ARTICLES

HOW OPINIONS ARE DEVELOPED IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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All our work, our whole life, is a matter of semantics, because words are the tools with which we work, the material out of which laws are made, out of which the Constitution was written. Everything depends on our understanding of them.[1]

I. INTRODUCTION

The most important responsibility of an appellate court is to determine whether errors of sufficient magnitude occurred in the lower court or tribunal to warrant disturbing the judgment or ruling on appeal. The second most important responsibility, in my opinion, is to provide explanations for the decisions in the form of written opinions. In this Article, I seek to provide some insight into how judges write opinions, as well as to provide some insight into the processes and procedures in the United States Court of Appeals for the Eleventh Circuit. In Part II, I will discuss the framework of the Eleventh Circuit and how appeals are handled within the Circuit. Part III contains a discussion concerning the decisions that are made with respect to opinions, such as whether the opinion should be published and whether a summary affirmance is appropriate. In Part IV, I discuss the structure of opin-

 Judge, United States Court of Appeals for the Eleventh Circuit. I am indebted to my law clerk, Catherine Shannon Christie, who is a former Editor in Chief of the *Stetson Law Review*. Without her assistance, this Article would not have been possible.

1. *Felix Frankfurter: A Tribute* 41–42 (Wallace Mendelson ed., Reynal & Co. 1964) (quoting Justice Felix Frankfurter).

ions, the style of opinions, and the audience. Finally, in Part V, I discuss what happens after opinions are circulated to the other judges of the panel and how opinions are released by the clerk.

II. THE ELEVENTH CIRCUIT

The Eleventh Circuit was established in 1981, when the Former Fifth Circuit was split into the Fifth Circuit and the Eleventh Circuit.[2] It comprises Florida, Georgia, and Alabama,[3] and at least one session of the Court is held in each of these states every year.[4] The Eleventh Circuit has its headquarters in Atlanta, Georgia in the Elbert P. Tuttle United States Court of Appeals Building,[5] and it currently has eleven active judges and six senior judges,[6] all of who take part in the decision-making process in this Circuit.[7]

There are two calendars in the Eleventh Circuit — the argument calendar, which provides the dates for oral argument, and the nonargument calendar, which is determined by the screening process.[8] As the processes under each of these calendars differ, they are addressed separately.

A. The Screening Process

The nonargument calendar is determined largely by the screening process in this Circuit.[9] Cases dealt with in the screen-

2. Thomas E. Baker, *A Postscript on Precedent in the Divided Fifth Circuit*, 36 Sw. L.J. 725, 725–726 (1982).

3. *Id.* at 729.

4. 11th Cir. R. 34-1(a) (2002).

5. 11th Cir. R. 47-7, I.O.P. 1 (2002).

6. U.S. Cts., *Circuit Judges* <http://www.ca11.uscourts.gov/about/judges.html> (accessed Aug. 22, 2002). The Eleventh Circuit is authorized to have twelve active judges. 11th Cir. R. 47-7, I.O.P. 2.

7. 11th Cir. R. 47-7, I.O.P. 2. The "[s]enior judges do not normally participate in the administrative or non-oral argument work of the court, although they are authorized by law to do so." *Id.*

8. 11th Cir. R. 34-3 (2002).

9. *See* 11th Cir. R. 34-4, I.O.P. 1 (2002) (describing the screening process and the nonargument calendar). During the 2000–2001 fiscal year, the Eleventh Circuit disposed of 76.5% of all appeals without oral argument after submission on the briefs, which means that those appeals were dealt with in the screening process. U.S. Cts., *Judicial Business of the United States Courts: 2001, Table S-1: U.S. Courts of Appeals — Appeals Terminated on the Merits after Oral Hearings or Submission on Briefs during the 12-Month Period Ending September 30, 2001* <http://www.uscourts.gov/judbus2001/contents.html> (accessed Aug. 22, 2002).

ing process typically fall within one of the following three categories: (1) "the appeal is frivolous"; (2) "the dispositive issue or set of issues has been authoritatively determined"; or (3) "the facts and legal arguments are adequately presented in the briefs and record and the decisional process will not be significantly aided by oral argument."[10]

The screening process begins when all of the briefs in a case are received.[11] At that time, the appeal is sent to the staff attorneys' office for prescreening.[12] If a staff attorney determines that oral argument is unnecessary, a memorandum is prepared and the case is sent to an active judge on the nonargument calendar; this judge will be the first member of the screening panel to review the case.[13]

This screening panel consists of three judges, and the first judge to review the case is identified as the initiating judge.[14] If the initiating judge believes that the appeal warrants oral argument after reviewing the briefs and the pertinent provisions of the record, the entire file will be returned to the clerk and the case will be scheduled for oral argument.[15] If, however, the initiating judge decides that oral argument is unnecessary, a draft opinion will be prepared and the entire file, along with the draft opinion, will be forwarded to the second member of the panel.[16] The second member of the panel, who also reviews the briefs and the record, can sign on to the opinion prepared by the initiating judge or send the file back so that the clerk can schedule it for oral argument.[17] The third member of the panel is vested with the same discretion.[18] If, however, all three panel members agree that oral

10. 11th Cir. R. 34-3(b)(1)–(3).

11. 11th Cir. R. 34-4, I.O.P. 1.

12. *Id.*

13. *Id.* The staff attorney also can decide that an appeal warrants oral argument. *Id*. If so, the case will be assigned to the argument calendar subject to later review by the members of the panel to which it is assigned. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *See id*. (requiring all judges to concur that the appeal does not warrant oral argument). The members of the panel can file dissents or concurrences only when neither party has requested oral argument. *Id*. If either party requested oral argument, the panel's decision must be unanimous. *Id.*

18. *See id*. (requiring all judges to concur that the appeal does not warrant oral argument).

argument is unnecessary, the opinion of the initiating judge, along with any modifications proposed by the other panel members, will be submitted to the clerk for filing.[19]

B. Oral Argument

The circuit executive, in collaboration with the clerk, proposes a schedule for the fiscal year, which runs from October 1st to September 31st.[20] This schedule establishes the weeks during which oral argument will be held.[21] "To insure complete objectivity," however, "the two functions of judge assignment to panels and the calendaring of appeals" are dealt with separately.[22] The circuit executive assigns judges to each sitting on the calendar; he does not establish what appeals will be heard during which weeks.[23] That is the function of the clerk, who schedules the appeals to be heard at each panel sitting approximately one month before the sitting.[24] The clerk attempts to diversify each docket "so that each panel for a particular week has an equitable number of different types of litigation for consideration."[25] After the clerk produces the calendar, the clerk receives the names of the panel members and the briefs are forwarded to them.[26]

Once the briefs are received, each judge prepares for each case before the sitting.[27] In my chambers, after a thorough review of the briefs and the pertinent statutes and case law, a bench memorandum typically is prepared for each case for my use on the bench. This practice, however, is personal to each judge.

