

Nova Law Review

Volume 24, Issue 1

1999

Article 2

Appellate Practice

Anthony C. Musto*

*

Copyright ©1999 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). <https://nsuworks.nova.edu/nlr>

Appellate Practice: 1999 Survey of Florida Law

Anthony C. Musto*

TABLE OF CONTENTS

I. INTRODUCTION	2
II. AMENDMENTS TO THE FLORIDA RULES OF APPELLATE PROCEDURE	2
III. ADMINISTRATIVE ORDERS	3
IV. JURISDICTION OF THE SUPREME COURT OF FLORIDA.....	3
V. APPEALABLE ORDERS	4
VI. INSTITUTION OF APPELLATE PROCEEDINGS	5
VII. STAYS	7
VIII. RECORD ON APPEAL	9
IX. TRANSCRIPTS	9
X. MOTIONS	10
XI. AMICUS CURIAE	10
XII. DISQUALIFICATION OF CIRCUIT JUDGES IN THEIR APPELLATE CAPACITIES	11
XIII. SANCTIONS	11
XIV. EXTRAORDINARY WRITS	13
A. <i>Certiorari</i>	13
B. <i>Mandamus</i>	18
C. <i>Prohibition</i>	18
D. <i>Habeas Corpus</i>	20
E. <i>Coram Nobis</i>	21
XV. APPEALS IN CRIMINAL CASES	22
A. <i>Orders Reviewable</i>	22
B. <i>Bond Pending Appeal</i>	23

* B.G.S., 1972, University of Miami; J.D., 1975, Catholic University of America. Mr. Musto, a private practitioner in Broward County, Florida, is board certified in appellate practice. He previously served as the Chief Appellate Counsel for Broward County and the Chief Counsel of the Florida Attorney General's Miami office. Mr. Musto is a past chair of The Florida Bar Appellate Practice and Advocacy Section, a member of the Florida Appellate Court Rules Committee, a member of The Florida Bar Appellate Practice Certification Committee, and a member of the Supreme Court of Florida Commission on Professionalism. He is also a past chair of The Florida Bar Criminal Law Section, The Florida Bar Government Lawyer Section, the Florida Criminal Procedure Rules Committee, and the Florida Rules of Judicial Administration Committee.

C. <i>Capital Cases</i>	24
D. <i>Appeals From Denials of Motions for Postconviction Relief</i>	25
E. <i>Belated Appeals</i>	26
XVI. APPEALS IN TERMINATION OF PARENTAL RIGHTS CASES.....	26
XVII. APPEALS IN JUVENILE CASES	27
XVIII. ATTORNEY'S FEES	28
XIX. COSTS	28
XX. REHEARING	29
XXI. MANDATE	33
XXII. A LOOK TO THE FUTURE.....	33

I. INTRODUCTION

This article will discuss recent developments in the field of appellate practice in Florida. Although this article will focus primarily on cases decided between July 1, 1998, and June 30, 1999, it will also deal with certain cases decided shortly before and after that period. These cases are either of particular interest to the appellate practitioner or provide the background for, or the culmination of, issues that were addressed by cases decided during that period.

In a broad sense, every appellate decision falls within the scope of appellate practice. Decisions relating to substantive areas of the law, however, are more properly dealt with in articles relating to those substantive areas and therefore, will not be discussed here. Rather, this article will focus on matters relating to practice in the appellate courts and examines those areas. This article will not discuss cases relating to the preservation of particular issues, nor will it discuss the question of whether particular errors were harmless.

II. AMENDMENTS TO THE FLORIDA RULES OF APPELLATE PROCEDURE

In light of the enactment of legislation requiring parental notification, or judicial waiver thereof, before an abortion may be performed on a minor, the supreme court¹ adopted, on an emergency basis, amendments to *Florida Rule of Appellate Procedure* 9.110(1).² The amendments replace the reference to

1. In this article, references to "the supreme court" will constitute references to the Supreme Court of Florida. The Florida district courts of appeal will be referred to as "the First District," "the Second District," "the Third District," "the Fourth District," and "the Fifth District."

2. *In re* Amendments to the Florida Rules of Civil Procedure, 24 Fla. L. Weekly S299 (June 24, 1999).

an order denying a petition for “termination of pregnancy” with one to an order denying a petition for “judicial waiver of parental notice of abortion,” and add a sentence reading, “[n]o filing fee shall be required for an appeal of the denial of a waiver of parental notice of abortion.”³ In the same opinion, the court also made appropriate amendments to the *Florida Rules of Civil Procedure*.⁴

III. ADMINISTRATIVE ORDERS

By an administrative order entered by the chief judge and pursuant to the affirmative vote of a majority of the judges of the court, the First District, the only Florida appellate court to ever split into subject matter divisions, dispensed with those divisions.⁵

In *1-888-Traffic Schools v. Chief Circuit Judge*,⁶ the supreme court addressed the issue of which court should review challenges to administrative orders entered by circuit courts.⁷ Rejecting the First District’s conclusion that only the supreme court can consider such issues, the court found that review by the district courts is appropriate.⁸ The court limited its prior holding in *Wild v. Dozier*,⁹ which had concluded that it had sole jurisdiction to review judicial assignments to administrative orders making such assignments.¹⁰

IV. JURISDICTION OF THE SUPREME COURT OF FLORIDA

The supreme court declined to answer a certified question in *State v. Schebel*,¹¹ concluding that the necessary facts for a determination of the issues were not contained in the record.¹² An opinion based on the “speculative facts” alleged by the party who filed the initial motion in the trial court “would necessarily be advisory in nature,” the court concluded.¹³ The court also declined to answer a certified question in *State v. Vazquez*,¹⁴

3. *Id.* at S300.

4. *Id.* at S299–S300.

5. Administrative Order 98-3, *In re Abolishment of Court Divs.*, 24 Fla. L. Weekly D84 (1st Dist. Ct. App. Dec. 15, 1998).

6. 734 So. 2d 413 (Fla. 1999).

7. *Id.* at 413.

8. *Id.* at 416.

9. 672 So. 2d 16 (Fla. 1996).

10. *Traffic Schools*, 734 So. 2d at 415.

11. 723 So. 2d 830 (Fla. 1999).

12. *Id.* at 830.

13. *Id.*

14. 718 So. 2d 755 (Fla. 1998).

basing its action on the fact that the district court had not ruled on the issue raised by the question.¹⁵

In *Inquiry Concerning a Judge, No. 97-04, Re: Elizabeth L. Hapner*,¹⁶ the court determined that it has the authority to tax costs in a proceeding of the Judicial Qualifications Commission ("JQC").¹⁷ The court limited the costs in the case to certain charges relating to the court reporter and the transcript,¹⁸ concluding that attorneys' fees may not be awarded as costs.¹⁹ The court directed the Florida Rules of Judicial Administration Committee to draft a proposed rule addressing the assessment of costs in a JQC proceeding.²⁰

V. APPEALABLE ORDERS

The Fourth District provided some guidance with regard to the manner of review of orders impacting nonparties to trial court proceedings. In *Shook v. Alter*,²¹ a lawyer representing a party in the trial court sought certiorari review of an order holding him in indirect civil contempt.²² The district court concluded that because the order was final as far as the lawyer was concerned, review was proper by appeal, not by certiorari.²³ The appellate court noted that this distinction was important because a petitioner seeking certiorari must meet a heavier burden than an appellant taking an appeal²⁴ and stated that it was publishing its order in the case "so that the Bar will know that, where a final order is entered against a non-party [sic] such as, for example, a lawyer or a witness, the appropriate method for review of that order is by final appeal."²⁵

Numerous other cases discussed the issue of whether particular orders were reviewable on appeal. These cases included the following: *Meyers v. Metropolitan Dade County*²⁶ (jury's verdict as to liability in a bifurcated proceeding was the equivalent of an order determining liability under the interlocutory appeal rule and was therefore appealable under that rule);

15. *Id.* at 756.

