

TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF CASE AND FACTS.....	1
ISSUE PRESENTED.....	2
SUMMARY OF ARGUMENTS.....	3
REASONS FOR GRANTING REVIEW	4
THE FIRST DISTRICT'S DECISION DISMISSING THE APPEAL BELOW FOR FAILING TO FILE THE NOTICE OF APPEAL IN THE " <i>PROPER COURT</i> " EXPRESSLY AND DIRECTLY CONFLICTS WITH OTHER RECENT DECISIONS OF THIS AND OTHER DISTRICT COURTS AND IS A QUESTION OF GREAT PUBLIC INTEREST, SINCE A DISTRICT COURT OF APPEAL HAS JURISDICTION TO ENTERTAIN AN APPEAL FROM A FINAL JUDGMENT OF A CIRCUIT COURT WHERE, AS HERE, (1) THE APPELLANT ERRONEOUSLY FILES A NOTICE OF APPEAL WITH THE DISTRICT COURT, RATHER THAN THE CIRCUIT COURT, AND (2) THE APPELLANT IS UNABLE TO TAKE CORRECTIVE ACTION TO FILE THE NOTICE OF APPEAL IN THE CIRCUIT COURT WITHIN THIRTY DAYS OF THE RENDITION OF THE FINAL JUDGMENT.	4
CONCLUSION	7
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

	<u>Page No.</u>
<i>Alfonso v. State DER</i> , 588 So. 2d 1065, 1066 (Fla., 3 DCA, 1991)	2, 6, 7
<i>Hines v. Lykes</i> , 374 So. 2d 1132, 1133 (Fla. 2 DCA 1979)	6, 7
<i>Johnson v. Citizens State</i> , 537 So. 2d 96 (Fla., 1989)	3, 5, 6, 7
<i>Lampkin-Asan v. Third DCA</i> , 364 So. 2d 469 (Fla., 1978),	6, 7
<i>Restrepo v. First Union</i> , 591 So. 2d 1157 (Fla. 3 DCA, 1992),	2, 6
<i>Rubenstein v. Richard</i> , 346 So.2d 89, 90 (Fla. 3rd DCA, 1977)	4
<i>Sanchez v. Swanson</i> , 481 So. 2d 481 (Fla., 1986)	6, 7
<i>Skinner v. Skinner</i> , 561 So.2d 260, 262 (Fla., 1990)	3, 5, 6, 7

OTHER AUTHORITY

Florida Rule of Appellate Procedure 9.040(b)	4, 5
Florida Rule of Appellate Procedure 9.110(b)	4

STATEMENT OF CASE AND FACTS

On May 22, 1992 the Honorable George Reynolds, III, Circuit Judge for the Second Judicial Circuit, Leon County, rendered an "Order on Defendants' Motion to Dismiss the Action and Complaint," there dismissing the Petitioners' amended complaint with prejudice [Exhibit 1, *infra*]. The Respondent's motion was based upon an alleged lack of subject matter jurisdiction.

Thereafter, on June 19, 1992, the Petitioners' counsel mailed a Notice of Appeal seeking review of the above circuit court order to the First District Court of Appeal, along with the appropriate filing fee of \$250 [Exhibit 2, *infra*]. The Notice of Appeal was stamped by the Clerk of the First DCA as "FILED" three days later on Monday, June 22, 1992 [Exhibit 3, *infra*]. The style of the notice indicated it was "In the Circuit Court for the Second Judicial Circuit. . . Leon County" [Exhibit 3, *infra*]. The Notice of Appeal which was "filed" by the First DCA on June 22, 1992 was returned by the First DCA clerk shortly thereafter to Petitioners' counsel, with directions to file in the lower tribunal clerk's office [Exhibit 4, *infra*].¹ Copies of this Notice of Appeal were served by U.S. Mail on June 19, 1992 upon Respondent's two attorneys, which included Morris Shelkofsky, Jr., Assistant Attorney General and Debra King, Senior Counsel for the University of South Florida [Exhibit 3, page 2, *infra*].

