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# Who's Your Appellate Lawyer? Spotlight on Fox & Loquasto, P.A.

by Susan W. Fox

*The "Who's Your Appellate Lawyer?" Spotlight is a series focusing on attorneys who specialize in appellate practice. "Who's Your Appellate Lawyer" is the slogan of the Appellate Practice Section and is designed to create awareness of the need for appellate specialists. This series looks at practice development as an appellate specialist, by spotlighting successful appellate practitioners.*

On December 1, 2003, Fox & Loquasto ("F&L") came into being as an appellate boutique law firm with offices in Tampa and Tallahassee. In the first month, F&L became counsel of record in twenty-three appellate proceedings, and in another twenty-nine appeals during the ensuing six months. These included appellate proceedings in all but one of the state appellate courts and the United States Supreme Court, and covered the gamut of civil, criminal, administrative, worker's compensation, traffic/DUI, public utilities, probate and family.

F&L's principal attorneys, Susan W. Fox and Wendy S. Loquasto, believe theirs is the first appellate firm to offer comprehensive, statewide coverage of all types of appeals in all Florida courts. This approach, however, was a natural outgrowth of their different backgrounds, broad experience, and geographic locations. This

article describes the evolution of the founders of F&L into appellate practitioners, and provides guidance to attorneys who may wish to follow a similar path.

## **A. Becoming Appellate Lawyers**

Susan Fox's destiny of becoming an appellate lawyer was settled while attending the University of Florida, College of Law ("UF"), from 1974 to 1976. During law school, she was on the Editorial Board of the Law Review, and taught legal research and writing.

More fatefully, however, she took an appellate law course taught by Robert T. Mann, who had recently retired as Chief Judge of the Second District Court of Appeal. Mann encouraged Susan to pursue an interest in appellate practice, and took her to meetings of the Appellate Court Rules Committee, of which he was Vice Chair. Other Committee members besides Mann included legendary lawyers such as the late Tobias Simon and Judge Raymond Nathan, as well as Adkins Award winners Arthur England and William Haddad. The Committee was then in the midst of its historic revision of the old Florida Appellate Rules, and was writing the present Florida Rules of Appellate Procedure. Robert Mann enlisted Susan to perform legal research for the Committee, with the

promise that he would help her publish an article when the Rule revisions were finalized.

Susan's father, Hamilton H. Whaley delivered a further nudge to Susan in the direction of appellate practice. Mr. Whaley came to UF one fall weekend for a football game. There, he deposited Susan in the library, along with a file for Susan to write her first appellate brief on a case that he had lost at trial. Since he represented the appellant, the chances of victory were not great, but he liked Susan's brief so much that he filed it verbatim.

Upon graduation from UF, Susan became an all-purpose associate at Macfarlane Ferguson & McMullen in the summer of 1977. A chance to specialize in appeals was not handed to her on a silver platter. Despite winning her father's appeal, being appointed to the Appellate Rules Committee immediately upon graduation, and publishing an article about the new appellate rules with Judge Mann in the Florida Bar Journal in 1978, she was given only limited opportunities to try her hand at appeals during her early years. The law firm already had an established appellate department that did not enthusiastically share its business with the young upstart.

Instead, most of the appeals assigned to Susan came through the

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law firm's workers' compensation department, which included her father. As a result of his praise of her appellate skills, she began doing appeals for the law firm's defense clients. More significantly for her practice today, she developed a small following of claimants' attorneys who became acquainted with her as opposing counsel, and who then turned to her to handle their own appeals. This following grew over the years.

Ultimately, Susan became an integral part of the appellate department at Macfarlane Ferguson. She headed the Macfarlane Ferguson appellate department from 1996 until she left to start F&L. The referral bases she had built over the years became the portable business that allowed the F&L firm to be established.

Also during that time, Susan served several terms on the Appellate Court Rules Committee, including six years as the Committee's Secretary. She became Committee Chair in 1999. She also became active in the Appellate Practice Section, serving as Editor in Chief of *The Record* for two years, and maintains an active role in the Section's leadership.

