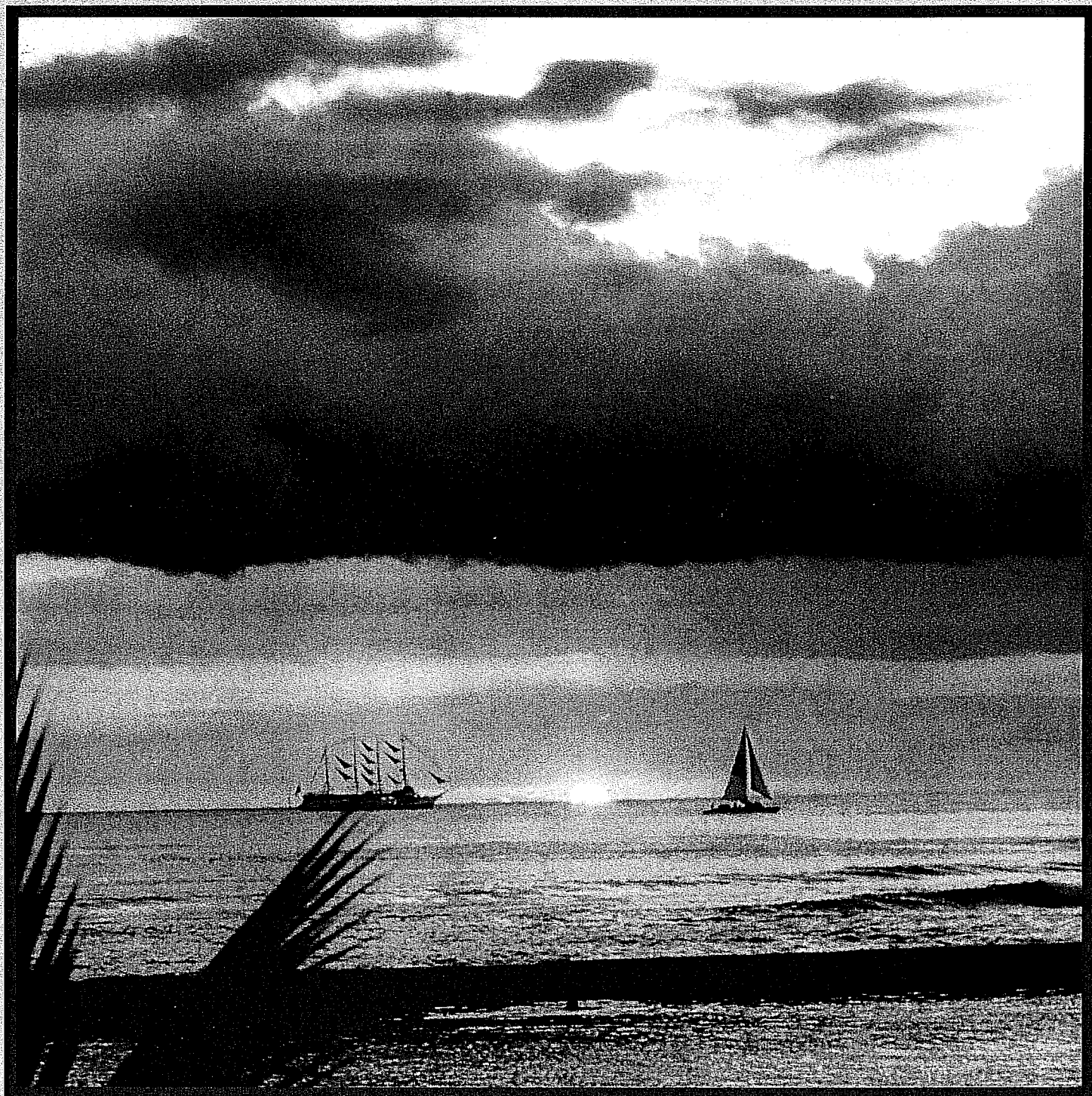


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THE HILLSBOROUGH COUNTY BAR ASSOCIATION

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FIGURING OUT FINALITY

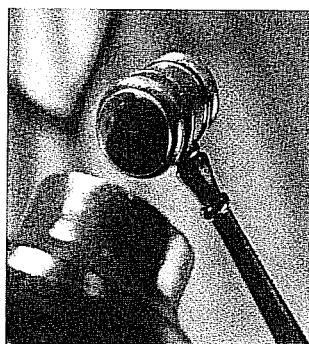
Appellate Practice Section

Chairs: Duane A. Daiker, Shumaker, Loop & Kendrick, LLP; and Marie A. Borland, Hill Ward Henderson



