IN THE SUPREME COURT OF THE STATE OF FLORIDA

APPEAL NO. 79,667
(DCA CASE NO. 91-01723)

WALLACE P. HARMON, as Personal
Representative of the Estate of
Patsy P. Williams, deceased

Petitioner

V.

LARRY T. WILLIAMS, as Personal
Representative of the Estate of
R. Virgil Williams, deceased

Respondent

DISCRETIONARY REVIEW OF CONFLICT

CERTIFIED BY THE COURT OF APPEAL, SECOND DISTRICT

REPLY BRIEF

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SYMBOLS AND REFERENCES

The symbols and references used in this initial brief are summarized as follows:

"Petitioner" shall mean Wallace P. Harmon, as Personal Representative of the Estate of Patsy P. Williams, deceased.

"Respondent" shall mean Larry T. Williams, as Personal Representative of the Estate of R. Virgil Williams, deceased.

"Notice" shall mean the Notice of Intention to Petition for Elective Share.

Citations to the Appendix to the Petitioner's Initial Brief will appear as "(A.____)", to indicate the page number of the Appendix to which reference is made.

Citations to the record on appeal with the Second District Court of Appeal will appear as "(R.____)", to indicate the page number of the record on appeal to which reference is made.

POINT I

THIS COURT HAS CONFLICT JURISDICTION OF THIS PROCEEDING BECAUSE THE SECOND DISTRICT CERTIFIED THAT ITS DECISION IN HARMON WAS IN DIRECT CONFLICT WITH THE DECISION OF THE FIFTH DISTRICT IN SCHRIVER

Respondent contends that this Court does not have "conflict jurisdiction" of this proceeding under article V, section 3(b)(4), because: (i) the district court only certified that there was "possible conflict," and (ii) the asserted conflict did not involve a "dispositive issue" in the case under review. Neither contention affects the pending certification of conflict jurisdiction in this case.

Article V, section 3(b)(4) empowers and authorizes a district court to certify a decision under review by it, if and only if, the district court believes that its decision "directly conflicts" with the decision of sister court. Art. V, § 3(b)(4), Fla. Const. This "constitutional command" defines and limits the broad grant of discretionary subject-matter jurisdiction assigned to this Court. See, The Florida Star v. B.J.F., 530 So.2d 286, 288 (Fla. 1988). Like any other judicial act, a certification is entitled to a presumption of correctness. A certification order must be presumed to be based on the district court's implicit finding that a "direct conflict" exists -- to some degree or another -- between its decision and that of its sister court, The degree of direct conflict (e.g., "patent," "actual," "possible," or "arguable,") is a determination that appears to have been left within the sound discretion of the district court. Art. V, § 3(b)(4), Fla. Const. The vesting of such discretion in the district courts is consistent with the policy objectives of the "broadened certification authority"[1] granted to Florida district courts of appeal,

[1] *See*, e.g., Overton, District Court of Appeal: Courts of Final Jurisdiction with Two New Responsibilities, 35 U. of Fla. L. Rev. 80, 87 (1983).

> This [certification of conflict] allows the intermediate appellate courts of Flarida to directly suggest a resolution of the conflict when they disagree with a sister court on a principle of law which they understand applies to a similar set of facts.[2]

Contrary to Respondent's contention (Answer Brief at 13-14), the certification process requires nothing more than a finding by the district court of a "possible [direct] conflict" or "arguable claim of [direct] conflict" between interdistrict decisions. See AIU Insurance Co. v. Block Marina Investment, Inc., 544 So.2d 998 (Fla. 1989). Indeed, the district courts are encouraged to certify issues to this Court whenever they believe there may be an arguable claim of conflict, so as to avoid a potential disharmony between districts,[3]

In the instant case, the three judicial officers who comprised the panel screened the decision for possible discretionary review by this Court, as is their duty under their "broadened certification authority." Based upon their detailed familiarity with the record and issues in the case, the district court found that its decision may be in conflict with a decision of the Fifth District, thereby creating potential interdistrict disharmony if both decisions were permitted to stand. Accordingly, the Second District formally "certified" that its decision was in "possible conflict" with the decision of the Fifth District in In Re: Estate of Schriver, 441 So.2d 1105 (Fla. 5th DCA 1983).