16. 737 So. 2d 1075 (Fla. 1999).

17. *Id.* at 1075.

18. *Id.*

19. *Id.*

20. *Id.*

21. 715 So. 2d 1082 (Fla. 4th Dist. Ct. App. 1998).

22. *Id.* at 1082-83.

23. *Id.* at 1083.

24. *Id.*

25. *Id.*

26. 24 Fla. L. Weekly S135 (Mar. 18, 1999).

*Thomas v. Thomas*²⁷ (denial of a motion to transfer a pending modification of a child custody case to another state was appealable as a determination in the nature of venue); *Okeelanta Corp. v. McDonald*²⁸ (rule providing for appeals from orders granting or denying certification of a class does not extend jurisdiction to orders ruling on motions to decertify a class and an appeal from such an order was therefore dismissed); *Key Club Associates v. Mayer*²⁹ (nonfinal order dismissing counterplaintiffs' request for certification of their class for purposes of their compulsory counterclaim was appealable); *Croteau v. Operator Service of South Florida, Inc.*³⁰ (order denying a motion to enforce a settlement agreement which constituted the equivalent of a partial final judgment was appealable); *Blakeslee v. Morse Operations, Inc.*³¹ (conditional order of dismissal, requiring a plaintiff to arbitrate within thirty days or have the case dismissed, was not appealable as an order of dismissal); *Red Bird Laundry v. Parks*³² (appeal from order denying attorneys' fees was not proper when the final order in the underlying action had not yet been entered); *Wanner v. State*³³ (order granting bank's motion to intervene in a criminal case as a victim for purposes of restitution was not appealable); *Crawford v. Dwoskin*³⁴ (order remanding a matter to an arbitrator to clarify certain portions of an award was not appealable).

VI. INSTITUTION OF APPELLATE PROCEEDINGS

In *Holden Avenue Inter-Neighborhood Council, Inc. v. Orange County*,³⁵ nine days after an action by the Orange County Board of County Commissioners, the petitioner filed a notice of intention to file a petition for writ of certiorari to review the Board's decision.³⁶ This action was taken pursuant to a county code provision which provides that such a notice must be filed in the circuit court within ten days after the decision at issue and that the petition must be filed within sixty days after the Board's ruling.³⁷ The petitioner filed the petition within the time provided by the code, but after the expiration of the thirty-day period allowed for seeking certiorari under

27. 724 So. 2d 1246 (Fla. 4th Dist. Ct. App. 1999).

28. 730 So. 2d 1283 (Fla. 4th Dist. Ct. App. 1999).

29. 718 So. 2d 346 (Fla. 2d Dist. Ct. App. 1998).

30. 721 So. 2d 386 (Fla. 4th Dist. Ct. App. 1998).

31. 720 So. 2d 1166 (Fla. 4th Dist. Ct. App. 1998).

32. 728 So. 2d 1238 (Fla. 5th Dist. Ct. App. 1999).

33. 24 Fla. L. Weekly D924 (2d Dist. Ct. App. Apr. 9, 1999).

34. 729 So. 2d 520 (Fla. 3d Dist. Ct. App. 1999).

35. 719 So. 2d 1002 (Fla. 5th Dist. Ct. App. 1998).

36. *Id.* at 1003.

37. *Id.*

Florida Rule of Appellate Procedure 9.100(c)(2).³⁸ The circuit court then granted the County's motion to dismiss the proceeding as untimely.³⁹ Although agreeing that the petitioner could not rely on the code provision because the Florida Constitution provides that only the supreme court has the authority to adopt rules of practice and procedure,⁴⁰ the Fifth District granted certiorari.⁴¹ The court concluded that the notice of intention to file the petition, which was clearly filed within the time frame established by the appellate rule, was the functional equivalent of a notice of appeal and that it plainly placed the County on notice that the petitioner intended to seek review.⁴² Noting that the petitioner was "understandably misled"⁴³ by the code, the court "in the interests of justice,"⁴⁴ treated the notice of intention to file the petition as the petition itself and the actual petition as an amended petition.⁴⁵

In its opinion in *Horst v. Unemployment Appeals Commission*,⁴⁶ the Second District called for a legislative change with regard to the time for instituting appeals to the Unemployment Appeals Commission.⁴⁷ Under section 443.151(4)(b) of the *Florida Statutes*, such appeals must be taken within twenty days of the order under review.⁴⁸ In the case at issue, the appeal was dismissed because it was instituted twenty-five days after the order.⁴⁹ The district court accordingly indicated that it was "constrained to affirm the Commission's ruling."⁵⁰ The court noted, however, that the case was not an isolated one and that it "frequently affirms without written opinion when the Commission dismisses an appeal because it was filed a few days late."⁵¹ In asking the legislature to establish a thirty day period that would equal the period given in other civil and administrative appeals,⁵² the court pointed out that claimants are typically not represented by counsel, are often ill prepared to prosecute a legal appeal, are appealing because they are unemployed and did not receive benefits, and "may be distracted from filing

38. *Id.*

39. *Id.*

40. *Holden*, 719 So. 2d at 1003-04.

41. *Id.*

42. *Id.*

43. *Id.* at 1003-04.

44. *Id.* at 1004.

45. *Holden*, 719 So. 2d at 1004.

46. 725 So. 2d 1266 (Fla. 2d Dist. Ct. App. 1999).

47. *Id.* at 1267.

48. FLA. STAT. § 443.151(4)(b) (1999).

49. *Horst*, 725 So. 2d at 1267.

50. *Id.*

51. *Id.*

52. *Id.*

an appeal within the abbreviated period by their need to search for another job.”⁵³

In *State v. West*,⁵⁴ after the state instituted an appeal from a sentence that constituted a downward departure from the sentencing guidelines, the trial court, which had not previously given any reasons for the departure, *sua sponte* made written findings of its reasons.⁵⁵ The Fifth District reversed the sentence, stating that “the trial court’s belated effort . . . to supply written reasons after an appeal was taken cannot cure the defect since the trial court had by that time lost jurisdiction.”⁵⁶

VII. STAYS

In *Mann v. Brantley*,⁵⁷ an appeal was taken from an order granting a new trial.⁵⁸ The trial court denied a stay and the appellants sought review of the denial in the Fourth District.⁵⁹ That court pointed out that since an order granting a new trial is a nonfinal order, *Florida Rule of Appellate Procedure* 9.130(f) precluded the trial court from entering a final order during the pendency of the appeal.⁶⁰ In light of that fact, and the fact that the holding of a new trial while the appeal was pending would be a waste of money and judicial resources, the district court found the denial of the stay to constitute an abuse of discretion.⁶¹

The appellants in *Begonia Corp. v. Nam Financial Corp.*⁶² sought review of an order imposing sanctions in the amount of \$100,000 against them for frustrating orders of the court relating to a sale under a final judgment of foreclosure.⁶³ They sought a supersedeas bond as to the amount of the sanctions, but the trial court refused to set or allow such a bond and thus any stay pending review.⁶⁴ Reviewing the denial of stay, the Fourth District noted that while the final judgment of foreclosure itself may not have been solely for the payment of money, such as to create an entitlement to bond under *Florida Rule of Appellate Procedure* 9.310(b)(1), the

53. *Id.*

54. 718 So. 2d 266 (Fla. 5th Dist. Ct. App. 1998).

