The Record

JOURNAL OF THE APPELLATE PRACTICE AND ADVOCACY SECTION

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Inside the District Court of Appeal, *The First District*

by Thomas D. Hall
Career Staff Attorney

Introduction

This is a first in a series of updates concerning practice at the various district courts of appeal in Florida. The series was originally written by Roy Wasson in 1994.

Few appellate attorneys practice before all the appellate courts in Florida. An occasional case outside the familiar court can be unnerving for even the most experienced practitioner. Even those readers with regular practices before the district being featured in each of these articles is likely to learn something new about that court. The courts are constantly revising their internal practices. Your first information about one of Florida's district courts should not be when you walk up the stairs to attend oral argument. Don't think that you already know all there is to know about your local DCA; you may be surprised what you find out in this and future columns.

History and Jurisdiction of the First District

The First District Court of Appeal, created in 1957, was one of the first three district courts in Florida. However, it was 24 years before the court had a true home of its own. Initially it was housed in an office building in downtown Tallahassee. It then moved to share space with the Florida Supreme Court for many years. During part of that time the court was actually housed in two locations, at the Supreme Court and in the Koger Office Center complex, also in Tallahassee. The court's current building was completed in 1981.

Although it was reduced in size when the number of district courts was increased to five, the geographical jurisdiction of the First District is still the largest of all of Florida's

See "First District," page 15

Message from the Chair

by Christopher L. Kurzner

What's the big fuss over vendor neutral citation? The Florida Courts Technology Commission is preparing a proposal to move Florida courts to a vendor neutral citation system. For as long as most people can remember, West Publishing has been the official reporter for appellate decisions in Florida. However, with recent technology developments that have made access to information much more affordable, many alternative sources of opinions have become available. For example, CD-ROM and Internet research have begun to transform the way we research the law. West Publishing's owners have not ignored these changes; its original owners sold out just this year, likely because of the looming changes in the marketplace.

At our meeting in September, the council was presented with a memorandum outlining a set of alternative proposals for case citation. I personally was surprised with what I per-

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CHAIR'S MESSAGE

from page 1

ceived to be a great reluctance by many of our council members in embracing the proposals by the Commission. Our council members are not alone in their reluctance. According to *Computing* magazine, the Federal Judicial Conference and the conference of State Supreme Court justices have both announced formal opposition to the adoption of vendor neutral alternatives to the West citation system. The Committee on Automation and Technology's Subcommittee on Policy and Programs Concerning Standard Electronic Citations, in September 1997, recommended that the Judicial Conference reject the ABA proposal.

I don't quite understand the fuss. As lawyers, we are charged with presenting the law to the courts in advancing our respective positions. It is critical that we have the ability to locate all relevant authority and equally critical that the court and opposing counsel have the ability to locate the authority we present in support of our positions. What is not critical, obviously, though, is that we continue to refer solely to a reporting system that may no longer be in step with the times.

Perhaps the issue is not the *concept* of vendor neutral citation; the devil may be in the details. At our September meeting, several people raised the issue of opinions withdrawn on rehearing, which, under the current proposal and unlike West's current system, would be given a final citation reference before the opinion has become final (i.e., before the time for rehearing has passed or a motion has been denied). To address this concern, and others that may appear through a more thorough review of the proposal, we formed a special committee at our September meeting. That committee has been charged with the task of considering the details of the Commission's plan and formulating recommendations for the section to consider in January.

Both the Florida Supreme Court and the Commission have sought our input, and we have been assured that we will have a full opportunity to discuss and comment on any plan that is ultimately submitted. If you, as a section member, feel strongly about this issue, please contact Raoul Cantero or Tony Musto and ask to get involved with this committee. Your input and assistance would be appreciated.

The Appellate Practice and Advocacy Section thanks its annual meeting reception sponsors:

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Timetable for Appeal Florida Circuit Court to District Court of Appeal: Civil

By Christopher L. Kurzner
Revised by Lucinda A. Hofmann
October 16, 1997

STEP	ACTION	RULE	TIME LIMIT	DATE DUE	DATE FILED/ SERVED
1.	Judgment filed.	---	---		
2.	Motion for new trial, rehearing, or to alter or amend judgment.	1.530(b)* 1.530(g)*	Served 10 days after return of verdict in jury case or the date of filing/entry of the judgment.		
	a. Supporting affidavits	1.530(c)*	Served with motion.		
	b. Opposing affidavits†	1.530(c)*	Served within 10 days after service of motion and affidavits. Extension for serving affidavits up to additional 20 days with leave of court or by parties' written stipulation. Court may permit reply affidavits.		
3.	Motion for relief from judgment.	1.540(a)* 1.540(b)*	Clerical mistakes: at any time. Other: Within reasonable time; no more than one year for mistake, newly discovered evidence, fraud. Motion does not affect finality of judgment.		
4.	Entry of order denying motion for new trial (step 2), or order granting or denying motion for JNOV or motion to alter or amend.	---	Set by court action.		
5.	**Notice of appeal.** ($250 docketing fee & $___ filing fee to circuit clerk)	**9.110(b)** **9.110(d)** **9.900(a)**	**First notice: Filed in circuit clerk's office no later than 30 days after [illegible] of step 1**		

8.	Appellee's directions; designation of transcript.	9.200(a),(b)	Served within 20 days after notice of appeal (step 5).
9.	Cross-appellant's directions and designation of transcript. —must arrange to pay at time of order.	9.200(c)	Within 20 days of filing notice of cross-appeal (step 5a). Must serve statement of judicial acts to be reviewed if less than entire record is designated.
10.	Cross-appellee's directions; designation of transcript.	9.200(c)	Within 10 days after service of directions and statement (step 9).
11.	Notice of intent to file stipulated statement.	9.200(a)(4)	Must advise court of intent to file in lieu of record as early in advance as possible.
12.	Stipulated statement.	9.200(a)(4)	File within 110 days after notice of appeal.
13.	Court reporter to deliver transcript to clerk.	9.200(b)(2)	30 days after service of designation.
14.	Statement of evidence. a. Appellee's objections or amendments.+	9.200(b)(4)	Appellant serves on appellee. Served within 10 days after service of appellant's statement. Submit statement and objections to circuit court. Only necessary if no report of proceedings made or if the transcript was unavailable.
15.	Clerk prepares record and serves index.	9.110(e) 9.200	Within 50 days after notice of appeal (step 5).
16.	**Appellant's brief.** a. Request for oral argument.	**9.110(f)** 9.320	**Served within 70 days after notice of appeal (step 5).** Must serve separate paper with last brief filed (initial or reply, if filed).
17.	Appendix.	9.220	May serve with brief, motion, or response to motion; must contain index and order to be reviewed.
18.	**Appellee's Brief.+** a. Request for oral argument.	**9.210(f)** 9.320	**Served within 20 days after service of appellant's brief (step 16).** Must serve separate paper with answer brief.
19.	Motion for Attorneys' fees.	9.400(b)	Must be served no later than time for service of reply brief.