Respondent attempts to go behind that certification, arguing that the certification is "equivocal" or "ambiguous", and is inadequate to vest jurisdiction. (Answer Brief at 12-13). The district court's certification is one of the two

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[2] Overton, A Prescription for the Appellate Caseload Explosion, 12 Fla. St. L. Rev. 227, 228 (1984).

[3] Id. at 87; England and Williams, Florida Appellate Reform One Year Later, 9 Fla. St. L. Rev. 224, 250.

procedural prerequisites for the invocation of certified conflict jurisdiction. The first being the filing of the notice to invoke discretionary jurisdiction in the district court. Fla. R. App. 9.120(b) and (c). Upon satisfaction of these prerequisites, this Court has certified conflict jurisdiction.

The district court's finding of direct conflict is not reviewable, per se, (i.e., for the purpose of determining the validity or "adequacy" of the certification itself), any more so than would be a district court's certification (and implicit finding of the degree of "importance") of a "question of great public importance" under article V, section 3(b)(4). Cf. Lake Region Packing Ass'n., Inc. v. Furze, 327 So.2d 212 (Fla. 1976). The finding of "direct conflict" (as an indispensable predicate for the invocation of certified conflict) has been made in this proceeding; therefore, conflict jurisdiction has been invoked and this proceeding is pending a review on the merits. No "briefs on jurisdiction" are now required, or even "permitted." Fla. R. App. P. 9.120(d).

The real issue here is not whether this Court has "certified conflict jurisdiction" to review the district court's decision in Harmon v. Williams, 596 So.2d 1139 (Fla. 2d DCA 1992), as the Respondent contends. The real issue is **whether this Court[4] should exercise its discretion** and review[5] the district court's decision certified to it.

Respondent argues for a new rule governing the certification process.

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4 More specifically, the 5-justice review panel is required by the Internal Rules of this Court to review this case after all briefs on the merits are received. See Fla. Sup. Ct. Manual of Internal Operating Proc., § II, A.2.

5 If this Court exercises its discretion and "accepts" jurisdiction of this proceeding, this Court has the prerogative to consider any error in the record, not just the narrow issue certified. Cf. Lawrence v. Fla. East Coast Railway Co., 346 So.2d 1012 (Fla. 1977) ("We deem it our prerogative to consider any error in the record once we have it properly before us for our review. The record is properly before us on the certified question." Id. at n. 2.); Tyus v. Apalachicola Northern Railroad Co., 130 So.2d 580 (Fla. 1961).

Respondent contends that if the district court's certification is "equivocal" (e.g., where the court only certifies a "possible conflict"), then the certification "should not create jurisdiction unless there are independent grounds for jurisdiction." (Answer Brief at 13 (emphasis added)). As "authority" for such a proposition, Respondent cites a covey of so-called "conflict cases," all of which pertain to conflict jurisdiction under article V, section 3(b)(3), not certified conflict under section 3(b)(4). None of the cited "authority" even deals with the certification process, except Block Marina, 544 So. 2d 998, and that case does not support the proposition for which Respondent has cited it. (Answer Brief at 14).

In Block Marina the district court certified its decision as "possibly in conflict" with a sister court, This Court accepted jurisdiction ("We perceive conflict [too] ... .") and granted review on the merits. Id. at 999. At no place in the opinion did this Court say (let alone hold) that its jurisdiction was based on any jurisdictional basis other than the certification of the district court. The opinion is devoid of any "independent" basis for conflict jurisdiction.

Respondent next contends that a certification "should not only be clear, express, and unambiguous but [it] must also involve a dispositive issue in the case." (Answer Brief at 11 (emphasis added)). Respondent leans on Block Marina to support his newly found requirement of a "dispositive issue," but that case neither holds nor stands for such a principle of law.

