

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed February 10, 2010.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-3082
Lower Tribunal No. 07-1174

Lower Keys Medical Center,
Petitioner,

vs.

Jennifer Windisch, et al.,
Respondents.

On petition for Writ of Certiorari to the Circuit Court for Monroe County,
Mark H. Jones, Judge.

Wicker, Smith, O'Hara, McCoy & Ford, P.A. and Michael R. D'Lugo (Key
West), for petitioner.

Ratzan & Rubio, P.A. and Stuart N. Ratzan; Falk, Waas, Hernandez,
Cortina, Solomon & Bonner, P.A. and Scott Mendlestein; Lubell & Rosen, P.A.
and Julie M. Ingle; and Restani, Dittmar & Hauser, P.A. and Patricia I. Murray, for
respondents.

Before WELLS and SHEPHERD, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

The petitioner's position in this case is directly contrary to Florida Hospital Waterman, Inc. v. Buster, 984 So. 2d 478 (Fla. 2008), and each of the other District Courts of Appeal. See West Fla. Reg'l Med. Ctr., Inc. v. See, 18 So. 3d 676 (Fla. 1st DCA 2009); Lakeland Reg'l Med. Ctr. v. Neely, 8 So. 3d 1268 (Fla. 2d DCA 2009); Columbia Hosp. Corp. of S. Broward v. Fain, 16 So. 3d 236 (Fla. 4th DCA 2009); Fla. Eye Clinic, P.A. v. Gmach, 14 So. 3d 1044 (Fla. 5th DCA 2009).

Even if we were inclined, which we are not, we do not have the authority to rule otherwise. Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973). The petitioner's suggestion that we might do so is insulting and frivolous.

Certiorari denied.

CONFIDENTIAL APPELLATE JUDGE FEEDBACK FORM

Judge

Court

To the attorney: This form will enable you to provide useful information to the judges before whom you just appeared. Our judges rely on your feedback. Please make constructive comments, whether positive or negative. Do NOT provide your name or otherwise identify yourself on this form. There are a total of 4 appellate sections.

Instructions:

1. If you wish to fill out a feedback form for more than one judge on the panel, duplicate this form.
2. Complete a form for each judge you wish to evaluate. Please type or write legibly.
3. Place each completed form in a plain envelope marked 'judicial feedback' and 'confidential.' Place the name of the judge on the face of the envelope. **IMPORTANT: Do not enclose the feedback form of more than one judge in the same envelope.**
4. Place the plain envelope(s) containing the feedback form(s) in a transmittal envelope and mail to the clerk of the district court of appeal on which the judge is serving.

A. QUESTIONING

1. Were the judge's questions clear?

() Yes

() No (Please explain): _____

() No opinion/not applicable

2. Did the judge use an appropriate or excessive amount of time in questioning counsel or in asking an individual question?

() Yes

() No (Please explain): _____

() No opinion/not applicable

Comments: _____

3. Did the judge interrupt another judge or interrupt counsel's response to a question in a manner that hindered argument?

() Yes (Please explain): _____

() No

() No opinion/not applicable

4. Other comments regarding questioning: _____

B. PROFESSIONAL CONDUCT

5. As to the judge's judicial demeanor, did the judge exhibit professionalism?

() Yes

() No (Please explain): _____

() No opinion/not applicable

6. Did the judge use appropriate language?

() Yes

() No (Please explain): _____

() No opinion/not applicable

7. Was the judge attentive to counsel?

() Yes

() No (Please explain): _____

() No opinion/not applicable

8. Was the judge willing to be informed about areas of law with which the judge was not conversant?

() Yes

() No (Please explain): _____

() No opinion/not applicable

9. Other comments regarding professional conduct: _____

C. KNOWLEDGE OF THE CASE

10. Did the judge show evidence of having prepared in advance for oral argument?

- () Yes
- () No (Please explain): _____

- () No opinion/not applicable

11. Was the judge knowledgeable regarding the facts and the law?

- () Yes
- () No (Please explain): _____

- () No opinion/not applicable

12. Was the judge familiar with applicable cases and statutes?

- () Yes
- () No (Please explain): _____

- () No opinion/not applicable

13. Other comments regarding knowledge of the case: _____

D. THE OPINION

14. Was the Opinion rendered in a timely manner? (For guidance, see Florida Rule of Judicial Administration 2.250(a)-(b).)

- () Yes
- () No (Please explain): _____

- () No opinion/not applicable

15. Was the opinion clearly written?

Yes

No (Please explain): _____

No opinion/not applicable

16. Did the opinion take into account applicable cases and statutes?

Yes

No (Please explain): _____

No opinion/not applicable

17. Did the opinion provide clear precedential guidance for later cases?

Yes

No (Please explain): _____

No opinion/not applicable

18. If there was a concurring or dissenting opinion, did the majority opinion fairly deal with the issues raised by the concurrence or dissent?

Yes

No (Please explain): _____

No opinion/not applicable

19. Other comments regarding the opinion: _____

Upon completion and transmittal by evaluating counsel, this judicial feedback form shall be the property of the evaluated judge and shall be a confidential document within the meaning of Florida Rule of Judicial Administration 2.420 (c)(4).