During the panel sitting, "the court [usually] hears the appeals in the order in which they appear on the calendar."[28] Coun-

19. *Id.* It is rare that an opinion written as a result of this screening process will be filed as a published opinion, *infra* n. 42 and accompanying text, and such opinions usually are brief and concise, *infra* pt. IV(C). Appeals handled through this screening process, however, are not considered less important than those orally argued. 11th Cir. R. 34-4, I.O.P. 1.

20. *Id.* at I.O.P. 2(a).

21. *Id.*

22. *Id.* at I.O.P. 2(b).

23. *Id.*

24. *Id.* at I.O.P. 3(a).

25. *Id.* at I.O.P. 3(b).

26. *Id.* at I.O.P. 2(b), 5.

27. In the Eleventh Circuit, judges must read the briefs before oral argument. *Id.* at I.O.P. 6.

28. *Id.* at I.O.P. 12.

sel for each side is provided an allotted amount of time in which to make arguments and respond to the questions of the panel members.[29] "At the conclusion of each day's arguments the panel usually has a conference on the appeals heard that day."[30] At that conference, the senior member of the three-judge panel distributes the writing responsibilities to the members of the panel in an equitable fashion,[31] and the panel reaches a tentative decision about each case, including whether it should be a summary affirmance and whether it should be published.[32]

III. DECISIONS ABOUT OPINIONS

A. Summary Affirmances

Oftentimes, the panel decides at conference that the opinion should be dealt with as a summary affirmance. Consider the following scenario: You have just completed oral argument in an appeal before the Eleventh Circuit in Atlanta. On the flight back home you feel fairly confident about your chances of obtaining a reversal on appeal. Because the argument was punctuated with a wide variety of probing questions from the Court and because of the size of the record, you expect that it will take quite some time before a decision is reached and a lengthy opinion is prepared reflecting the decision of the panel. Yet, upon your arrival at your office the next morning, your secretary brings you the opinion consisting of the following dreaded words for an appellant: "Per Curiam Affirmed. *See* 11th Cir. R. 36-1."

If you have fallen victim to this scenario, you are not alone. During the 2000–2001 fiscal year, 356 decisions in the Eleventh Circuit were affirmed without any opinion at all.[33] These opinions

29. *Id.* at I.O.P. 10. Counsel for each side usually is provided fifteen minutes and should argue with the knowledge that the judges on the panel are familiar with the case. *Id.* at I.O.P. 13.

30. *Id.* at I.O.P. 15.

31. *Id.*

32. *Id.*

33. U.S. Cts., *Judicial Business of the United States Courts: 2001, Table S-3: U.S. Courts of Appeals — Types of Opinions or Orders Filed in Cases Terminated on the Merits after Oral Hearings or Submission on Briefs during the 12-Month Period Ending September 30, 2001* <http://www.uscourts.gov/judbus2001/contents.html> (accessed Aug. 22, 2002).

commonly are referred to as "summary affirmances" or "memorandum opinions,"[34] and, in the Eleventh Circuit, they arise when

> (a) the judgment of the district court is based on findings of fact that are not clearly erroneous;
> (b) the evidence in support of a jury verdict is sufficient;
> (c) the order of an administrative agency is supported by substantial evidence on the record as a whole;
> (d) a summary judgment, directed verdict, or judgment on the pleadings is supported by the record;
> (e) the judgment has been entered without a reversible error of law; and
> (f) an opinion would have no precedential value.[35]

Many lawyers are perplexed by this type of opinion, but there are reasons why this Court utilizes this type of opinion. Each judge thoroughly prepares for oral argument and usually arrives at the sitting with questions about each case. When those questions are answered at oral argument, the correct ruling often becomes clear to the judges. The judges write a summary affirmance, because they believe that the case is so clear that there is no need to draft an opinion.

This type of opinion typically is not signed by the writing judge; rather, it is signed "per curiam."[36] "Per curiam" is a Latin term for "[b]y the court as a whole," and an opinion signed as "per curiam" will not identify the judge who actually wrote the opinion for the Court.[37] Opinions are listed as per curiam when the opinion reflects the collective decision of the panel; the panel has made an assessment about the appropriate application of the law, and that panel, rather than an individual judge, is setting forth

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34. One writer aptly placed summary affirmances in context by stating that "[o]pinions creating new precedent or clarifying the law lie at one end of the spectrum, opinions merely involving routine application of established law to particular facts lie somewhere in the middle, and summary affirmances lie at the other end." Elizabeth M. Horton, Student Author, *Selective Publication and the Authority of Precedent in the United States Courts of Appeals*, 42 UCLA L. Rev. 1691, 1694 (1995).

35. 11th Cir. R. 36-1 (2002).

36. U.S. Cts., *supra* n. 33 (noting that of the 356 opinions during the 2000–2001 fiscal year that were summary affirmances, none were signed or published).

37. *Black's Law Dictionary* 1119, 1156 (Bryan A. Garner ed., 7th ed., West 1999). As described in *Black's Law Dictionary*, a per curiam opinion is "[a]n opinion handed down by an appellate court without identifying the individual judge who wrote the opinion." *Id.* at 1119.

its assessment for the Circuit.[38] In addition, in this Circuit, opinions also are signed per curiam when other members of the panel have an active or significant role in drafting the opinion.