A dispositive issue requirement might make some public policy sense, if this Court's focus is to restrict review to the narrow confines of the case under review, as in questions certified by federal courts under Art. V, §3(b)(6), Fla. Const. ("May review a question ... which is determinative of the cause ... .").
But such a requirement has no place in the certification of conflict under section 3(b)(4). Engrafting a dispositive issue requirement on the certification process

would result in the tail wagging the dog. The judicial law-making function of reconciling conflict and harmonizing the law would become subservient to the function of error-correcting. Conflict based on obiter dictum, for example, could never be resolved by certification, regardless of how infectious the conflict may be. See e.g., Garcia v. Cedars of Lebanon Hospital, 444 So.2d 538 (Fla. 1984).

Here, the Second District certified that its decision that a spouse's attorney of record (the spouse's agent and fiduciary) had no authority to sign the election to take the statutory election conflicted with the Fifth District's decision that a spouse's attorney in fact (also the spouse's agent and fiduciary) had authority to actually make an election under section 732.210. 596 So. 2d at 1142-43.

Section 732.210 provides that the spousal election "may be exercised (not executed) by the surviving spouse or her guardian of the property." 0732.210, Fla. Stat. (1989). In Schriver, the Fifth District construed section 732.210 and held that the act of the attorney-in-fact was the act of the surviving spouse (not of her guardian). The Fifth District baaed its decision on statutes governing powers of attorney and the terms of the power of attorney executed by the surviving spouse. Schriver, 441 So.2d at 1107. Similarly, the acts of the attorney of record are also the acts of the surviving spouse, based on the rules of court governing attorneys and case law regarding the attorney-client relationship, See Fla. R. Jud. Admin. 2.060, FPR 5.010, and Johnson v. Estate of Fraedrich, 472 So.2d 1266 (Fla. 1985).

Rule 2.060 provides that the act of the attorney of record in a proceeding is the act of the client. Fla. R. Jud. Admin. 2,060. See also Fla. R. Civ. P. 1.180. The Florida Probate Rules actually require a probate pleading to be signed by the attorney of record for the party, not the party. FPR 5.010. Only in exceptional cases, which the election of the elective share is not, is the probate pleading required to be signed personally by the party. FPR 5.360.

These procedural rules, which empower litigants' attorneys of record to execute papers and pleadings on behalf of their clients, are further buttressed by Johnson, 472 So. 2d 1266. In Johnson, the Fifth District held that an attorney of record for a personal representative had inherent authority, by virtue of the attorney's position as an agent for his client in the pending estate proceeding, to "sign and file" an objection to a creditor's claim, notwithstanding the statutory requirement that the personal representative personally file the written objection. Johnson, 472 So. 2d at 1268.

The Second District's decision that the surviving spouse's attorney of record does not have authority to sign the spousal election (not to "exercise" it, mind you) directly conflicts with the application of Rules 2.060 and 5.010 to the facts of this case and the Fifth District's decisions in both Johnson and Schriver.

Had the Fifth District heard Harmon, it would have held that (i) the attorney at law for Patsy Williams had inherent authority by virtue of his position as her attorney of record to sign and file on her behalf an election to take the elective share, and (ii) the act of Patsy Williams' attorney at law constituted the act of Patsy Williams under section 732.210(1). Unfortunately for Patsy Williams (and now her children), her husband died domiciled in the Second District, not the Fifth District.

Were this Court to accept Respondent's suggestion that certified conflict jurisdiction should not be accepted, this Court also has jurisdiction under article V, section 3(b)(3), based on the Second District's interpretation that " ... neither the attorney acting as agent nor the guardian ad litem's signature could satisfy the statute [section 732.210]." Harmon at 1142. This statement expressly and directly conflicts with this Court's decision in Edwards v. Edwards, 106 So. 2d 558 (Fla. 1958). In Edwards, this Court stated that a guardian ad litem for the surviving spouse could execute (in that instance even "exercise" the dower election) and file

the dower election on behalf of the widow. The Second District's opinion conflicts with decisions rendered by this Court and the Fifth District.

