



# THE CARLYLE APPELLATE LAW FIRM

A MEMBER OF THE FLORIDA APPELLATE ALLIANCE, PLC

## APPELLATE INSIDER

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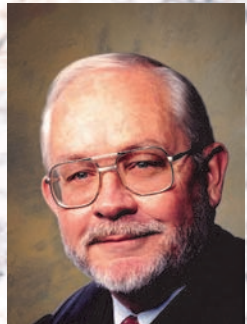
Spring 2006



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### Anxiously Awaiting- Firm Celebrates Ground Breaking

The Carlyle Appellate Law Firm marked the firm's commitment to community and the appellate process at the groundbreaking of its new office located in The Laurel Manor Professional Center on State Road 466 in The Villages.

Construction of the new office is anticipated to be complete in May 2006. "The new office building will provide a pleasant working environment and will give us more room to better serve our clients and referring lawyers," stated founding partner, Shannon McLin Carlyle. "Although our practice is truly nationwide, we maintain our office in 'Florida's Friendliest Hometown' -- The Villages, which provides our attorneys, paralegals, and staff with the ability to balance career, family, and recreation," Carlyle added.

The Carlyle Appellate Law Firm has over 75 years of combined appellate ex-



perience and has counseled and co-counseled with some of the top lawyers in Florida and throughout the country. The Firm handles complex appellate litigation in state and federal courts.

Founding partner, Shannon McLin Carlyle, symbolically turns the dirt at the new home of The Carlyle Appellate Law Firm as former appellate judge Gilbert S. Goshorn, Jr. (left) and law partner Christopher V. Carlyle (right) observe the ceremony.

### General Counsel to a United States Senator

By Skip Dalton

*Skip Dalton took a 6 month sabbatical from The Carlyle Appellate Law Firm to serve as general counsel to US Senator Mel Martinez. The following is an account of his work there.*

I have been privileged to have a number of wonderful partners and colleagues in the practice of law over the past 30 years. Among the most rewarding were the years spent in practice with United

States Senator Mel Martinez. When Mel left central Florida to go to Washington, I could only imagine the excitement he felt at being in the seat of our government, serving in the United States Senate. Neither of us ever really imagined such a development during our days together in Orlando. Certainly,

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*Counsel continued from page 1*

it never occurred to me that his meteoric rise in the world of politics would take me out of my comfort zone and into the world of government service. From June of 2005 to January of 2006, I was honored to serve as General Counsel to Senator Martinez in his Washington, D.C. office. In addition to the fun of living and working with Mel in Washington, I was privileged with a unique window into the world of national politics and events.

During my stint in Washington, my principle responsibility was to establish procedures to assure that the office staff was well educated in the ethical obligations inherent in working in the office of a United States Senator. In that vein, I developed forms and guidelines for acceptance of gifts, provided oversight into public and privately sponsored travel requests and reviewed correspondence to assist staff in adhering to the rigid rules of the Senate concerning the separation of official business from political or campaign functions. From time to time I provided legal analysis of issues and briefing points for the Senator and his communications department. In addition, I was tasked with the establishment of procedural rules for the statewide Federal Judicial Nominating Commission and assisted Senator Martinez by recommending individuals to serve as members of that commission. I was privileged to work closely with staff from Senator Nelson's office as well as lawyers from the Office of Legal Policy at the White House, Office of White House Counsel, Counsel for the Committee on the Judiciary and the Office of Legal Counsel to Governor Bush.

The 7 months spent in Washington were filled with highlights that included private meetings with now Chief Justice John Roberts and Associate Justice Sam Alito, briefings with National Security Advisor Stephen Hadley, and preparation for hearings on a variety of matters including immigration reform, the confirmation of Federal Reserve Chairman Ben Bernanke, Chief Justice Roberts and many more. Perhaps most rewarding was the opportunity to become close to all of the hard working staff serv-



**Pictured from left: Chief Justice John Roberts, Skip Dalton and Senator Mel Martinez.**

ing in the Senator's office in Washington and throughout the State. These young people come from all types of backgrounds and have many different views of the world and political philosophies. They are all incredibly hard working and committed to public service. They work long hours under an amazing amount of stress with energy, enthusiasm and a commitment to doing the right thing. They enriched my experience far more than any measure of value I might have provided to the office.

I learned first hand about the rigors of serving in public office. Imagine having every 15-minute block of every day (including Saturdays and Sundays) filled with requests for meetings, public hearings, travel and political events. Now imagine trying to provide oversight into the management of a staff of 60 employees, answering the concerns of constituents in a state with a population of almost 18 million while at the same time being expected to be fully informed and knowledgeable on over 300 hundred votes per year on issues ranging from agriculture to international trade, all the while living under a microscope and trying to have some semblance of a family life. This is the life of a United States Senator from Florida. Seeing my friend live in this environment, working hard to do the right thing while being pulled in every direction gave me a renewed sense of respect for my former partner, who is most deserving of the title "Senator" Martinez.

