"I'm taking it all the way up! But how do I get there?" Jurisdiction of the Florida Supreme Court

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So, you have a great case but a bad result in the district court. What are you going to do? To start, you should take a look at article V, section 3 of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a), which provide the limited matters that are subject to the jurisdiction of the Supreme Court of Florida. Those matters fall into three classifications: original, mandatory, and discretionary jurisdiction.

The Court has original jurisdiction over petitions for writs of mandamus, quo warranto, prohibition, and habeas corpus. Unfortunately, such grounds are far too particular to cover in any detail here. On the other hand, mandatory jurisdiction is fairly straight-forward – it is available in death penalty cases, Public Service Commission actions relating to utility rates or services, and bond validation cases. As well, the Court has mandatory jurisdiction over cases in which a district court has held that a statute or constitutional provision is invalid, which may encompass a variety of case types.

Clearly, a party wanting to take a case all the way up would prefer original or mandatory jurisdiction. However, few attorneys who do not practice criminal or governmental law will have a case that falls into anything other than discretionary review.

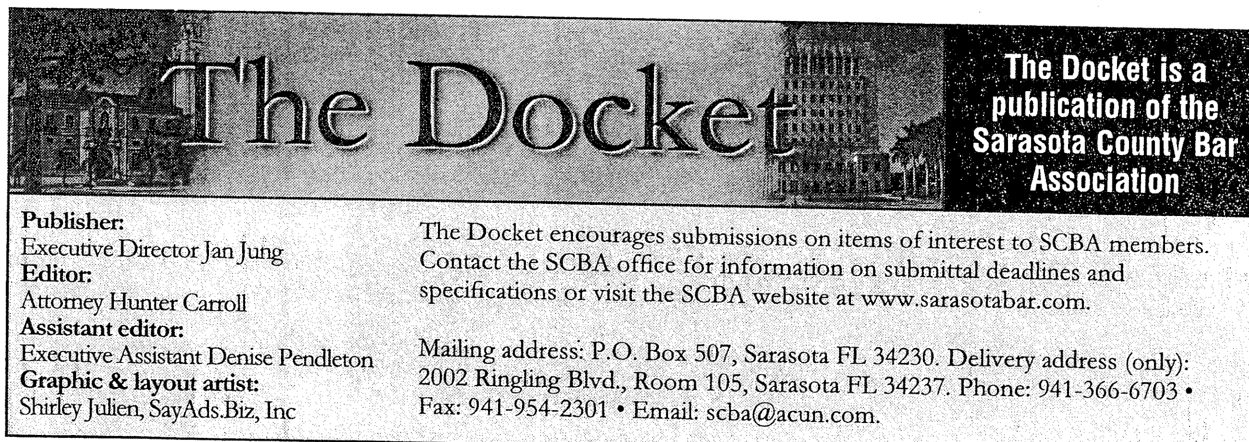
In the realm of discretionary jurisdiction, the best case scenario for a petitioner is when the district court has certified that its decision conflicts with another district court's decision or that the case involves an issue of "great public importance." Sometimes a district court will include such certification in its original decision. However, often the losing party will need to file a motion and ask that it be added.

Other grounds for discretionary review include district court decisions that expressly hold a statute valid, construe a constitutional provision, or affect a class of constitutional or state officers. As well, there is what is often called "pass through" jurisdiction, which occurs when a district court certifies that a case requires immediate review and resolution by the Court. In such instances, the district court does not rule on the case first, but rather passes it up. (This occurred in the Terri Schiavo case when basic nutrition was removed.) The Court then has the discretion to take the case or pass it back down.

Finally, and most importantly for most petitioners, the Court has discretionary jurisdiction over a district court decision that expressly and directly conflicts with a decision of another district court or the supreme court on a question of law. This basis is the most popular. However, it is not necessarily the most successful, primarily because it is often misunderstood – and for good reason, as there are multiple theories as to what constitutes "express and direct conflict," even among the justices on the Court. Anyone contemplating a petition based on "conflict jurisdiction" should review "The Operation and Jurisdiction of the Supreme Court of Florida," 29 Nova L. R. 432 (2005), by Justice Harry Lee Anstead, Gerald Kogan, Thomas D. Hall, and Robert Craig Waters, which details various types of conflict. What is clear in express and direct conflict cases, however, is the "four corners rule," which requires that the conflict be evident from the face of the majority opinions alleged to be in conflict – the record below, decisions from other courts, and non-majority opinions are not relevant.

If you are thinking about invoking discretionary jurisdiction, you should counsel your client on the statistics that reflect the likelihood of getting his or her day in (supreme) court. For example, in 2005, the Court denied petitions seeking discretionary jurisdiction in over 1150 cases, more than 950 of which alleged conflict jurisdiction. And in the first half of 2006, only 75 petitions for discretionary jurisdiction have been granted.

While those figures may be daunting, if you think you have strong grounds for review and a client willing to keep up the good fight, it may be worth going for it. All you must do is file a notice seeking discretionary jurisdiction, pay the filing fee, and file a jurisdictional brief. The jurisdictional brief is shorter and narrower in scope than a brief on the merits. Good luck!



Publisher:
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The Docket · Feb. 2007 · Vol. 24 No. 2