55. *Id.* at 267.

56. *Id.*

57. 732 So. 2d 1090 (Fla. 4th Dist. Ct. App. 1998).

58. *Id.* at 1091.

59. *Id.*

60. *Id.*

61. *Id.*

62. 724 So. 2d 714 (Fla. 4th Dist. Ct. App. 1999).

63. *Id.* at 714.

64. *Id.*

sanctions order was reasonably understood as such a judgment.⁶⁵ The court found that an order lacking words allowing for immediate execution did not remove it from the realm of orders essentially requiring the payment of a fixed sum of money and that the appellants were therefore entitled to bond the sanctions order while they pursued their appeal.⁶⁶

The Fifth District, in *Garvin v. Jerome*,⁶⁷ rejected a contention that *Florida Rule of Appellate Procedure* 9.310(b)(2), which provides for automatic stays pending review when public bodies and officials file notices of appeal, applied to stay an election when the appellant, a public official, appealed from an order denying a request for an injunction to halt the conduct of the election.⁶⁸ Aligning itself with decisions of the Second and Fourth Districts,⁶⁹ the First District, in *Taylor v. Barnett Bank of North Central Florida, N.A.*,⁷⁰ found that the provision of the Federal Bankruptcy Code,⁷¹ providing for an automatic stay of all legal proceedings “against the debtor,” applies on appeal when the original proceedings were against the debtor, “regardless of whether the debtor is an appellant or appellee.”⁷² The court recognized that the Third District had reached a contrary conclusion,⁷³ but indicated that the Third District’s decision was reached at a time when there was a dearth of law on the subject and that since the federal courts began considering the issue, all six courts of appeals that have addressed the question have taken the approach adopted by the Second and Fourth Districts.⁷⁴

65. *Id.*

66. *Id.*

67. 721 So. 2d 1224 (Fla. 5th Dist. Ct. App. 1998), *review granted*, 735 So. 2d 1284 (Fla. 1999).

68. *Id.* at 1229.

69. *Crowe Group, Inc. v. Garner*, 691 So. 2d 1089 (Fla. 2d Dist. Ct. App. 1993); *Florida E. Dev. Co. v. Len-Hal Realty, Inc.*, 636 So. 2d 756 (Fla. 4th Dist. Ct. App. 1994).

70. 737 So. 2d 1105 (Fla. 1st Dist. Ct. App. 1998).

71. 11 U.S.C. § 362(a)(1) (1995).

72. *Taylor*, 737 So. 2d at 1105.

73. *Shop in the Grove, Ltd. v. Union Fed. Sav. & Loan Ass’n*, 425 So. 2d 1138 (Fla. 3d Dist. Ct. App. 1982).

74. *See Farley v. Henson*, 2 F.3d 273, 275 (8th Cir. 1993); *Ingersoll-Rand Fin. Corp. v. Miller Mining Co.*, 817 F.2d 1424, 1426 (9th Cir. 1987); *Commerzanstalt v. Telewide Sys., Inc.*, 790 F.2d 206, 207 (2d Cir. 1986); *Marcus, Stowell & Beye Gov’t Sec., Inc. v. Jefferson Inv. Corp.*, 797 F.2d 227, 230, n.4 (5th Cir. 1986); *Cathey v. Johns-Manville Sales Corp.*, 711 F.2d 60, 62 (6th Cir. 1983); *Association of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 449 (3d Cir. 1982).

VIII. RECORD ON APPEAL

The Second District, in *Licea v. Blancher*,⁷⁵ found notes made by jurors in the record on appeal.⁷⁶ The court found that the trial court had erred when it preserved the notes and that the notes should have been destroyed as soon as the jury was discharged.⁷⁷ In affirming the judgment, the court sealed the envelope containing the notes and remanded with instructions to correct the record by unsealing the envelope and destroying the notes.⁷⁸

IX. TRANSCRIPTS

In *Palomares v. Palomares*,⁷⁹ the appellant filed a "Motion To Require Court Reporters To Charge A Reasonable Rate For Transcription."⁸⁰ The court noted that the court reporter charged \$5.95 per page for appellate transcripts, a fee that included an original and two copies, but only \$3.50 per page for non-appellate transcripts.⁸¹ Noting that *Florida Rule of Appellate Procedure* 9.200(b)(2) allows parties to acquire an original transcript and make additional copies at their own expense, the court concluded that the court reporter should make available an original copy only and that it should do so at a cost not to exceed its charge for a nonappellate transcript.⁸² The court stated that the purpose of the appellate rule would be defeated if court reporters were permitted to require designating parties to pay for copies as well as the original.⁸³ "Although we recognize that we do not have the authority to fix and determine the reasonableness of a fee," the court continued, "we can as a matter of law require the court reporter to follow the rules adopted by the Supreme Court of Florida."⁸⁴

The Second District, in *Mathis v. State*,⁸⁵ reversed the denial of a petition for writ of mandamus which sought an order compelling the court reporter to inform the petitioner of the cost for transcripts of certain trial proceedings.⁸⁶

75. 724 So. 2d 662 (Fla. 2d Dist. Ct. App. 1999).

76. *Id.* at 663.

77. *Id.*

78. *Id.*

79. 730 So. 2d 705 (Fla. 3d Dist. Ct. App. 1999).

80. *Id.* at 706.

81. *Id.* at 706-07.

82. *Id.* at 707.

83. *Id.* at 708.

84. *Palomares*, 730 So. 2d at 708.

85. 722 So. 2d 235 (Fla. 2d Dist. Ct. App. 1998).

86. *Id.* at 236.

Further, in *Manuel v. State*,⁸⁷ the First District reversed a judgment and remanded a case for a new trial when the trial transcript was not produced in accordance with the procedure mandated by the rules of judicial administration and an order of the chief judge of the trial court.⁸⁸ In that case, no court reporter was present during trial.⁸⁹ Instead, the proceedings were tape recorded and transcribed by a deputy clerk.⁹⁰ The court pointed out a number of problems with the quality of the transcript, but emphasized that its conclusion was not based on these concerns.⁹¹ Rather, the court found that the principal problem was the fact “that the transcript was not produced by a licensed court reporter, and, therefore,” was “not the official record” of [the] proceedings.⁹² Thus, the court pointed out that it would have reached the same conclusion “[e]ven if the transcript were otherwise letter perfect.”⁹³

X. MOTIONS

After setting forth a series of motions filed by the parties, and denying all but one of them, the Fourth District, in *Slizyk v. Smilack*,⁹⁴ warned the parties “that motions are not to be used to present arguments which should be addressed in the briefs . . . nor to delay the progress of the appeal.”⁹⁵

XI. AMICUS CURIAE

The Third District endorsed and adopted the principles stated in Chief Judge Posner’s opinion in *Ryan v. CFTC*⁹⁶ in denying a motion to appear and file a brief as an amicus curiae.⁹⁷ In *Ryan*, Chief Judge Posner indicated that “[a]fter 16 years of reading amicus curiae briefs the vast majority of which [had] not assisted the judges,” he had decided “that it would be good to scrutinize these motions [for leave to file amicus curiae briefs] in a more careful, indeed a ‘fish-eyed,’ fashion.”⁹⁸ The opinion notes that most amicus

87. 737 So. 2d 580 (Fla. 1st Dist. Ct. App. 1999).

