

A d v i s o r*W h e r e F a m i l y M a t t e r s*

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*Hiring An Appellate Specialist***Litigation. . . it does not always work the way you planned, and if it does, the other side often will choose to seek review by a higher court. So, what do you do? Hire an appellate specialist!***By: Debra Sutton***WHY hire an appellate specialist?**

A number of trial lawyers are of the belief that an appeal simply regards the writing of an appellate brief and, in most cases, the presentation of an oral argument. They did this in law school, so how hard can it be? In most cases, however, it has been a number of years, if ever, since they have handled an appeal. The rules can be sticky and rights can be lost, simply by not following the rules. The writing style is different. The presentation of oral argument is not like the presentation of an argument to a jury or judicial trier of fact. In fact, many appellate judges and lawyers believe that it is the ability to succinctly write the appellate brief that is the most valued skill of the appellate lawyer. Former United States Supreme Court Justice Thurgood Marshall once observed, "In the seclusion of his chambers, the judge has only his briefs and his law books." The appellate specialist is uniquely skilled to identify the relevant facts to most effectively present a compelling argument to the court.

Most trial lawyers are skilled in the spoken word and persuasion in that regard. They present their case through questions and answers of witnesses at trial, during depositions or both. An appellate lawyer, in contrast, must make their client's case through written word and location and citation to written legal authorities. While oral argument is often a part of an appellate process, the format is more like an oral examination or debate and is firmly limited in most all cases to a total of 20 minutes. Thus, the appellate lawyer is particularly

skilled in identifying and responding to the Court's questions and presenting the highlights and strengths or, on occasion even explaining a perceived weakness, to attempt to persuade the court to rule with your position.

As the client, however, you may feel comfortable with your trial counsel and expect that attorney to also argue your case before the appellate court. If the trial attorney is not a specialist in appellate law, however, this may not be the best idea. The trial attorney should, however, work closely with the appellate counsel to assist in identifying and enabling appellate counsel to present the strongest argument on appeal. Note, too, that the strategy used before a trial court or jury is often not the same as that which would best serve the client's interests before the appellate court. Thus, a fresh view from appellate counsel is desirable.

WHAT are the qualifications of an appellate specialist?

An appellate specialist is a lawyer designated by the Florida Bar as being Board Certified in this area of the law. In Florida, of the approximate 80,000 licensed to practice law in our state only 155 attorneys are Board Certified in Appellate Practice. In order to become Board Certified, the attorney must be a member in good standing with the Florida Bar, must have a significant portion of their practice dedicated to this area of the law, must pass peer and judicial review of their abilities in this area of law, must provide the reviewing committee of the Florida Bar with a sampling of the cases they have handled and the oral ar-

guments presented to demonstrate their legal abilities and successfully complete a comprehensive one-day written examination covering state and federal appellate law. In addition, a Board Certified specialist has to complete 45 hours of continuing education in the area of appellate law and each 5 years must be re-certified to show continued involvement and capabilities in the area of specialization. Through this program, attorneys as well as the public can make informed decisions about seeking the assistance of an attorney.

WHEN to hire an Appellate Lawyer.

The simple answer to the question of when to hire an appellate specialist is "as early as possible." Realistic considerations regarding the consultation with or retainment of appellate counsel includes the complexity of the case, the issues present, the nature of the controversy and extent of damages, the financial resources available, and others dependent upon the case. While the specific list of situations is endless, here are some examples of the types of matters and situations where serious consideration should be given to hiring an appellate specialist:

- To assist during trial, before an adverse decision, to ensure that the record is preserved;
- To assist with the evaluation of the court's jurisdictional authority and limitations;
- To ensure jurisdictional deadlines are not missed;
- To strategize regarding trial arguments, presentation of evidence, objections and requests for mistrial, burdens of proof, proffers, etc.;

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Appellate...cont.

- To have a fresh perspective, which often identifies more favorable objectives for a successful outcome, such as identifying jurisdictional issues that may have been missed by a trial counsel still caught in the heat of the battle;
- To have insight into the different standards of review, aligning such for the best outcome;
- To assist with drafting motions for summary judgment, relief from judgment, rehearing;
- To assist with drafting of final judgments if an appeal is to be sought or if one is anticipated from the opposition;
- To challenge decisions by writ (e.g. a trial court order requiring disclosure of privileged material; to have a client released from incarceration or for the return of a child)
- To analyze the "finality" of a judgment and then to advise whether to seek rehearing, to appeal or both;
- To consider whether to cross-appeal where a request for review is initiated by the opposing party;

WHY would I need an Appellate Specialist?

There are many situations where an appellate specialist can be of great assistance and, in some cases, be able to preserve a client's rights, help to avoid an adverse decision, and perhaps even assist in the avoidance of attorney negligence. For example, the appellate rules are different in state versus federal court. There is a ten-day time period within which to file a notice of appeal in federal court, whereas it is thirty days in state court. An attorney who is not mindful of these distinctions could forfeit a client's right to appeal without further remedy. Thus, with a consultation with or referral to an appellate specialist, the appellate rights of the client could be saved.

