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CENTER FOR EXCELLENCE IN ADVOCACY SYMPOSIUM

INTRODUCTION *Roberta Kemp Flowers* 1

ARTICLES

Capital Punishment: An Examination of Current Issues and Trends and How These Developments May Impact the Death Penalty in Florida *Hon. O.H. Eaton, Jr.* 9

Florida's death penalty scheme, created in the wake of the United States Supreme Court's decision in *Furman v. Georgia*, is expensive and difficult to administer. Recent challenges to statutory schemes in which mitigating and aggravating factors are used in sentencing hearings have forced Florida to examine its death-penalty scheme. This Article first generally compares Florida's death-penalty scheme with those in other states and then provides in-depth analysis of Florida's current appellate review process. Next, this Article reviews recent federal judicial decisions in response to constitutional challenges, including cases affecting sentencing-hearing procedure. This Article then reviews and comments on the recommendations put forth by the Illinois Commission on Capital Punishment. Finally, the Author suggests improvements to Florida's death-penalty scheme that would anticipate problems associated with Sixth, Eighth, and Fourteenth Amendment challenges.

Life, Death, and Advocacy: Rules of Procedure in the Contested End-of-Life Case *Michael P. Allen* 55

The end-of-life case comes in many forms. It can involve disputes over a child's medical treatment, the care of an elderly patient, or the decision to terminate life-sustaining treatment for an adult rendered incompetent by illness or an accident. In this Article, the Author explores the uses and abuses of various rules of procedure in contested end-of-life cases from both lawyers' and judges' perspectives. Using the highly publicized Terri Schiavo case, the Author first explores the importance procedure plays to the advocates in an end-of-life case. The Article then addresses the ethical dangers that can arise when advocates feel compelled to misuse procedural devices. Finally, the Author considers procedural rules from the perspective of the judges handling end-of-life disputes. The Article argues that judges in these highly emotional cases should resist the temptation to craft ad hoc procedural rules to address the disputes. Instead, judges should follow neutral, generally applicable procedural rules that apply to all civil litigation.

The Florida Evidence Code and the Separation of Powers Doctrine: How to Distinguish Substance and Procedure Now That It Matters *Michael P. Dickey* 109

In 2000, the Florida Supreme Court took the unprecedented measure of declining to adopt a revision to the Florida Evidence Code as a rule of procedure. In so doing, it set the stage for a potential constitutional conflict between the Court's rulemaking authority and the Legislature's

authority to amend the Evidence Code. In this Article, the Author explores the demarcation, and occasional overlap, between the Court's authority to promulgate rules of procedure and the Legislature's substantive lawmaking powers as they apply to the rules of evidence. Finding the frameworks developed in other states and in federal precedent to be inadequate, the Author proposes a functional approach to drawing this distinction, based on whether a rule advances a public policy goal or other goals such as trustworthiness. Although imperfect, this framework will provide a predictable means of guiding the Florida Supreme Court when it inevitably faces this issue in the future.

WILLIAM REECE SMITH, JR. DISTINGUISHED LECTURE IN LEGAL ETHICS

Can Client Confidentiality Survive Enron,
Arthur Andersen, and the ABA?

Lawrence J. Fox 147

Recent corporate governance scandals have prompted many to search for ways to uncover corporate fraud in America. In a desperate search for a solution, Congress, the Securities and Exchange Commission, and even the American Bar Association have introduced regulations that intrude on the attorney-client privilege. The lecturer addresses each group's hasty solution, discussing the problems with government regulation of attorneys and with the change in disclosure rules. He warns us to be wary of these "misguided solutions," arguing that they alter the role of the corporate attorney and effectively eliminate attorney-client confidentiality. The lecture concludes by urging attorneys to recapture the profession and make a return to self-regulation.

COMMENTS

A "Special Need" for Change: Fourth Amendment Problems
and Solutions Regarding DNA Databanking

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Every state and the federal government have laws mandating DNA sampling from certain criminal offenders. Convicts' DNA information is then stored in state and nationwide databanks for use in investigating crimes that the convicts might commit in the future. Law enforcement professionals applaud this system; civil libertarians abhor it. Because this is essentially a seizure of blood without probable cause, mandatory DNA sampling has been subject to close Fourth Amendment scrutiny. Courts have traditionally upheld mandatory DNA sampling statutes under the special-needs exception to the Fourth Amendment's probable cause requirement, a doctrine that allows for administrative or regulatory searches if they do not serve law enforcement purposes. This Comment supports DNA databanking for convicted criminals but also recognizes that the justifications suggesting that future crime investigation is not a law enforcement purpose are tenuous at best. Suggesting that science has developed faster than the law in this area, the Author proposes abandoning the special-needs test for administrative searches when the party being searched has a reduced expectation of privacy. Instead of the special-needs test, this Comment recommends a balancing test that considers the individual's reduced privacy expectation against the legitimacy of the government's interest, law-enforcement or otherwise.

Rape cases in state-licensed group homes have given rise to requests for court-appointed guardians for unborn children. Under federal law, states are allowed to pass laws respecting the potential life of fetuses so long as the laws do not create an undue burden on the mother. Florida constitutional law requires a stricter standard of privacy because of the express Right to Privacy provision in the Florida Constitution. This Comment argues that it would be constitutional for courts to appoint a guardian for a viable fetus in certain situations. However, under current Florida privacy law, an appointment of a guardian is less likely, but not impossible. A guardian has a fiduciary duty to consider only the ward's best interests, which would leave an incompetent mother's fetus with no one to speak for it. A guardian would be able to independently assess information and voice how certain decisions would affect the fetus, allowing a court to hear both the mother's and the fetus's interests before making decisions regarding the mother's care. Appointing a guardian for the fetus is the only way to ensure that the fetus's interests are considered adequately in this unique situation.