CARLTON FIELDS

ATTORNEYS AT LAW

APPELLATE PRACTICE POINTER
Topps v. State of Florida

In Topps v. State of Florida, 29 Fla.L.Weekly S21 (Jan. 22, 2004), the Florida Supreme Court recently resolved the conflict among the Florida district courts over the res judicata effects of an unelaborated order denying relief from a petition for an extraordinary writ in Florida. The Court determined that a denial of a petition for any extraordinary writ would not be deemed a decision on the merits which would later bar the litigant from presenting similar issues under the doctrine of res judicata or collateral estoppel, unless it included a citation to authority or other statement that clearly showed an issue was considered on the merits by the reviewing court. In order for a reviewing court to attach the res judicata effect to such a decision, the court merely needs to include a simple phrase, such as "with prejudice" or "on the merits", to indicate that the merits were considered and were determined. Otherwise, an unelaborated denial of a petition for an extraordinary writ will not be deemed to be a denial on the merits. This decision only has prospective effect, so that prior denials in the districts that gave them res judicata effect would continue to be denials on the merits.