A Not-So-*Little* Problem With Precedent: Intra-District Conflict in Florida District Courts of Appeal

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There is a difference in opinion when it comes to intra-district precedent in Florida. Most lawyers believe — and some judicial opinions hold — that a district court's three-judge panel is bound by a prior panel opinion until the district court sitting en banc or the Florida Supreme Court overrules it. Surprisingly, some district court opinions hold (or at least instruct) that when two panel opinions conflict, the later opinion controls. Thus, there are two approaches to reconciling intra-district precedent in Florida: "older is better" versus "later is greater."[1]

In this article, we trace the history of intra-district conflict in Florida, outline how Florida Rule of Appellate Procedure 9.331 changed (or should have changed) the landscape, and explain *Little v. State*, 206 So. 2d 9 (Fla. 1968), a case that has created confusion. From there, we outline Florida district court opinions that come to different conclusions on how to resolve intra-district conflict. Then, as an example of how we believe courts should address conflict, we explain how the 11th Circuit Court of Appeals deals with panel conflict. Finally, we propose a solution for this not-so-little problem.

'Later Is Greater'

The legislature created the First, Second, and Third district courts of appeal in 1957. There were three judges on each court.[2] Since panels deciding cases consisted of three judges, the courts were sitting en banc in every case. There should have been no question, at that time, about whether a later panel could overrule a prior panel, and they did.[3]

In 1965, the legislature created the Fourth District, with three judges. At the same time, the legislature added two judgeships to each of the other districts, so that each of those districts had five.[4] The legislature subsequently added additional judgeships to each court and, in 1979, created the Fifth District, with six judges.[5] Even though the courts were no longer sitting en banc in each case, from 1966 to 1972, later panels continued to overrule prior ones.[6]

Then, in 1972, the constitutional provision governing the Supreme Court's jurisdiction was amended. For a brief period of Florida's history, the court had jurisdiction to review all conflicts, including intra-district conflicts.[7] Meanwhile, in the district courts, later panels were still overruling earlier panels, with no authority telling them they shouldn't.[8]

In 1978, the Commission on the Florida Appellate Court Structure proposed formalizing en banc proceedings in Florida district courts, issuing a telling report:

> Presently, the district courts hold ad hoc conferences to discuss problems of conflicts between panels and to determine whether a panel should recede from a prior written opinion of the court. This proposal will formalize that process and provide a method for securing the input of counsel to resolve cases worthy of en banc determination. Although conflicts of decisions in cases decided by the same district court do not often arise, this recommendation will serve the dual purpose of reducing the Supreme Court's work load and furthering the goal of making the district courts the courts of last resort in most instances.[9]

As a result, the Supreme Court created Fla. Rul. App. P. 9.331, effective 1980.[10] Rule 9.331 authorized en banc proceedings. According to the 1978 commission report, subsequent panels were not freelancing; the whole court was acting, although that was unstated and perhaps unknown to the public.

A Not-So-*Little* Problem

Much of the confusion regarding intra-district precedent can be traced to a single Supreme Court opinion issued in 1968, before the creation of the en banc rule: *Little*. In the case, the court held that, in the face of an intra-district conflict, the decision later in time controls.[11] At the time *Little* was decided, a later panel could overrule the precedent established by a prior panel, or at least everyone thought they could. The statement in *Little* reflected the state of law and practice at that time. Without the approach taken in *Little*, courts operating before the en banc rule would have been stuck with bad precedent — even if every member of the court thought it was wrong, unless, of course, Supreme Court review was available and undertaken.

To understand the confusion sparked by *Little*, one also needs to understand how the Supreme Court's jurisdiction evolved after the decision. Following up on the commission's work, Chief Justice Arthur England submitted a report to the legislature calling for changes to the court's jurisdiction.[12] Ultimately, a constitutional amendment was put to the voters that would alter the state's appellate structure and limit the Supreme Court's conflict jurisdiction by restoring the "another district" language.[13] Now the Supreme Court was no longer able to resolve intra-district conflicts.