88. *Id.* at 583.

89. *Id.* at 581.

90. *Id.*

91. *Id.* at 582.

92. *Manuel*, 737 So. 2d at 582.

93. *Id.* at 582–83.

94. 734 So. 2d 1166 (Fla. 4th Dist. Ct. App. 1999).

95. *Id.* at 1167.

96. 125 F.3d 1062 (7th Cir. 1997).

97. *Rathkamp v. Department of Community Affairs*, 730 So. 2d 866 (Fla. 3d Dist. Ct. App. 1999).

98. *Ryan*, 125 F.3d at 1063.

curiae briefs are filed by allies of the parties and duplicate the arguments made in the parties' briefs, "in effect merely extending the length of the litigant's brief."⁹⁹ It went on to state that an amicus brief should normally be allowed when a party is not represented or is not represented competently, when the amicus has an interest in some other case that may be affected by the case under review, and when the amicus has unique information or a unique perspective that can help the court beyond the help that the parties are able to provide.¹⁰⁰ "Otherwise," Chief Judge Posner concluded, "leave to file an amicus curiae brief should be denied."¹⁰¹ Noting that "[t]he bane of lawyers is prolixity and duplication,"¹⁰² Chief Judge Posner summarized by stating that "we judges should be assiduous to bar the gates to amicus curiae briefs that fail to present convincing reasons why the parties' briefs do not give us all the help we need for deciding the appeal."¹⁰³

XII. DISQUALIFICATION OF CIRCUIT JUDGES IN THEIR APPELLATE CAPACITIES

The First District found that a circuit judge considering a petition for a writ of certiorari erred in denying a motion for disqualification in *Smith v. Santa Rosa Island Authority*.¹⁰⁴ The court found that the procedures for seeking disqualification that are set forth in *Florida Rule of Judicial Administration* 2.160 were applicable.¹⁰⁵ The court rejected the argument that the rule applies only to judges sitting in their capacities as trial judges,¹⁰⁶ pointing to the fact that rule 2.160(a), although titled "Disqualification of Trial Judges," provides that the rule applies to "county and circuit judges in all matters in all divisions of court."¹⁰⁷

XIII. SANCTIONS

After the Third District issued a per curiam affirmance without opinion, counsel for the appellant in *Banderas v. Advance Petroleum, Inc.*,¹⁰⁸ filed a motion for rehearing that the court considered to be "solely . . . a tool to

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 1064.

103. *Ryan*, 125 F.3d at 1064.

104. 729 So. 2d 944 (Fla. 1st Dist. Ct. App. 1998).

105. *Id.* at 946.

106. *Id.*

107. *Id.* (emphasis in original).

108. 716 So. 2d 876 (Fla. 3d Dist. Ct. App. 1998).

express his personal displeasure with this Court's conclusion,"¹⁰⁹ and thus "a flagrant violation of [Florida] Rule [of Appellate Procedure] 9.330(a)."¹¹⁰ The motion included the following language:

4. For this Court to simply ignore all the legal precedents is atrocious. Whatever hapened to Justice and Fairness? We come before this Court for rulings which are based on the well-established law. We do not come to hear Nothing, which is precisely what a Per Curiam Affirmed opinion tell us. NOTHING! What a "cop-out." But I suppose, when you don't have a good reason for doing something, then you do nothing and don't even have to explain it.

6. From the Opinion rendered in this case, it would appear to be an exercise in futility to even try and get a fair hearing before this tribunal, and I suppose the reality is that people have to suffer, as a result. However, if there is one courageous Jurist out there who would take a moment to look again at this case, perhaps my faith in the system would be restored, even though I realize that my faith 'is not the issue.'¹¹¹

Because of what the court termed "counsel for the appellant's flagrant abuse of the Rules of Appellate Procedure" and because the court found the motion "to be both frivolous and insulting," the court ordered the appellant's counsel to show cause why sanctions should not be imposed upon him¹¹² The Clerk was directed to provide a copy of the court's opinion to The Florida Bar.¹¹³

The attorney filed a response to the court's order and a second opinion, ordering the attorney to pay \$2500 as a sanction was filed.¹¹⁴ The court found that the response attempted "to explain and justify the language used" in the motion and that in some respects, the response made the attorney's "conduct appear to be even more egregious."¹¹⁵ As examples, the court quoted portions of the response which stated, "[m]y intent in writing the

109. *Id.* at 876.

110. *Id.*

111. *Id.* at 877 (emphasis in original).

112. *Banderas*, 716 So. 2d at 877.

113. *Id.* at 877-78.

114. *Banderas v. Advance Petroleum, Inc.*, 718 So. 2d 376, 377 (Fla. 3d Dist. Ct. App. 1998).

115. *Id.*

[m]otion was based on my belief that my comments and criticism did not exceed the boundaries of truth,” and, “I do not believe that what I wrote could be construed as being false.”¹¹⁶

In *Rampart Life Associates, Inc. v. Turkish*,¹¹⁷ counsel for the appellees moved to supplement the record with a deposition taken after the entry of the order being appealed.¹¹⁸ After this motion was denied, counsel filed a brief that made reference, in a footnote, to the contents of the deposition and pointed out that the motion to supplement the record had been denied by the court.¹¹⁹ The Fourth District indicated that “[i]t would have been bad enough if counsel . . . had included the information in appellees’ brief without moving to supplement the record,”¹²⁰ but that “[t]o make matters worse,”¹²¹ counsel did so after the motion was denied.¹²² The court stated:

In doing so . . . [counsel] violated two ethical rules: (1) Rule 4-3(5)(a) of the Florida Bar Rules of Professional Conduct which provides that a lawyer “shall not seek to influence a judge . . . except as permitted by law or the rules of court;” and (2) Rule 4-3.4(c) which provides that counsel shall not “knowingly disobey an obligation under the rules of a tribunal.”¹²³

Accordingly, the court struck the footnote and sanctioned the appellees’ attorney by assessing \$500 in attorney’s fees to paid to opposing counsel.¹²⁴

XIV. EXTRAORDINARY WRITS

A. *Certiorari*

The supreme court clarified the scope of certiorari review with regard to pretrial discovery matters in *Allstate Insurance Co. v. Boecher*.¹²⁵ The court began its discussion by pointing out that in *Martin-Johnson, Inc. v. Savage*,¹²⁶ it described certiorari relief as an “‘extraordinary remedy’ that ‘should not be used to circumvent the interlocutory appeal rule which

116. *Id.* (quoting appellant’s response motion).

117. 730 So. 2d 384 (Fla. 4th Dist. Ct. App. 1999).

118. *Id.* at 385.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Rampart*, 730 So. 2d at 385.

123. *Id.*

124. *Id.*

125. 733 So. 2d 993 (Fla. 1999).