20.	**Reply Brief.**+	**9.210(f)**	**Served within 20 days after service of appellee's brief (step 18).**
21.	Cross-Reply Brief.+ (only if cross-appeal)	9.210(f)	Served within 20 days after service of reply brief (step 19).
22.	Brief of Amicus Curiae.	9.370	May file with written consent of all parties or by order or request of the court. Must file and serve within time prescribed for briefs of party whose position is supported.
23.	Extensions.	9.300 9.300(a) 9.300(b)	Must file and serve motion. Must certify that consulted opposing counsel. Motion for extension tolls schedule of proceedings until disposition, except for motions filed in the supreme court if unaccompanied by a separate request to toll time.
24.	Motions.	9.300(d)(10)	Motions Not Tolling Time: Motion for stay pending appeal, or for those relating to: oral argument, joinder and substitution of parties, amicus curiae, attorney's fees on appeal, service, admission or withdrawal of attorneys.
25.	Response to motion.+	9.300(a)	Serve within 10 days after service of motion (step 24).
26.	Clerk delivers record to court of appeal.	9.110(e)	Within 110 days after notice of appeal.
27.	**Oral argument.**	**9.320**	**Set by court action.**
28.	Entry of appellate court's opinion or order.	---	Set by court action.
29.	Motion for rehearing; clarification; certification	9.330(a) 9.330(a)	Must file within 15 days after order, or within such other time set by the court. Serve reply within 10 days of motion.
30.	Rehearing en banc.	9.331(d) 9.331(d)(1) 9.331(d)(2)	Court's own motion, or motion of party. Within 15 days of order and in conjunction with motion for rehearing. Motion must contain statement by attorney.

continued...

31.	Issuance of mandate.	9.340(a) 9.340(b)	15 days after entry of order or decision, unless shortened or enlarged by court order. Petition for rehearing, certification, or clarification (step 29) will stay mandate until 15 days after cause fully determined.
32.	Bill of Costs; objections.	9.400	To tax costs, must serve motion in circuit court within 30 days after issuance of mandate (step 31). Proof of service required; bill must be itemized and verified. Objections to bill of costs must be filed within 10 days of service on party against whom costs are to be taxed unless time extended by court.
33.	**Notice to invoke discretionary jurisdiction of supreme court.**	**9.120(b)** **9.120(c)** **9.900**	**File notice with DCA within 30 days after rendition of order to be reviewed.** **Notice must contain basis for invoking jurisdiction.** **If there has been filed a timely motion for rehearing (step 29), time for filing notice runs from the date of denial of motion for rehearing or entry of subsequent order.**

Endnotes:

* Refers to Fla. R. Civ. P. All other references to Fla. R. App. P. unless otherwise noted.

• Whenever a party is required or permitted to do an act within a prescribed period *after service* of a paper upon that party *and the paper is served by mail*, add 5 days to the prescribed period. Fla. R. App. P. 9.420(d).

Appellate Practice and Advocacy 1996-97 Actual

REVENUE	
Dues	$23,665
Dues Retained by Bar	11,838
Net Dues	11,827
Directory Ads	450
Reception Sponsor	5,400
Videotape Sales	745
Audiotape Sales	3,640
CLE Courses	1,682
Interest	2,294
Material Sales	252
Credit Card Fee	<1>
CLE Workshops	455
TOTAL REVENUE	**$26,744**

EXPENSES	
Postage	1,916
Printing	192
Newsletter	2,128
Membership	77
Photocopying	395
Meeting Travel	680
Council Meetings	780
Bar Annual Meeting	5,103
Awards	939
Committee Expense	303
Council of Sections	300
Staff Travel	821
Directory	8,604
Section Service Program	1,131
TOTAL EXPENSES	**$23,369**

Beginning Fund Bal.	$26,798
Plus Revenues	$26,744
Less Expenses	$23,369
Less Net from Other Center	$900
Ending Fund Bal.	**$29,273**

THE APPELLATE PRACTICE AND ADVOCACY SECTION OF THE FLORIDA BAR

1998 Appellate Practice Certification Exam Review Course

NOTE: Space is limited, so pre-register by completing the form on page 8 and return it no later than January 15, 1998.

LIMITED ATTENDANCE

January 30, 1998 • Airport Marriott • Tampa International Airport

Course No. 4486R

This course is designed to cover a broad spectrum of appellate practice fundamentals. The presentation will serve as a review of areas on the Appellate Practice Certification Examination. This course will not necessarily prepare you for the Appellate Practice Certification Examination. The individuals involved in the preparation of the Appellate Practice Certification Exam have not contributed to this program. However, all designated non-judicial speakers are Board Certified Appellate Practice or Criminal Appellate Attorneys.

LECTURE PROGRAM

8:10 a.m. - 8:30 a.m.
Late Registration

8:30 a.m. - 8:35 a.m. **Welcome**
Lucinda A. Hofmann
Holland & Knight, Miami

8:35 a.m. - 9:05 a.m.
Overview of Appellate Certification Examination
John R. Beranek, Ausley & McMullen P.A., Tallahassee

9:05 a.m. - 9:50 a.m.
Florida Civil Appellate Practice: Part I
Steven L. Brannock
Holland & Knight, Tampa

9:50 a.m. - 10:00 a.m. **Break**

10:45 a.m. - 11:30 a.m.
Writs
Bonnie Kneeland Brown
Fowler, White, Gillen, Boggs, Villareal & Banker, Tampa

11:30 a.m. - 11:45 a.m.
Questions and Answers on Morning Topics

11:45 a.m. - 1:00 p.m.
Lunch (on your own)

1:00 p.m. - 1:50 p.m.
Administrative Appeals
The Honorable Marguerite H. Davis, First District Court of Appeal, Tallahassee

1:50 p.m. - 2:40 p.m.

2:40 p.m. - 2:50 p.m. **Break**

2:50 p.m. - 3:15 p.m.
Criminal Appeals (Federal)
Bruce S. Rogow
Bruce S. Rogow, P.A.
Ft. Lauderdale

3:15 p.m. - 3:45 p.m.
Federal Civil Procedure
Bruce S. Rogow
Bruce S. Rogow, P.A.
Ft. Lauderdale

3:45 p.m. - 4:30 p.m.
Federal Appellate Jurisdiction
Hala A. Sandridge
Fowler, White, Gillen, Boggs, Villareal & Banker, Tampa

TO REGISTER OR TO ORDER MATERIALS, MAIL THIS PAGE (OR A COPY TO): Jackie Werndli, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 with a check in the appropriate amount made payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5623.