POINT II

THE DISTRICT COURT ERRED WHEN IT HELD A WRITTEN ELECTION UNDER SECTIONS 732.210 AND 732.212, FLORIDA STATUTES (1989), COULD NOT BE EXECUTED BY THE ATTORNEY OF RECOPD OF A COMPETENT SURVIVING SPOUSE

Points I and V of Respondent's Answer Brief appear to have confused the personal exercise of a spouse's right with the physical act of execution of a document evidencing the exercise. There was no evidence in the record that Patsy Williams' attorney of record made the personal decision to take the elective share. The only evidence before the district court was (i) that the attorney executed, on behalf of Patsy Williams, a probate pleading evidencing her decision to take the elective share, and *(ii)* that Patsy's written election was subsequently ratified by her guardian ad litem, when he executed and filed the second written election.

Respondent obfuscates the issue by making a false analogy of the attorney's execution of an offer to convey real estate in Rushing v. Garrett, 375 So. 2d 903 (Fla. 1st DCA 1979), to an attorney's execution of the spousal share. The Rushing attorney's letter offer read, "My clients have indicated they will buy or sell the property for $600 per acre. Id. at 908 (emphasis added). The trial court found that the partition litigant's attorney had full authority to execute, on his client's behalf, the agreement to convey real estate, despite the attorney denying that he could bind his client. The Rushing appellate court reversed the trial court, holding that a party seeking to enforce an agreement to convey real estate must prove authorized assent by the other party. Id. at 905. Since there was no proof of any express or apparent authority, the agreement was not binding.

Here, Patsy Williams' attorney stated in the first written election (a pleading not a letter) that she ~~would file~~ a petition to determine the elective share (A-15). The apparent authority of Patsy Williams' attorney to execute the election (the written confirmation of Patsy's exercise) was subsequently ratified when Patsy's guardian ad litem executed and filed the amended election. (A. 17). Thus, there was proof of Patsy Williams' attorney to sign the first election on Patsy's behalf,

Another distinction between Rushing and this case is the absence of a statute requiring the signature of the party. In Rushing, the statute of frauds required the party's signature. Id. at 905. Here, the statutory requirement that the surviving spouse execute the election was specifically deleted by the Florida legislature when it enacted the elective share statute. (See Point I of Initial Brief).

The act of the attorney executing and filing an elective share election in a probate proceeding is analogous to an attorney executing, on behalf of his or her client, a complaint to institute a civil action or a notice of appeal to initiate appellate review. See e.g., Fla. R. Civ. Proc. 1.180 (every pleading or other paper of a party represented by an attorney need not be verified or accompanied by an affidavit, except when specifically required, which Rule is similar to FPR 5.010). See also Hankin v. Blissett, 475 So.2d 1303 (Fla. 3d DCA 1985) (an attorney's secretary is authorized as the attorney's agent to execute a notice of appeal). Thus, the district trial court erred when it held that the surviving spouse's attorney had no authority to execute the election, a probate pleading.

POINT III

THE DISTRICT COURT ERRED WHEN IT HELD THAT A NOTICE OF INTENTION TO PETITION FOR ELECTIVE SHARE WAS NOT SUBSTANTIVELY AN ELECTION UNDER SECTION 732.212, FLA. STAT.

The Respondent erroneously contends that the Second District analyzed, in depth, the issue of whether Patsy Williams' Notice of Intention to Petition For Elective Share ["Notice"] was substantively an election to take the elective share. The Second District did not analyze the content of the Notice; it criticized that " ... the notice merely recites the attorney's intention to file a petition on Patsy's behalf. An election and a petition are not the same." Harmon at 1142. The Second District appears to have misconstrued the Notice as a petition to determine the elective share, not Patsy's actual or attempted election. Such a construction is not supported by the plain language of the Notice. It did not state, as is required, the proposed time and manner of the distribution of the elective share. See § 732.214, Fla. Stat. (1989) and FPR 5.360(b). The Notice was filed during the life of Patsy Williams and within the 4-month election period. Therefore, even if the Notice is deemed to be defective in form, it was a timely filed election. See Allen v. Guthrie, 469 So.2d 204 (Fla. 2d DCA 1985).