126. 509 So. 2d 1097 (Fla. 1987).

authorizes appeal from only a few types of nonfinal orders.”¹²⁷ In the same opinion, the court indicated that not every erroneous discovery order creates certiorari jurisdiction and focused on the existence of “irreparable harm” as the governing standard.¹²⁸

The court then discussed its opinion in *Allstate Insurance Co. v. Langston*,¹²⁹ which cited to *Martin-Johnson* with approval and disapproved contrary appellate court decisions to the extent that “they could be interpreted as ‘automatically equating irrelevant discovery requests with irreparable harm.’”¹³⁰ In *Langston*, however, the court quashed the district court decision under review “to the extent that it permit[ted] discovery even when it has been affirmatively established that such discovery is neither relevant nor will lead to the discovery of relevant information.”¹³¹

The court went on to note that this language in *Langston* apparently “caused at least one appellate court to experience ‘an increase in the number of petitions for certiorari seeking review of discovery orders.’”¹³² Noting that Judge Klein concluded in *Eberhardt* that the decision in *Langston* did not expand certiorari review in the discovery context, the court expressed its agreement with Judge Klein’s analysis and reiterated that *Martin-Johnson* properly sets forth the parameters for certiorari relief in pretrial discovery.¹³³

Citing *Boecher*, the Fourth District, in *Wal-Mart Stores, Inc. v. Cumming*,¹³⁴ stated “that certiorari does not lie to review the relevance of discovery, since the disclosure of information that is merely irrelevant is not likely to cause irreparable harm within the meaning of *Martin-Johnson*.”¹³⁵ The court noted the petitioner’s reliance on its prior decision in *Nissan Motors Corp. v. Espinosa*,¹³⁶ which reversed an order requiring disclosure of irrelevant discovery information without discussion of whether the order posed a threat of irreparable harm.¹³⁷ To the extent that *Nissan Motors* can be read as dispensing with the irreparable harm factor, the court indicated

127. *Boecher*, 733 So. 2d at 999 (quoting *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1098 (Fla. 1987)).

128. *Id.*

129. 655 So. 2d 91 (Fla. 1995).

130. *Boecher*, 733 So. 2d at 999 (quoting *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 95 (Fla. 1995)).

131. *Id.* (quoting *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 95 (Fla. 1995)).

132. *Id.* (quoting *Eberhardt v. Eberhardt*, 666 So. 2d 1024, 1024 (Fla. 4th Dist. Ct. App. 1996)).

133. *Id.* at 999–1000.

134. 736 So. 2d 1248 (Fla. 4th Dist. Ct. App. 1999).

135. *Id.* at 1248.

136. 716 So. 2d 279 (Fla. 4th Dist. Ct. App. 1998).

137. *Wal-Mart Stores*, 736 So. 2d at 1248 (citing *Nissan Motors Corp. v. Espinosa*, 716 So. 2d 279 (Fla. 4th Dist. Ct. App. 1998)).

that it conflicts with *Boecher* and cannot be relied upon as an expansion of the court's certiorari jurisdiction.¹³⁸

Clarifying its earlier denial without opinion of a petition for writ of certiorari in *Casey-Goldsmith v. Goldsmith*,¹³⁹ the Fifth District aligned itself with rulings of other district courts, which have held that such a denial is not a ruling on the merits and does not establish law of the case.¹⁴⁰ "Of course," the court continued, "if the court of appeal chooses to do so it can issue a denial on the merits, which would establish law of the case."¹⁴¹

A number of cases dealt with the question of whether particular orders were reviewable by certiorari. The First and Fifth Districts each considered whether certiorari is appropriate to review comprehensive plan amendments directly related to proposed small-scale development activities. This issue was specifically left open by the supreme court when it ruled in *Martin County v. Yusem*¹⁴² that amendments to comprehensive land use plans are legislative, rather than quasi-judicial decisions, and therefore can only be challenged through original proceedings, as opposed to review proceedings such as certiorari, in the circuit courts.¹⁴³ Both of the district courts concluded that the same rationale applied to small-scale amendments.

In *City of Jacksonville Beach v. Coastal Development of North Florida, Inc.*,¹⁴⁴ the First District based its determination on its conclusion "that all comprehensive plan amendment requests necessarily involve the formulation of policy, rather than its mere application" and that whatever the size of "proposed development, a comprehensive plan amendment request will require that the governmental entity determine whether it is socially desirable to reformulate the policies previously formulated for the orderly future growth of the community."¹⁴⁵

The Fifth District, in *Fleeman v. City of St. Augustine Beach*,¹⁴⁶ discussed some of the practical reasons for its conclusion.

We cannot discern any good reason for the courts to treat small-parcel amendments differently than any other amendments or adoption of comprehensive land use plans. To do so would invite

138. *Wal-Mart Stores*, 736 So. 2d at 1248.

139. 735 So. 2d 610 (Fla. 5th Dist. Ct. App. 1999).^o

140. *Id.* at 610 (citing *Degrass v. Wertheim*, 566 So. 2d 515, 515 (Fla. 3d Dist. Ct. App. 1990); *Johnson v. Florida Farm Bureau Cas. Ins. Co.*, 542 So. 2d 367, 369 (Fla. 4th Dist. Ct. App. 1988); *Bevan v. Wanicka*, 505 So. 2d 1116, 1117 (Fla. 2d Dist. Ct. App. 1987)).

141. *Id.*

142. 690 So. 2d 1288 (Fla. 1997).

143. *Id.* at 1295.

144. 730 So. 2d 792 (Fla. 1st Dist. Ct. App. 1999).

145. *Id.* at 794.

146. 728 So. 2d 1178 (Fla. 5th Dist. Ct. App. 1998).

more uncertainty in this still unsettled area of law. How small must the parcel be? How many other people must be affected?¹⁴⁷

Both courts certified to the supreme court that the question at issue is one of great public importance,¹⁴⁸ although the Fifth District did not formulate a specific question.¹⁴⁹ That court did, however, also certify that its decision conflicted with that of the Third District in *Debes v. City of Key West*.¹⁵⁰

The supreme court in *Jaye v. Royal Saxon, Inc.*,¹⁵¹ found that certiorari is inappropriate to review trial court orders striking parties' demands for jury trials because such orders do not cause irreparable injury that cannot be remedied on direct appeal.¹⁵² The court's opinion resolved conflict among the district courts by upholding the Fourth District decision that was under review¹⁵³ and disapproving decisions of the First,¹⁵⁴ Second,¹⁵⁵ and Third¹⁵⁶ Districts on the same issue to the extent that they are inconsistent with the supreme court's opinion.¹⁵⁷

In *Schneider v. Schneider*,¹⁵⁸ the Fourth District relied on *Jaye* in concluding that certiorari could not be used to review an order requiring a trustee to retain counsel.¹⁵⁹ The court stated that "if the importance of the right to trial by jury could not displace the requirement of injury that cannot be corrected on appeal," as concluded in *Jaye*, "then neither can the right of self-representation."¹⁶⁰ The court found to be misplaced the petitioner's reliance on federal cases allowing review of comparable orders under the collateral order doctrine because "Florida has not adopted the doctrine, and certainly under *Jaye* it could not be used as a basis to avoid the requirement of irreparable injury uncorrectable on final appeal."¹⁶¹

147. *Id.* at 1180.

148. *City of Jacksonville Beach*, 730 So. 2d at 792; *Fleeman*, 728 So. 2d at 1178.

149. *Fleeman*, 728 So. 2d at 1178.

