

# 2011 APPELLATE PRACTICE TEST SPECIFICATIONS\*

\*- (See Note At End of Document)

## 1. Statement of Purpose of Examination

### a. Level of Expertise Represented by Examination

Successful completion of the examination will require proficiency and experience in appellate practice including the recognition, preservation, and presentation of trial error, and knowledge and application of the rules of appellate procedure applicable to state and federal appellate practice in Florida to justify the representation of special competence to the legal profession and public.

### b. Types of Skills Assessed

The examination is designed to test the lawyer's analytical reasoning and skills in applying knowledge to specific appellate situations. Each question assumes a level of knowledge compatible with at least five years of the practice of law with substantial involvement in appellate practice.

The applicant is expected to be able to answer questions involving appellate issues found in civil, criminal, administrative, family law, and other substantive areas. The applicant is expected to be knowledgeable about both federal and Florida appellate practice.

Questions regarding ethics and professionalism issues confronting lawyers in appellate litigation are also included on the examination.

### c. Explanation of Core verses Subarea Emphasis

The core areas of the examination will be civil appeals in the state system and civil appeals in the federal system, limited to the Eleventh Circuit Court of Appeals and the United States Supreme Court. Sub-areas that may be in the examination include state and federal criminal appeals and post-conviction relief appeals (regardless of whether such proceedings are deemed civil), state and federal administrative appeals, family law appeals, probate appeals and worker's compensation appeals.

## 2. Content of the Examination

### a. Content of Areas to be Covered

The examination will cover the jurisdiction of United States Supreme Court, the Court of Appeals for the 11th Circuit, and Florida courts acting in appellate capacity; the procedural rules and time periods involved in invoking discretionary and non-discretionary review; extraordinary writs, including their standards and uses; jurisdictional briefs; cross-appeals; preparation of the record on appeal and appendices; organization of briefs and their contents; motion practice, including attorneys' fees, costs and rehearing; the meaning of finality and appealable non-final orders; preservation of error and fundamental error; standards of review, including harmless error; jurisdiction of the lower tribunal pending review; stays; and ethical issues. Within each core area and sub-area, this content will be equally emphasized.

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### 2. Content of the Examination (continued)

#### b. Content Allocation Plan

Civil appeals in the state court system will be allocated approximately 70% of the total points available in the examination.

Practice in the United States Court of Appeals for the Eleventh Circuit and the United States Supreme Court will be allocated approximately 20% of the points available in the examination.

The sub-areas of state and federal criminal appeals, state and federal administrative appeals, family law appeals, probate appeals and worker's compensation appeals will be allocated a total of approximately 10% of the points available in the examination. Not all of these sub-areas will be included in the examination.

### 3. Description of the Examination

#### a. Format

##### Part I:

60 mandatory multiple choice questions, 1 point each  
10 mandatory short essays, 12 points each

All questions must be completed in a three hour block during the morning session of the examination. **Total points for Part I: 180**

##### Part II:

5 mandatory short essays, 12 points each

4 long essays, 30 points each, must be completed. (Three questions are selected by the Committee and are mandatory. One question is selected by the examinee from three choices.)

All questions must be completed in a three hour block during the afternoon session of the examination. **Total points for Part II: 180**

**Total points for examination: 360.**

#### b. What time period is covered for the law?

All answers should assume the current law at the time of the examination. The examination will include new developments in the law.

#### c. How will state versus federal laws be emphasized?

Each question will specify whether it involves state or federal law and the particular jurisdiction, if that is important to the question and answer.

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### 3. Description of the Examination (Continued)

#### d. How much time is allotted to the entire exam and to each part?

PART I - 180 minutes (morning session)

PART II - 180 minutes (afternoon session)

**TOTAL AMOUNT OF TIME ALLOTTED TO EXAM: 6 HOURS (360 Minutes)**

### 4. Directions to Examinees

#### a. What are the time allocations for parts of the examination:

Part I - Registration - 8:00 a.m. - 8:50 a.m.

Part I - Instructions to all examinees - 8:50 a.m. - 9:00 a.m. (in classroom)

Part I - 3 hours (180 minutes total) - 9:00 a.m. - 12:00 Noon

Mandatory lunch break after morning session – 12:00 Noon - 1:30 p.m.

Part II - Registration - 1:30 p.m. - 1:50 p.m.

Part II - Instructions to all examinees - 1:50 p.m. - 2:00 p.m. (in classroom)

Part II - 3 hours (180 minutes total) - 2:00 p.m. - 5:00 p.m.

#### b. What materials, equipment, etc. are allowed/required in the examination room?

The examination is a closed book exam and no materials may be brought into the examination room. Examinees who wish to type their **essays** on laptops are accommodated. Examinees may also write their essay responses by hand.

#### c. What penalties are given, if any, for spelling, handwriting, etc.?

There is no deduction for poor handwriting, but there will be no points given for answers that are not legible. There are no penalties for spelling or grammatical errors or footnoting additional thoughts, but the answers should be written as essays. Mere outlines or bullet points that do not fully express the examinee's thought process and reasoning will not be credited.

### 5. Scoring Procedures

#### a. How are the essays scored?

Short and long essays are scored holistically on a six point rubric and the score is converted to analytical points thereafter.

#### b. Who scores the essays and what is the process?

All essays are reviewed by a minimum of 2 Committee members who come to a decision as to the final holistic score for each essay.

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### 5. Scoring Procedures (Continued)

#### b. Who scores the essays and what is the process? (continued)

If the 2 reviewers disagree on what the final score should be, a third member of the Committee reviews the essay in question to set the final score.

#### c. How is score scale created?

<b>MULTIPLE CHOICE QUESTIONS PART I ONLY ----- ANALYTICAL SCORING SCALE</b> <b>EACH QUESTION IS WORTH 1 ANALYTICAL POINT EACH (Maximum)</b>  Total points for multiple choice questions in this section: 60.00 (16.7%)	
Analytical Score	Points Converted To:
1	1.00

<b>SHORT ESSAYS - PARTS I AND II ----- HOLISTIC SCORING SCALE</b> <b>EACH ESSAY IS WORTH 12 ANALYTICAL POINTS (Maximum)</b>  Total points for short essays in Part I: 120.00 (10 short essays) (33.3%) Total points for short essays in Part II: 60.00 (5 short essays) (16.7%)	
Holistic Score	Points Converted To:
1	2
2	4
3	6
4	8
5	10
6	12

<b>LONG ESSAYS - PART II ONLY ----- HOLISTIC SCORING SCALE</b> <b>EACH ESSAY IS WORTH 30 ANALYTICAL POINTS (Maximum)</b>  Total points for long essays in this section: 120.00 (4 long essays) (33.3%)	
Holistic Score	Points Converted To:
1	5.00
2	10.00
3	15.00
4	20.00
5	25.00
6	30.00

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### 5. Scoring Procedures (Continued)

#### d. What is the total possible score?

The total number of **analytical** points available on the examination is 360.

#### e. What is the passing standard?

The passing standard is set at 227 points, or 63%.

**Note:** The Committee regrades all exams falling within 5% of the passing standard.

#### f. What level of skill does the passing standard represent?

This represents a level of skill that is above minimum competence and approaching clear competence on the 6 point rubric utilized for evaluating essay answers in the examination.

\* - (**Note To All Interested Applicants:** As of the date of this posting (June 15, 2010), the Appellate Practice Certification Committee had not met to develop the 2011 examination. If it decides to change the content of the examination and/or any other portion of these "test specifications", an updated version will be posted on The Florida Bar website. You should check back periodically for a more updated version.)

*(As of 6/15/10)*