Register me for the 1998 Appellate Practice Certification Exam Review Course.

Airport Marriott Hotel, Tampa (049) January 30, 1998 **JW: 4486R (AP006)**

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❑ Member of the Appellate Practice & Advocacy Section: **$150**
❑ Non section member: **$175** (includes section membership)
❑ I cannot attend the review course, but would like to purchase the materials. Check for **$50** plus tax, is attached. (AP003)
❑ Please check here if you have a disability that may require **special attention or services.** To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

CLE Credit is not awarded for the purchase of course materials.

CLER CREDIT
(Maximum: 8.0 hours)
General: 8.0 hours

CERTIFICATION CREDIT
(Maximum: 8.0 hours)
Appellate Practice: 8.0 hours
Business Litigation: .5 hour
City, County, Local Government: 1.0 hour
Civil Trial: 2.5 hours
Criminal Appellate: 2.5 hours
Criminal Trial: 2.5 hours

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

Section Midyear Meeting Schedule

COMMITTEE REPORTS

Appellate Court Liaison Committee

Over the past few months, the Appellate Court Liaison Committee has been looking into what role, if any, the Appellate Practice and Advocacy Section should take when appellate judges who are up for merit retention are unfairly attacked.

Such attacks seem to come in two general forms: (1) an attack, often by disgruntled litigants, in the days just prior to the election, and (2) organized campaigns, often quite well funded, and usually based on decisions the judge has rendered in one particular area of the law. The frequency with which such attacks occur appears to vary between districts with the First and Fifth Districts apparently being the most affected by such attacks.

After discussion, the Committee concluded that there was little that could be done to respond to the last minutes attacks, especially since appellate judges seem reluctant to initiate a process of having a response distributed. Where an organized campaign exists, the key to a successful response is the ability to raise enough money to be able to meet the opponents on a more level playing field. Given ethical considerations, the necessity of complying with the election laws, and the fact that varying members of the Section might disagree on whether any particular attack was "unfair", and hence should be responded to, it was the Committee's consensus that responses to such attacks would not be an appropriate function for the Section, but that individual members of the Section might well agree to help raise the necessary funds to respond to any organized, but unwarranted, attack.

The Committee further felt that in many cases, voters do not understand merit retention, and feel that the judge in question must have been charged with some wrongdoing or there would not be a question on the ballot as to whether they should be kept in office. In that light, some type of educational program by the Appellate Practice and Advocacy Section or some other organ of The Florida Bar would seem appropriate to try to rectify this misapprehension. The Committee would welcome any input on these matters.

Appellate Rules Liaison Committee

There were two noteworthy developments at the September meeting of the Appellate Court Rules Committee.

Rule 9.130(a)

First, there is yet another chapter in the saga of the possibly dwindling Florida Appellate Rule 9.130 (proceedings to review non-final orders) and this one is somewhat of a cliff hanger.

The background here is quite simple. Rule 9.130(a)(3)(C)(viii) authorizes appellate review of non-final orders that determine, as a matter of law, that a party is not entitled to absolute or qualified immunity in a civil rights claim arising under federal law. That 1996 addition was a response to the Supreme Court directive in *Tucker v. Resha*, 648 So. 2d 1187 (Fla. 1994) (as in federal courts, an order denying summary judgment based on qualified immunity is subject to interlocutory review to the extent that order turns on an issue of law).

More recently, in *Johnson v. Fankell*, 117 S.Ct. 1800 (1997), the United States Supreme Court shed doubt on *Tucker* and said that state courts need not allow interlocutory appeals from denials of immunity in Section 1983 cases. At the June meeting, the Committee, prompted by *Johnson*, voted to repeal that civil rights immunity provision. The Committee also approved the repeal of Rule 9.130(a)(3)(C)(vi), which permits interlocutory appeals of orders that, as a matter of law, deny entitlement to workers' compensation immunity.

At the September meeting, the Committee decided to reconsider the decision to abolish such non-final appeals. Subcommittees will specifically study the workers' compensation and civil rights immunity appealability issues and more broadly attempt to ascertain to what extent appeals from non-final orders increase the workload of the appellate courts.

Rule 9.330(a)

Second, the Committee approved a proposed change to Florida Rule of Appellate Procedure 9.330(a) (motions for rehearing or clarification). The Committee's changes aim to clarify the permissible scope of such motions and incorporate into the Rule a basic case law proscription. As changed, the Rule would read:

> (a) **Time For Filing; Contents; Response.** A motion for rehearing, clarification or certification may be filed within 15 days of an order or within such other time set by the court. A motion for rehearing shall state with particularity the points of law or fact that in the opinion of the movant the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding. A motion for clarification shall state with particularity the points of law or fact in the court's decision which in the opinion of the movant are in need of clarification. A response may be served within 10 days of service of the motion.

The Committee also approved the following proposed comment:

> The amendment has a dual purpose. By omitting the sentence, "The motion shall not re-argue the merits of the court's order," the amendment is intended to clarify the permissible scope of motions for rehearing and clarification. Nevertheless, the essential purpose of a motion for

continued...

rehearing remains the same. It should be utilized to bring to the attention of the court points of law or fact which it has overlooked or misapprehended in its decision, not to express mere disagreement with its resolution of the issues on appeal. The amendment also codifies the decisional law's prohibition against raising issues in post-decision motions which have not previously been raised in the proceeding.

Anyone wishing to respond or make suggestions to the Appellate Court Rules Committee, should send these to the Chair, the Honorable Gerald B. Cope, Jr. at the Third District Court of Appeal, 2001 S.W. 117 Avenue, Miami, Florida 33175-1716.

CLE Committee

The CLE Committee met September 4, 1997 and took the following action:

1. Appellate Section's "Flagship" Seminar

The Committee was in favor of holding this seminar in the Fall of 1997. The date of December 3, 1997 was selected. Hala Sandridge is the chair of the Steering Committee. The seminar will include topics such as a discussion of the new rules and any case law decided thereunder, ethics and professionalism, appellate attorney's fees (panel discussion), extraordinary writs, appellate mediation (mock mediation to be held), and others to be determined. There will be one live presentation of the seminar, to be held in Tampa.

2. Appellate Practice Certification Exam Review Course

Cindy Hofmann is serving as the chair of the Steering Committee and Jennifer Carroll is assisting. The course is tentatively scheduled for January 30, 1998, in Tampa. The Steering Committee is exploring the issue of including new speakers who have more recent experience with the exam.