If an opinion is not "per curiam," it is signed by the writing judge.[39] This means that the individual judge, rather than the panel, speaks on behalf of the Court. It does not mean, however, that the other members of the panel have not contributed to the opinion. Each member of the panel has the opportunity to provide the writing judge with his or her comments and concerns about the opinion.[40]

B. Published Opinions versus Unpublished Opinions

At conference, the panel also decides collectively whether the opinion warrants publication. The Eleventh Circuit's policy with respect to the publication of opinions is set forth in its Internal Operating Procedures as follows:

> The unlimited proliferation of published opinions is undesirable because it tends to impair the development of the cohesive body of law. To meet this serious problem it is declared to be the basic policy of this court to exercise imaginative and innovative resourcefulness in fashioning new methods to increase judicial efficiency and reduce the volume of published opinions. Judges of this court will exercise appropriate discipline to reduce the length of opinions by the use of those techniques which result in brevity without sacrifice of quality.[41]

Keeping in line with this mandate, this Circuit published only 11.7% of its opinions during the 2000–2001 fiscal year.[42]

At the outset, "it is important to [note] that the label 'unpublished opinion,' as used by some courts, is a misnomer. . . . [T]he main distinction between a published and unpublished opinion is that unpublished opinions have not been selected for official pub-

38. Unsigned reasoned opinions frequently are unpublished. *See* U.S. Cts., *supra* n. 33 (noting that, in the Eleventh Circuit, 3,159 of the 3,274 written, reasoned, and unsigned opinions during the 2000–2001 fiscal year were not published).

39. Opinions signed by the writing judge frequently are published. For example, of the published opinions in this Circuit during the 2000–2001 fiscal year, 358 were signed, while 115 were unsigned. *Id.*

40. For a brief discussion on the circulation of opinions, see *infra* part V(A).

41. 11th Cir. R. 36-3, I.O.P. 5 (2002).

42. *See* U.S. Cts., *supra* n. 33 (noting that 88.3% of the Eleventh Circuit's opinions were not published during the 2000–2001 fiscal year).

lication by the courts."[43] Such opinions do not comprise a "secret" body of law.[44] As noted by many, these opinions are readily available on Web sites and electronic databases.[45] Thus, the importance of the distinction really lies in the way that unpublished opinions are treated by the courts.[46]

The courts treat unpublished opinions differently than published opinions.[47] In the Eleventh Circuit, unpublished opinions have no precedential value, which means that they are not binding upon a subsequent panel, although they are persuasive.[48] Eleventh Circuit Rule 36-2 provides,

> An opinion shall be unpublished unless a majority of the panel decides to publish it. Unpublished opinions are not considered binding precedent. They may be cited as persuasive authority, provided that a copy of the unpublished opinion is attached to or incorporated within the brief, petition, motion or response in which such citation is made.[49]

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43. K.K. DuVivier, *Are Some Words Better Left Unpublished? Precedent and the Role of Unpublished Decisions*, 3 J. App. Prac. & Process 397, 398 (2001).

44. Richard S. Arnold, *Unpublished Opinions: A Comment*, 1 J. App. Prac. & Process 219, 219–220 (1999); DuVivier, *supra* n. 43, at 398.

45. *E.g.* Arnold, *supra* n. 44, at 220 ("All opinions are public, in the sense that they are available to the public . . . and "[T]o describe the situation in more modern terms, anyone may gain computer access to any opinion or order of a court of appeals . . . ."); DuVivier, *supra* n. 43, at 398 (noting that Westlaw and LEXIS usually provide access to unpublished opinions).

46. *Infra* nn. 47–62 and accompanying text.

47. DuVivier, *supra* n. 43, at 403. K.K. DuVivier noted that

> [t]here are three options that courts can exercise with respect to unpublished opinions. First, some courts completely prohibit the citation of unpublished opinions. Second, other courts permit the citation of unpublished decisions, but will consider them only as persuasive, not binding authority. Finally, the position proposed by *Anastasoff* would not only permit the parties to cite unpublished decisions freely but also require the issuing courts to treat those decisions as controlling precedent.

Id. (footnote omitted).

48. 11th Cir. R. 36-2 (2002).

49. *Id.* Before the adoption of Rule 36-2, unpublished opinions in this Circuit were considered binding precedent. *Harris v. U.S.*, 769 F.2d 718, 720 n. 1 (11th Cir. 1985) (per curiam).

In *Anastasoff v. United States*, 223 F.3d 898, 905 (8th Cir. 2000), *vacated as moot*, 235 F.3d 1054 (8th Cir. 2000) (en banc), the Eighth Circuit held that a rule that allows judges to decide when an opinion is binding was unconstitutional. For a brief discussion of the constitutionality arguments that arise with respect to the publication of opinions, see *infra* note 56.

In most other circuits, citing unpublished opinions is either barred or limited.[50] Only the Fifth Circuit has a rule that provides that some unpublished opinions have precedential value.[51] Just as various circuits treat unpublished opinions differently, whether unpublished opinions should have precedential value has been the subject of some debate among jurists and the bar.

There are many criticisms of unpublished opinions.[52] The most common criticism is that because unpublished opinions have no precedential value and often cannot be cited by litigants, judges give short shrift to these cases.[53] Consequently, another criticism is that unpublished opinions are careless and lack well-reasoned analysis.[54] Because judges spend less time on these opinions and typically do not provide the thorough analysis found in published opinions, many argue that the result is fatal.[55] Thus, many assert that all opinions should be published or that unpublished opinions should have precedential value to maintain uniformity and predictability.[56]

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50. *E.g.* Fed. Cir. R. 47.6(b) (2002) ("An opinion or order which is designated as not to be cited as precedent is one unanimously determined by the panel issuing it as not adding significantly to the body of law. Any opinion or order so designated must not be employed or cited as precedent.").

51. 5th Cir. R. 47.5.3 (2002) (noting that "[u]npublished opinions issued before January 1, 1996" are binding).

52. *E.g.* Melissa H. Weresh, *The Unpublished, Non-precedential Decision: An Uncomfortable Legality?* 3 J. App. Prac. & Process 175, 181–190 (2001). These criticisms center around the following three concepts: (1) availability, (2) quality, and (3) precedent. DuVivier, *supra* n. 43, at 399.

53. Chip Babcock, *Texas Supreme Court Considers Abolishing Unpublished Opinions*, 39 Hous. Law. 22, 22 (Sept./Oct. 2001); Douglas A. Berman & Jeffrey O. Cooper, *In Defense of Less Precedential Opinions: A Reply to Chief Judge Martin*, 60 Ohio St. L.J. 2025, 2033–2034 (1999).

