third District Court of Appeal in 1996. During his private practice, he was the City Attorney for the City of Naples and the City of Sweetwater and represented various governmental agencies as special counsel, including the municipalities of North Miami, Miami Beach, Hialeah, Hialeah Gardens, Miami Springs, and North Bay Village. He was also special counsel to the Dade County School Board and to the Broward County Expressway Authority.

Judge Fletcher practiced throughout the state representing private clients in matters related to governmental law, including eminent domain, land use, election, and property tax matters. He was general counsel to the Sanibel-Captiva Island Water Association from 1978-85.

Judge Fletcher taught state and local taxation as an assistant adjunct professor at the University of Miami (1971-73). He also lectured at various continuing legal education seminars on local government, environmental law, land use law and professional ethics. Since 1989, he has been listed in The Best Lawyers in America.

Born in Philadelphia, Pennsylvania, in 1937, Judge Fletcher moved with his parents to Dunedin, Florida in 1952. He graduated from Clearwater High School in 1955, received his B.A. from the University of Miami in 1959, and his law degree from the University of Florida in 1962. He married Donna Gould Fletcher in 1965 and they have two children, John G. Fletcher III and Rebecca L. Fletcher.

Robert L. Shevin. Judge Robert L. Shevin was appointed to the Third District Court by Governor Chiles as of June 24, 1996. Judge Shevin was a senior litigation partner in the Miami office of Stroock & Stroock & Lavan prior to being appointed to the Court. Judge Shevin entered the public arena in 1964 when he was elected a member of Florida's House of Representatives. From 1966 to 1970, Judge Shevin served as a Florida State Senator representing Dade and Monroe Counties, and chaired the Florida Legislature's Select Committee to Investigate Organized Crime and Law Enforcement. Judge Shevin was elected Attorney General of the State of Florida in 1970 and was re-elected, without opposition, to a second four-year term in 1974. He was the first Attorney General to argue and try cases on behalf of the State of Florida before the United States Supreme Court, the Florida Supreme Court, United States Circuit Courts of Appeal, United States District Courts, and various Florida District Courts of Appeal. He personally argued and won two cases in the United States

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Supreme Court, one upholding the constitutionality of Florida's death penalty law, and the other upholding the constitutionality of Florida's far-reaching Oil Spill Prevention Act.

In 1979, Judge Shevin resumed the private practice of law. He also served as the City Attorney for the City of Miami Beach in 1979-80. From January 1979 to February 1988, he was a shareholder in the firm of Sparber, Shevin, Rosen, Shapo & Heilbronner. He then moved to Stroock & Stroock & Lavan.

Judge Shevin maintains memberships in the Florida, Dade County, American, and International Bar Associations. He is also a member of the American Trial Lawyers Association, the Society of Attorneys General Emeritus, and the American Judicature Society.

An active community leader, Judge Shevin has served as Chair of the Interim Committee on Crime & Law Enforcement, Chair of the Housing Finance Authority of Dade County, and Chair of the Florida State Athletic Commission. He also serves on the Board of Dade Partners for Safe Neighborhoods.

Judge Shevin has been a member of the Legislature's Interim Study Committee on Urban Affairs, the Florida Tax Reform Commission, the Florida Constitutional Revision Commission, Florida Citizens Against Crime, Florida Crime Commission, Judicial Reform Committee, Florida Senate's Sunshine Advisory Committee, Board of Trustees, Beacon Council, the Federal Judicial Nominating Commission of Florida (1995-96), Florida Bar Judicial Administration, Selection and Tenure Committee (1995-99).

Judge Shevin was born in Miami, Florida, on January 19, 1934. He is married to Myrna Bressack; they have three children, Laura, Hilary, and Harry, and three grandsons.

Judge Shevin earned his B.A. from the University of Florida in 1955, and graduated Magna Cum Laude in 1957 from the University of Miami School of Law. While at the University of Florida, he was a member of Florida Blue Key and the Hall of Fame. At the University of Miami, he was President of the Student Bar Association, a moot court competition winner, an editor of the University of Miami Law Review, and a member of Phi Delta Phi Law Fraternity and Iron Arrow. He was also the recipient of several Book Awards for Excellence.

Fourth District

The Fourth District has made several significant changes in procedure. The court has adopted the use of docketing statements, and now screen all cases requesting oral argument. The court also now requires a request for oral argument to state reasons why the court should grant it. Further, the court has adopted expedited procedures for handling adoption/termination cases and its "Fasttrack" method of handling cases is seldom if ever employed anymore. In an effort to improve its computer capabilities, the court is emphasizing its request that a floppy disk of briefs be filed. The Fourth District now has a home page on the internet. The address is http://justice.courts.state.fl.us/courts/4dca. In

Robert M. Gross. Judge Gross is the court's newest member. He was born and raised in Washington, D.C. He is married and the father of two sons.