Wendy Loquasto's path to appellate practitioner arises from a more academic history. Like Susan, Wendy was on Law Review from 1986 to 1988, while she attended Stetson University College of Law ("Stetson"). She was also a teaching fellow, assisting in the instruction of first year law students in their legal research and writing course. The seeds of Wendy's career in appellate practice were sewn during her own first-year experience, when she received the awards for "Best Oralist" and "Best Brief" in her legal research and writing class.

Upon graduating from Stetson in 1988, Wendy began her clerkship with the Honorable Richard W. Ervin, III, at the First District Court of Appeal. Sixteen years later, one could say, "and the rest is history." At the time, Judge Ervin had been at the appellate court for nearly twelve years, and under his mentorship, as well as that provided by the other judges and law clerks, Wendy's love of appellate law blossomed.

Wendy became immersed in appellate law while at the First District Court of Appeal, a court with the most varied caseload of all of Florida's appellate courts. She worked on the usual civil and criminal cases and extraordinary writs; but due to the court's Tallahassee location, she also worked on many state agency appeals, as well as workers' compensation appeals, over which the First District has exclusive jurisdiction.

Also, like most appellate courts, the majority of the cases filed at the First District were (and still are) criminal appeals. Wendy came to relish *Anders* appeals because, through the process of reviewing the record to search for error, she experienced an inkling of what it would mean to be an appellate advocate.

While Wendy worked anonymously on the First District's appeals, she resolved to remain in the appellate law system. After remaining with the First District for more than fifteen years, she feared that opportunities in private practice had passed her by. The opportunity to form an appellate practice law firm with Susan represented Wendy's chance to realize her long-held dream.

Since leaving the court and forming F&L in December 2003, local attorneys have been eager to tap Wendy as an appellate resource. Because of Wendy's fifteen years at the First District, she developed a unique knowledge of the workings of an appellate court, as well as appellate law and rules. Those attorneys not practicing in the area of appellate law refer their clients needing to file an appeal to Wendy. They do so, confident that they have placed their clients in capable hands.

### **B. The Mechanics of F&L's State-wide Practice**

With Susan in Tampa and Wendy in Tallahassee, F&L faces both logistical opportunities and challenges. Although they have secretarial support in both offices, Tampa is the main office, out of which they bind and send all their briefs. They divide the cases based on their interests, skills, and work load. They capitalize on their respective appellate expertise by always exchanging drafts during the week preceding the due date, for additional appellate "checks and balances". Both appreciate the criti-

cal analysis the other provides.

Although a statewide appellate practice would have been unthinkable in years past, with overnight mail delivery, and with electronic filing soon to become a reality in some courts, an appellate attorney's physical location places no limitation on the practice area.

The broad spectrum of appeals that F&L handles might seem unusual to many appellate practitioners, since most focus on either civil or criminal appeals. Because Susan and Wendy have decades of combined appellate experience, however, they have come to find that the steps and critical analysis necessary to handle any kind of appeal are essentially the same. They, therefore, feel comfortable handling an appeal of any topic, although they do draw on each other's subject matter expertise.

While Susan's practice has been largely in the civil and administrative areas, Wendy, through her work at the First District, has gained substantial experience in criminal appeals. So, the decision to include criminal appeals in F&L's portfolio was also a natural one.

The appellate boutique practice also has several advantages over the large firm practice that is more traditional for appellate lawyers. For attorneys that rely on a referral base, as Susan has, a large firm imposes many conflicts of interest that require potential appeals to be turned away. In the boutique practice, on the other hand, conflicts are rare. Also, outside attorneys who would not refer appeals to an appellate attorney in a competing large firm, might be more willing to refer to an appellate boutique because there is no risk of losing the client's business on other matters. The large firm practice requires a fairly high overhead, which can be an unnecessary burden on an appellate practice that requires minimal overhead.

F&L's all inclusive approach to appeals also has advantages. Referral attorneys don't encounter a negative response to the question, "Do you handle [whatever type] appeals?" Few appeals are rejected out of hand. Screening appeals is still required, of course, for jurisdiction and merit, and fee arrangements must be worked out. Fee arrangements are generally flexible because of the variety of ap-

peals. For example, in some appeals, such as workers' compensation, statutory fees are contingent. Criminal appeals are usually performed on a flat-rate basis. Other appeals are often done on an hourly basis.