On June 25, 1992, after receiving back the previously-filed notice of appeal from the district court clerk, Petitioners' counsel then sent the notice, filing fee and a letter of explanation to the Clerk of the Circuit Court for the Second Circuit [Exhibit 5, *infra*]. This notice, filing fee and letter were apparently never received at that time by the circuit clerk [Exhibit 2, *infra*].

Thereafter, on August 28, 1992, Petitioners' filed a Notice of Refiling the Notice of Appeal in the Circuit Court, noting it had originally been "filed" in the First DCA on June 22, 1992 on a timely basis. [Exhibit 6, *infra*].

Eventually the *refiled* Notice of Appeal, reflecting a filing date of September 2, 1992, was forwarded on to the First DCA on September 8, 1992 [Exhibit 7, *infra*].

¹ In an order entered by the circuit judge on September 8, 1992, the circuit judge made these factual findings of record [Exhibit 2, *infra*].

On September 9, 1992 the First DCA entered an Order to Show Cause for Petitioners' to show why the appeal should not be dismissed for failure to file timely notice of appeal. [Exhibit 8, *infra*]. After responses were filed by the Petitioners and Respondent, the First DCA entered an order dismissing the appeal for lack of jurisdiction on the grounds that "the notice of appeal was not timely filed in the *proper court*." [Exhibit 9, *infra*].

ISSUE PRESENTED:

"WHETHER A DISTRICT COURT OF APPEAL HAS JURISDICTION TO ENTERTAIN AN APPEAL FROM A FINAL JUDGMENT OF A CIRCUIT COURT WHERE, AS HERE, (1) THE APPELLANT ERRONEOUSLY FILES A NOTICE OF APPEAL WITH THE DISTRICT COURT, RATHER THAN THE CIRCUIT COURT, AND (2) THE APPELLANT TAKES NO CORRECTIVE ACTION TO FILE THE NOTICE OF APPEAL IN THE CIRCUIT COURT WITHIN THIRTY DAYS OF THE RENDITION OF THE FINAL JUDGMENT."

Question as pending before this Court in Restrepo v. First Union, 591 So.2d 1157 (Fla. 3rd DCA, 1992), review pending, Supreme Court Case Number 79,406 and Alfonso v. State DER, 588 So.2d 1065 (Fla 3rd DCA, 1991), review pending, Florida Supreme Court Case Number 79,096.

SUMMARY OF ARGUMENTS

The Petitioners timely filed their notice of appeal within the 30-day period with the clerk of the appellate court, rather than the lower tribunal. The clerk of the appellate court failed to transfer the notice to the appellate court as required by Rule 9.040(b), but rather improperly mailed the notice back to the office of Petitioners' counsel. Notwithstanding, this Court in its more-recent *Skinner* and *Johnson* decisions has declared that the improper filing of an initial appeal pleading in the wrong court is indeed sufficient to invoke the appellate court's jurisdiction. The appellate court in this case erred in dismissing the appeal on the ground that the notice was improperly filed in the appellate court rather than the lower tribunal, and the dismissal order conflicts with *Skinner*, *Johnson* and other district court decisions.

REASONS FOR GRANTING REVIEW

THE FIRST DISTRICT'S DECISION DISMISSING THE APPEAL BELOW FOR FAILING TO FILE THE NOTICE OF APPEAL IN THE "*PROPER COURT*" EXPRESSLY AND DIRECTLY CONFLICTS WITH OTHER RECENT DECISIONS OF THIS AND OTHER DISTRICT COURTS AND IS A QUESTION OF GREAT PUBLIC INTEREST, SINCE A DISTRICT COURT OF APPEAL HAS JURISDICTION TO ENTERTAIN AN APPEAL FROM A FINAL JUDGMENT OF A CIRCUIT COURT WHERE, AS HERE, (1) THE APPELLANT ERRONEOUSLY FILES A NOTICE OF APPEAL WITH THE DISTRICT COURT, RATHER THAN THE CIRCUIT COURT, AND (2) THE APPELLANT IS UNABLE TO TAKE CORRECTIVE ACTION TO FILE THE NOTICE OF APPEAL IN THE CIRCUIT COURT WITHIN THIRTY DAYS OF THE RENDITION OF THE FINAL JUDGMENT.