3. Federal Appellate Seminar

It had been contemplated that this seminar would alternate in location between Orlando and Atlanta, although not necessarily on an every-other-year basis. Because of space problems, the seminar will be held in Tampa this year. It is scheduled for April 17, 1998. Judge Kathryn Pecko is the Chair of the Steering Committee. Hala Sandridge is a committee member and shall serve as Steering Committee Chair next year. The Steering Committee will seek to arrange several of the same topics and speakers which were scheduled for last year's event. The Steering Committee will also seek to obtain a co-sponsorship with the Out-of-State Division, as in the past.

4. Appellate Practice Workshop

The proposed Appellate Practice Workshop, which was conceived as an idea last year, has now been scheduled for July 22-25, 1998. Tom Hall is the chair of the Steering Committee and Jan Majewski is the on-site administrator from Stetson University, where the workshop will be held. It is planned that participation will be limited to forty students. In concept, the program is aimed at lawyers with zero to five years experience who are interested in appeals, but it is open to everyone, and it is anticipated that it will be the type of program that will be beneficial to lawyers of various experience levels who are interested in appeals. There will be eight core instructors, including appellate judges. The planned segments include brief-writing with an assignment, oral argument and critique, incorporated lectures and a professionalism panel.

5. Co-Sponsorships

As in the past, the Appellate Practice and Advocacy Section is actively seeking out co-sponsorships with other sections to take advantage of the opportunity to "spread the appellate message" and to achieve the financial benefits for the section which co-sponsorships provide. Deborah Sutton is chair of the Steering Committee discussing a possible co-sponsorship with the Family Law Section. It is anticipated that the Section will co-sponsor a seminar with the Government Lawyers Section, as it did this past year. In addition, the Section is exploring a co-sponsorship with the Criminal Law Section much like the co-sponsored seminar which took place on June 6, the Criminal Law Update. The Section has invited all other Bar sections interested in CLE programs to explore a co-sponsorship arrangement for the mutual benefits available, and has received responses from some of them encouraging further discussions.

The next meeting of the CLE Committee will be at The Bar's Midyear Meeting on January 22, 1998, in Miami. The exact time and place will be announced soon.

This newsletter is prepared and published by
the Appellate Practice and Advocacy Section of The Florida Bar.

Publications Committee

Led by Cindy Hofmann, Vice-Chair of the Section and Chair of the Publications Committee, the committee met once on September 4,

1997, and by teleconference on September 30, 1997. The Committee made the following decisions regarding those projects it oversees:

I. *The Record.*

This year's Editor of the *Record* is Angela Flowers. Kim Staffa is Executive Editor. The Committee discussed what to include in this year's *Record*. All in attendance agreed it was useful to section members to publish committee reports and the minutes of the executive council meetings. The committee also agreed to restore the state and federal civil and criminal columns. This year, however, the column's emphasis will be on changes relating to appellate practice, rather than substantive areas of the law. In addition, the *Record* will rotate the columns from issue to issue.

In general, the Editor needs assistance obtaining book reviews, case law updates, interviews and reprints. If you are interested in providing any such assistance, please contact Angela Flowers at (305) 982-6636.

II. *Appellate Practice Guide.*

This year's Editor of the Guide is Nancy Copperthwaite. Several other positions remain available for soliciting advertisement and sponsorships. The Committee has obtained commitments from section members to update the "Inside the DCA Series." The Guide also plans to include a new section entitled "Inside the 11th Circuit." However, because of timing problems, this new section will probably not be included in the next issue of the Guide. The Committee currently seeks an enthusiastic section member for this job. Finally, the Committee seeks additional last minute editors and proofreaders for the Guide. The anticipated publication date for the Guide is January. Please contact Nancy Copperthwaite at (305) 579-0444 if you are interested in any of these remaining positions.

III. The Florida Bar *Journal.*

Jackie Shapiro is Editor for articles to be submitted on behalf of the section to The Florida Bar *Journal*. The Section may contribute up to five articles to the *Journal*. Raoul Cantero, Hala Sandridge, Tracy Gunn, and Jennifer Carroll have all agreed to submit articles. Hala Sandridge has also agreed to solicit additional articles for the *Journal*. If you are a member of the Section and wish to contribute an article to the *Journal*, please contact Hala Sandridge at (813) 222-1127.

Appellate Pro Bono Project

Are you interested in obtaining appellate certification and meeting your pro bono obligations? Here is a way you can do both at the same time and benefit Florida's abused, neglected, and abandoned children. The Civil Appellate Practice Committee of the Appellate Practice and Advocacy Section of The Florida Bar has decided to undertake a rather daunting pro bono project (the "Project"). The various Guardian Ad Litem Programs in the State of Florida often have difficulty finding appellate counsel to represent them in appeals from dependency and termination of parental rights cases. Most of the circuits in Florida have some trial support through pro bono attorneys, but because of the complexity and time intensity associated with appeals from these types of cases, they often find themselves in a difficult position when the trial court decisions are appealed. As a result, the Civil Appellate Practice Committee would like to find attorneys interested in being listed on a roster of individuals interested in handling pro bono appeals on behalf of the Guardian Ad Litem Programs in the State of Florida.

At this point, the Project is in its infancy, but the concept would be that appellate lawyers, who may not have much experience with Chapter 39, the dependency and termination of parental rights statutes, would be paired with competent trial counsel in each circuit. For assistance with formulating and researching the issues for appeal, the appellate counsel would have contact with someone in the circuit familiar with the issues who could assist in preparing the briefs. The appellate counsel would, however, be primarily responsible for filing the briefs on behalf of the Guardian Ad Litem and, therefore, would be able to claim credit for the appeal for purposes of certification and pro bono hours. Consequently, the appellate counsel will have the benefit of certification and the satisfaction of knowing that they are providing representation for the guardians who look out for Florida's abused, neglected, and abandoned children.

If you are interested in volunteering time for Guardian Ad Litem appeals and would like more information, please contact either Robert Sturgess, the Chair of the Civil Appellate Practice Committee of the Appellate Practice and Advocacy Section of The Florida Bar or Tracy S. Carlin, one of the Committee members responsible for coordinating the Project. Their addresses and telephone numbers are as follows:

Robert Sturgess
Chair, Civil Appellate Practice Committee
1201 Riverplace Boulevard
Jacksonville, FL 32207
(904) 398-1192

Tracy S. Carlin, Esq.
Foley & Lardner
Post Office Box 240
Jacksonville, FL 32201-0240
(904) 359-2000

BOOK REVIEW

Reviewed by Scott D. Makar

Race Crime, and the Law

by Randall Kennedy

Shades of Freedom: Racial Politics and Presumption of the American Legal Process

by A. Leon Higginbotham, Jr.,

— and —

Black Judges on Justice

by Linn Washington

Much has been written and debated about the role of race in public perceptions of the court system, the development of legal doctrines, and the formation of judicial attitudes. Prominent are recent polemics on (1) whether the O.J. Simpson criminal trial was about justice against a racially-corrupt system or the defendant's use of the "race card" to obfuscate the truth, (2) whether racially-drawn voting districts promote minority political participation or merely create "separate but equal" enclaves of isolation from the general population, and (3) whether Justice Clarence Thomas—although black—thinks "white."