### C. Suggestions for Developing an Appellate Practice

To those wanting to start working more in appellate law, or embark on their own appellate practice, Susan and Wendy impart the following wisdom.

**1. Find a Mentor.** As Susan's story shows, many successful appellate attorneys have had the benefit of a mentor who helped to guide and groom them. Some young attorneys today prefer peer-to-peer counseling, and do not desire the inferior status that comes with being a protégé of a successful person. While recognizing this path is not for everyone and that some young lawyers never get the opportunity to learn from a master, the opportunity, if it comes, should not be rejected lightly.

**2. Develop Skills.** Although on-the-job learning opportunities do arise, most successful appellate practitioners do not get paid to learn their skills. They, in fact, develop their strongest and most-important skills through Bar committee work, CLE workshops, observing role models, and pro bono projects. Performing free research and legwork for a key committee, as Susan did in 1976, can open doors of opportunity, as well as provide a chance to work with the greatest members of the profession.

Through Bar and pro bono activities, budding appellate lawyers can make contact with others, who will be available to provide advice, or who might be willing to provide consultation on arcane points of appellate procedure, proofread a brief or article, or participate in a moot court before oral argument.

To learn appellate procedure, service on the Appellate Court Rules Committee and its sub-committees is one of the best ways to do that. Likewise, service in the Appellate Practice Section, particularly the Publications or CLE Committees, can be invaluable for overall appellate learning.

**3. Develop Credentials.** Credential development comes primarily

through Bar service. Bar service leads to opportunities for writing and lecturing. Don't wait until you already feel that you know it all before volunteering, as this will only delay your development. If you are uncertain of what you have to offer, attend the meetings until you find some way to volunteer to serve. All Bar committees are hungry for fresh recruits.

**4. Cultivate Opposing Counsel.** While keeping a certain professional distance from opposing counsel is always appropriate, a courteous relationship has many rewards. The most obvious of these is cooperation through the course of the proceeding, resulting in fewer delays, decreased motions practice, and less stress and aggravation. Also, by doing a good job for your client without unnecessary animosity, your opposing counsel might become a referral source and ally in future cases.

**5. Build Relationships and Develop a Reputation for Reliability.** Most attorneys who refer appeals want to be able to feel confident that the case will be in good hands, and not require them to further monitor or follow-up. They want to refer the case to someone who will accept it. Therefore, be prepared to say "yes" to opportunities.

While we all must sometimes reject appeals that fail to meet finality or jurisdictional requirements or lack merit, be sure to give your referral source an opportunity to explain to you why he/she believes this appeal is worthy of your attention. This is true whether the referring attorney is your law partner, a regular referral source, or someone you met recently at a Bar function. Give them no reason to feel reluctant to call you in the future. Your desire is to become their "go to" person, who can be viewed as someone they can count on in appellate emergencies.

Relationships and reputations built outside the appellate arena are also useful in appellate practice. Wendy, for example, impressed many people with her work as the lead researcher and compiler of FAWL's First 150 Women Lawyer's Project, and later in assisting in completing FAWL's 50-Year history book. Susan was FAWL's Journal Editor during the First 150 Women Lawyer's Project, and FAWL's President dur-

ing the 50th Anniversary year. Through this experience, FAWL's President learned that she could count on Wendy to complete difficult projects. And when the time came to bring Wendy's talents into the appellate arena, Susan did not hesitate to do so. Through Bar work, lawyers learn who they can, and cannot, count on.

**6. Be Patient.** Few, if any, of us are handed the appellate opportunities of our dreams, or given major lucrative appeals on a silver platter. We are more likely to get a chance, as Susan did, to try our hand at a perceived long shot; to take on a type of appeal that no one else wants, and then to wait patiently for additional opportunities. While waiting, absorb everything you can about the process. No one starts at the top.

**Susan Fox** is a Florida Bar Board Certified appellate practitioner with her law firm, Fox & Loquasto, P.A., in Tallahassee and Tampa, Florida. She is currently Vice-Chair of the Appellate Practice Section, former Chair of The Florida Bar, Appellate Court Rules Committee, former Editor of The Record, Journal of the Appellate Practice and Advocacy Section, and former President of Florida Association for Women Lawyers.

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