Florida Rule of Appellate Procedure 9.110(b) provides that jurisdiction of the appellate court "shall be invoked by filing 2 copies of a notice, accompanied by filing fees prescribed by law, with the clerk of the lower tribunal within 30 days of rendition of the order to be reviewed." Moreover, Florida Rule of Appellate Procedure 9.040(b) provides with regard to filing in an improper forum:

"If a proceeding is commenced in an *inappropriate court*, that court *shall transfer* the cause to an appropriate court." (Italics added.)

Since the circuit court order sought for review was rendered on May 22, 1992, a notice of appeal must have necessarily been filed within 30 days of rendition, i.e. Monday, June 22, 1992. As the 30th day fell on Sunday, June 21, 1992, the 30-day period would have been tolled until Monday, June 22, 1992. See *Rubenstein v. Richard*, 346 So.2d 89, 90 (Fla. 3rd DCA, 1977) (where 30th day to file notice of appeal fell on Sunday, last day for filing notice was extended to next business day that courthouse was open). Thus, a notice could be timely filed through June 22, 1992.

In this case the Petitioners inadvertently filed their notice of appeal, although on a timely basis, within the prescribed 30-day period with the Clerk of the First District Court of Appeal. Apparently on or about the last day of the 30-day period the district court clerk returned the notice to the Petitioners' counsel in Tampa with directions for filing in the circuit court clerk's office (i.e.

the lower tribunal).² The notice was eventually refiled in the circuit court clerk's office, but well beyond the 30-day period. [Exhibit 7, *infra*].

Notwithstanding Petitioners' inadvertent filing of the notice of appeal in the district court, said filing within the 30-day period was indeed sufficient to invoke the district court's appellate jurisdiction, even though the Petitioners' should have filed the notice in the circuit court. See *Skinner v. Skinner*, 561 So.2d 260, 262 (Fla., 1990); *Johnson v. Citizens State*, 537 So. 2d 96 (Fla., 1989). In any event Rule 9.040(b) *mandates* that a timely but improperly filed notice in the district court *must* be transferred to the circuit court clerk, which was never done by the district court clerk in this case as required.

In *Skinner*, 561 So.2d at 262, this Court held that where an initial appeal pleading attempting to invoke the appellate jurisdiction of the district court is improperly filed with the district court rather than correctly with the circuit court clerk, such improper filing with the district court is *sufficient* to invoke the district court's appellate jurisdiction. As noted by this Court in *Skinner*, 561 So.2d at 262:

"It was the mistaken view of petitioner that the post-judgment order [of the circuit court] was, by its nature and content final, and therefore an appropriate matter for review by certiorari [in the district court]. As a result, petitioner filed with the district court a petition for certiorari instead of a notice of appeal with the circuit court. There is no question that an appellate court has jurisdiction to review a cause even though the form of appellate relief is mischaracterized. *Johnson*, 537 So.2d at 97. As a result, we believe that petitioner's timely filed application for certiorari in the district court was sufficient to invoke that court's appellate jurisdiction.

In *Johnson*, this court held that the filing of a notice of appeal in the circuit court was sufficient to confer jurisdiction on that appellate court in order to consider the appropriate remedy. We find no distinguishable difference between the scenario in allowing a petition for certiorari filed in the district court to confer jurisdiction on that appellate court in order to consider the appropriate remedy. **We believe that once the district court's jurisdiction has been invoked, it cannot be divested of jurisdiction by a hindsight determination that the wrong remedy was sought by a notice or petition filed in the wrong place."**

And in *Johnson*, 537 So. 2d at 98, this Court held that a notice of appeal improperly filed within the 30-day period in the lower tribunal (i.e. circuit court) was nonetheless sufficient to

² When filing the notice in the district court on the last day of the 30-day period, the district court clerk apparently did not "transfer" the notice to the nearby circuit court clerk in Tallahassee as required by Rule 9.040(b).

invoke the district court's appellate jurisdiction to consider a petition for certiorari, even though the petition was itself not timely and properly filed in the district court within the 30-day period.