Judge Gross received his undergraduate degree from Williams College in 1973 (Phi Beta Kappa, Magna Cum Laude), and his law degree from Cornell Law School in 1976. It was in law school that Judge Gross met Professor Irving Younger who ignited his interest in evidence and trial practice.

Judge Gross was appointed to the Fourth District Court of Appeal on November 10, 1995 by Governor Lawton Chiles. Prior to his appointment, he served four years as a circuit judge in the civil and family divisions. Before his elevation to the circuit court, he was a county court judge for seven years, serving as the Administrative Judge from 1988 to 1990.

Judge Gross began his legal career as an Assistant District Attorney under Robert Morgenthau in New York County. He served as an Assistant State Attorney in Palm Beach County and worked as an associate attorney with the West Palm Beach law firm of Moyle, Jones & Flanigan from 1981 through 1984.

Judge Gross served on Governor Chiles' Task Force on Criminal Justice and Corrections which issued its final report in 1995. He has been a faculty member of the Florida Judicial College since 1989, teaching evidence and building a judicial style.

Fifth District

The Fifth District Court suffered the loss of Judge George Diamantis in 1995. He was succeeded by Judge John Antoon. The court also acquired a new marshall, Ty Berdeaux, who replaced Marsha Lewis in that post.

John Antoon II. Judge Antoon joined the court in August 1995. He received his undergraduate degree cum laude from Florida Southern College and earned his law degree from Florida State University College of Law. Recently, Judge Antoon received a Masters of Science Degree from the Florida Institute of Technology.

Judge Antoon's legal career included service as an Assistant Public Defender, Assistant City Attorney, Prosecutor and Hearing Officer in the City of Cocoa, as well as the private practice of law. In 1985, he became a judge for the Eighteenth Judicial Circuit where he served as Chief Judge in 1991, 1993, and 1995.

Judge Antoon is active in the American Inns of Court and was named Master Emeritus of the Vassar B. Carlton Inn of Court. He has also been active in the Bar both on a state and local level. Some of his many activities include service as President of the Brevard County Bar Association, Chair-Elect of the Florida Conference of Circuit Judges, membership on the Governor's Task Force on Domestic Violence, membership on the Board of Directors of the Brevard Legal Aid Society, and Commissioner of the Fifth District Court of Appeal Judicial Nominating Committee. Judge Antoon presently serves as an Instructor at the College of Advanced Judicial Studies and in the past has taught at the Florida Judicial College, the University of Central Florida, Brevard Community College, the American Institute of Banking, the Florida Institute of Technology and Rollins College.

Judge Antoon's service to others is reflected by the many honors bestowed upon him during his career including the Marjorie Olsen Child Advocacy Award for distinguished service on behalf of Children's Council, the Brevard County Bar Association President's Award for Efforts in Assuring Safe and Adequate Access to Courts, Distinguished Service Award of the Florida Council on Crime and Delinquency, and the Florida Department of Corrections Award of Merit for Outstanding Service as a Judge.

Committee Reports

Appellate Court Liaison Committee

The major project currently being undertaken by the Appellate Court Liaison Committee is putting together a seminar on per curiam affirmances without opinion. "PCAS," as they are affectionately (or not so affectionately) known, seem to raise heated feelings among members of the bench and bar. The purpose of the seminar, which we anticipate will be presented at The Florida Bar's midyear meeting in Miami on January 23, will be to explore why particular cases are selected for PCA treatment, what purposes PCAs serve, what purposes are disserved by PCAs, what alternatives exist to serve the same purposes, perhaps in a more effective way, to discuss what steps counsel can legitimately take when an adverse PCA is received, and generally to open lines of communications between bench and bar on the whole subject matter.

We anticipate beginning the program with a roundtable discussion among the panel members, followed by a question and answer session encouraging questions from the floor. A reception will follow the program.

Several sitting District Court Judges have agreed to participate in the panel, along with two appellate practitioners and two former District Court Judges who have returned to private practice. We hope the seminar will spark a lively discussion and promote a dialogue between bench and bar on this controversial topic.