The Florida legislature enacted, and other appellate courts have liberally construed, the filing and amending criteria of a creditor's claim against an estate. These claim statutes, like the elective share claim statutes, provide an extension period for filing creditor's claims, if there is fraud, estoppel or insufficient notice of the claims period. See FPR 5.490, 9732.212, 733.702(3) and §733.704, Fla. Stat, (1989). The claim statutes and rules, however, unlike the elective share statute and rules, provide criteria for the form of the creditor's claim.

The Notice, like a creditor's statement of claim, gave the name of the claimant, the basis of the claim, and the name and address of the claimant's attorney. (A. 15). Thus, it satisfied the purpose of the written election. Unlike a creditor's statement, there was no need for Patsy Williams to state in her election whether the elective share claim was secured or unsecured, or contingent or unliquidated. See

FPR 5.490. Upon receiving a copy of the Notice (which gave the same information as the election form approved by Judge Parker), the personal representative was aware, **within the statutory 4-month election period,** that Patsy Williams had made a claim against the estate to take a spousal share. (A. 9).

The Notice reduced the uncertainty and facilitated the settlement of the decedent's estate. There was no prejudice or delay (as occurred in Guthrie) by the filing of Patsy Williams' election, See Spencer v. Williams, 569 A.2d 1194, 1196 (D. C. App. 1990) (the election to take against the will was deemed timely when it was filed by the surviving spouse's conservator within the statutory period, notwithstanding the conservator having no prior court authorization to file the renunciation, since the estate representative was put on timely notice within the statutory renunciation period -- the appellate courts must base their decision on what will most benefit the surviving spouse). Id. at 1198 (emphasis added). The Second District should not have found that the Notice was substantively defective.

POINT IV

THE DISTRICT COURT ERRED WHEN IT REFUSED TO HOLD THAT THE SECOND WRITTEN ELECTION RELATED BACK AND WAS, THUS, TIMELY FILED

The district court erred when it refused to hold that the written election filed by Patsy's guardian ad litem related back and was thus timely filed. Harmon at 1141. Respondent contends that the guardian ad litem's election could not be considered an **amended election** because (i) it did not purport to be an amendment, (ii) it was not accompanied by a motion to amend, and (iii) it was not brought to the attention of the probate court.

First, the guardian's election was executed and served on July 3, 1990, within 14 days of the service of the personal representative's motion to strike the

Notice. (R. 42-45). The timing of the guardian ad litem's election (which addressed all of the alleged deficiencies raised in the personal representative's motion to strike), in and of itself, implies that the guardian's election was an amended election. The fact that the title of the pleading did not contain the word "amended" is merely a defect in form, which should not be permitted to impair Patsy Williams' substantial right to over $190,000. FPR 5.020(a) (all technical forms of pleadings are abolished; no defect in form impairs substantial rights).

Second, there is no probate rule which generally provides for an amendment of pleadings or papers in a probate proceeding, as there is in the civil rules. Compare, Fla. R. Civ. Proc. 1.190 with FPR 5.340[6] and 5.490(e)[7]. It fosters an amendatory process which is functional, nontechnical, and designed to insure substantial justice to all interested persons.