One balanced voice in the crowd is Harvard law professor Randall Kennedy, whose recent book, *Race, Crime, and the Law* ($30.00, Pantheon, 1997), is a tour de force through a wide range of topics on race and the legal system. For example, he addresses the use of a person's "color as a proxy for dangerousness," the so-called "reasonable racial discrimination" that public authorities sometimes use to justify traffic stops, searches, and other detainments of minorities who fit "profiles" of suspected criminal activities (he argues that permitting race to be one of many purportedly non-decisive factors permits it to become corrupted into the "decisive" factor such that "small, marginal, even infinitesimal" amounts of discrimination can lead to injustice).

He explores the racial composition of juries including the elimination of racially discriminatory peremptory challenges (he advocates eliminating peremptory challenges altogether). He weighs in on use of the "race card" at trial, both by prosecutors and defense counsel (he concludes that Judge Ito "acted rightly by refraining from stopping" Johnnie Cochran's famous closing argument—in which he tells jurors to "send a message . . . because no one else is going to do it in our society . . . nobody has the courage.")

Other topics include the death penalty, the "War on Drugs," and their disproportionate impact on minorities. Reasonable minds might differ as to Professor Kennedy's conclusions on specific issues. It is unquestionable, however, that Professor Kennedy's book is a thoughtful and necessarily provocative presentation of contemporary issues of racial justice that contributes significantly to the existing literature.

No stranger to controversy is former federal circuit judge, learned scholar, and prolific writer, A. Leon Higginbotham, Jr., whose most noted writings include his path-breaking book on race, history and the legal process,[1] his "open letter" to Justice Thomas upon his appointment to the United States Supreme Court (published in the University of Pennsylvania Law Review),[2] and—at least at Florida State University—his article in tribute to Rosa Parks.[3]

Most recently, Judge Higginbotham has written the second volume in his series on Race and the American Legal Process: *Shades of Freedom: Racial Politics and Presumption of the American Legal Process* ($30.00, Oxford, 1996). *Shades of Freedom* provides an overview of the history of slavery and racial oppression in America from colonial times to the present day, as well as the author's personal journey through a segregated and unjust America.

The purpose of *Shades of Freedom* is to "highlight significant issues that exemplify the precept of racial inferiority."[4] The author, whose early encounters with legally-imposed subordination redirected his life's mission,[5] provides the personal passion on race issues that Professor Kennedy necessarily avoided in his book. For this reason, *Shades of Freedom* and *Race, Crime, and the Law*

nicely dove-tail in their analysis and intonation.

As Judge Higginbotham points out, the fact that American law reflected presumptions of racial inferiority, even during the Reconstruction era, needs no citation beyond the Supreme Court decisions in *Dred Scott*[6] and *Plessy v. Ferguson*.[7] As Judge Higginbotham notes, African-Americans "have left behind the midnight hour of slavery, traveled through the gray dawn of segregation, and we are now in a cloudy divide, posed between freedom and inequality."[8] He points out that eliminating political, legal, and social prejudices based on racial stigmatizations is about as difficult as removing chewing gum from children's hair.

Keep in mind that if the landmark decision in *Brown v. Board of Education*[9] were conceptualized as a promising new-born, it would be today just another member of the baby boomer generation. Enough time for an individual to develop and self-actualize (if that is possible), but scant time for an entire society to substantially overcome its long-held, institutionalized prejudices. As Judge Higginbotham concludes, "in the centuries between 1619 and 1996, we have only gone from total oppression to SHADES OF FREEDOM."[10]

Finally, an overlooked book presents a compilation of the views of a cross-section of state and federal trial and appellate judges who are African-American. In *Black Judges on Justice* ($22.95, The New Press, 1994), the personal insights of fourteen judges are collected based on interviews conducted by the author, Linn Washington.

Black Judges on Justice is unique in the sense that it provides a snapshot of the views of black judges on a range of important social issues as of 1993, and provides other black judges with a reality-check on their own "world-views." It is guaranteed to be provocative reading.

The range of views expressed is very broad, but with many common themes. All express their concerns about the indignities and prejudices that they, as African-Americans, have endured and continue to encounter. These experiences necessarily influence their views of societal discrimination, both in private and public institutions.

Many black judges share the sentiment that adjudicating black defendants requires experience with the realities of African-American communities. Some speak in broader terms, saying that judges must grasp the effects of poverty and social inequity generally in order to be effective in dispensing justice to litigants of all races.

Many judges provide inspirational and encouraging perspectives, with a sense of commitment and vigilance. Equal rights and the enforcement of the constitutional freedoms is a consistent theme. One judge, in an interesting perspective, said that his pet peeve was that, if the Constitution were drafted and presented to Congress today, it wouldn't be introduced—let alone adopted.[11]

An eye-opening aspect to *Black Judges on Justice* is the candor of those interviewed. Readers will get the feeling that each judge is speaking to them in confidence, like close friends chatting. A few of the judges make statements that, frankly, are shocking. One judge advocates—in order to get racial justice in L.A.—"air raids" that "burn down the inner city, if it takes that."[12] While he acknowledges that "[t]his is a strange statement coming from a judge" he quickly justifies his statement by saying that "[p]roperty damage alarms them."[13]

The final chapter, entitled "Closing Argument," is by Bruce Wright, a New York Supreme Court Justice, who wrote a provocative book on racial injustice.[14] Among his many outspoken statements, Justice Wright says: "I don't believe in jails. . . . I do not send people to jail. That's how I got my nickname, 'Turn 'em loose Bruce.'"[15] He also advocates a psychological test for judges to determine "if racism taints their perceptions of fairness."[16]

Although a couple of judge's views are a bit idiosyncratic, the point is that *Black Judges on Justice* speaks frankly, openly, and candidly from the hearts and minds of many African-American members of the nation's judiciary. What they say needs to be heard, and—much like *Race, Crime, and the Law*, and *Shades of Freedom*—what is said is not necessarily what people would like to hear.

Scott D. Makar *is an attorney in the Jacksonville office of Holland & Knight where he works on litigation, administrative and legislative matters.*

Endnotes

[1] A. Leon Higginbotham, Jr., *In the Matter of Color: Race & The American Legal Process: The Colonial Period*, ($15.95, Oxford, 1978) (hereafter *In the Matter of Color*).