See also: *Sanchez v. Swanson*, 481 So. 2d 481 (Fla., 1986) [where notice of appeal of county court order to circuit court was stamped as filed in circuit court (in its appellate capacity), improper filing of notice of appeal with circuit court clerk was sufficient to invoke circuit court's appellate jurisdiction]; *Hines v. Lykes*, 374 So. 2d 1132, 1133 (Fla. 2 DCA 1979) [where notice of administrative appeal was timely filed with district court clerk, but not timely filed with lower tribunal (i.e. administrative agency), timely filing in district court sufficient to invoke district court's appellate jurisdiction].

Moreover, the notice of appeal filed by Petitioners [Exhibit 3 *infra*] clearly notes at the top of the page that it is filed "In the Circuit Court for the Second Judicial Circuit" in Tallahassee, although it was inadvertently mailed to and/or received by the District Court Clerk, nearby in Tallahassee. The fact that the notice specifically designated the *lower tribunal* in its caption, is further indication of a jurisdictionally-sufficient notice. See *Sanchez*, 481 So. 2d at 482, Note 1.

Petitioners are mindful of the 14 year-old decision of this Court in *Lampkin-Asan v. Third DCA*, 364 So. 2d 469 (Fla., 1978), written during the time period of transition in this state from the Florida Appellate Rules to the Florida Rules of Appellate Procedure. This Court in *Lampkin* held that a notice of appeal inadvertently filed within the 30 day period in the district court of appeal, rather than in the circuit court, is jurisdictionally flawed and subject to dismissal.

However, it is evident from the 1989 *Johnson* and 1990 *Skinner* decisions that this Court has receded from its 1978 holding of *Lampkin*. See *Alfonso v. State DER*, 588 So. 2d 1065, 1066 (Fla., 3 DCA, 1991) ("we agree that the continuing validity of *Lampkin-Asan's* narrow holding may be open to question in view of the *Johnson* and *Skinner* cases.") And in *Johnson*, 537 So. 2d at 98, this Court expressly held, "we recede from *Lampkin-Asan* . . ."

Significantly the Third District has certified the question to this Court of whether the erroneous filing of a Notice of Appeal with the District Court rather than the Circuit Court is jurisdictionally deficient. See *Restrepo v. First Union*, 591 So. 2d 1157 (Fla. 3 DCA, 1992),

review pending , Florida Supreme Court Case Number 79,406; *See also Alfonso*, 588 So. 2d at 1066, *review pending*, Florida Supreme Court Case Number 79,096. Oral argument is scheduled in this Court in these cases for November 6, 1992. The question as certified by the Third DCA to this Court is as follows:


"WHETHER A DISTRICT COURT OF APPEAL HAS JURISDICTION TO ENTERTAIN AN APPEAL FROM A FINAL JUDGMENT OF A CIRCUIT COURT WHERE, AS HERE, (1) THE APPELLANT ERRONEOUSLY FILES A NOTICE OF APPEAL WITH THE DISTRICT COURT, RATHER THAN THE CIRCUIT COURT, AND (2) THE APPELLANT TAKES NO CORRECTIVE ACTION TO FILE THE NOTICE OF APPEAL IN THE CIRCUIT COURT WITHIN THIRTY DAYS OF THE RENDITION OF THE FINAL JUDGMENT."

It is apparent that this Court in *Skinner* and *Johnson* have retracted from its 1978 *Lampkin* decision, rendered during a transitional period. Accordingly, the First District's order dismissing the subject appeal expressly and directly conflicts with these opinions and those of other districts as cited above, and presents a question of great public interest.

CONCLUSION

Even though the notice was timely filed in the wrong court, such filing with the Clerk of the First District was sufficient to invoke the First District's appellate jurisdiction. *See: Skinner; Johnson; Sanchez; Hines*. Based upon the foregoing arguments and authorities, the Petitioners respectfully request this Court to grant review of this cause and quash the order of the First District dismissing the appeal.