'Older Is Better'

The creation of the en banc Rule 9.331 prompted judges to ask, finally, whether a three-judge panel could overrule a prior panel. The Supreme Court said no in *In re Rule 9.331*, 416 So. 2d 1127, 1128 (Fla. 1982), and explained:

> This historical discussion leads to the question raised by the chief judges of the district courts, whether one three-judge panel can expressly overrule or recede from a prior decision of a three-judge panel of the same court on the same point of law. Under our appellate structural scheme, each three-judge panel of a district court of appeal should not consider itself an independent court unto itself, with no responsibility to the district court as a whole. The view that one district court panel is independent of other panels on the same court could possibly be a proper constitutional interpretation if our constitution provided that district courts were merely intermediate courts, with this Court, as the state's highest court, having full discretionary jurisdiction to review all intermediate court decisions. This was not, however, the type of appellate structural scheme adopted by the electorate. In fact, the

> suggestion that each three-judge panel may rule indiscriminately without regard to previous decisions of the same court is totally inconsistent with the philosophy of a strong district court of appeal which possesses the responsibility to set the law within its district.[14]

Some district court panels have relied on these statements in In re Rule 9.331 to hold that "older is better."[15] Other panels, and the Supreme Court, have cited *Little* for the proposition that "later is greater."

In 1992, the Supreme Court accepted jurisdiction in *State v. Walker (Walker II)*, 593 So. 2d 1049 (Fla. 1992) (mem.), to resolve a conflict between the First and Fourth districts. In *Walker v. State (Walker I)*, 580 So. 2d 281, 281 (Fla. 4th DCA 1991), the Fourth District held that life felonies were not subject to a specific enhancement. The First District, however, held that the enhancement applied to life felonies in *Watson v. State*, 504 So. 2d 1267, 1270 (Fla. 1st DCA 1986), rev. den., 506 So. 2d 1043 (Fla. 1987).

The Supreme Court ultimately dismissed the case, explaining that review had been improvidently granted.[16] Why? In 1990, four years after *Watson* was decided, the First District issued *Johnson v. State*, 568 So. 2d 519 (Fla. 1st DCA 1990), holding that the enhancement at issue did not apply to life felonies. Relying on *Little*, the Supreme Court held that *Johnson*, which came after *Watson*, resolved the conflict between *Walker I* and *Watson*.[17]

As recently as 2017, the Supreme Court has cited *Little* — and its "later is greater" pronouncement — with approval. In *R.J. Reynolds Tobacco Company v. Marotta*, 214 So. 3d 590 (Fla. 2017), approving in part, quashing in part, 182 So. 3d 829 (Fla. 4th DCA 2016), two Fourth District holdings were alleged to be in conflict.[18] The Supreme Court distinguished the cases on the grounds that one case was an *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246 (Fla. 2006), progeny case, but the other (the case before the Supreme Court) was not.[19] The court explained that even if the cases were in conflict, "the difference could be attributed to a change in the Fourth District's position regarding implied conflict preemption in tobacco product liability cases."[20] It also cited *Little* for the proposition that "the decision later in time overrules the former decisional law in the district."[21]

Little, *Walker*, and *Marotta* have led to confusion among the district courts regarding intra-district conflict. And while there are opinions holding that subsequent panels cannot overrule prior panels,[22] district courts are not uniform on this issue. As we will see, there is even intra-district conflict on whether "older is better" or "later is greater."

'Older Is Better' vs. 'Later Is Greater' in the District Courts

In 2019, the First District decided *Daniel v. State*, 271 So. 3d 1214 (Fla. 1st DCA 2019), a case involving double jeopardy. The appellant argued that the "single-homicide rule" barred convictions for both vehicular homicide and fleeing or eluding causing death or great bodily harm.[23] The First District agreed based on a case it decided in 2016. In a footnote, the court explained that the 2016 decision conflicted with an opinion it issued in 2011. The First District resolved the conflict by holding that "the later decision controls."[24] The court cited *Marotta* and *Little* for support.[25] Based on *Daniel*, one is left to conclude that a three-judge panel of a district court is free to jettison prior precedent in light of subsequent, conflicting precedent. Not so fast!