[2] A. Leon Higginbotham, Jr., *An Open Letter To Justice Clarence Thomas From A Federal Judicial Colleague*, 140 U. Pa. L. Rev. 1005 (1992).

[3] A. Leon Higginbotham, Jr., *Rosa Parks: Foremother & Heroine Teaching Civility and Offering A Vision For A Better Tomorrow*, 22 Fla. St. U.L. Rev. 899 (1994).

[4] *Shades of Freedom* at ix.

[5] In the preface to *In the Matter of Color*, he tells how, as a sixteen year-old freshman at Purdue University in 1944, he and other black students were forced to live in an unheated attic on campus. He mustered the courage to visit the university president to ask to live in the heated dorm rooms where whites lived. The president said, "Higginbotham, the law doesn't require us to let colored students in the dorm, and you either accept things as they are or leave the University immediately." *In the Matter of Color* at viii. He transferred to Antioch College and later graduated from Yale University. *Id.* at ix.

[6] *Dred Scott v. Sandford*, 60 U.S. 393 (1856).

[7] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

[8] *Shades of Freedom* at xxxii.

[9] *Brown v. Board of Education*, 347 U.S. 483 (1954).

[10] *Shades of Freedom* at xxxii.

[11] *Black Judges on Justice* at 79.

[12] *Id.* at 62.

[13] *Id.*

[14] *Black Robes, White Justice: Why Our Legal System Doesn't Work For Blacks*, ($10.95, Carol Publishing, 1987).

[15] *Id.* at 261.

[16] *Id.*

The Appellate Practice and Advocacy Section of the Florida Bar

Minutes of the Executive Council Meeting

Held on September 4, 1997, Tampa Airport Marriott, Tampa, Florida

I. Call to order

The Executive Council Meeting was called to order by Section Chair Chris Kurzner.

II. Approval of minutes

The minutes of the previous meeting were approved.

III. Chair's report

The Chair's report was deferred.

IV. Discussion on proposed vender neutral citation system

Pursuant to the request of Justice Overton, Chris Kurzner introduced Ron Owens, a member of the Commission considering the proposal to change Florida's citation system. A report was provided to all council members in attendance. The proposal called for a vendor neutral citation system. It was reported that the proposal has been accepted by the American Bar Association and adopted by six other states. The premise for the proposal is to make costs of reporting decisions less expensive to the public. The Florida Bar Appellate Rules committee has voted to recommend this new system.

Numerous questions were raised by council members as to how it would work. There were answers to some questions, but not all. Many members were concerned this system had just been brought to the council for a recommendation without adequate time for reviewing the proposal and preparing a response. A motion was made to form a subcommittee to study this issue and to ask for an extension of time to respond to the report. The motion passed.

III. Chair's report

Chris Kurzner provided his report as to his goals for the upcoming year. These goals included solidifying the Section's current programs and stabilizing finances.

IV. Committee reports

A. *Programs Committee.*

Bonnie Kneeland Brown, Chair of the Programs Committee, provided a report. She indicated there was a good turnout for the Supreme Court question and answer session. All the justices attended and they have already asked if they could do it again next year. The Dessert Reception was also a success. Two hundred people attended and there were 30 sponsors.

Chris Kurzner questioned whether the Supreme Court should do a mock competition in lieu of the Supreme Court question and answer session. Tony Musto indicated we should not mess with the question and answer session because it is a proven success. Angela Flowers emphasized this program is not just for us, but for the Supreme Court. Part of their agenda is to be accessible to the public and the question and answer session meets their goal.

B. *Publications Committee.*

Cindy Hofmann, Chair of the publications committee, provided the report. Angela Flowers is the new editor of the Record. Kim Staffa is the executive editor. The Guide also has a new editor, Nancy Copperthwaite. Cindy noted that there will be some changes to the Guide. The appellate rules will not be in it this year. If we can get advertising revenue, the rules will be put back in next year. Four of our five slots for articles in The Florida Bar *Journal* have been filled.

C. *CLE Committee.*

Jack Aiello, Chair of the CLE Committee, reported on the status of the various 1997-98 Programs.

First, the committee decided to proceed with a "Hot Topics" seminar which has been scheduled for December 3, 1997, in Tampa Florida. Hala Sandridge is chair of that steering committee.

Once again, the Section will sponsor its certification review course seminar. It is currently scheduled for January 30, 1998. Cindy Hofmann is chairing that steering committee. This year the certification review course will have many new speakers.

The Federal Appellate Seminar, which was scheduled last year but was canceled, will be held on April 11, 1998. No sites are available in Orlando, so Tampa will now be the location. Kitty Pecko is the chair of the steering committee.

Jack then discussed potential cosponsorships with, but not limited to family law, property and trusts. Steve Stark indicated the administrative law section wanted to do a cosponsorship.

Tom Hall then described the appellate practice workshop tentatively scheduled for the summer of 1998, July 22-25. The workshop will be limited to 40 people. There will be eight instructors who will be there full time. Tom says the emphasis will be on skills. The workshop will focus on several aspects of appellate practice, including brief writing, oral argument, and professionalism. The last day of the workshop will include a formal oral argument judged by Supreme Court justices and District Court judges. The price for participation in the workshop has not been decided, but it will probably be in the $700/800 range. The workshop will first be advertised and offered to our section members. In January or February, we will begin a general offering. Although the premise behind the workshop was initially to target

young appellate practitioners, Tom now believes the workshop will appeal to a more experienced group.

V. Old business

A. *Section Webpage*

Steve Stark reported that nothing has really happened. We proceed to put together a draft, but that is the extent. John Crabtree questioned why we would give out only limited information if the purpose of the Webpage is the dissemination of information. Steve agreed this was a good point, but noted that we may want to limit information to encourage joinder in our Section. Steve estimates the costs for this year would be approximately $1000. Chris Kurzner asked that, for the January meeting, Steve have a template of what our page will show.

Tony Musto asked, if we raise dues, could we publish the Guide with the appellate rules? Jackie Werndli was unable to immediately answer this question. Tony Musto and Chris Kurzner will further examine this question.

VI. New business

A. *Judicial Management Council Recommendations*

Council members were provided with the Judicial Management Council Report. The gist of the report was that no new appellate courts or judges were needed. Many of the council members disagreed with the underlying premises to the report. For instance, Judge Webster said that, contrary to the report's conclusion, appeals from non-final orders were not a major burden on the and Judge Frank indicated the state needs a new district court of appeal. A motion was made to oppose Recommendations #1 & #2. This motion passed unanimously. Another motion was made that, because we voted against recommendation #1 & #2, all other recommendations should be reconsidered. This motion also passed. A third motion was made that the Section was against the wholesale reduction/limit on appeals or non-final appeals until there is more study on these issues. This motion passed also.

