

Florida Legislature Repeals Longstanding Law on Terms of Courts and Creates New Law Affecting Appellate Court's Ability To Recall Mandate

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In the 2013 legislative session, the Florida Legislature repealed the set of statutes that originated at the turn of the twentieth century setting terms of courts for all of Florida's circuit courts, district courts of appeal, and the supreme court. The law becomes effective January 1, 2014. See Ch. 2-13-25, § 25, Laws of Fla. (2013). In place of set court terms, the Legislature created section 43.43. This new statute gives the Florida Supreme Court the discretion to (1) establish terms of court for the Supreme Court, the district courts of appeal, and the circuit courts; (2) authorize those courts to establish their own terms of court; or (3) dispense with terms altogether. Of particular relevance to appellate practitioners, however, is the creation of section 43.44, which applies to appellate court mandates. That new section provides: An appellate court may, as the circumstances and justice of the case may require, reconsider, revise, reform, or modify its own opinions and orders for the purpose of making the same accord with law and justice. Accordingly, an appellate court may recall its own mandate for the purpose of allowing it to exercise such jurisdiction and power in a proper case. A mandate may not be recalled more than 120 days after it has been issued. Ch. 2013-25, § 10, Laws of Fla. (2013). This statute changes longstanding decisional law, holding that "the jurisdiction of an appellate court over its judgments persists to the end of the term at which the judgment is rendered, and then absolutely terminates, in the absence of statute or rule having the effect of a statute in force to the contrary." *Westberry v. Copeland Sausage Co.*, 397 So. 2d 1018, 1019 (Fla. 1st DCA 1981) (citing *Chapman v. St. Stephens Protestant Episcopal Church*, 138 So. 630 (Fla. 1932)). Whether section 43.44 restricts or broadens an appellate court's ability to alter a final decision by recalling its mandate depends of course on when the decision would have been issued during the court's former term. If a decision had been entered early on during the court's term, section 43.44 now restricts the time limit during which the appellate court could recall its mandate.

On the other hand, if the decision had been entered near the end of the court's term, section 43.44 expands the time within which the court could recall its mandate.

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