54. Babcock, *supra* n. 53, at 22; Berman & Cooper, *supra* n. 53, at 2033–2034.

55. Babcock, *supra* n. 53, at 22–23; Berman & Cooper, *supra* n. 53, at 2033–2034.

56. *E.g.* Martha J. Dragich, *Will the Federal Courts of Appeals Perish If They Publish? Or Does the Declining Use of Opinions to Explain and Justify Judicial Decisions Pose a Greater Threat?* 44 Am. U. L. Rev. 757, 791–800 (1995); Gilbert S. Merritt, *The Decision Making Process in Federal Courts of Appeals*, 51 Ohio St. L.J. 1385, 1393–1394 (1990). Other arguments have been asserted by critics of the unpublished opinion. Critics assert that unpublished opinions are unfair to litigants, that judges are less accountable, and that there are constitutional concerns. Babcock, *supra* n. 53, at 22–23; Berman & Cooper, *supra* n. 53, at 2033–2034; Lauren K. Robel, *The Myth of the Disposable Opinion: Unpublished Opinions and Government Litigants in the United States Courts of Appeals*, 87 Mich. L. Rev. 940, 946–947, 955 (1989) (noting that litigants who have more access to opinions because they litigate more frequently, like the federal government, are favored both in litigating and settling cases when the courts do not publish opinions).

Those who argue that unpublished opinions violate the United States Constitution center their arguments around Article III of the Constitution. *E.g.* Arnold, *supra* n. 44, at

There are, however, proponents of unpublished opinions who claim that the increased caseloads in the courts of appeals favor the use of unpublished opinions.[57] For example, during the 2000–2001 fiscal year, this Circuit decided 4,043 cases on the merits, the Ninth Circuit decided 4,994 cases on the merits, and the Fifth Circuit decided 4,152 cases on the merits.[58] These vast numbers show how overburdened many circuits are. The only way that these circuits can deal with their ever-increasing caseloads is through the use of unpublished opinions.[59] Without this mechanism, these courts would be overburdened and an even greater backlog would be created.[60]

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226. As one commentator noted,

> Article III . . . vests "judicial power" in the Supreme Court and in such inferior courts as Congress may from time to time ordain and establish. [Courts] can exercise no power that is not "judicial." That is all the power that [courts] have. When a governmental official, judge or not, acts contrary to what was done on a previous day, without giving reasons, and perhaps for no reason other than a change of mind, can the power that is being exercised properly be called "judicial"? Is it not more like legislative power, which can be exercised whenever the legislator thinks best, and without regard to prior decisions? In other words, is the assertion that unpublished opinions are not precedent and cannot be cited a violation of Article III?

Id. There are, however, those who believe that unpublished opinions satisfy constitutional muster. *E.g.* DuVivier, *supra* n. 43, at 411. As DuVivier noted, "Judges satisfy their Article III judicial duties when they provide fair and consistent decisions along with analysis and reasoning." *Id.* In fact, "most judges take their work seriously and make every effort to ensure that the outcome is both fair and timely for the litigants and that the reasoning satisfies the requirements of Article III for judicial deliberation." *Id.* (footnote omitted).

57. Arnold, *supra* n. 44, at 223 (noting that it is better to spend time on the harder cases than to waste time "on tedious explanations of the easy ones"); DuVivier, *supra* n. 43, at 398 (noting that "[i]f all cases were treated equally, both in terms of the time to prepare them and in terms of their weight as precedent, the impact could be catastrophic"); Boyce F. Martin, Jr., *In Defense of Unpublished Opinions*, 60 Ohio St. L.J. 177, 177 (1999) (stating that "[a]ppellate judges continue to labor under the weight of tens of thousands of appeals every year" and that "'multiplied utterances' would increase beyond all reason were we forced to publish all our opinions"); Merritt, *supra* n. 56, at 1393 (explaining that "most unpublished opinions are so fact-specific and precedent-bound that their major use would be simply to clutter briefs with longer string citations").

58. U.S. Cts., *supra* n. 33. The federal appellate courts decided 28,840 cases on the merits during the 2000–2001 fiscal year. *Id.*

59. As noted earlier, the Eleventh Circuit published only 11.7% of its appeals last year. *Id.* The Ninth Circuit published only 18.1% of its appeals, and the Fifth Circuit published only 14.1% of its appeals. *Id.*

60. DuVivier, *supra* n. 43, at 401 (explaining that because every litigant has a right to appeal, the appellate courts publish only certain opinions to handle the heavy workload); Martin, *supra* n. 57, at 181–183 (explaining that the amount of appeals justifies unpublished opinions). It also is important to note that publishing all opinions would be burdensome for litigants who must keep apprised of Circuit law. DuVivier, *supra* n. 43, at 407. Litigants would be inundated with opinions, which would make legal research more complicated and make it more difficult for litigants to determine the value of each opinion. *Id.*

In addition, publishing every opinion could bring confusion to the law rather than clarity. Ruggero J. Aldisert, a senior judge for the Third Circuit and the author of various publications about judicial opinion writing, opined that "[t]oo many opinions are being published that contribute nothing new to the body of law."[61] I tend to agree with Judge Aldisert, because I believe that the most important consideration in deciding whether to publish an opinion is whether it adds to the law of this Circuit.[62] Given the tremendous volume of appeals docketed in the Eleventh Circuit, efficiency necessitates that judges devote their time most significantly to writing opinions in those cases that involve issues of first impression and development of the common law of this Circuit, that will create conflict with another circuit, that involve issues of continuing public concern, and that modify or clarify the law of this Circuit.

IV. THE OPINION

A. Structure

Although each individual judge will employ a different writing style in drafting published opinions, the basic structure of opinions usually is consistent.[63]

1. The Opening Paragraph

Most opinions begin with an opening paragraph that informs the reader about the case.[64] Oftentimes, the opening paragraph

The caseload in the federal appellate courts lends itself to the debate over the role of law clerks in drafting and writing opinions. For a brief discussion of the role of law clerks, see *infra* notes 95–97 and accompanying text.

61. Ruggero J. Aldisert, *Opinion Writing* 1 (West 1990).

62. If the opinion does not add to the law of the Circuit, it probably will be dealt with in a more abbreviated form sufficient to explain to the parties and their counsel who won, who lost, and why. *See infra* pt. IV(C).

63. Although this discussion will focus upon the structure of published opinions, the same structure generally is used in unpublished opinions. It should be noted, however, that unpublished opinions are more abbreviated and concise. For a discussion of this distinction, see *infra* part IV(C).