VII. Informational

A. *Statement of Operations—6/30/97*

B. *Committee Chairs / Vice Chairs 1997-98*

VIII. Adjournment

[redacted]

FIRST DISTRICT
from page 1

Practice before the First District

In 1996, the First District dis-

retired judges, on an additional temporary panel. As noted, the only backlog which exists now is in criminal cases and that is directly attrib-

District are generally dealt with by the Chief Judge or the Clerk of the court. The processing of a motion is impacted greatly by the inclusion or absence of a certification regarding opposing counsel's position. It is very important to state in every motion the opposing party's position. While only required for motions for extension of time, failure to include this information needlessly delays a ruling on a motion.

Substantive motions that may draw opposition are routed to a three-judge motion panel which sits for a week at a time specifically to consider such motions (and original petitions) which are filed during that time period. If the opposing party's position was stated, many of the motions would not have to go to the three-judge panel. As noted by Roy Wasson in the original article, in addition to speeding consideration of motions, the advantage in truthfully reciting that a motion is not opposed is self-evident.

Perhaps more readily overlooked is the possible tactical advantage that accompanies a recitation that the adverse party opposes the motion. Because there is no authority under the Rules of Appellate Procedure for reply memoranda to address arguments raised and responses filed in opposition to motions, anticipatory arguments against the opponent's position must be included in the motion. Rather than counter hypothetical arguments against your motions which may never be raised (or—worse yet—ignore them in the same hope that they will not be raised), find out first if the adverse attorney actually intends to oppose your motion. If so, ask why they oppose the motion and then in the motion state what the objection is, and address that issue first before heading on to the motion itself.

In sum, whether your motion is opposed or unopposed, a recitation regarding opposing counsel's position will help both the court and you. File motions at a minimum, but try to include a certificate in every motion you file at the First District regarding the opposing counsel's position.

Briefs are screened upon receipt. Unfortunately, the statistics recited in Roy Wasson's 1994 article have not changed. Roughly one third of all the briefs filed by attorneys are rejected by the First District for failure to comply with the rules. This does not include pro se briefs.

The three most common mistakes in briefs are still those that were listed in 1994. They are: (1) failure to spell out the issues in the table of contents; (2) failure to comply with page limitations in reply briefs; and (3) failure to use correct typeface. Although the court has recently relaxed its standard on incorrect type, and now strikes a brief only when there has been a substantial deviation from the type requirement, there are still a great number of briefs which unfortunately do not meet even that lower criteria.

In addition, a number of the rules which went into effect in January of 1997 are not being followed by attorneys. The two most common of those are failure to include in the certificate of service the name of the party that each attorney represents and failure to bind the brief in a manner that allows it to lay flat when open.

Because of the numerous mistakes in briefs, the court has become less tolerant of attorneys who fail to correct their mistakes when filing an *amended* brief in response to the court's order. Now, when an amended brief is filed and all the mistakes are not corrected, the brief will be stricken. The attorney will be given one last chance to correct the brief, but if it is not corrected, then a show cause order will issue directing the attorney to show cause why sanctions should not be imposed against the attorney.

Oral argument is customarily granted in cases in which it is requested at the First District. Last year the court held oral argument in 648 cases. However, if the sole issue on appeal is the lack of competent, substantial evidence to support the judgment, oral argument is generally not granted.

The First District generally grants oral argument in amounts of 20 minutes, 15 minutes or 10 minutes per side. This is not arbitrarily done. The amount of time you are granted for oral argument says a lot about what the court expects to have happen at oral argument. It is very true that the judges on the First District will be thoroughly familiar with the facts of the case and the arguments made in your brief. The purpose of oral argument is to clarify those questions that the judges may have which they were unable to answer themselves with the help of the briefs.

On a more practical note, do not attempt to fly into Tallahassee on the morning of oral argument. The airport is often enveloped in fog and you may miss oral argument altogether. You should always plan to fly into Tallahassee the night before oral argument.

Many oral arguments now take place using the State's video-teleconferencing equipment. That means the judges are in Tallahassee and the attorneys are in a remote city, such as Miami. If a request for oral argument is granted, it will automatically be scheduled for video oral argument unless the request specifically includes a request that oral argument be held at the courthouse in Tallahassee.

There are no local rules in effect for the First District. The court rescinded those rules some time ago. However, every attorney should pay close attention to the Notice to Attorneys, which spells out the specific procedural requirements the First District requests attorneys to comply with. The clerk of the court remains willing and able to help with procedural questions but, of course, cannot give legal advice. One suggestion before you call: please read the Rules of Appellate Procedure carefully. Many of the questions that the clerk's office receives are answered by referring the attorney to the correct rule of procedure.

The court's mediation program has now been in operation for more than a year. During the first year 75 cases were settled. Many of those were global settlements meaning that the entire case settled and not just the part of the case on appeal. A full explanation of the mediation program is in the Section's Appellate Practice Guide. In addition to mediation, the court also conducts case management conferences in some cases, generally complex multi-party cases. These conferences are much like pre-trial conferences at the trial level and aimed at resolving procedural problems so that the case can be decided on the merits as soon as possible.

The Future and Concerns of the Court

As most attorneys know, the First District sits in autonomous divisions. Currently those divisions are the general division, the criminal division, and the administrative division. Effective January 1, 1998, the court will revert to only two divisions, the administrative division and the general division. The administrative division will handle primarily appeals of workers' compensation cases and administrative cases involving Florida state agencies. The general division will handle most all other cases. The five judges assigned to the administrative division effective January 1, 1998 are: Richard W. Ervin, III, Anne C. Booth, Robert T. Benton, II, William A. Van Nortwick, Jr. and Philip J. Padovano. Judges assigned to the general division are: Chief Judge Edward T. Barfield and James E. Joanos, Charles E. Miner, Jr., Michael E. Allen, James R. Wolf, Charles J. Kahn, Jr., Peter D. Webster, Stephan P. Mickle, L. Arthur Lawrence, Jr. and Marguerite H. Davis.

There are significant recommendations currently pending before the Judicial Management Council regarding the reorganization of Florida's district courts of appeal. If those are adopted, there will be a substantial impact on the First District Court of Appeal. In one of the scenarios, the First District could lose as many as three of its judges. The Section had an extensive discussion of those recommendations at its most recent executive council meeting. If you are not aware of those suggested changes, you should obtain a copy of the Case Load Committee's report and review it.

The Judges at the First District

What follows is a brief biographical sketch of each judge. Editorial constraints prohibit a listing of many of the significant accomplishments in the life of each judge.