150. *Id.* (citing *Debes v. City of Key West*, 690 So. 2d 700 (Fla. 3d Dist. Ct. App. 1997)).

151. 720 So. 2d 214 (Fla. 1998).

152. *Id.* at 215.

153. *Jaye v. Royal Saxon, Inc.*, 698 So. 2d 940 (Fla. 4th Dist. Ct. App. 1997), *decision approved* by 720 So. 2d 214 (Fla. 1998).

154. *Quality Coffee Serv., Inc. v. Tallahassee Coca-Cola Bottling Co.*, 474 So. 2d 427 (Fla. 1st Dist. Ct. App. 1985).

155. *Johnson Eng'g, Inc. v. Pate*, 563 So. 2d 1122 (Fla. 2d Dist. Ct. App. 1990).

156. *Spring v. Ronel Ref., Inc.*, 421 So. 2d 46 (Fla. 3d Dist. Ct. App. 1982).

157. *Jaye*, 720 So. 2d at 216.

158. 732 So. 2d 1147 (Fla. 4th Dist. Ct. App. 1999).

159. *Id.* at 1148 (citing *Jaye v. Royal Saxon, Inc.*, 720 So. 2d 214 (Fla. 1998)).

160. *Id.* (citing *Jaye v. Royal Saxon, Inc.*, 720 So. 2d 214 (Fla. 1998)).

161. *Id.* at 1149 (citing *Jaye v. Royal Saxon, Inc.*, 720 So. 2d 214 (Fla. 1998)).

The petitioner in *Martin v. Doe*¹⁶² sought certiorari review of an order entered by a circuit court sitting in its appellate capacity.¹⁶³ The district court noted that whether it had certiorari jurisdiction under such circumstances was “questionable.”¹⁶⁴ However, it did not determine the issue in light of its conclusion that the petitioner had not shown irreparable injury.¹⁶⁵

Other cases included the following: *Sheley v. Florida Parole Commission*¹⁶⁶ (certiorari rather than direct appeal appropriate method of review of circuit court’s denial of petition for writ of mandamus challenging order of the Florida Parole Commission); *Pee v. Aaron*¹⁶⁷ (certiorari granted to quash a trial court order requiring plaintiffs’ counsel to accept documents from defense counsel by fax); *Williams v. Spears*¹⁶⁸ (certiorari review of denial of parents’ motion for summary judgment warranted when the motion challenged the constitutionality of a statute authorizing courts to order grandparent visitation if the parents’ marriage has been dissolved because the continuation of the trial court proceedings would violate the parents’ right to privacy by exploring questions of parental decision-making and considering the best interests of the child); *Florida Commission on Hurricane Loss Projection Methodology v. State*¹⁶⁹ (court lacked jurisdiction to entertain a petition for certiorari when the order at issue was fully favorable to the party seeking review and the party only claimed departure from the essential requirements of law was a conclusion in the nature of dicta); *City of Tallahassee v. Kovach*¹⁷⁰ (challenges to a municipality’s annexation of property must be conducted by certiorari pursuant to section 171.081 of the *Florida Statutes*); and *Panagakos v. Laufer*¹⁷¹ (court lacked jurisdiction to review, by certiorari, an order denying a motion to dismiss, based on a claim that allegedly defamatory statements were privileged from suit because they were made during the course of judicial proceedings and court declined to address whether certiorari jurisdiction would lie to review a claim of judicial proceedings privilege denied after summary judgment).

162. 731 So. 2d 806 (Fla. 4th Dist. Ct. App. 1999).

163. *Id.* at 806.

164. *Id.*

165. *Id.* at 807.

166. 720 So. 2d 216 (Fla. 1998).

167. 719 So. 2d 372 (Fla. 4th Dist. Ct. App. 1998).

168. 719 So. 2d 1236 (Fla. 1st Dist. Ct. App. 1998).

169. 716 So. 2d 345 (Fla. 1st Dist. Ct. App. 1998).

170. 733 So. 2d 576 (Fla. 1st Dist. Ct. App. 1999).

171. 24 Fla. L. Weekly D801 (2d Dist. Ct. App. Mar. 26, 1999).

B. *Mandamus*

Cases involving requests for mandamus included the following: *Soto v. Board of County Commissioners*¹⁷² (mandamus appropriate to compel Board of County Commissioners to process a grievance filed by a county employee in situation in which the county had provided that employee disputes would be resolved through a grievance process); *Pisarri v. State*¹⁷³ (mandamus not available to require Florida Department of Law Enforcement to remove an individual's name from its list of sexual predators when the individual was included on the list pursuant to a written finding by a court and an appeal from the court's order would have been the appropriate manner to allege that the individual was erroneously found to be a sexual predator); and *Donahue v. Vaughn*¹⁷⁴ (mandamus denied for various reasons when petitioner sought to have the court order his former attorney to furnish him, free of charge, copies of documents in his case; reasons included the fact that mandamus in these circumstances only applies to government officials, not private lawyers).

C. *Prohibition*

In *Anderson v. Glass*,¹⁷⁵ the Fifth District granted a writ of prohibition solely because the trial court delayed too long before ruling on a motion for disqualification.¹⁷⁶ Without discussing the merit or lack of merit of the motion, the district court relied on the fact that the trial court took the matter under advisement for more than thirty days before entering an order denying the motion and the fact that *Florida Rule of Judicial Administration 2.160(f)* requires a trial judge to "immediately"¹⁷⁷ enter either an order granting disqualification or denying the motion.

In *Smith v. State*,¹⁷⁸ a criminal defendant's petition for a writ of prohibition on speedy trial grounds was summarily denied.¹⁷⁹ After he was convicted, he appealed and raised the same issue that had formed the basis for the petition.¹⁸⁰ The Fifth District noted that other district courts disagree as to whether a summary denial of a writ of prohibition constitutes an absolute

172. 716 So. 2d 863 (Fla. 5th Dist. Ct. App. 1998).

173. 724 So. 2d 635 (Fla. 5th Dist. Ct. App. 1998).

174. 721 So. 2d 356 (Fla. 5th Dist. Ct. App. 1998).

175. 727 So. 2d 1147 (Fla. 5th Dist. Ct. App. 1999).

176. *Id.* at 1147.

177. *Id.*

178. 738 So. 2d 410 (Fla. 5th Dist. Ct. App. 1999).

179. *Id.* at 411.

180. *Id.*

bar against raising the same issue on direct appeal.¹⁸¹ In this regard, it pointed out that the Third¹⁸² and Fourth¹⁸³ Districts have held that denials of petitions will be, unless otherwise indicated, rulings on the merits,¹⁸⁴ and that the Second District¹⁸⁵ has held that a summary denial of a petition does not preclude the raising of the same issue in a subsequent appeal unless it can be affirmatively established that the denial was on the merits or that a merits determination was the only possible basis for denial.¹⁸⁶ The Fifth District stated that although it had not previously articulated its policy, it had followed procedures similar to those practiced by the Second District.¹⁸⁷ Notwithstanding what it termed “the persuasive reasoning set forth by” the Third and Fourth Districts, the court “decline[d] to depart from [its] established practice.”¹⁸⁸

The Second District found, in *Panagakos v. Laufer*,¹⁸⁹ that prohibition was not available to review a trial court’s denial of a defendant’s motion to dismiss based on a claim that the complaint was barred by the statute of limitations.¹⁹⁰ The court recognized that in *Swartzman v. Harlan*,¹⁹¹ it issued a writ of prohibition because an action was barred by the statute of limitations.¹⁹² To the extent that the decision in *Swartzman*, which did not specifically address the appropriateness of prohibition, suggested that prohibition is the proper remedy, the court indicated that it believed that the supreme court’s decision in *Mandico v. Taos Construction, Inc.*,¹⁹³ which held that prohibition may not be used to raise the affirmative defense of workers’ compensation immunity, required a contrary conclusion.¹⁹⁴

181. *Id.* at 411–12.