64. Many have noted the significance of the opening paragraph. Justice George Rose Smith of the Arkansas Supreme Court stated,

> The importance of the first paragraph cannot be over-emphasized. . . . The readability of an opinion is nearly always improved if the opening paragraph (occasionally it takes two) answers three questions. First, what kind of case is this: Divorce, foreclosure, workmen's compensation, and so on? Second, what roles, plaintiff or defendant, did the appellant and the appellee have in the trial court? Third, what was the trial

includes a statement of the issues to be decided. The following opening paragraph from one of my recent signed opinions, *Smith v. BellSouth Telecommunications, Incorporated*, exemplifies the proper use of the opening paragraph:

> This appeal presents an issue of first impression in this Circuit: whether a former employee who alleges that his employer retaliated against him in its decision not to rehire him should be considered an "employee" under the enforcement provision of the Family and Medical Leave Act of 1993 (FMLA) that provides for a private right of action "against any employer . . . by any one or more employees." 29 U.S.C. § 2617(a)(2). The district court held that Arthur Leroy Smith, a former BellSouth employee who applied for reemployment, lacked standing to bring suit because the FMLA affords a private right of action only to individuals who suffer adverse action while they are employed. Because we find that the provision of the FMLA that provides a right of action to "employees" is ambiguous, and that the Department of Labor regulation interpreting the FMLA to protect former employees from discrimination in hiring decisions is reasonable, we must afford this regulation deference. We therefore reverse.[65]

In this paragraph, we explained the district court's ruling, set forth the relevant statutory provision, presented the issue we were going to address, and set forth our holding. These elements are key to a good and informative opening paragraph.

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court's decision? A fourth question, What are the issues on appeal?, should also be answered unless the contentions are too numerous to be easily summarized.

George Rose Smith, *A Primer of Opinion Writing for Four New Judges*, 21 Ark. L. Rev. 197, 204 (1967); *see* Joseph Kimble, *First Things First: The Lost Art of Summarizing*, 38 Ct. Rev. 30, 30 (Summer 2001) (asserting that "[a]ll legal writing should be front-loaded" and noting that "[i]t should start with a capsule version of the analysis").

In addition, Judge Federick G. Hamley noted that

> [t]he purpose of this part of the opinion is to set the stage for the discussion to follow. It tells the reader at once whether he should begin thinking about contract law, tort law, criminal law, or some other area in the vast field of jurisprudence. Such a statement also establishes at the outset the roles of the plaintiff and defendant as appellant or appellee. It may also supply other essential information. For example, inform a reader as to whether there was a jury trial and, if so, whether the judgment follows the verdict.

Judge Frederick G. Hamley, *Internal Operating Procedures of Appellate Courts* 29–31 (ABA 1961). Judge Aldisert noted that the opening paragraph should inform the reader about "what kind of case this is, what issues it addresses, and what the judge has concluded." Aldisert, *supra* n. 61, at 73.

65. 273 F.3d 1303, 1305 (11th Cir. 2001).

2. The Background

After the opening paragraph, the opinion usually proceeds to provide the relevant facts and the procedural background.[66] This entails a description of the facts, how this case got to this stage in the proceedings, and what the district court held. For example, in *Smith*, it was important to note that Smith was a former employee of BellSouth who applied for a new position with the company months after resigning from his position as a service representative.[67] It also was important to note that Smith had taken leave under the Family and Medical Leave Act (FMLA) when he worked for BellSouth.[68] In addition, the district court's ruling was pertinent to our discussion, as the district court granted BellSouth's motion for summary judgment, finding that a former employee did not have a private right of action under the FMLA.[69]

3. The Standard of Review

The background section leads into a brief recitation of the standard of review. In the standard of review section of *Smith*, we noted that the de novo standard applied to our consideration of the district court's grant of summary judgment to BellSouth and to our interpretation of the FMLA.[70] It was important to set forth the standard of review at this early stage, because the standard of review guides the analysis. In fact, the standard of review is "critically important in appellate decision making. In large part, [it] determine[s] the power of the lens through which the appellate court may examine a particular issue in a case."[71]

4. The Analysis

The heart of the opinion is devoted to discussing the issues and the analysis used in arriving at the decision.[72] Both Supreme

66. It is important to present only those facts that are pertinent to the appeal, but "[t]he principal directive in narrating the facts is accuracy." Aldisert, *supra* n. 61, at 99–101.

67. 273 F.3d at 1305.

68. *Id.*

69. *Id.*

70. *Id.*

71. Aldisert, *supra* n. 61, at 53.

72. Judge Aldisert defined a judicial opinion "as a reasoned elaboration, publicly stated, that justifies a conclusion or decision." *Id.* at 9. As a result, he stated that that the

Court and Eleventh Circuit precedent guide the writing judge in analyzing the issues,[73] and other circuit law, while not binding,[74] may be of assistance in resolving the case.[75] This part of the opinion deserves the utmost care and consideration, as it will contribute to the development of the law within this Circuit; it should clearly and comprehensively set forth the analysis used in reaching the ruling.[76]

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analysis section is "the opinion's sinew and muscle and fiber," and he argued that "the purpose of a judicial opinion is to convince any reader that sound reasons support the court's decision." *Id.* at 105, 107. That is why the analysis section must be clear and comprehensive.

73. *See U.S. v. Hanna*, 153 F.3d 1286, 1288 (11th Cir. 1998) (per curiam) (noting that "[i]n this circuit, only the court of appeals sitting *en banc*, an overriding United States Supreme Court decision, or a change in the statutory law can overrule a previous panel decision"); *Jaffree v. Wallace*, 705 F.2d 1526, 1532 (11th Cir. 1983) (noting that "[f]ederal district courts and circuit courts are bound to adhere to the controlling decisions of the Supreme Court"), *aff'd,* 472 U.S. 38 (1985).

74. It is important to note that the Eleventh Circuit is bound, however, by the decisions of the Fifth Circuit that were handed down before the close of business on September 30, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

75. *Id.* at 1211 ("Theoretically this court could decide to proceed with its duties without any precedent, deciding each legal principle anew, and relying upon decisions of the former Fifth Circuit and other circuit and district courts as only persuasive authority and not binding.").

An example of other circuit precedent that this Court found persuasive can be found in *Smith*. 273 F.3d at 1306–1307. There, we found that *Duckworth v. Pratt & Whitney, Incorporated*, 152 F.3d 1 (1st Cir. 1998), was persuasive, and "we join[ed] the First Circuit in holding that a former employee who alleges his former employer refused to rehire him based on his past use of FMLA leave qualifies as an 'employee' under § 2617(a)(2)." *Smith*, 273 F.3d at 1307.