HOW would you hire an Appellate Specialist?

Ordinarily, this is the easy part. It is very similar to the hiring of other lawyers. The fee arrangements may be hourly, flat fee, contingency or some combination. Some clients or lawyers desire that the appellate attorney be associated through the trial lawyer's firm and others wish to have a separate agreement between the appellate lawyer and the client. Some contracts or statutes will, as well, provide for the payment of attorney's fees and costs on appeal. Section 61.16, Florida Statutes (2007), for example, provides in family law

matters for the awarding of attorneys fees and costs to a spouse in need of financial assistance or where the parties' incomes may be disparate.

What is important is to also know that a number of appellate lawyers will attempt to answer general inquiries without charge to inquiring counsel or for a nominal fee. More complex or involved inquiries will often be accomplished for an hourly investigative charge, particularly where pleadings, orders and transcripts are to be reviewed as part of the initial opinion to be rendered.

The Sutton Law Firm, established in 1990, has a general appellate practice, serving most all appellate needs. We often work with civil trial lawyers to defend or to pursue appellate review of judgments, non-final orders, or to seek issuance of a writ, most commonly for discovery related matters. Due to the firm's trial practice experience in the area of marital and family law, referrals and cases in family law appellate matters represent a large segment of the firm's appellate practice.

We welcome the opportunity to consult with attorneys or clients in these areas of the law.

Debra Sutton graduated cum laude from Stetson University, College of Law. She was first Board Certified in 1995 and has maintained that designation in Appellate Practice through the re-certification since that time. She has also served for six years on the Florida Bar's Appellate Certification Committee. Following her service on the Appellate Certification Committee, Ms. Sutton next served on the Appellate Review Panel of the Family Law Certification Committee. Recently, Ms. Sutton was appointed to the Family Law Certification Committee.



New in Polk County: Computer Re-enactments

Polk County now has available locally a computer graphics generalist who can prepare computer generated works. These include services from the more common photograph restoration to the complex services of reconstruction of accidents. Accident reconstruction can be prepared from computer graphics, actual photographs, accident reports, or some combination. Proposed additions or destruction of assets or real property can be brought to life. For example, by showing a vehicle in its existing state, at various stages of repair and improvement, and as anticipated upon completion. "Day in the Life" videos are available to assist with the presentation of various cases such as personal injury claim, an alimony claim, or a claim of disability of a child. Need to know how the home would look with a pool without spending the money to add the pool - this service is also available. For assistance with visual presentation of your case or your client's case, contact Narvin Meeks, Computer Graphic Generalist at www.nmeeks.com.



Homeowner's Insurance: Are you really covered?

By Neal O'Toole

Since the hurricanes in 2004 throughout Florida, homeowners are having to pay much more for much less insurance coverage. Even though the property insurance industry reported record profits of \$44 billion in 2005 and \$64 billion in 2006, there has been an ongoing deliberate attempt by insurance companies to limit those things that are covered by your policy of homeowner's insurance in order to increase their profits. The changes in insurance coverage have been gradual. They are spelled out in annual revisions to the terms of policies. Unfortunately, few homeowners read their policies and they are often unaware that their coverage has been deleted, reduced or changed until they are faced with making repairs or rebuilding their homes. As we approach the new year, it is recommended that you carefully review your policies to make certain that you are fully insured.

The following are some examples of things that many homeowner's insurance policies no longer cover:

Flood: This is also referred to in most policies as lateral water intrusion. Unbeknownst to many people, the standard homeowner's policy does not include coverage for flooding, leakage or broken pipes regardless of whether or not it is caused by a covered event such as a hurricane. Flood insurance must be purchased separately and is generally available through the federal government's flood insurance program. If you are not sure how to get this coverage you should speak to your agent or visit the Federal Emergency Management Agency site for more information (www.fema.gov).

Sinkhole: Regrettably, this year during the special session which was called to deal with the alleged "insurance crisis" the Florida legislature adopted new laws regarding sinkhole insurance which greatly limit the nature and type of sinkhole coverage that a homeowner is entitled to. Starting this year, new policies will no longer automatically include sinkhole coverage. Rather, homeowners will be required to specifically request and pay for this coverage when they

renew or purchase new policies. Here in central Florida, sinkhole losses account for a substantial portion of property insurance claims and homeowners should be vigilant to make sure that they have this coverage in their policy.

Dogs: Over the years insurance companies have become less and less enthusiastic about insuring certain breeds of dogs and some companies have excluded dog bites entirely. The breeds that many insurance companies have been known to disapprove of include Akita, Alaskan Malamute, Chow Chow, Doberman Pinscher, German Shepherd, Pit Bull and Rottweilers. If you have a dog, make sure you have insurance coverage in the unfortunate event that it bites someone.