The very same day the First District issued *Daniel*, the court also decided *Wanless v. State*, 271

So. 3d 1219 (Fla. 1st DCA 2019), a case about expert testimony and consecutive sentences. The First District wrestled with "whether consecutive mandatory-minimum sentences can stand when there are multiple victims but only a single gunshot."[26] Over the course of several paragraphs — and guided by *Walker v. State*, 186 So. 3d 989 (Fla. 2016) — the First District outlined its precedent on the issue.[27] The court ultimately decided that "one gunshot is enough."[28] The court noted that the Supreme Court had not provided an explicit answer to the question.[29] Accordingly, it held, "We are of course bound to follow our own decisions unless and until an intervening decision from the Supreme Court, the U.S. Supreme Court, or this court sitting en banc compels otherwise."[30] Thus, on the same day, two panels of the First District made conflicting pronouncements about whether "older is better" or "later is greater."

There is similar inconsistency in the Second District. *Wood v. Fraser*, 677 So. 2d 15 (Fla. 2d DCA 1996), involved the statute of repose in a medical malpractice case. In the trial court, the doctor argued that a 1995 decision, *Arango v. Orr*, 656 So. 2d 248 (Fla. 2d DCA 1995), overruled a 1991 decision, *Moore v. Winter Haven Hospital*, 579 So. 2d 188 (Fla. 2d DCA 1991). The trial court agreed and granted the doctor's motion for summary judgment.

The Second District reversed, holding that "the trial court failed to adhere to a previous decision of this court involving the same point of law."[31] Specifically, the court wrote, "[B]ecause *Arango* was the opinion of a three-judge panel, that panel, consistent with the long-standing policy of this court, would not have receded from *Moore*, even if it were inclined to do so, without first seeking en banc consideration from the full court pursuant to Florida Rule of Appellate Procedure 9.331."[32] For nearly two decades, the Second District utilized the "older is better" approach. Then came *Collins v. State*, 893 So. 2d 592 (Fla. 2d DCA 2004), approved in part and quashed in part on other grounds, 985 So. 2d 985 (Fla. 2008), and a return of *Little*.

In *Collins*, the Second District considered the sufficiency of the evidence at a probation-revocation hearing.[33] A sub-issue was whether the case should be remanded to allow the state to present additional evidence as to an enhancement. The Second District declined the state's request,[34] citing *Wallace v. State*, 835 So. 2d 1281 (Fla. 2d DCA 2003); *Rivera v. State*, 825 So. 2d 500 (Fla. 2d DCA 2002); and *Reynolds v. State*, 674 So. 2d 180 (Fla. 2d DCA 1996). In a footnote, the court acknowledged that its 2001 panel opinion in *Thomas v. State*, 805 So. 2d 989 (Fla 2d DCA 2001), was "at odds with the holding in *Reynolds* where the court addressed the same issue."[35] Citing *Little*, the Second District stated, "*Thomas* has, however, effectively been superseded by *Rivera* and *Wallace*."[36] This statement from *Collins* conflicts with *Wood*. Curiously, *Wallace* cites *Reynolds* and *Rivera*, but not *Thomas*.