## Firm Overview-

### What we can offer your clients

At every level of the federal and state appellate court systems, The Carlyle Appellate Law Firm has successfully represented clients in complex appellate litigation across all areas of the law. The firm has earned an AV rating by Martindale-Hubbell. Members of our team have held positions such as appellate law clerk, appellate judge, judicial assistant and appellate clerk's staff member. These positions provide a unique window into how judges actually decide cases as well as how the appellate court system is administered.

Our appellate lawyers vigorously represent clients in appeals to all five of Florida's district courts of appeal, the Supreme Court of Florida, the United States Court of Appeals for the 11th Circuit Court, and the Supreme Court of the United States. We pride ourselves in keeping our clients closely informed of appellate proceedings and developments throughout the process.

We also provide strategic counseling and advice to trial lawyers and their clients on issues before they actually reach the appellate level. For instance, we are frequently retained to assist in briefing complex legal issues at the trial level to ensure that arguments are properly preserved for appeal. Other aspects of litigation support include assisting trial counsel with pre-trial motions, jury instructions, objections during trial and post-trial motions. We also evaluate the prospects of an appeal and assist in appellate mediation.

## Mission Statement

*The Carlyle Appellate Law Firm is an entrepreneurial and dynamic firm composed of lawyer and non-lawyer professionals who strive to give clients the best appellate representation in the State of Florida. We function as a team. We support, trust, and respect each other—both personally and professionally. We adhere to the highest ethical standards in our dealings with each other, with our clients, with the judiciary, with the legal profession, and with our community.*



### Construction Update...

The Carlyle Appellate Law Firm expects to move into its new state of the art facility in mid May. We look forward to celebrating its completion with an open house this summer.

### Trial Tip...

#### If you attend it... record it!

The failure to have a court reporter at a hearing can doom a party's chances for prevailing on appeal, particularly when the hearing involves disputed factual issues. The Florida Supreme Court has noted that the failure to include a transcript may result in affirmance due to an appellant failing to carry its burden to provide the court with an adequate record. *Applegate v. Barnett Bank*, 377 So. 2d 1150 (Fla. 1979). Many cases have affirmed a variety of orders solely due to the lack of a transcript. *See, e.g., Arthur v. Gibson*, 654 So. 2d 983 (Fla. 5th DCA 1995) (affirming order disqualifying counsel); *Carteret Sav. Bank, F.A. v. Rivers*, 650 So. 2d 704 (Fla. 3d DCA 1995) (affirming order enforcing settlement agreement); *Hamm v. Ambassador Ins. Co.*, 456 So. 2d 966 (Fla. 5th DCA 1994) (affirming order transferring venue). While the Florida Rules of Appellate Procedure set forth certain options when a transcript is not available *see* Fla. R. App. P. 9.200, these options can be difficult, time consuming and a poor substitute for recording what actually occurred. While there are situations when a trial lawyer may choose for strategic reasons not to have a court reporter present, counsel should be very careful in making that decision. If the hearing goes badly, the lack of a transcript may seal your fate in the appellate court.

## Featured Opinion: *Florida Hospital Waterman, Inc. v. Buster*, 31 Fla. L. Weekly D763 (Fla. 5<sup>th</sup> DCA March 10, 2006):

The Carlyle Appellate Law Firm was recently involved in a case decided by the Fifth District Court of Appeal that has great statewide significance. The *Buster* decision concerns the application of Amendment 7, also known as the “Patients Right to Know Amendment.” In the case, Buster’s attorneys sought to discover documents from a hospital under the authority of Amendment 7. The trial court ordered the documents be produced, and the hospital sought certiorari review to the Fifth District Court of Appeal. In a lengthy opinion, the Court considered three issues.

First, it addressed whether Amendment 7 pre-empted certain statutory privileges applicable to healthcare providers. The Court answered this question in the affirmative, and set forth a lengthy analysis of the Amendment and its purposes. The Court noted that the summary of the proposed Amendment contained an “obvious” reference to the pre-existing statutory privileges, and was clearly designed to take precedence over them.

The next question the Court considered was whether Amendment 7 was self-executing, and it likewise answered this question affirmatively. The constitutional amendment is presumed to be self-executing, and the test concerns whether its purpose can be achieved without the need for enabling legislation. After analyzing Amendment 7, the Court concluded that it was indeed self-executing.

The third issue was whether Amendment 7 could be applied retroactively. The Court held it could not, and in reaching this conclusion noted that nothing in Amendment 7 specifically stated it was to have retroactive application.

The Court noted that the opinion “brings about a significant change in Florida law that will have impact statewide on litigation filed by patients against their healthcare providers.” The Court certified the above three questions to the Florida Supreme Court as matters of great public importance. Though many cases involving Amendment 7 have been litigated throughout the state at the trial level, the *Buster* opinion is the first District Court of Appeal decision to address these important issues.

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