SMITH & WILLIAMS, P.A.
712 S. Oregon Avenue
Tampa, Florida 33606-2569
813-253-5400
Attorneys for Petitioners

By: 

Samuel R. Mandelbaum, Esquire
Florida Bar Number: 270806

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Morris E. Shelkofsky, Jr., Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050, and Debra A. King, Senior Counsel, University of South Florida, ADM 250, 4202 East Fowler Avenue, Tampa, Florida 33620-6250, this 28 day of October, 1992.



Samuel R. Mandelbaum, Esquire

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JEFFREY L. STICKNEY, M.D.,
JAMES N. PAPPAS, M.D., DOUGLAS
STRINGHAM, M.D., TOM D.
HOWEY, M.D., PAUL T.
FORTIN, M.D., MARK FRANKLE,
M.D., and WILLIAM F. BENNETT, M.D.,

Petitioners,

Fla. Sup. Ct. Case No.: 80,623

1st DCA Appeal No.: 92-3059

v.

THE BOARD OF REGENTS OF
THE STATE OF FLORIDA
STATE UNIVERSITY SYSTEM,

Respondent.

PETITIONERS' APPENDIX

- Exhibit 1 - Circuit Court Order Granting Motion to Dismiss.
- Exhibit 2 - Order of Motion to Withdraw.
- Exhibit 3 - Petitioners Notice of Appeal filed in First DCA on June 22, 1992.
- Exhibit 4 - First DCA memorandum to Petitioners returning notice of appeal, with advice to refile in the lower tribunal.
- Exhibit 5 - Petitioners' letter to Clerk of Circuit Court for Second Circuit.
- Exhibit 6 - Notice of Refiling notice of appeal.
- Exhibit 7 - First DCA acknowledgment of receipt of Notice of Appeal dated September 8, 1992.
- Exhibit 8 - First DCA Order to Show Cause why appeal should not be dismissed.
- Exhibit 9 - First DCA order dismissing Petitioners' appeal.

RECEIVED
MAY 26 1992

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

JEFFREY L. STICKNEY, M.D.,
JAMES N. PAPPAS, M.D.,
DOUGLAS STRINGHAM, M.D.,
TOM D. HOWEY, M.D.,
WILLIAM F. BENNETT, M.D.,

Plaintiffs,

v.

CASE NO. 91-4715

THE BOARD OF REGENTS OF
THE STATE OF FLORIDA
STATE UNIVERSITY SYSTEM,

Defendant.


ORDER ON DEFENDANT'S MOTION TO DISMISS
THE ACTION AND COMPLAINT

This action was heard on Defendant's Motion to
Dismiss the Action and the Complaint and

IT IS ADJUDGED that:

1. The Motion is GRANTED.
2. The Amended Complaint is DISMISSED with
prejudice.

ORDERED in Tallahassee, Florida this 22 day
of May, 1992.



GEORGE S. REYNOLDS, III
CIRCUIT COURT JUDGE

cc: James A. Muench, Esquire
Smith & Williams
Old Hyde Park
712 South Oregon Avenue
Tampa, Florida 33606-2569

Deborah A. King, Senior Counsel
University of South Florida
ADM 250
4202 East Fowler Avenue
Tampa, Florida 33620-6250

Morris E. Shelkofsky, Jr.
Assistant Attorney General
Department of Legal Affairs
The Capitol - Suite 1501
Tallahassee, Florida 32399-1050

<Morris>Stickney.Ord/lw

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR LEON COUNTY
CIVIL DIVISION

JEFFREY L. STICKNEY, M.D.,
JAMES N. PAPPAS, M.D., DOUGLAS
STRINGHAM, M.D., TOM D.
HOWEY, M.D., PAUL T. FORTIN,
M.D., MARK FRANKLE, M.D., and
WILLIAM F. BENNETT, M.D.,

Plaintiffs/Appellants,

Case No. 91-4715

v.

Florida Bar No. 472867

THE BOARD OF REGENTS OF
THE STATE OF FLORIDA
STATE UNIVERSITY SYSTEM,

Defendants/Appellees.