182. *Obanion v. State*, 496 So. 2d 977, 980 (Fla. 3d Dist. Ct. App. 1986).

183. *Hobbs v. State*, 689 So. 2d 1249, 1251 (Fla. 4th Dist. Ct. App. 1997) (en banc).

184. *Smith*, 738 So. 2d at 411.

185. *Sumner v. Sumner*, 707 So. 2d 934, 935 (Fla. 2d Dist. Ct. App. 1998).

186. *Smith*, 738 So. 2d at 411–12.

187. *Id.* at 412.

188. *Id.*

189. 24 Fla. L. Weekly D801 (2d Dist. Ct. App. Mar. 26, 1999).

190. *Id.* at D801.

191. 535 So. 2d 605 (Fla. 2d Dist. Ct. App. 1988).

192. *Panagakos*, 24 Fla. L. Weekly at D801 (citing *Swartzman v. Harlan*, 535 So. 2d 605 (Fla. 2d Dist. Ct. App. 1988)).

193. 605 So. 2d 850 (Fla. 1992).

194. *Panagakos*, 24 Fla. L. Weekly at D801.

D. *Habeas Corpus*

In *Harvard v. Singletary*,¹⁹⁵ the supreme court declined to exercise its jurisdiction to consider an emergency petition for writ of habeas corpus, instead transferring the matter to the circuit court where the petitioner was incarcerated.¹⁹⁶ In doing so, the court took the opportunity to explain that it will take similar actions with regard to future writ petitions which “raise substantial issues of fact or present individualized issues that do not require immediate resolution by *this* Court, or are not the type of case in which an opinion from this Court would provide important guiding principles for the other courts of this State.”¹⁹⁷

The court also indicated that it would continue its practice of denying petitions when it is able to determine from the face of the petition that the claim is successive or procedurally barred.¹⁹⁸ Discussing its policy, the court noted that review of petitions that fall in the above categories “requires the expenditure of substantial time that would otherwise be devoted to the performance of our unique duties as the State’s highest court.”¹⁹⁹ The court then concluded that “[c]ommon sense dictates that we reserve our exercise of original writ jurisdiction for cases which require this Court’s specific or immediate attention.”²⁰⁰

In *Basse v. State*,²⁰¹ the supreme court considered a challenge to an order of the Second District that struck a 117 page petition for writ of habeas corpus and ordered that an amended petition of no more than fifty pages be filed.²⁰² In support of its order, the district court had cited *Florida Rule of Appellate Procedure* 9.210(a)(5), which limits appellate briefs to fifty pages.²⁰³ The supreme court agreed with the petitioner that the rule does not apply to writ petitions, but found that the district court had the inherent authority to place reasonable page limitations on filings so long as the rules do not provide otherwise.²⁰⁴ The court also found that the fifty page limit of the rule provided a reasonable benchmark for the district court to use in exercising its authority, but cautioned that petitioners must be afforded the opportunity to show good cause for filing longer petitions and that when such cause is shown, the court must allow petitioners to exceed the limit to

195. 733 So. 2d 1020 (Fla. 1999).

196. *Id.* at 1021.

197. *Id.* at 1021–22 (emphasis added).

198. *Id.* at 1022.

199. *Id.* at 1023.

200. *Harvard*, 733 So 2d at 1023.

201. 24 Fla. L. Weekly S273 (Jun. 10, 1999).

202. *Id.* at S273.

203. *Id.*

204. *Id.*

the extent necessary for adequate presentation of their claims.²⁰⁵ The court also referred to the Florida Appellate Court Rules Committee the issue of whether the rules should contain a provision governing the length of original writ petitions.²⁰⁶

Other cases dealing with requests for habeas corpus included the following: *Minott v. State*²⁰⁷ (circuit court order denying habeas corpus vacated when the petitioner was not given the opportunity to serve a reply to the respondent's response) and *S.C. v. Peterson*²⁰⁸ (habeas corpus not available to individual on home detention pursuant to section 985.03(18)(c) of the *Florida Statutes*).

E. *Coram Nobis*

The supreme court, in *Wood v. State*,²⁰⁹ determined that the time limitations for filing motions for postconviction relief under *Florida Rule of Criminal Procedure* 3.850 should also apply to petitions for writs of error coram nobis.²¹⁰ The court amended the criminal rule to include such petitions and stated that the time limitations would apply to all defendants adjudicated guilty after the date the decision was filed (May 27, 1999) and that all defendants adjudicated prior to the filing date would have two years from that date to file claims traditionally cognizable under coram nobis.²¹¹

In *Gregersen v. State*,²¹² the Fourth District found that coram nobis is available to challenge a trial court's failure to inform a criminal defendant of the deportation consequences of a plea.²¹³ The court recognized that the Third District had reached a contrary conclusion in *Peart v. State*.²¹⁴ The supreme court has accepted jurisdiction to review both *Gregersen* and *Peart*. In addition, the Third District, in adhering to its approach in *Van Tuyn v. State*,²¹⁵ certified conflict with *Gregersen*.²¹⁶

205. *Id.*

206. *Basse*, 24 Fla. L. Weekly at S273 n.1.

207. 718 So. 2d 381 (Fla. 5th Dist. Ct. App. 1998).

208. 718 So. 2d 220 (Fla. 4th Dist. Ct. App. 1998).

209. 24 Fla. L. Weekly S240 (May 27, 1999).

210. *Id.* at S241.

211. *Id.* at S241-42.

212. 714 So. 2d 1195 (Fla. 4th Dist. Ct. App. 1998), *review granted*, 728 So. 2d 205 (Fla. 1998).

213. *Id.* at 1196.

214. *Id.* (citing *Peart v. State*, 705 So. 2d 1059 (Fla. 3d Dist. Ct. App. 1998)).

215. 736 So. 2d 71 (Fla. 3d Dist. Ct. App. 1999).

216. *Id.* at 71.

XV. APPEALS IN CRIMINAL CASES

A. *Orders Reviewable*

In *State v. Schultz*,²¹⁷ the supreme court concluded that a defendant found guilty may appeal from an order withholding adjudication without placing the defendant on probation.²¹⁸ The court resolved a conflict between the districts by approving the Fourth District decision under review²¹⁹ and disapproving the Second District's decision in *Martin v. State*.²²⁰

The state moved to dismiss a defendant's appeal in *Jefferson v. State*.²²¹ The state pointed to the legislature's recent enactment of the Criminal Appeal Reform Act,²²² which states that an appeal may not be taken from a judgment or order of a trial court unless a prejudicial error is alleged and is properly preserved or, if not, would constitute fundamental error, and asserted that since the alleged sentencing errors in the case under review were neither preserved nor fundamental, the Third District lacked jurisdiction.²²³ The court denied the state's motion, concluding that the legislation did not limit its jurisdiction to hear the appeal and that the question of whether errors have been preserved and, if so, whether they have merit are issues to be decided on appeal, not on a motion to dismiss.²²⁴ The court did certify to the supreme court a question of great public importance that asked whether, in light of the legislative enactment, the failure to preserve a sentencing error that is not fundamental is a jurisdictional impediment that should result in the dismissal of an appeal.²²⁵

Also certifying questions of great public importance on this subject was the decision of the Second District in *Bain v. State*.²²⁶ Reiterating the conclusion it reached in *Denson v. State*,²²⁷ the court opined that the Criminal Appeal Reform Act does limit the jurisdiction of Florida's appellate courts to entertain appeals from final orders in criminal cases.²²⁸

217. 720 So. 2d 247 (Fla. 1998).