Mechanized vehicles: For quite a long time, homeowner's insurance policies have excluded any injuries relating to the use and/or ownership of motorcycles, ATV's, boats, jet skis, and the like. You should always be certain that you obtain separate coverage for these at the time of your purchase.

Personal computers, phone systems, and security systems: These items are very often excluded in homeowner's policies although you may be able to obtain coverage through endorsements and/or special limits on these items. You should make sure to ask if your policy has adequate coverage for these items.

Jewelry, furs and collectibles: Most policies only have a minimal payout that is available under the personal property provisions. Additional coverage is almost always available for these items through an endorsement or rider also known as scheduled personal property insurance. Once again, you should make sure that you have coverage for such items and that the coverage is adequate.

Hurricane deductibles: A recent occurrence in the state of Florida is that insurers are now allowed to establish and charge for a different, larger deductible in connection with a hurricane loss. According to the Florida Insurance Council, 70% of Florida home-

owners currently have different deductibles applicable to hurricane coverage. The deductibles often range from 2% to 5% of the overall loss and could prove to be a hefty dollar amount one would owe in the event of a hurricane. As an informed policy holder you should consider setting aside money to defray the costs of what could be a sizeable deductible in the event a hurricane strikes.

To get a better understanding of your homeowner's insurance policy, you should talk to your insurance agent or licensed agent at your insurance company. It may even be a good idea to schedule an appointment and go sit down with them so that you can discuss the ins and outs of your property and casualty insurance policy including coverage limits and exclusions. Each year there are more and more variables in the type of coverages you have and you should make sure to make educated decisions. In addition, researching homeowner's insurance policy information is actually quite easy on the internet merely by accessing the Florida Department of Insurance (www.fl.org) or a host of other consumer oriented sites.



Neal L. O'Toole is an AV rated lawyer. He is board certified by The Florida Bar as both a Civil Trial Lawyer and in Business Litigation. He is also certified by the American Board of Trial Advocacy and the National

Board of Trial Advocates. Mr. O'Toole is admitted to practice law in Florida and Louisiana, as well as before the United States District Courts and the Courts of Appeal within those states. Mr. O'Toole is a partner of the law offices of Lilly, O'Toole and Brown LLP.



STETSON LAW SCHOOL ADVISORY COMMITTEE

On September 28, Attorney Sutton again returned to her alma mater, Stetson University, College of Law, as a member of its advisory committee. The college continues to be ranked among the nations' Top 100 law schools. The college has continued to excel in its trial advocacy programs, remaining No. 1 for trial advocacy, as well as the clinic experiences made available to students. The clinics are designed to provide students with a limited license to practice law under the supervision of a member of the Florida Bar, to enable the student to have actual hands-on experience in the practice of law prior to graduation. The college is the first law school in Florida to require pro bono services by students and faculty. Stetson now has centers for excellence in advocacy, elder law, higher education law and policy and international law.

The Dean was also proud to announce the college's launching of various subjects for virtual study through its Distance Learning program, enabling students to participate from any location - including other coun-

tries - and at various times. The program is in its infancy, but is already being reviewed by other colleges for implementation on their campuses. The law school has provided summer programs in Buenos Aires, Argentina; Tianjin, China; Granada, Spain; The Hague, Netherlands; and Freiburg, Germany. Professor Nagel of Stetson recently lectured regarding social and economic development in Lagos, Nigeria.

The committee addressed various issues of concern to Stetson, identifying its strengths, protecting its position in legal education five years from now, and attempting to predict some of the significant changes and developments anticipated in the law in the coming years to assist the law school and its faculty in meeting these challenges for the future. Attorney Sutton reported that she is pleased to see the continued commitment of Stetson Law School to legal excellence and its drive to remain one of the campuses that continues to produce legal scholars for the continued development of the future of our judicial system.



Family Fun Night in Historic Bartow

On the third Friday evening of each month, the streets of Historic Downtown Bartow are blocked off. Local antique shops display their prized finds for purchase. The restaurants and vendors provide plenty of southern delicacies for tasting and beverages to drink. Musical talent is provided and friends, parents and children can all - literally - "dance in the street!" It is a nice time to unwind before returning home from the busy work week. On Friday, September 21, 2007, the Sutton Law Firm hosted the Family Fun Night. Sounds from the 60's got everyone singing, the local high school students paraded their Sadie Hawkins attire, and the younger children enjoyed the large inflated slide. Many parents and grandparents sat at tables under umbrellas, taking it all in and sipping the strawberry champagne provided by the local bed and breakfast. The Sutton Law Firm looks forward to hosting other family oriented events in the future.



The home of the Sutton Law Firm in Bartow, FL

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you written information about our qualifications and experience.


The Mann Manor
A d v i s o r

Sutton Law Firm
(863) 533-8912
Post Office Drawer 427
325 West Main Street
Bartow, FL 33831-0427

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