76. The issue of whether to include footnotes in judicial opinions has been debated. There are those who believe that footnotes should not be used in judicial opinions. *E.g.* Robert E. Keeton, *How I Write*, 4 Scribes J. Leg. Writing 31, 34–35 (1993) ("First, drafting an opinion with no excursions and no footnotes is harder work. Second, the result, if well done, is a clearer and more readable opinion, with fewer ambiguities. . . . Third, the added value seems to me well worth the extra effort — at least when I am a reader."); Hon. Abner J. Mikva, *Law Reviews, Judicial Opinions, and Their Relationship to Writing*, 30 Stetson L. Rev. 521, 524 (2000) (In a discussion on footnotes, the author noted, "If God had intended the use of footnotes to be a norm, He would have put our eyes in vertically instead of horizontally."). These critics argue that footnotes add nothing to opinions, serve only to distract the reader, and are unnecessary. *E.g.* Abner J. Mikva, *Goodbye to Footnotes*, 56 U. Colo. L. Rev. 647, 647–648 (1985) (noting that footnotes are an "abomination" and calling for an end to the use of footnotes).

There are others, however, who feel that footnotes can be useful in an opinion. *E.g.* Aldisert, *supra* n. 61, at 177–178 (noting that footnotes can be useful when they are used properly and setting forth guidelines for the proper use of footnotes); Edward R. Becker, *In Praise of Footnotes*, 74 Wash. U. L.Q. 1, 1–2 (1996) ("[W]ell-conceived and well-crafted footnotes are valuable tools of their trade."). I tend to agree with them. As we try to provide a clear analysis to the reader, there can be times when information that would be helpful to the reader does not fit into the text of the opinion. Placing that information in a

It often is useful to begin the analysis with a roadmap. We took this approach in *Smith* when we discussed the two-step process set forth in *Chevron U.S.A., Incorporated v. Natural Resources Defense Council, Incorporated*,[77] and noted that our decision would be guided by that framework.[78] We said,

> First, we ask "whether Congress has directly spoken to the precise question at issue." If the will of Congress is clear from the statute itself, our inquiry ends — "the court, as well as the

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footnote is the best way to avoid interrupting the opinion, while still allowing the writer to explain the reasoning as thoroughly as possible. For example, in the *Smith* opinion, BellSouth's argument that *Dunlop v. Carriage Carpet Company*, 548 F.2d 139, 142 (6th Cir. 1977), should not be seen as persuasive was addressed in a footnote in the discussion of how we should interpret the term "employee." *Smith*, 273 F.3d at 1308 n. 6. Although discussion of this issue was not pertinent to the arguments in the text of the opinion and would have interrupted the analysis, a brief footnote describing our reason for failing to find the case unpersuasive was helpful to the reader and responded to an argument raised by one of the parties. The following footnote was placed after the introduction of *Carriage Carpet Company*:

> We reject BellSouth's contention that we should not treat *Carriage Carpet Co.* as persuasive authority regarding the scope of the FLSA definition of employee because it was decided under a broader definition of employee. Although the complained of conduct in *Carriage Carpet Co.* occurred when the definition of employee in the FLSA provided, "'[e]mployee' includes any individual employed by an employer," which in 1974 was amended to "'[e]mployee' means any individual employed by an employer," the legislative history of the 1974 amendments indicates that the amendments were meant to expand — not narrow — the coverage of the Act. The *Carriage Carpet Co.* court considered the 1974 amendments and decided that since the amendments were meant to expand the coverage of the FLSA and nothing in the House reports explained the reasons for the change, the substitution of "means" for "includes" was of "no particular significance."

Id. (citations omitted) (quoting *Carriage Carpet Co.*, 548 F.2d at 142).

Another debate with respect to footnotes centers around whether citations should be placed in footnotes. Bryan A. Garner proposed that all citations be placed in footnotes to create more readable opinions. Bryan A. Garner, *Clearing the Cobwebs from Judicial Opinions*, 38 Ct. Rev. 4, 4 (Summer 2001); *see* Rodney Davis, *No Longer Speaking in Code*, 38 Ct. Rev. 26, 26–27 (Summer 2001) (noting that Garner's proposal, though tough to implement, is worthwhile); John Minor Wisdom, *How I Write*, 4 Scribes J. Leg. Writing 83, 86 (1993) (noting that one of the author's idiosyncrasies is that "[c]itations belong in a footnote"). Garner asserted that legal writers who place all citations in footnotes will (1) "[u]se shorter sentences"; (2) "[c]ompose paragraphs that are more coherent and forceful"; (3) "[l]ead their readers to focus on ideas, not numbers"; (4) "[l]ay bare poor writing and poor thinking"; (5) "[d]iscuss the controlling [case law] more thoroughly"; and (6) "[u]se string citations with impunity." Garner, *supra*, at 4. There are, however, those who argue against this strategy, because footnotes "interrupt" the text and prevent "continuous reading." *E.g.* Richard A. Posner, *Against Footnotes*, 38 Ct. Rev. 24, 24 (Summer 2001). DuVivier argued that citation footnotes "most likely will be ignored." K.K. DuVivier, *Footnote Citations?* 30 Colo. Law. 47, 47–48 (May 2001).

77. 467 U.S. 837, 842–845 (1984).

78. *Smith*, 273 F.3d at 1307.

> agency, must give effect to the unambiguously expressed intent of Congress." "[I]f, the statute is silent or ambiguous," however, we next ask whether the agency's construction of the statute is reasonable.[79]

In addition to a roadmap, it often is helpful to provide the reader with guideposts throughout the opinion. These guideposts usually take the form of topic sentences and transition sentences, which help guide the reader through the analysis and improve the flow of the opinion. For example, when we began our discussion of the first step of the *Chevron* inquiry, we wrote, "Addressing the first prong of the *Chevron* inquiry — whether the FMLA provision providing a right of action to "employees" is ambiguous — we begin by examining the language in the enforcement provision itself."[80] After examining the issue and concluding that the term "employee" was ambiguous, we moved on to the next step in our inquiry.[81] We signaled this change to the reader when we wrote, "Therefore, we now must turn to the second step of the *Chevron* inquiry, and ask whether the Department of Labor's interpretation of the statute is reasonable."[82] Both examples show that carefully-crafted sentences can improve the flow of an opinion as well as guide the reader through the analysis.