Lastly, the guardian ad litem's election was filed in the court file on July 9, 1990. (R. 46). Thus, the probate court was on notice that the guardian ad litem's election had been filed one week before the trial court heard the personal representative's motion to strike the Notice. (A. 18). There is nothing in the record to show whether the guardian ad litem's election was orally brought to the court's attention during the hearing on the motion to strike. The only record before this

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[6] Under rule 5.340(c), for example, a personal representative may amend or supplement the inventory of the assets of the estate, without filing and having heard a motion for leave to amend the inventory. To amend or supplement the inventory, the personal representative need only (i) learn of a new asset, (ii) discover an asset value or description is erroneous or misleading, or (iii) determine the fair market value of an item which was previously unknown. No motion is required. FPR 5.340(c).

[7] The second rule which provides for amendments is rule 5.490(e). Under rule 5.490(e), a court may authorize an amendment to a claim "at any time", if the claim "is sufficient to notify interested persons of its substance" but is defective as to form. FPR 5.490(e) (emphasis added). ~~See also~~ 8733.704, Fla. Stat. (1989). Neither the rule nor the statute require a motion for leave to amend the creditor's claim.

Court is a stipulated statement of facts regarding the first hearing, and that statement of facts is silent regarding the guardian ad litem's election.

Respondent diverts attention to In Re: Estate of Pearson, 192 So. 2d 89 (Fla. 2d DCA 1966), a dower case, in support of his contention that the guardian ad litem's election "died" with Patsy Williams, since there had been no judicial "determination" of her elective share prior to her death. The Respondent appears to ignore Smail v. Hutchins, 491 So. 2d 301 (Fla. 3rd DCA 1986), in this regard.

In Smail, the surviving spouse validly exercised her elective share, but died before the petition to determine her elective share was filed. After the wife's death, the personal representative of the husband's estate objected to the wife's election, on the ground that her death terminated her entitlement to the elective share because her share had not been "determined" at her death. The Third District held that the right to an elective share "is not lost if the surviving spouse dies after the election, but before the court determines the amount of the elective share." Id. at 302 (emphasis added). The right to the elective share vests upon the election.

The Third District's opinion in Smail v. Hutchins is in direct conflict with the Fourth District's opinion in In Re: Estate of Anderson, 394 So. 2d 1146 (Fla. 4th DCA 1981), on which Respondent relies. Anderson adopts a myopic view that the elective share is limited to the duration of the surviving spouse's need for support. Such a dower-based rationale is antiquated and should be relegated to a footnote status in a gender bias study.

In Smail, the district court dismissed the staid and antiquated dower precedents based upon a spousal "duty of support." In their place, the Third District adopted the more modern approach -- treating a marriage as a partnership. It implicitly viewed the elective share as a gender neutral claim of a spouse to a marital interest in the deceased spouse's property. The Third District found that

merely because a surviving spouse's heirs may benefit from an election is no reason to deny the surviving spouse's statutory right to choose the elective share. Id. at 303. If the spouse dies shortly after receiving the elective share (as spouses do after receiving one-half of the marital property via a final judgment of dissolution of marriage), the beneficiaries of the spouse's estate (which may be the parties' children) become the primary recipients of a deceased spouse's estate.

The Florida elective share statute was derived, in substantial part, from the Uniform Probate Code [the "UPC"]. See, 8 Uniform Laws Annotated, 00 2201-207, Two basic family law principles underlie the elective share: (i) that marriage is an "economic partnership" between the spouses, and (ii) that spouses have "mutual duties of support" which survive their death.' By adopting the statutory elective share, the Florida legislature recognized both principles, not just the dower-based support theory, as suggested by that fleeting reference in Anderson. The elective share is more than just a larger "family allowance", as Respondent would have this court believe. Under Florida law it is the right of the surviving spouse (competent or incompetent) to a forced share in the decedent's entire probatable estate located in Florida. See §§732.206, .207, .208, and .209, Fla. Stat. (1989).[9]

The statutory qualification that the court determine the election as the best interest of the surviving spouse requires is satisfied " .., by electing the option which provides the surviving spouse with the greatest monetary value." Spencer, 569 A. 2d at 1198. An infirm spouse should not be penalized because of her

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[8] Uniform Probate Code, §2-203 and General Comment to Article 11, Part 2 (1990).