ORDER ON SMITH & WILLIAMS, P.A.'S
MOTION TO WITHDRAW AS COUNSEL

THIS ACTION was heard on Smith & Williams, P.A.'s Motion To Withdraw As Counsel, the Court finding that:

1. On June 19, 1992, Smith & Williams, P.A., as counsel for Plaintiffs, mailed a Notice Of Appeal for filing in the First District Court of Appeal, along with the appropriate filing fee of \$250.00.
2. Through clerical error, the Notice of Appeal and check were inadvertently mailed for filing to the First District Court of Appeal.
3. Notwithstanding, the First District Court of Appeal filed the Notice of Appeal on June 22, 1992, and affixed the "filed stamp" as of that date (i.e., June 22, 1992).

4. On June 25, 1992, the First District Court of Appeal sent back to Smith & Williams, P.A. the Notice of Appeal and filing fee: In returning the Notice of Appeal and filing fee, the First District Court of Appeal stated: "Your notice of appeal is returned herewith. It should be filed in the lower tribunals clerks office within thirty days from the rendition of the order you are appealing."

5. On June 25, 1992, Smith & Williams, P.A. then sent the Notice of Appeal, filing fee and letter of explanation to Paul F. Hartsfield, Clerk of Court for the Second Judicial Circuit.

6. On August 28, 1992, Ms. Brenda Gainey, Deputy Clerk for the Second Judicial Circuit informed Smith & Williams that it never received the aforementioned Notice of Appeal, filing fee and letter.

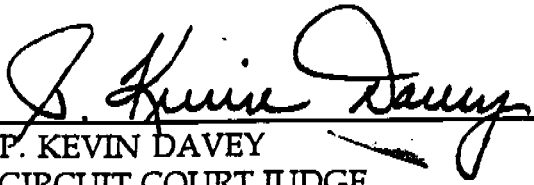
7. On August 28, 1992, Smith & Williams filed a Notice of Refiling Notice of Appeal setting forth each of the above facts.

THEREFORE, it is ORDERED AND ADJUDGED that:

1. To the extent this Court has jurisdiction of this action, Smith & Williams, P. A.'s Motion To Withdraw As Counsel is granted.

2. All further pleadings shall be filed directly on Plaintiffs.

DONE AND ORDERED in Chambers, Leon County, Tallahassee, Florida, this 8th day of September, 1992.


P. KEVIN DAVEY
CIRCUIT COURT JUDGE

cc: Morris E. Shelkofsky, Esquire
Debra A. King, Esquire
James A. Muench

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Morris E. Shelkofsky, Jr., Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050, and Debra A. King, Senior Counsel, University of South Florida, ADM 250, 4202 East Fowler Avenue, Tampa, Florida 33620-6250, this 19th day of June, 1992.



JAMES A. MUENCH

SMITH & WILLIAMS, P.A.
TAMPA, FL 33608

6987

INVOICE	Q/L#	CLIENT	MAT	DESCRIPTION	AMOUNT
	89020	856	2	Jon S. Wheeler, Clerk of court	250.00

CHECK #: 6987

CHECK DATE: 06/19/92

CHECK AMOUNT: 250.00



RECEIVED
JUN 25 1992

DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA 32301

Jon S. Wheeler
CLERK

(904) 498-6151

In response to your recent communication, see paragraph(s) marked below.

X Your notice of appeal is returned herewith. It should be filed in the lower tribunal* clerk's office within 30 days from the rendition of the order you are appealing.

— The papers tendered to this office fail to set forth any grounds for invoking the jurisdiction of this Court; therefore, no action can be taken by the Court.

— Your appeal is pending in this Court. As soon as the record on appeal and all briefs have been filed, it will be ready to be submitted to the Court for decision. When a decision is reached, you will be notified.

— Your appeal is presently under consideration by the Court and there is no way I can tell how long it will be before a decision is reached. As soon as a decision is reached and an opinion filed, you will be notified.

— Motions for bail pending appeal must be filed in the clerk's office of the trial court. If denied by the trial court, a motion to review denial of appeal bond can be filed in this Court. In the latter case you should accompany your motion to review with a copy of the order of the trial court denying the bond and a transcript of the hearing, if any.

— I am not authorized to give detailed legal advice. It is suggested that you contact the attorney who was appointed to represent you on appeal or the attorney who represented you at trial.