While topic sentences and transition sentences are useful as guides when there is one issue, it sometimes is helpful to use an outline format when the issues are numerous.[83] For example, in *Smith*, we addressed the following three issues: (1) whether the Department of Labor's regulation was reasonable;[84] (2) whether the refusal to rehire a former employee based upon his past use of FMLA is an unlawful employment practice;[85] and (3) whether Smith established a prima facie case of retaliation under the FMLA.[86] As each of these issues was distinct, we used an outline

79. *Id.* (citations omitted) (quoting *Chevron*, 467 U.S. at 842–845).
80. *Id.*
81. *Id*. at 1313.
82. *Id.*
83. As Judge Aldisert noted, "A lengthy discussion of a multifaceted single issue or of multiple issues should be segmented. Each segment should be preceded by a Roman numeral or a letter. In this way, the reader has a visual outline to aid in understanding the opinion." Aldisert, *supra* n. 61, at 136.
84. 273 F.3d at 1307–1313.
85. *Id.* at 1313–1314.
86. *Id.* at 1314.

format in the discussion section to show the reader that we were no longer moving from point to point within an issue, but rather from issue to issue.

Thus, roadmaps, topic sentences, and outlines are useful tools that can be utilized in meeting the objective of creating an opinion that is comprehensive and clear.

5. The Conclusion

The final paragraph of the opinion usually is referred to as the conclusion, and it either repeats or asserts for the first time the ruling of the court. The following conclusion from *Smith* is a good example:

> We hold that the district court erred in deciding that because Smith was not employed by BellSouth when it made the decision not to rehire him, Smith was not an "employee" and lacked standing to bring suit under the FMLA. Since the provision of the FMLA that affords a private right of action to "employees" is ambiguous, and the Department of Labor regulation prohibiting an employer from considering an employee's past use of FMLA leave in hiring decisions is a reasonable interpretation of the statue, we must afford that regulation *Chevron* deference.[87]

In addition to asserting the ruling, the conclusion also gives the lower court directions. This section is referred to as the mandate of the court,[88] and it consists of a general reference about the disposition of the case, such as affirmed, vacated and remanded, or reversed and remanded.[89] For example, in *Smith*, we held, "Accordingly, the district court's order granting summary judgment is REVERSED, and the case is REMANDED for further proceedings consistent with this opinion."[90]

87. *Id.*

88. For further discussion of mandates, see *infra* note 107.

89. "The opinion writer has an obligation to the trial court and the litigants to articulate clearly the action taken by the reviewing court." Aldisert, *supra* n. 61, at 135.

90. 273 F.3d at 1314.

B. Style

Certainly, each judge employs his own style of writing.[91] Judge Richard A. Posner aptly described style as follows:

> We can think of it most broadly as the specific written form in which a writer encodes an idea, a "message," that he wants to put across. His tools of communication are, of course, linguistic. But they include not only vocabulary and grammar but also the often tacit principles governing the length and complexity of sentences, the organization of sentences into larger units such as paragraphs, and the level of formality at which to pitch the writing. These tools are used not just to communicate an idea but also to establish a mood and perhaps a sense of the writer's personality.[92]

Although judges should follow their own style, they should be mindful of avoiding opinions that are "too long," "are burdened with too many citations," "tend to ramble instead of clearly defining and discussing issues," and, among other things, "eschew those good, plain words and sentences that communicate rather than befuddle."[93] That is why my rule is to follow the three C's of judicial opinion writing: be clear, be concise, and write with character.[94]

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91. Writing is a very personal process and each writer has his own idiosyncrasies. *E.g.* Michael Gilbert, *How I Write*, 4 Scribes J. Leg. Writing 9, 11 (1993) (stating, "[A] writer's style will reflect the sort of person he is."); Tony Honoré, *How I Write*, 4 Scribes J. Leg. Writing 19, 20 (1993) ("Another point that I have learned from experience is that each author has fingerprints — perhaps they should now be called file-prints," because "[n]o two are quite alike."); Judith S. Kaye, *Judges as Wordsmiths*, 69 N.Y. St. B.J. 10, 10 (Nov. 1997) ("Words are, after all, how I clothe my thoughts. And as a judge . . . I have preferred simple though stylish dress. Writing should be clear and communicative."); Thomas M. Reavley, *How I Write*, 4 Scribes J. Leg. Writing 51, 54 (1993) ("I would not give the impression that I think style and composition do not matter. Of course they do. We write to be read by lawyers and judges. To be read and understood, readily and correctly. Unnecessary words should be boiled out."); Wisdom, *supra* n. 76, at 85–86 ("One's writing style is developed over a long period of years . . . ." In fact, "[w]e all develop idiosyncrasies. I have mine . . . .").

92. Richard A. Posner, *Judges' Writing Styles (And Do They Matter?)*, 62 U. Chi. L. Rev. 1421, 1422 (1995). Judge Posner notes, however, that his broad definition of style has the disadvantage of merging style with rhetoric. *Id*.

93. Aldisert, *supra* n. 61, at 7.

94. I adopted this rule after attending a seminar conducted by Timothy P. Terrell, a professor of law at Emory University School of Law in Atlanta, Georgia, who regularly conducts writing seminars for appellate judges and presents writing seminars to law clerks in the Eleventh Circuit.

Within every discussion about style lies a separate argument about the use of law clerks. Some suggest that law clerks take much of the style out of judicial opinions.[95] I believe, however, that law clerks play an invaluable role in assisting appellate judges in fulfilling their duties and responsibilities.[96] I make significant use of my law clerks' talents and abilities.[97] Oftentimes, more than one law clerk may participate in drafting an opinion or may participate in the development of the opinion by cite-checking the opinion, editing the opinion, or conducting a grammatical review of the opinion. I do not believe that their role in this process affects my style, because I am responsible for each opinion, and I edit each opinion to ensure that the final draft reflects my thoughts and analysis.

C. Audience

One of the most important considerations in drafting judicial opinions is the audience.[98] The audience of an unpublished opinion differs significantly from the audience of a published opinion. The audience of an unpublished opinion likely will be limited to the district court and the lawyers and parties involved, which is an informed audience that is intimately familiar with the facts and the issues in the case. The role of an appellate court in this instance is to tell the audience who won, who lost, and why.

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95. *See e.g.* Posner, *supra* n. 92, at 1425 (noting that "[t]he idea of style as voice plays a rationalizing role with respect to the contemporary scandal (as some think it to be) of delegating opinion writing to law clerks").