CLE Committee

The following were discussed at the meeting of the CLE Committee held at the Bar's General Meeting on September 5, 1996:

Appellate Section's "Flagship" Seminar. The flagship program steering committee is being chaired by Tom Hall. Other members include Marisa Mendez, Jennifer Carroll, Kathryn Pecko, and Jack Aiello. The program is scheduled to take place on November 21 and 22, 1996 (Tampa, live; Miami, live and taped). The program is essentially set. Topics include various segments on the new appellate rules, the Criminal Appeals Reform Act of 1996, ethics and professionalism in the appellate arena, appellate attorneys' fees, extraordinary writs, appellate mediation, and appellate certification. The slate of speakers is a distinguished one, highlighted by the appearance of two Supreme Court justices and judges from four of the five appellate districts. Among the speakers are the Honorable Larry A. Klein (4th DCA), Honorable Marguerite H. Davis (1st DCA), Honorable Gerald B. Cope, Jr. (3rd DCA), Honorable Jacqueline R. Griffin (5th DCA), Justice Harry Lee Anstead, Justice Charles T. Wells, Thomas Hall, Nancy A. Daniels, Laurie Waldman Ross, Donna Riselli Gebhart, and Benedict P. Kuehne. The opening remarks will be contributed in Tampa by Tom Elligett, and in Miami by Jack Aiello.

Appellate Practice Certification Exam Review Course. Bonnie Kneeland, who is once again chairing the program, will be joined by Cindy Hofmann on the steering committee. The committee continues to welcome an additional volunteer, if one is available, to lessen Cindy's burden on the committee in the 1998 program. The course is scheduled for February 14, 1997, in Orlando. Tom Hall raised the possibility that a worker's compensation segment would need to be added to the course this year. Tony Musto suggested that the issue should be studied because he was not sure that a full segment would be required on the topic. The steering committee will look into this matter.

Federal Appellate Seminar. The steering committee for the Federal Appellate Seminar includes co-chairs Kathryn Pecko and Hala Sandridge, Steve Wisotsky, Jennifer Carroll, and Paul Gayle-Smith. The Eleventh Circuit has been consulted about scheduling, and the date chosen for the seminar is March 21, 1997, in Orlando. One idea suggested at the meeting is to hold the seminar at a hotel near Disney World and to market it with that attraction in mind. In addition, a suggestion was made that the out-of-state practitioner's section be consulted about a possible co-sponsorship.

Co-Sponsorships. Several co-sponsorships are already being discussed or negotiated, and the Appellate Section continues to welcome proposals from other sections about possible additional co-sponsorships. First, the Government Lawyers Section "1997 Rules of Court" seminar, scheduled for January, 1997, will be co-sponsored by the Appellate Section. Kathryn Pecko is serving as the steering committee and will coordinate the Appellate Section's contribution in the form of speakers on the subjects relating to appellate rules changes with the Government Lawyers Section. Second, the Government Lawyers Section will hold a forfeiture seminar in May, 1997, similar to last year's seminar. Paul Gayle-Smith shall serve as the steering committee and will coordinate the Appellate Section's involvement in what should be a repeat performance of last year's co-sponsorship. Third, the criminal law update, which was tentatively scheduled for the middle of April 1997, but which may be moved, will be co-sponsored by the Appellate Section. Stuart Markman and Steve Mason comprise the steering committee for the Appellate Section. Finally, Cindy Hofmann is serving as the steering committee for a possible co-sponsorship in the Appellate Practice for General Practitioners Seminar, presently scheduled for April 18,

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1997. The Committee, considering an issue that had been left undecided at the last meeting, determined that the Appellate Section should be involved in this seminar. The extent of the Appellate Section's involvement and the financial arrangements have yet to be determined.

Other Business. Tom Hall brought before the Committee an idea for a future seminar based upon a multiple-day intensive NITA-style "learning-by-doing" approach. The Committee favored researching the idea, including whether a sufficient market is present and identifying the alternative financial arrangements under which such a seminar could be held. Tom Hall is serving as the chair of the informal "exploratory" committee to begin studying the feasibility and desirability of such a program. Tom Elligett put forth the idea of including a discussion of appellate fee agreements as either an issue in a 1997 appellate seminar or as part of a new seminar aimed at practical aspects of maintaining an appellate practice. Hala Sandridge received information about appellate fee agreements and will initially study the idea. Finally, Jackie Werndli advised that for purposes of the 1997-98 budget, The Florida Bar has tentatively budgeted the three programs which the appellate section is holding as primary sponsor this year: the Section's "Flagship" Program, the Federal Appellate Seminar, and the Certification Review Course.

The next meeting of the CLE Committee will be at the mid-year meetings in January 1997. It is likely that the Executive Council will meet in the afternoon, and the CLE Committee will meet once again in the morning. The exact time and place will be announced later.