— This Court has no forms for petitions for writ of habeas corpus. The allegations in your petition may be set forth in your own words.

— There appears to be no appeal pending or closed in this Court similar to the style you state.

— The attached correspondence appears to have been mailed to this District Court of Appeal in error.

— The judgment, order, or sentence was affirmed on _____.

— The above-styled appeal was dismissed or quashed on _____.

— The motion for rehearing was denied on _____.

— This Court's mandate was issued on _____ and the appeal is now closed in this Court.

Sincerely,
Jon S. Wheeler
Jon S. Wheeler

*Lower tribunal: The court, agency, officer, board, commission, or body whose order is to be reviewed.

SMITH & WILLIAMS

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

JEFFREY A. AMAN
JANA P. ANDREWS
DALE K. BOHNER
MARGARET E. BOWLES
DAVID L. COOLEY
ROBERT L. HARDING
J. GREGORY HUMPHRIES
JAMES A. MUENCH
BRIAN D. PUGH
NEAL A. SIVYER
DAVID LISLE SMITH
GREGORY L. WILLIAMS

OLD HYDE PARK
712 SOUTH OREGON AVENUE
TAMPA, FLORIDA 33606-2569

(813) 253-5400

FAX (813) 254-3459

ORLANDO OFFICE:

201 EAST PINE STREET
SUITE 700
ORLANDO, FLORIDA 32801
(407) 849-5151

*ALSO ADMITTED VA BAR

PLEASE REPLY TO TAMPA

June 25, 1992

Paul F. Hartsfield, Clerk of Court
Second Judicial Circuit
Leon County Courthouse
Tallahassee, Florida 32301

Re: Jeffrey L. Stickney, M.D., et al. v. The Board of Regents of The
State of Florida State University System
Case No. 91-4715

Dear Mr. Hartsfield:

Enclosed for filing please find an Appeal and check in the amount of \$250.00.
The Appeal was inadvertently directly filed with the Appeal Court.

Thank you for your attention to this matter. Please call if you have any
questions.

Sincerely,



Anna Marie Davis
Secretary to Mr. Muench

/amd
enclosures

EXHIBIT 5

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR LEON COUNTY
CIVIL DIVISION

JEFFREY L. STICKNEY, M.D.,
JAMES N. PAPPAS, M.D., DOUGLAS
STRINGHAM, M.D., TOM D.
HOWEY, M.D., PAUL T. FORTIN,
M.D., MARK FRANKLE, M.D., and
WILLIAM F. BENNETT, M.D.,

Plaintiffs/Appellants,

Case No. 91-4715

v.

Florida Bar No. 472867

THE BOARD OF REGENTS OF
THE STATE OF FLORIDA
STATE UNIVERSITY SYSTEM,

Defendants/Appellees.

NOTICE OF REILING NOTICE OF APPEAL

COMES NOW, Plaintiffs/Appellants Jeffrey L. Stickney, M.D., James N. Pappas, M.D., Douglas Stringham, M.D., Tom D. Howey, M.D., Paul T. Fortin, M.D., Mark Frankle, M.D., and William F. Bennett, M.D., and hereby refiles their Notice Of Appeal previously filed with the First District Court Appeal, and state as follows:

1. On June 19, 1992, Smith & Williams, P.A., as counsel for Plaintiffs, mailed the Notice of Appeal for filing in the First District Court of Appeal (attached as Exhibit 1) along with the appropriate filing fee of \$250.00. Said filing fee as evidenced by check stub #6987, attached as Exhibit 2 was made payable to Jon S. Wheeler, Clerk of Court. Through clerical error, the Notice of Appeal and check #6987 were inadvertantly mailed for filing to the First District Court of Appeal in Tallahassee.

2. Notwithstanding the First District Court of Appeal filed the Notice of Appeal on June 22, 1992, and affixed the "Filed" stamp as of that date (i.e., June 22, 1992) [See Exhibit "1" infra].