The Second District returned to *Wood* in 2019. In *Schofield v. Judd*, 268 So. 3d 890 (Fla. 2d DCA 2019), the Second District explained that precedent from the Supreme Court led to its decision in a 2006 case called *Oren v. Judd*, 940 So. 2d 1271 (Fla. 2d DCA 2006). At issue in *Schofield* was whether any subsequent panel opinion from the Second District could be considered controlling over *Oren*. The court said no: "[A]ny subsequent panel decision issued from our court that conflicts with our court's prior holding in *Oren*,… cannot be considered binding."[37]

Since the Supreme Court adopted Rule 9.331 in 1982, at least two district courts (and the Supreme Court in *Walker* and *Marotta*) have sent mixed signals on whether "older is better" or

"later is greater" based on *Little*. This has undoubtedly led to confusion among litigators and appellate practitioners. There is far less confusion in the 11th Circuit.

'Older Is Better' in the 11th Circuit

Things are more straightforward in federal courts where, with very few exceptions, federal circuits resolve intra-circuit conflict in favor of the older decision.[38] In the 11th Circuit, where judges are "obligated, if at all possible, to distill from apparently conflicting prior panel decisions a basis of reconciliation and to apply that reconciled rule."[39] If reconciliation is impossible, the panel must follow the earliest precedent that reached a binding decision on the issue.[40] Importantly, legal principles that are set forth outside of a decision's holding will not bind the court when reconciling precedent.[41]

In 2022, the 11th Circuit put these principles into action. In *Washington v. Howard*, 25 F.4th 891 (11th Cir. 2022), the 11th Circuit analyzed the probable-cause standard under the Fourth Amendment of the U.S. Constitution. The court recognized that it had not always consistently articulated the probable-cause standard in the context of arrests, even after the U.S. Supreme Court clarified the standard in 2018.[42] The court dissected various precedents that had applied the older probable-cause standard. In doing so, the court concluded that, "[i]n every decision, faithful application of the *Wesby* stan-dard would have led to the same conclusion that there was no probable cause, so we are not bound to apply the [pre-*Wesby*] standard."[43]

In *Caplan*, this concept arose when, after prevailing in a lawsuit under the American Disabilities Act of 1990, the plaintiff moved for attorneys' fees.[44] The trial court determined that he was entitled to attorneys' fees but found the requested amount was grossly disproportionate and awarded a reduced amount. The 11th Circuit concluded that the trial court did not abuse its discretion and affirmed.[45]

One issue on appeal was whether the trial court erred by failing to hold an evidentiary hearing to determine whether the case could have settled earlier even though a hearing was never requested. The plaintiff relied on a 1993 decision, *Love v. Deal*, where the 11th Circuit held, "'[i]t is not necessary for a plaintiff to request an evidentiary hearing. Rather, the essential factor is whether there is a dispute of material fact that cannot be resolved from the record.'"[46]

The circuit court noted that statement conflicted with an earlier holding from *Norman v. Housing Authority of Montgomery*, 836 F.2d 1292, 1302 (11th Cir. 1988). In *Norman*, the 11th Circuit held that "it was an abuse of discretion to make an award without an evidentiary hearing 'where an evidentiary hearing was requested, where there were disputes of fact, and where the written record was not sufficiently clear to allow the trial court to resolve the disputes of fact.'"[47] The court explained that the *Norman* holding had been reaffirmed in *Thompson v. Pharmacy Corporation of America, Inc.*, 334 F.3d 1242, 1245-46 (11th Cir. 2003). In *Thompson*, the court held that the plaintiff was not entitled to an evidentiary hearing on the fee issue because the record did not show that the plaintiff had "requested an evidentiary hearing on the fee issue" and the plaintiff therefore "failed to meet the first prerequisite for obtaining a hearing (that she plainly request one in the first place)."[48]

Since there was conflict in the precedent involving the issue, the court dissected the decisional law and concluded that *Norman* was the earliest on-point precedent. In doing so, the court found that the use of the word "and" in *Norman* mandated that all three elements

were necessary to establish that a trial court had abused its discretion.[49] Since the 11th Circuit could not reconcile its precedent in *Love* with the earlier precedent in *Norman*, the court was required to follow the earlier decision of *Norman*.[50] The 11th Circuit's "older is better" approach fosters stability and gives practitioners a consistent framework for dealing with conflicting precedent.