Criminal Appellate Practice Committee

Practice Tips. Last year, several committee members expressed interest in putting together practice tips for attorneys litigating criminal cases in Florida's appellate courts. The idea was to supplement the appellate rules and the court-by-court internal operating procedures already published in the Florida Appellate Practice Guide.

Fleur Lobree agreed to spearhead this effort and has begun contacting attorneys in each of the state's appellate districts for practice suggestions. The goal will be to obtain suggestions from a cross-section of attorneys. We also discussed a vehicle for publishing these tips. Fleur will contact the Section coordinators for the Florida Appellate Practice Guide to see whether there is interest in including the practice tips in next year's issue—this may entail expanding the tips to the civil arena and, if so, Fleur will contact the Civil Appellate Practice Committee of our Section for their input. Additionally, Fleur is looking into at least one article for The Florida Bar *Journal* on these practice tips.

Fleur Lobree has made excellent progress on the Practice Tips project since the September meeting. She's spoken with a number of people, who are very enthusiastic, and we are directing our efforts towards one of two articles for The Florida Bar *Journal* and perhaps articles in *The Record*. She is working with the Civil Appellate Practice Committee and may even be able to secure the involvement of other sections.

This will be a big project—and probably our committee's major contribution this year—so if anyone is interested in working with her, please call Harvey Sepler or Fleur Lobree.

CLE seminars. Last year's committee also expressed interest in putting together CLE seminars. Angie Zayas agreed to chair a CLE project to explore placing our committee members on seminars sponsored by other sections. For example, Angie will be speaking with the Young Lawyer's Section and the General Practice Section. Perhaps the Trial Lawyer's Section may also be interested. The goal here will be to supplement the Appellate Practice Section's commitment to co-sponsoring CLE seminars for other sections not ready to co-sponsor a seminar with our Section. Establishing a presence in one of their seminars would go a long way in enticing a co-sponsorship in the coming years.

Since the September meeting, Angie Zayas has spoken with Jack Aiello (CLE chair for the Section) and Cindy Hoffman (Executive Council member of the Section) concerning placing people from our committee on CLE seminars sponsored by other sections. One program which may be the most promising is the General Practice Section seminar in April 1997. If Cindy can broker a co-sponsorship between the General Practice Section and Appellate Practice Section and arrange to have practitioners speak (instead of the traditional judge-only) at the seminar, there is a very good chance the Section will participate in it.

Carolyn Snurkowski proposed an idea for an excellent CLE seminar on litigating cases in the Florida Supreme Court. Carolyn Snurkowski and Harvey Sepler will be working on a moot court problem that can be argued before the Court. The plan is to present the argument and afterwards arrange a discussion with the Court (perhaps even with Sid White) on how it processes cases, what things attorneys should do or avoid doing, and general suggestions about oral argument. Harvey Sepler is working with Jackie Werndli to establish a date for the proposed seminar (which we will tape). We will keep the Section up to date regarding the program as it develops. If you have any ideas, please contact Carolyn Snurkowski or Harvey Sepler.

Carolyn will also be contacting Stuart Markman (Chair, Appellate Practice Section federal appellate practice CLE seminar) and Sheryl Lowenthal (Chair, Criminal Law Section federal appellate practice CLE seminar), about incorporating a presentation of new changes to habeas corpus procedure into their seminars. [Perhaps Stuart can contact Sheryl about co-sponsoring a single seminar].

Committee By-Laws. Our committee drafted by-laws during the June meeting. The by-laws must be approved by the Executive Council of the Appellate Practice Section, and this was apparently never done. Thus, the by-laws will be submitted to the Executive Council for approval.

Finally, if anyone is interested in authoring an article in The Florida Bar *Journal*, the Appellate Practice Section has article space allotted to it several times over the year. If you

would like to submit an article, you may either contact Harvey Sepler (if you want to represent our committee) or Jackie Shapiro, Assistant Federal Public Defender, Museum Tower, Suite 1500, 150 W. Flagler Street, Miami, Florida 33131, (305) 536-6900, ext. 221 (for all other articles).

Publications Committee

The Publications Committee provides support for the Section's efforts to distribute ideas and information to Section members and others in several areas, from internal Section business (as illustrated by this column), to practice-related topics, to information about the operation and makeup of our appellate courts. The three main channels of written communication of such information are this publication, our Section's allocated columns in The Florida Bar *Journal*, and our annual *Florida Appellate Practice Guide*.

