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Criminal Law Update

by Roberta G. Mandel¹

The Florida Supreme Court accepted the recommendation of the Florida Bar Code and Rules of Evidence Committee with regard to the adoption of an amendment to Florida Statute 90.104(1)(b). See, In Re: Amendments to the Florida Evidence Code-Section 90.104, 2005 Fla. L. Weekly S701 (Fla. October 20, 2005). The amendment eliminates the need for a trial objection in order to preserve an evidentiary issue for appeal when the trial judge makes a definitive ruling on the admissibility of the evidence. The amendment is consistent with the Florida Supreme Court's prior decision holding that once a trial court makes an unequivocal ruling admitting evidence over a motion in limine, the subsequent introduction of that evidence does not constitute a waiver of the error for appellate review. It was the position of a number of committee members who practice criminal law that the amendment would reduce the number of motions filed under Florida Rule Criminal

Procedure 3.850. The change eliminated the problem of inadvertent waiver that precluded an appellate court's consideration of an erroneous ruling at trial. The Florida Supreme Court held that it was effective on the date it became law.

In *State v. Barnum*, 30 Fla. L. Weekly S637 (Fla. September 20, 2005), the Florida Supreme Court rejected the State's argument that the Court's earlier decision in *Thompson v. State*, 695 So.2d 691 (Fla. 1997), had been altered by subsequent decisions of the Court. The Court reiterated that the issue presented in *Thompson* was "whether knowledge of the victim's status as a law enforcement officer is an element of attempted murder of a law enforcement officer under subsection (3) of section 784.07, Florida Statutes (1993)." *Thompson*, 695 So.2d at 692. There, the Court held that knowledge of the victim's

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Message from the Chair

by Susan W. Fox



Welcome to the 2006 year of Appellate Practice Section! Having had a great strategic planning session at the Section's Retreat this summer, I am excited to begin my year as Section Chair.

As we begin the year, it is an appropriate time to discuss the Section's goals for the coming year. Our foremost objective

is to carry on the Section's traditions of excellence.. Our publications and CLE programs have always been among the very best that The Florida Bar has to offer. With Caryn Bellus chairing the Publications Committee, Jack Reiter as Editor of *The Record*, and Betsy Gallagher chairing CLEs, we hope to meet, and perhaps exceed, the high standards set by their predecessors. With Celene Humphries as Programs Chair, we can all count on continuing the excellence and fun for our signature programs we

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sponsor at the annual meeting the Conversation with the Court and Dessert Reception.

But every organization needs new goals and initiatives from time to time. In our case, the new goals were established at our Retreat in May. A key goal is to continue our efforts to reach out to new members, especially government lawyers who handle 60% of all appeals, but who, due to time or budgetary constraints, do not attend The Florida Bar midyear or annual meetings and thus find it difficult to become involved in the Section. Starting with North and Central Florida, the Section will explore the feasibility of hosting local section meetings. The North Florida meeting is scheduled for noon on Thursday, September 21, at the Doubletree Hotel Inn in downtown Tallahassee and is open to members and nonmembers, but is particularly designed to reach out to government lawyers. Judge Padovano of the First District Court of Appeal will discuss the DCA Workload and Assessment Committee, and Marianne Trussell, Chair of our Government Lawyers Committee, will invite their active participation. Chris Carlyle and Angela Flowers are organizing a similar local gathering in Central Florida. While some local bars already have an appellate practice section that meets on a regular basis and coor-

dinates with the local district court of appeal, if your local bar association does not and you would like the Section's help in establishing a local group, please let me know.

A second goal is to create web-based discussion groups in specific appellate subject matter areas, such as: civil, criminal, family, land use, juvenile dependency, etc. Lucretia Pitts agreed to chair a committee to organize this initiative. We'll need everyone's participation in these discussion groups to make this endeavor a success, but the effort will be worthwhile considering the vast resource of knowledge you'll be able to access. Stay tuned to our website (www.flabarappellate.org) to look for these and other upgrades being developed by Henry Gyden, Chair of the Website Committee.

A third area of special concern in the coming year, with so many issues affecting appellate practice, is to increase the section's public advocacy. With regard to issues important to appellate practitioners, Tom Warner has agreed to chair this committee. Currently, the committee is working on the Section's response to and comments for the DCA Workload and Assessment Committee. Other issues to be addressed by this committee include electronic e-filing procedures, rule-making powers of the Supreme Court, pay raises for judges and court personnel, and issues involving the JNCs. If you have an issue you want the committee to address, please do

not hesitate to contact me or Tom Warner.

On the fiscal front, the Section will attempt to better secure its financial future and independence by affiliating with an appropriate non-Bar organization, probably a 501(c)3 corporation, whose finances would be independent of The Florida Bar. Tony Musto agreed to chair this initiative.

Some of the initiatives coming to fruition this year were begun by last year's chair, Tom Hall, in whose footsteps I am honored to walk. These initiatives include the outreach to government lawyers, which has long been one of Tom's goals for the Section, and the establishment of financial independence. However, the biggest project being carried over is publication of the Self Represented Litigant Handbook. As I write this message, the final chapters of the handbook are being edited and assembled by Dorothy Easley who has been spearheading this monumental project.

Finally, recognizing a discussion at the Retreat to the effect we each became involved in the Section when we were personally recruited and made to feel welcome at a Section meeting, a Hospitality Committee to be chaired by Barbara Eagan and John Crabtree will endeavor to make sure that each member who attends a meeting is given a meaningful opportunity to serve on a Section committee. At the midyear and annual meetings, the Section will sweeten the invitation by offering free pastries for new members or new attendees to the committee meetings, and will help steer the new recruit to the right committee meeting.

As I look forward with anticipation to the exciting work to be done this year, I feel also trepidation because it seems like times are tough and getting tougher for many appellate lawyers. The data presented so far by the DCA Assessment Committee indicates appellate filings are down in all but criminal and postconviction matters. The reasons for the reduction in filings is a subject I hope to explore in the coming year.

I thank you for the privilege of serving as Chair and welcome each of you to contact me at any time with questions or concerns at susanfox@flappeal.com.

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