Conclusion

One district judge attempted to resolve the not-so-*Little* problem. In *Rogers v. State*, 296 So. 2d 500, 519, 527 n.1 (Fla. 2020) (Bilbrey, J., concurring), Judge Ross L. Bilbrey recognized that "older is better" and he "reject[ed] any contention that a subsequent panel of three judges can overrule or disregard a prior panel decision, even if the prior decision was erroneous." Why? "The prospect of any three-judge panel being able to overrule any previous panel could lead to chaos."[51] Attempting to reconcile "older is better" with *Little*'s "later is greater" approach, Judge Bilbrey explained:

> The case law arising from *Little*. . . , which provides that in the event of a conflict between cases from the same district court the more recent case prevails, is to give instruction in the event of inconsistent decisions. The line of cases from *Little* is not a grant of permission for one three-judge panel to disregard the previous decision of this court; rather it is an instruction for trial courts on how to reconcile seemingly inconsistent cases in the event a district court does not acknowledge a previous, apparently contrary decision.[52]

Judge Bilbrey suggests that district courts should handle precedent one way and trial courts another: district court panels must not overrule prior panel precedent, but if they do, trial courts must follow the later decision. The ironic result of Judge Bilbrey's suggestion is that the transgressing subsequent panel carries the day. If trial courts are required to follow the later opinion in the face of intra-district conflict, we question whether the principle that "older is better" has any teeth.

In sum, because of its decisions in *Little*, *Walker*, and *Marotta*, it is up to the Supreme Court, not the district courts, to clear up the confusion in Florida and conclusively determine which approach prevails in Florida: "older is better" or "later is greater." When the court was faced with the question in *In re Rule 9.331*, it rejected the suggestion that it adopt a rule of procedure codifying "older is better."[53] We agree that a rule is not the appropriate way to resolve the issue. Instead, the solution should come to the Supreme Court in a case. At the earliest opportunity, a district court should find the appropriate case to certify a question of great public importance to the Supreme Court on the issue. The Supreme Court should look to the federal circuit courts, and particularly the 11th Circuit, for guidance and clarify that *Little*, while correct in 1968, was decided prior to the adoption of Rule 9.331 and is no longer the state of the law in Florida. Finally, appellate practitioners can play a role by alerting district courts to intra-district conflict. This would include providing supplemental authority where appropriate.

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This column is submitted on behalf of the Appellate Practice Section, Carrie Ann Wozniak, chair, and Heather Kolinsky, editor.

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[1] We credit our colleague, Patrick E. Quinlan, for coining "older is better versus later is greater" and for tipping us off about this important issue. We also thank our colleague, Lindsey Lawton, for editing this article. Her keen eye is much appreciated.

[2] Laws of Fla. Ch. 57-248, §1 (1957).

[3] H. Bell & Assocs. v. Keasbey & Mattison Co., 140 So. 2d 125 (Fla. 3d DCA 1962); Brooks v. Fla. Home Mortg. Co., 165 So. 2d 238 (Fla. 1st DCA 1964); Burton v. Sanders, 170 So. 2d 591 (Fla. 2d DCA 1965).

[4] Laws of Fla. Ch. 65-294, §1 (1965).

[5] Laws of Fla. Ch. 79-413, §3 (1979) (adding one each to the Second, Third, and Fourth district courts and creating a Fifth District composed of six judges).

[6] N. Broward Hosp. Dist. v. Crosewell, 188 So. 2d 54 (Fla. 2d DCA 1966); Jones v. State, 174 So. 2d 452 (Fla. 2d DCA 1965); Robertson v. State, 219 So. 2d 456 (Fla. 1st DCA 1969); Meyer v. Law, 265 So. 2d 737 (Fla. 2d DCA 1972), quashed, 287 So. 2d 37 (Fla. 1973).