We need wide and regular Section member participation in all three publications. There surely are countless members who have fine ideas for articles to be published in *The Record* or the Bar *Journal*, who perhaps are unaware of the availability of those publications for dissemination of their ideas. It is not necessary to be a member of the Publications Committee to have an article published in one of these periodicals. Writers with ideas for articles of primary interest to Section members should contact Hala Sandridge, Editor of *The Record*. Writers with ideas for articles useful to the Bar as a whole should make them known to Jacqueline Shapiro, Editor of our column in the Bar *Journal*.

Your contribution to the *Guide* can be more immediate and less demanding than writing an article for publication. Our Section Executive Council is wrestling with the question whether to continue the original format of the *Guide*, which includes the Florida Rules of Appellate Procedure, the Federal Rules of Appellate Procedure, the Eleventh Circuit's Local Rules and Internal Operating Procedures, and the U.S. Supreme Court rules. Those rules alone take up about two-thirds of the *Guide* and if the format remains unchanged, the cost of reproducing and distributing those rules will necessitate an increase in Section dues.

The alternative is to alter the layout of the *Guide* to delete the appellate rules. The *Guide* would continue to provide the other valuable information, such as the directory of our members, Section bylaws and organizational structure, certification standards, and specific information on the six appellate courts of Florida. To the extent that one court has localized procedures which differ from or add to the Rules of Appellate Procedure, we would continue to seek to learn of them and print them in the *Guide*.

Each Section member will receive a survey seeking input on whether to continue publication of the *Guide* with the Rules of Appellate Procedure. Please take a moment to complete that form and return it to the address thereon when you receive it.

In closing, let us all acknowledge that the written word is the stock-in-trade of appellate practitioners and judges, and that the publications supported by this committee offer us vehicles to expand our use of the written word beyond briefs and opinions to accomplish goals not possible in those media. Your ideas, opinions and information are valuable and should be shared with others. So please take some time to contribute to our publications effort.

Appellate Mediation Committee

At its June meeting, held in conjunction with The Florida Bar Convention, the Section's Executive Council addressed a number of issues relating to appellate mediation. As most of you know, the First District Court of Appeal on July 1, 1996, started its new appellate mediation program modeled after the appellate mediation programs which exist in most federal circuit courts. With the inauguration of that program, the Section's Appellate Mediation Committee, which has been studying the issue for almost a year, made a number of recommendations which were passed by the Executive Council. Those resolutions were:

1. The Appellate Practice and Advocacy Section endorses the concept of appellate case management and mediation as a means of:

a. expediting the resolution of appeals;

b. reducing the costs of appellate mediation;

c. encouraging alternative dispute resolution at all levels of the court system;

d. promoting a positive public perception of the court system; and

e. reducing the backlog of appellate court cases.

The Section requests that The Florida Bar support legislative funding, as requested by the individual district courts of appeal, as necessary to support case management and mediation programs in the district courts at this time.

2. To the extent appellate courts implement appellate mediation, the Section supports the concept of allowing parties to select their own mediator, at the parties' expense, as an alternative to using the court's staff mediator.

3. That the Florida Supreme Court create another type of mediator certification, *i.e.*, Appellate Court Mediator.

4. Prior to appellate mediator certification, the appellate courts should limit *private* mediators of appellate cases to members of The Florida Bar who: are certified as a circuit civil or family mediator (as appropriate), *and*

a. have been members of the Bar at least ten years and possess substantial appellate experience, *or*

b. are a certified appellate practitioner, *or*

c. possess substantial mediation experience and have successfully completed the appellate certification CLE program sponsored by the Section.

The Committee will continue to work toward implementation of these goals, hopefully submitting a final report to the Section's Executive Council by the end of this Bar year. If anyone is interested in serving on the Mediation Committee, please feel free to call Tom Hall in Tallahassee—(904) 488-4965 Ex. 142.

Programs Committee

The Programs Committee of the Appellate Practice and Advocacy Section encourages all members to volunteer to judge local moot court competitions as a public service to Florida's law schools. The following are the moot court representatives for Florida law schools:

COMMITTEE REPORTS
from page 19

University of Miami
David Bonham, President,
Moot Court Board
305-284-2836
Needs: September, October, January, and March

Nova S.E. University
Omar Perez, Jr., Chief Advocate,
Moot Court Board
954-452-6242
Needs: November, February and March

St. ThomasUniversity
Assistant Professor,
Richard H.W. Maloy
305-623-2394
Needs: February and March

Stetson College of Law
Professor Darby Dickerson
813-562-7858
Needs: College of judges year round; especially during competition third week in August

University of Florida
Professor Henry Wihnyk
College of Law
352-392-2198
Needs: November and April

Florida State College of Law
Professor Nat Stern
904-644-1801
Needs: Entire year, particularly February and March

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