96. Most judges certainly would find it very difficult to issue polished opinions without the assistance of their law clerks. The late Supreme Court Justice William O. Douglas, however, once suggested during a conference of his colleagues that they experiment with the temporary elimination of law clerks. William O. Douglas, *The Court Years: 1939–1975: The Autobiography of William O. Douglas* 172 (Random House 1980). Describing the reaction to his proposal, he said, "My proposal was met by a few smiles but mostly by stony silence." *Id*.

Generally, law clerks are law school graduates who exhibit outstanding research and writing skills, as well as strong academic performance while in law school. They typically serve for one- or two-year terms, although some judges will keep one or a few "career" law clerks in chambers. I had the pleasure of serving as a law clerk for the Honorable Joseph W. Hatchett, who was my predecessor on the Eleventh Circuit.

97. The sheer volume of cases presented for appellate review necessitates the assistance of law clerks. For a brief discussion of the caseload in federal appellate courts, see *supra* notes 57–60 and accompanying text.

98. *See* Aldisert, *supra* n. 61, at 22–25 (noting that "you must always be aware of the audience for whom you write").

Knowing that the audience has a firm grasp of the facts and issues allows for an abbreviated opinion.[99]

With a published opinion, however, the audience is broader. We still write for the district court, the lawyers, and the parties, but we also must write for the bar and the district courts.[100] As this broad audience is not as well informed as the audience of a published opinion, we cannot be as brief and concise.[101] We no longer can focus just upon providing a concise statement of who won, who lost, and why. Now, we must concern ourselves with addressing the state of the law in the Circuit. We must be careful to articulate our holding clearly, and because we are establishing law, we must present our well-reasoned analysis to the audience. We should never lay down a rule of law without providing a clear and comprehensive explanation of how we arrived at our decision.[102]

V. RELEASE OF OPINIONS

A. Circulation and Dissents and Concurrences

Once a member of this Court receives his or her writing responsibilities, draft opinions will be prepared and circulated to the other judges on the panel as proposed opinions.[103] The other

99. An unpublished opinion typically is written in what Judge Edith Hollan Jones termed the "barebones style." Edith Hollan Jones, *How I Write*, 4 Scribes J. Leg. Writing 25, 27–28 (1993). Jones described this style as follows:

> In the barebones style, I write to explain a conclusion that I believe follows naturally from settled legal principles. When cases lend themselves to a barebones or summary-calendar decision, the factual predicate and issue or issues may be paraphrased in a sentence or two. The result often turns on a clear legal rule or on a standard of review such as the sanctity of the jury verdict or the broad discretion of the trial judge. . . . My purpose is to assure the losing party that the issues he raised were considered in light of the record and that their outcome was legally foreordained, albeit, to him, unpalatable.

Id.

100. In high profile cases, the audience of published opinions often also includes the media and the general public.

101. For a discussion on whether to publish opinions, see *supra* part III(B).

102. The audience of a dissenting opinion often includes another entity — the United States Supreme Court. When drafting a dissenting opinion, I often consider whether the parties will file a petition for a writ of certiorari to the Supreme Court. If I believe that the parties will, I write the dissent with the Supreme Court in mind.

103. 11th Cir. R. 36-3, I.O.P. 3.

two judges on the panel will give "high priority" to the review of these proposed opinions.[104]

Any member of the panel who votes in the majority may decide to file a concurring opinion and write separately.[105] This usually takes place when a member of the panel agrees with the result, but disagrees with the analysis; or the concurring judge may agree with the majority opinion in part and dissent in part. Any member of the panel who disagrees with the result as reflected in the majority opinion is entitled to file a written dissent, explaining the reasons for the difference of opinion.[106] During my time on the Court, there have been occasions when I may not have voted with the majority, but nonetheless decided that the case did not warrant a written dissent — a fact that never will be disclosed to those reading the opinion. My personal practice is to write a dissent only when I feel strongly about the result reached in the majority opinion. Such a practice is personal to each individual judge.

Once each member of the panel has had an opportunity to concur or to prepare a special concurrence or dissent, the writing judge will transmit the opinion to the clerk for filing, along with the concurrence, special concurrence, or dissent, if any.[107]

B. The Clerk of Court

The clerk's office in Atlanta releases the opinions.[108] Counsel generally will not receive notice regarding the time frame in

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* The members of the Court who are not members of the three-judge panel will not review a proposed opinion before it is filed with the Court, except in special cases in which the panel may determine that such review is necessary. *Id.* at I.O.P. 4. Members of the Court will, however, receive a copy of the opinion before it is issued as a slip opinion by West Publishing Company.

Any member of the Court can withhold the mandate in a particular case, which means that no action will be taken with respect to that case. *See* 11th Cir. R. 41-2, I.O.P. 1 (2002) (providing that "[a] motion for stay or recall of mandate is disposed of by a single judge"). When the mandate is withheld, the withholding judge may decide to release it, the panel may decide to rewrite the opinion or address the judge's concern, or the withholding judge may ask for the Court to be polled on whether the issue should be considered en banc. However, the opinion still has precedential value within the Circuit. 11th Cir. R. 36-3, I.O.P. 2. It does not lose its precedential value unless the original panel opinion is vacated by the Court. *Id.*

108. *Id.* at I.O.P. 6.

which an opinion will be issued.[109] A copy of unpublished opinions is mailed to counsel for the parties and also is "made available to the press and public at the clerk's office and at the circuit libraries."[110] Published opinions, however, are released in a slightly different fashion. Counsel are telephoned and notified of the release of a published opinion and are advised that the opinion is available on the internet.[111] They also are advised that a copy will be mailed to them.[112]

VI. CONCLUSION

It is my hope that in describing what happens during the time between the submission of an appeal and the release of an appellate decision, I was able to provide some insight into the processes and procedures of the Eleventh Circuit and the way in which judges draft opinions. The judges who serve on the Eleventh Circuit devote a considerable amount of time and effort to the task of drafting opinions. Our goal is to ensure that the Circuit continues to develop and maintain a cohesive body of law that the courts, lawyers, and the public can understand and rely upon in furthering the sound administration of justice within the Circuit.

109. *Id.*

110. *Id.* The clerk also may notify counsel by telephone upon request. *Id.*

111. *Id.* Published opinions are available at <http://www.ca11.uscourts.gov>. *Id.*

112. *Id.* All "[o]pinions are subject to typographical and printing errors." *Id.* As a result, this Circuit solicits the aid of the bar in bringing such errors to its attention. *Id.*