Edward T. Barfield has served on the Court since 1984 after nearly four years on the trial court bench in the First Judicial Circuit. Before becoming a judge, Chief Judge Barfield was in private practice in Pensacola and served as attorney for the Escambia County School Board. He earned his law degree at Tulane and has a Bachelor's in English from Davidson College. A father of three and grandfather of one, Chief Judge Barfield divides his "spare" time between serving on numerous Supreme Court and Bar committees. He was elected Chief Judge after Judge E. Earle Zehmer's death in May 1996. He was reelected for a two-year term in July 1997.

Richard W. Ervin, III, has been a judge on the First District since 1977, and served as Chief Judge from 1983-1985. Judge Ervin, a Phi Beta Kappa scholar, has a richness of diversity in his background, as demonstrated by his education: an undergraduate degree from Florida State University and a law degree from the University of Florida. His thirteen and one-half years as Public Defender in the Second Judicial Circuit were balanced by his stint as an Assistant United States Attorney for the Northern District of Florida from 1960-1963. Judge Ervin is the father of five children, and has been an active member of the Tallahassee Bar Association and Florida Bar committees, including the Appellate Court Rules Committee.

Anne C. Booth has sat on the First District bench since 1978 and was Chief Judge from 1985-1987. Immediately before joining the Court, Judge Booth was a named partner in a Tallahassee law firm. Judge Booth has served as a member and has chaired several important Bar committees during her career, including serving a six-year stint as Vice-Chair and Chair of the Committee on Standards of Conduct Governing Judges. Judge Booth, who was born in Gainesville, earned both her B.S. and J.D. degrees with High Honors from the University of Florida, where she was inducted into the Order of the Coif. She has authored several publications and has won awards for her research and writing. Judge Booth and her husband have two children.

James E. Joanos, father of three and grandfather of four, received his undergraduate degree from Florida State University in 1956 and his law degree from Yale in 1962, the continuity of his studies being separated by a tour of duty with the Air Force. Upon graduation from law school, Judge Joanos served on the First District as a law clerk, then went into private practice from 1963-1971. In 1971, Judge Joanos donned the robes of a Judge of the Leon County Felony Court of Record, where he sat for two years before becoming a Circuit Judge in the Second Judicial Circuit. He was elevated to the First District bench in 1980, and served as Chief Judge from 1991-1993. His Bench and Bar activities include serving on the Supreme Court Committee on Standard Jury Instructions (Criminal), the Gender Bias Study Commission, and as an active member of the Florida Circuit Judges Conference and the Florida Conference of District Court of Appeal Judges. Judge Joanos has taught law at Florida State University as an adjunct professor. His awards include the F.S.U. Gold Key Outstanding Alumnus Award for 1967 and the Outstanding Alumnus Award for 1986.

Charles E. Miner, Jr. received his undergraduate degree in Political Science from Florida State University and a law degree from the University of Florida. Judge Miner has a varied and interesting background. He went on the Circuit Court bench in the Second Judicial Circuit in 1976, where he served until joining the First District in 1989. Prior to becoming a judge, Judge Minor served in professional capacities as varied as being a High School Civics and English teacher in Clewiston, to patrolling Washington as a member of the United States Capitol Police. His legal background includes several years as an attorney in private practice and service as General Counsel to the State Board of Education. Unique among the judges of the Court, Judge Miner is active in the theater and a member of the Dramatist Guild. Before being published as an author of legal works on such subjects as prison overcrowding, Judge Miner wrote musical and dramatic plays, some of which have been performed on stage. Judge Miner's activities include being Chair of the

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Task Force for the Review of the Criminal Justice and Corrections System.

Michael E. Allen, the father of two girls, received his undergraduate degree from Florida State University in 1971 and his J.D. from Stetson in 1975. He practiced criminal law prior to taking the bench, both as a Public Defender and as a part-time prosecutor while in private practice. Judge

torney for the Department of Transportation. In 1979, Judge Kahn went into the private practice of law, where he remained until joining the First District in 1991. Judge Kahn is a published author who has actively served many national, state and local Bar organizations, including service as a member of the Florida Bar Rules of Judicial Administration and Appellate Rules Committees, as a Master Lawyer with the Tallahassee Ameri-

tion he has held for five years. Judge Mickle is active with local, state and national bar associations including the Inns of Court, the A.B.A., and the National Bar Association.

L. Arthur Lawrence, a lifelong resident of Florida and the father of three adult children, received his B.A. degree from Emory University in 1960 and his law degree from the University of Florida in 1962. Judge

the Court in 1994, sat for seventeen years as a Hearing Officer for the Florida Division of Administrative Hearings. Judge Benton has academic, teaching and writing credentials too numerous to mention, including a B.A. from Johns Hopkins, a J.D. with Honors from the University of Florida, membership in the Order of the Coif, an L.L.M. from Harvard Law School, and authorship of many publications on topics ranging from administrative procedure to criminal appellate practice. He has been a frequent lecturer and panelist and has served as member and chair of various Bar committees and groups. Judge Benton and his wife have two daughters.

William A. Van Nortwick, Jr., 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 President'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.

Philip J. Padovano is married to Janet Ferris and lives in Tallahassee. He received a B.S. in Business from the Florida State University in 1969 and his J.D. from Stetson University College of Law in 1973. While in law school, he served as a contributing author for the Stetson Law Review. Judge Padovano began his professional career as a lawyer in St. Petersburg where he worked in a small firm and as a sole practitioner. He moved to Tallahassee in 1978 to establish a law practice and eventually developed specialties in criminal law, family law, and appellate practice. In 1988, Judge Padovano was elected as a circuit judge for the Second Judicial Circuit. He was elected as Chief Judge of the Second Judicial Circuit in 1993, and again in 1995, where he served until 1996 when he was appointed to the First District Court of Appeal. Judge Padovano has written many published legal articles and he is the author of a legal textbook, Florida Appellate Practice, published by West Publishing Company in 1988. He has served as a lecturer for CLE programs and an adjunct professor at The Florida State University College of Law, and he is presently on the faculty of the Florida Judicial Studies where he teaches a course on handling capital cases. In addition to his regular duties, Judge Padovano has served on numerous Committees of The Florida Bar and of the Florida Supreme Court. His most prominent awards include the 1983 Tobias Simon Pro Bono Service Award by the Florida Supreme Court and The Florida Bar, and 1991 Outstanding Jurist Award by the Young Lawyer's Division of The Florida Bar.

Conclusion

The First District Court of Appeal continues to be one of Florida's and the nation's busiest appellate courts. It continues to try innovative approaches to speed the handling of appeals through the district court process while ensuring that a quality result is reached.

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