[7] Compare Fla. Const. art. V, §4(2) (as amended in the general election of Nov. 6, 1956, which at the same time created the DCAs) ("The supreme court may review by certiorari any decision of a district court of appeal… that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law" (emphasis added)), with Fla. Const. art. V, §3(b)(3) (as amended in the special election of Mar. 14, 1972) (Supreme Court "[m]ay review by certiorari any decision of a district court of appeal… that is in direct conflict with a decision of any district court of appeal or of the supreme court on the same question of law" (emphasis added)).

[8] Save Sand Key, Inc. v. U. S. Steel Corp., 281 So. 2d 572 (Fla. 2d DCA 1973), decision quashed, cause remanded, 303 So. 2d 9 (Fla. 1974); Gelis v. State, 287 So. 2d 368 (Fla. 2d DCA 1973); Davis v. State, 277 So. 2d 300 (Fla. 2d DCA 1973); Jones v. Jones, 330 So. 2d 536 (Fla. 1st DCA 1976); Irvin v. State, 324 So. 2d 684, 686 n.1 (Fla. 4th DCA 1976); Fauls v. Sheriff of Leon Cnty., 384 So. 2d 238 (Fla. 1st DCA 1980), approved, 394 So. 2d 117 (Fla. 1981); Drozinski v. Straub, 383 So. 2d 301 (Fla. 2d DCA 1980); Matter of Adoption of Cottrill, 388 So. 2d 302 (Fla. 3d DCA 1980); Quest v. Joseph, 392 So. 2d 256 (Fla. 3d DCA 1980), decision quashed, cause remanded, 414 So. 2d 1063 (Fla. 1982); Kohl v. Bay Colony Club Condo., 385 So. 2d 1028 (Fla. 4th DCA 1980); In Interest of G. A. R., 387 So. 2d 404 (Fla. 4th DCA 1980); Lawrence v. State, 388 So. 2d 1250, 1252 (Fla. 4th DCA 1980), approved sub nom. Griffin v. State, 419 So. 2d 320 (Fla. 1982); U.S. Fid. & Guar. Co. v. Graham, 404 So. 2d 863 (Fla. 4th DCA 1981).

[9] Report of the Supreme Court Commission on the Florida Appellate Structure §2-1 (Mar. 13, 1979).

[10] In re Florida Rules of Appellate Procedure, 374 So. 2d 992, modified, 377 So. 2d 700 (Fla. 1979).

[11] *Little*, 206 So. 2d at 10.

[12] Chief Justice Arthur J. England, Jr., 1979 Report on the Florida Judiciary (Apr. 1979).

[13] See Schreiber v. Chase Fed. Sav. & Loan Ass'n, 422 So. 2d 911, 914 (Fla. 3d DCA 1982) (on rehearing en banc) (Nesbitt, J., dissenting) (emphasis in original; footnote omitted), decision quashed, 479 So. 2d 90 (Fla. 1985).

[14] See also Univ. of Miami v. Wilson, 948 So. 2d 774, 788-89 (Fla. 3d DCA 2006) (Shephard, J., concurring in the denial of a motion for rehearing en banc.).

[15] See, e.g., Sims v. State, 260 So. 3d 509, 514 (Fla. 1st DCA 2018) ("Each panel decision is binding on future panels, absent an intervening decision of a higher court or this court sitting en banc.").

[16] *Walker II*, 593 So. 2d at 1049.

[17] Id. at 1049-50.

[18] The Supreme Court accepted the case to address a matter of great public importance concerning preemption.

[19] *Marotta*, 214 So. 3d at 604.

[20] Id.

[21] Id.

