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# Introduction

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## FROM TOWN MEETING TO ORAL ARGUMENT: CITIZENS, CITIES, AND THE APPELLATE COURTS

Craig E. Leen, Esq., BCS

This issue takes a critical look at the intersection of local government decision-making and the subsequent appellate review of those decisions. Local governments have substantial authority over the daily lives of residents and businesses, particularly in zoning and development matters. This authority is known as the police power and allows a local government to enact and enforce regulations for the health, safety, and welfare of the community. If residents or businesses disagree with a local government's decision, particularly when it affects that party's property rights, they often may have the decision directly reviewed by an appellate court or file a lawsuit that is eventually reviewed on the appellate level. This appellate review serves as an important check and balance on governmental power. Indeed, effective appellate review is a bedrock of our constitutional system. It is at the appellate level where certainty is provided as to the court's interpretation of a law, which can serve as binding precedent in future cases.

Dennis Kerbel, the Chief of the Land Use and Zoning Section for the Miami-Dade County Attorney's Office, begins the issue with an article explaining the local government decision-making process, including the standards applied for a quasi-judicial zoning proceeding at the local government level and how such standards balance the rights of various stakeholders, including private citizens, in the proceeding.<sup>1</sup> Kerbel also looks at the use of covenants and similar proffers made by developers as part of the zoning process.

John Greco, Chief Appellate Counsel for the City of Miami, then focuses on certiorari review of quasi-judicial decisions by appellate courts, and particularly at what is referred to as second-tier certiorari review.<sup>2</sup> As the name indicates, this second-tier review occurs after a local government decision has already been reviewed once by an appellate court and is therefore a very difficult standard to meet, even requiring that manifest injustice be shown (to ensure that it is not simply treated as a second appeal). Mr. Greco analyzes the manifest injustice standard and provides examples of where manifest injustice has occurred to either the local

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<sup>1</sup> Dennis A. Kerbel, *Zoning and the Complicated Reliance on Restrictive Covenants*, 12 FIU L. REV. 263 (2017).

<sup>2</sup> John A. Greco, *Second-Tier Certiorari: Adverse Precedential Effect as a Predicate for Finding a "Miscarriage of Justice" in Government Appeals*, 12 FIU L. REV. 297 (2017).

government or the opposing party. In particular, he looks at the precedential value of decisions that are issued at the Circuit Court level and whether the District Court should take action to ensure that any erroneous ones are addressed to prevent more incorrect precedents from being issued.

Craig Leen, City Attorney of Coral Gables and the faculty lead for this issue, then turns to judicial decision-making, concerned that three-fourths of all District Court appellate decisions in Florida are single word decisions without any accompanying explanation (a *per curiam* affirmance or “PCA”).<sup>3</sup> Mr. Leen explains that this can harm local governments as it leads to less case law and guidance to them. It also substantially limits the jurisdiction of the Florida Supreme Court, as there cannot be conflict jurisdiction based on a PCA. Mr. Leen then recommends various solutions whereby PCAs would be limited or significantly restricted, including proposals by Mr. Leen for a rule of procedure making it easier to seek a written opinion following a PCA, as well as a constitutional amendment that was recently proposed by Mr. Leen to the Constitution Revision Commission requiring appellate decisions to be accompanied by a decision.

Kimberly Kanoff Berman, head of the Appellate Division at McIntosh Sawran & Cartaya, P.A., provides a very helpful review of motion practice in appellate court to guide the practitioner in the effective use of such motions.<sup>4</sup>

Finally, although each article in this edition focuses on appellate practice or local government law, or some combination of both, it is ultimately about accountability of government to the people at the local, quasi-judicial level all the way through the issuance of a mandate following appellate review of the local government decision.

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<sup>3</sup> Craig E. Leen, *Without Explanation: Judicial Restraint, Per Curiam Affirmances, and the Written Opinion Rule*, 12 FIU L. REV. 309 (2017).

<sup>4</sup> Kimberly Kanoff Berman, *A Cure for “Acute Motion Sickness”: A Practitioner’s Guide to Motion Practice in Florida’s Appellate Courts*, 12 FIU L. REV. 335 (2017).