The first issue attorneys face in the appellate process is whether an order is final and ripe for appeal. With the exception of a very narrow class of non-final orders that are immediately reviewable,¹ an order must be "final" to seek appellate review. An order or judgment is final when there is "an end to the judicial labor in the trial court."² Attorneys

will often file a notice of appeal prematurely, such as appealing an order of dismissal with prejudice or an order granting summary judgment, before the entry of an actual final judgment.³ Fortunately, the appellate rules permit a premature notice of appeal to vest jurisdiction in the appellate court.⁴ A practitioner is unlikely to cause any prejudice to the client by filing a premature notice of



Any doubt as to the finality of an order should be resolved in favor of filing a notice of appeal, even if potentially premature.

appeal, although it adds unnecessary confusion to the appellate process.

In comparison, the late filing of a notice of appeal directed to a final order is disastrous. The appellate court has no jurisdiction to hear an appeal if the notice is late, and this jurisdictional defect cannot be remedied by the trial court or the appellate court.⁵

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MEDIATION & ARBITRATION DALAN, KATZ & SIEGEL, P.L.

Attorneys at Law

Rick Dalan:

- Board Certified Civil Trial Lawyer
- Certified Circuit Civil Court Mediator
- Certified Federal Court Mediator
- AV Rated

Jeffrey M. Katz:

- LLM in Taxation
- Certified Circuit Civil Court Mediator
- AV Rated

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The rendition of a final order can easily be overlooked when partial judgments are entered as to less than all claims or less than all the parties to an action. As a general rule, an order that disposes of all claims as to a party is final as to that party.⁶ That order must be appealed within 30 days of rendition. As an example, if a court enters summary judgment in favor of one defendant in a multi-defendant case, the judgment as to that defendant must be appealed within 30 days. If the notice is not filed until the conclusion of the case, the appeal will be dismissed as untimely. This differs from

federal procedure, which does not require an immediate appeal in such circumstances.⁷

Judgments that reserve jurisdiction for an award of attorney fees or costs are considered final and appealable when rendered, even though the collateral cost or attorney fees issues remain pending.⁸ Practitioners must review orders carefully to determine their finality because of the serious malpractice risks associated with the late filing of a notice of appeal.

¹ FLA. R. APP. P. 9.130. Some nonfinal orders may be reviewable by certiorari if they depart from the essential requirements of the law, causing a material injury throughout the remainder of the proceedings and effectively leaving no adequate remedy upon appeal of the final judgment.

See Allstate Ins. Co. v. Langston, 655 So. 2d 91, 94 (Fla. 1995).

² *Miami-Dade Water & Sewer Auth. v. Metro. Dade County*, 469 So. 2d 813, 814 (Fla. 3d DCA 1985).

³ *See, e.g., Better Gov't Ass'n of Sarasota County, Inc. v. State*, 802 So. 2d 414 (Fla. 2d DCA 2001).

⁴ FLA. R. APP. P. 9.110(l).

⁵ *Miami-Dade County v. Peart*, 843 So. 2d 363, 364 (Fla. 3d DCA 2003); FLA. R. CIV. P. 1.090(b). *See also David M. Dresdner, M.D., P.A. v. Charter Oak Fire Ins. Co.*, 972 So. 2d 275 (Fla. 2d DCA 2008).

⁶ *Phillips v. Ostrer*, 442 So. 2d 1084, 1084 (Fla. 3d DCA 1983).

⁷ FED. R. CIV. P. 54(b).

⁸ *Travelers Indem. Co. v. Hutchins*, 489 So. 2d 208, 209-10 (Fla. 2d DCA 1986).

Author: Duane A. Daiker, Shumaker, Loop & Kendrick, LLP



Appellate Practice Section Luncheon



Judge Douglas A. Wallace of the Second DCA was the featured speaker for the Appellate Practice Section Luncheon held on May 19, 2010 at the Chester H. Ferguson Law Center. Left: Appellate Practice Section co-chair Duane Daiker, Judge Douglas Wallace, and Randall Reder. Right: Judge Morris Silberman and 2010-2011 HCBA President Amy Farrior.