[22] See, e.g., State v. Washington, 114 So. 3d 182, 188-89 (Fla. 3d DCA 2012) ("This panel is not free to disregard, or recede from, that decision; only this Court, sitting en banc, may recede from an earlier opinion."); Bean v. Univ. of Miami, 252 So. 3d 810, 821 (Fla. 3d DCA 2018) (same) (citing Washington); Sims v. State, 260 So. 3d 509, 514 (Fla. 1st DCA 2018) ("Each panel decision is binding on future panels, absent an intervening decision of a higher court or this court sitting en banc."); Fox v. Fox, 262 So. 3d 789, 792 (Fla. 4th DCA 2018) ("A panel of our court has no authority to overrule or recede from our precedent on the same legal issue."); Nat'l Med. Imaging, LLC v. Lyon Fin. Servs., Inc., No. 3D20-730, 2020 WL 5228979, at **1-2 n.2 (Fla. 3d DCA 2020)

("Unless the Florida Supreme Court overrules a prior panel's decision, a subsequent panel of this Court is not free to disregard, and must follow, precedent of the prior panel."); cf. *Schofield* v. Judd, 268 So. 3d 890, 898-99 (Fla. 2d DCA 2019) ("[A]ny subsequent panel decision issued from our court that conflicts with our court's prior… cannot be considered binding.").

[23] *Daniel*, 271 So. 3d at 1215.

[24] Id. at 1215 n.3.

[25] Id.

[26] Wanless, 271 So. 3d at 1222.

[27] Id. at 1222-23.

[28] Id. at 1222 (emphasis removed).

[29] Id.

[30] Id. at 1223 (emphasis added) (citing Schlesinger v. Jacob, 240 So. 3d 75, 78 (Fla. 3d DCA 2018) (Luck, J., concurring)); see also Earven v. State, 324 So. 3d 22, 27 (Fla. 1st DCA 2021) (Bilbrey, J., specially concurring).

[31] *Wood*, 677 So. 2d at 16.

[32] Id. at 18 (citing In re Rule 9.331, 416 So. 2d 1127, 1128 (Fla. 1982)).

[33] *Collins*, 893 So. 2d at 593.

[34] Id. at 594.

[35] Id. at 594 n.3 (Canady, J.).

[36] Id. (emphasis added).

[37] *Schofield*, 268 So. 3d at 898-99 (citing *Wood* v. Fraser, 677 So. 2d 15, 18 (Fla. 2d DCA 1996)).

[38] For an in-depth review of each circuit's practice consult Joseph W. Mead, Stare Decisis in the Inferior Courts of the United States, 12 Nev. L. J. 787 (2012), and Michael Duvall, Resolving Intra-Circuit Splits in the Federal Courts of Appeal, 3 Fed. Cts. L. Rev. 17 (2009).

[39] Caplan v. All Am. Auto Collision, Inc., 36 F.4th 1083, 1093 (11th Cir. 2022) (quoting Williams v. Aguirre, 965 F.3d 1147, 1163 (11th Cir. 2020) (quoting United States v. Hogan, 986 F.2d 1364, 1369 (11th Cir. 1993))).

[40] Since these principles are well established in the 11th Circuit, many decisions hinge on whether cases can be reconciled.

[41] Washington v. Howard, 25 F.4th 891, 900 (11th Cir. 2022).

[42] Id. at 898 (discussing Dist. of Columbia v. Wesby, 138 S. Ct. 577, 586 (2018)).

[43] Id. at 900.

[44] Caplan v. All Am. Auto Collision, Inc., 36 F.4th 1083, 1083 (11th Cir. 2022).

[45] Id. at 1095.

[46] Id. at 1093 (quoting Love v. Deal, 5 F.3d 1406, 1409 (11th Cir. 1993)).

[47] Caplan, 36 F.4th at 1093 (quoting Norman, 836 F.2d at 1302-03 (11th Cir. 1988) (emphasis in Caplan)).

[48] Id. at 1093.

[49] Id. at 1094.

[50] Id.

[51] Rogers, 296 So. 2d at 500 (citing In re Rule 9.331, 416 So. 2d 1127, 1128 (Fla. 1982)).

[52] Id.

[53] In re Rule 9.331, 416 So. 2d at 1128.