[9] See, generally, Adock and Valentine, "Estate Planner's Dilemma: Reconciling Legal, Ethical, and Moral Responsibilities," 60 Fla. Bar J. 51 (1986).

condition. See Spencer v. Williams, 569 A. 2d 1194 (DCA at 1990). This view, not the Anderson view, is more in keeping with the Florida legislature's concept of marriage as an economic partnership, which upon its termination requires an equitable distribution of assets. See 61.075, Fla. Stat (1989).

The interpretation and construction of the elective share statute is far from being a settled area of law. As some of the uncharted issues are addressed and clarified by this Court, careful attention should be given to guard against the mechanical application of so-called "precedent" -- developed during the dower era. The statutory elective share concept is comparatively new. It is based an evolving principles of modern family law. To automatically apply dower precedent, with all the creativity of a cookie cutter, to the new concept of the elective share, would seriously undermine the clear legislative purpose of the statute.

SUMMARY

Petitioner requests this Court to exercise its discretion, review this proceeding, and render an opinion on the issues raised in this proceeding, for the following reasons:

1. To authoritatively address the mechanics of the "certified conflict jurisdiction process." Can the certification itself be reviewed or challenged, as attempted by the Respondent? Is a "dispositive issue" required? (See Reply Brief at 1-5).

2. To resolve the stated conflict and harmonize the construction of sections 732.210 and 212, Florida Statutes, regarding who is permitted to execute an election on behalf of a spouse, in light of the amendments of the statute and the compliant silence of the statutes and Probate Rules. (See Initial Brief 8-22; Reply Brief at 5-8).

3. To chart a clearer course for practitioners regarding the inherent authority of an attorney of record to file a written execution in a proceeding under FPR 5.360 for an elective share. (See Initial Brief at 11-20; Reply Brief at 5-8).

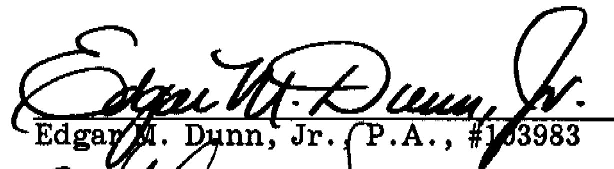
4. To harmonize the district courts' applications of precedents regarding how and when interests are "determined in the interest of the surviving spouse." (Reply Brief at 12-14).

5. To clarify the authority of a guardian ad litem to make and execute an election for spouse. *(See* Initial Brief at 30-32; Reply Brief at 6).

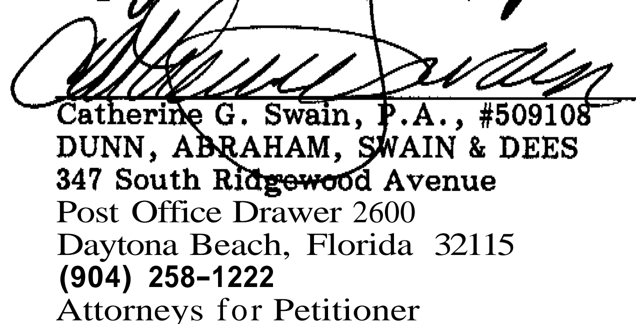
6. To give guidance to the trial courts regarding procedures to be followed in non-adversary election proceeding. Can a defective election be amended? What is the minimally acceptable form of a valid election, in the absence of an official form or prescription in the statutes or Florida Probate Rules? Does the policy "No defect of form impairs substantial rights ..." (FPR 5.020(a)) really mean what it says? (See Initial Brief at 23-29; Reply Brief at 8-12).

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof was furnished, by mail, to Hywel Leonard, Esquire, of CARLTON, FIELDS, WARD, et al., at Post Office Box 3239, Tampa, Florida 33601, attorney for Larry T. Williams, as Personal Representative of the Estate of R. Virgil Williams, deceased, this 2nd day of September, 1992.



Edgar M. Dunn, Jr., P.A., #103983



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