3. On June 25, 1992, the First District Court of Appeal sent back to Smith & Williams the Notice of Appeal and filing fee. (See supporting documentation attached as Exhibit 3). In returning the Notice of Appeal and filing fee, the First District Court of Appeal stated: "Your notice of appeal is returned herewith. It should be filed in the lower tribunal clerk's office within 30 days from the rendition of the order you are appealing."

4. On June 25, 1992, Smith & Williams then sent the Notice of Appeal, filing fee and a letter of explanation attached as Exhibit 4 to Paul F. Hartsfield, Clerk of Court for the Second Judicial Circuit.

5. On August 28, 1992, Ms. Brenda Gainey, Deputy Clerk for the Second Judicial Circuit informed Smith & Williams that it never received the aforementioned Notice of Appeal and letter.

WHEREFORE, the Plaintiffs/Appellants respectfully refiles the previously-filed Notice of Appeal with this Court.

Respectfully submitted,

SMITH & WILLIAMS, P.A.

By: _____

JAMES A. MUENCH
712 South Oregon Avenue
Tampa, Florida 33606
(813) 253-5400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Morris E. Shelkofsky, Jr., Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050, Debra A. King, Senior Counsel, University of South Florida, ADM 250, 4202 East Fowler Avenue, Tampa, Florida 33620-6250, this 28th day of August, 1992.



JAMES A. MUENCH



RECEIVED
SEP 10 1992

DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA 32399-1850

JON S. WHEELER
CLERK OF THE COURT

September 08, 1992

(904) 488-6151

Honorable Paul F. Hartsfield
Clerk of the Circuit Court
P.O. Box 726
Tallahassee, FL 32302

RE: Jeffrey L. Stickney, VS The Board of Regents of
M.D., et al. The State of Fla. etc.
Case Number : 92-03059
Lower Case number : 91-4715

Dear Paul F. Hartsfield

The Clerk of the Court acknowledges receipt of the following:

Notice of Appeal from the lower tribunal reflecting a filing date of 09/02/92. Receipt number 921627 for filing fee attached.

In the future, please use this court's case number on all pleadings and correspondence filed in this cause.

BEFORE THIS CASE CAN BE ASSIGNED TO A PANEL OF JUDGES FOR CONSIDERATION, the attached Docketing Statement must be completed and filed with this Court by the Appellant/Petitioner. Appellees/Respondents/Amicus need to review the information on the Appellants/Petitioner docketing sheet and file a docketing statement if required, and as explained in the attached docketing statement.

Sincerely Yours,


JON S. WHEELER

CC:
James A. Muench
Morris E. Shelkofsky, Jr.
Debra A. King

EXHIBIT 7

RECEIVED
SEP 11 1992

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399

Telephone No. (904) 488-6151

DATE: September 9, 1992

CASE NO.: 92-3059

JEFFREY L. STICKNEY,
M.D., et al.
Appellant/Petitioner

vs. THE BOARD OF REGENTS OF
THE STATE OF FLA. etc.
Appellee/Respondent

ORDER

Upon the court's own motion the appellant is ordered to show cause within 10 days from the date of this order why the appeal should not be dismissed for failure to timely file the notice of appeal. If any pleading or order is referenced in support of the response, a copy of the referenced order or pleading shall be attached to the response.

By order of the court

Jon S. Wheeler
JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

James A. Muench
Debra A. King

Morris E. Shelkofsky, Jr.

Gaurie Black
Deputy Clerk



DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Fl. 32399

Telephone (904) 488-6151

DATE September 30, 1992

LT 91-4715

CASE NO. 92-3059

JEFFREY L. STICKNEY, M.D., vs. THE BOARD OF REGENTS OF THE STATE
appellant/petitioner et al. appellee/respondent OF FLORIDA, et

ORDER

The court has considered the appellant's response to the show cause order. As the notice of appeal was not timely filed in the proper court, this appeal is dismissed for lack of jurisdiction. Beeks v. State, 569 So.2d 1345 (Fla. 1st DCA 1990).

By order of the court

Jon S. Wheeler

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

James A. Muench
Morris E. Shelkofsky, Jr.
Paul F. Hartsfield

Samuel R. Mandelbaum
Debra A. King

Laurie Black
Deputy Clerk