218. *Id.* at 247.

219. *Schultz v. State*, 700 So. 2d 56 (Fla. 4th Dist. Ct. App. 1997).

220. 600 So. 2d 20 (Fla. 2d Dist. Ct. App. 1992).

221. 724 So. 2d 105 (Fla. 3d Dist. Ct. App. 1998), *review granted*, 732 So. 2d 328 (Fla. 1999).

222. FLA. STAT. § 924.051 (1999).

223. *Jefferson*, 724 So. 2d at 105-06.

224. *Id.* at 106.

225. *Id.*

226. 730 So. 2d 296, 306 (Fla. 2d Dist. Ct. App. 1999).

227. 711 So. 2d 1225 (Fla. 2d Dist. Ct. App. 1998).

228. *Bain*, 730 So. 2d at 302.

In *State v. Gaines*,²²⁹ after the state presented its case, the defense moved for the first time to suppress certain evidence.²³⁰ The trial court granted the motion, and after the state announced that it had no other evidence with which to prove its case, entered an order dismissing the case.²³¹ The state appealed from the order of dismissal, asserting that the trial court erroneously suppressed the evidence.²³² The Fourth District granted the defendant's motion to dismiss the appeal, which contended that any error in the suppression ruling was moot because retrying the defendant would constitute a double jeopardy violation.²³³ The district court indicated that the state should have argued to the trial court to exercise its discretion not to consider the motion to suppress unless the defendant would agree to a mistrial in the event the motion was to be granted.²³⁴ In a motion for rehearing, the State pointed to section 924.07(1)(l) of the *Florida Statutes*, which provides that the state may appeal "[a]n order or ruling suppressing evidence or evidence in limine at trial"²³⁵ was pointed to by the state.²³⁶ The court denied rehearing, finding that the provision violated article V, section 4(b)(1) of the Florida Constitution, which vests exclusive power to authorize non-final appeals in the supreme court.²³⁷

Other cases dealing with the question of whether particular orders were reviewable included the following: *State v. Gray*²³⁸ (state may not appeal from orders modifying probation or community control) and *State v. Figueroa*²³⁹ (state does not have the right to appeal from a legal sentence entered over the state's objection after the trial court advised the defendant that if he pled to the crimes charged, it would withhold adjudication and place him on probation).

B. Bond Pending Appeal

The trial court in *Coolley v. State*²⁴⁰ denied bond pending appeal, relying on four factors:

229. 731 So. 2d 7 (Fla. 4th Dist. Ct. App. 1999).

230. *Id.* at 7.

231. *Id.* at 7-8.

232. *Id.* at 8.

233. *Id.*

234. *Gaines*, 731 So. 2d at 8.

235. FLA. STAT. § 924.07(1)(l) (1997).

236. *Gaines*, 731 So. 2d at 8-9.

237. *Id.* at 9.

238. 721 So. 2d 370 (Fla. 4th Dist. Ct. App. 1998).

239. 728 So. 2d 787 (Fla. 4th Dist. Ct. App. 1999).

240. 720 So. 2d 598 (Fla. 2d Dist. Ct. App. 1998).

- 1) Following a finding of guilt by a jury there “remains a high presumption of guilt.”
- 2) As a firearm was used in the offense, the defendant poses a risk to the community.
- 3) Coolley’s conviction involves a mandatory prison term.
- 4) The trial court feared that the Coolley would not appear for any future court dates if released on bail.²⁴¹

The Second District granted the defendant’s motion for release and directed the trial court to set a reasonable bond.²⁴² The court “disagree[d] that there is but a presumption of guilt after a jury returns a guilty verdict.”²⁴³ The court recognized that there is a presumption of correctness that follows the verdict, but said that “this presumption applies in every criminal case and is not, therefore, an appropriate factor upon which to base the denial of a bond in a specific case.”²⁴⁴ The court then stated that it did “not consider the use of a firearm, in and of itself, conclusive evidence that a defendant poses a risk to the community.”²⁴⁵ The court went on to indicate that if the legislature had seen fit to deny an appeal bond to any offender who used a firearm or who faced a minimum mandatory sentence, appropriate legislation to that effect would have been enacted.²⁴⁶ Finally, the court found no factual basis for the conclusion that the defendant would not appear for future court dates if released.²⁴⁷

C. Capital Cases

In *Arbelaez v. Butterworth*,²⁴⁸ a petition was filed by the Capital Collateral Regional Counsel (“CCRC”) for the Southern Region of Florida, which asked the court to “exercise its all writs jurisdiction to stay all applicable time limits, court proceedings, and executions until adequate funding was provided to CCRC, or until . . . the start of the next fiscal year.”²⁴⁹ Subsequently, the CCRCs for both the Northern and Southern Regions filed separate all writs petitions asking the court to “impose a general moratorium on the imposition of the death penalty until the CCRCs

241. *Id.* at 598.

242. *Id.* at 599.

243. *Id.*

244. *Id.*

245. *Coolley*, 720 So. 2d at 598.

246. *Id.* at 599.

247. *Id.*

248. 738 So. 2d 326 (Fla. 1999).

249. *Id.* at 326.

are adequately funded pursuant to a caseload methodology.”²⁵⁰ Finding that since the actions were filed, “the structure of the CCRC offices has been substantially modified and the funding has significantly changed and increased through two legislative sessions,”²⁵¹ the court concluded that there was “no present case in controversy,”²⁵² and denied the petitions.²⁵³

D. Appeals From Denials of Motions for Postconviction Relief

In *Gantt v. State*,²⁵⁴ the Fourth District made it clear that it is not necessary for court appointed counsel to follow the procedures set forth in *Anders v. California*,²⁵⁵ which allow attorneys to satisfy their ethical obligations when they can identify no meritorious issues to raise in direct appeals of convictions and sentences, before seeking to withdraw from appeals of orders denying postconviction relief.²⁵⁶ Pointing out that the *Anders* procedures stem from the Sixth Amendment right to counsel, the court concluded that since the appointment of an attorney to handle an appeal from an order denying a motion for postconviction relief is not a matter of right, but is based on due process considerations, the procedures need not be followed.²⁵⁷

The court also took the opportunity to remind the trial court that the Criminal Appeals Reform Act limits the court’s power of appointment of appellate attorneys in postconviction matters.²⁵⁸ Since appointment is not a matter of right, the court continued, trial courts should apply the standards of *Graham v. State*,²⁵⁹ and when, as in the case under review, “no issues are present, let alone a complex one,” counsel should not be appointed.²⁶⁰

250. *Id.*

251. *Id.*

252. *Id.*

253. *Arbelaez*, 738 So. 2d at 327.

254. 714 So. 2d 1116 (Fla. 4th Dist. Ct. App. 1998).

255. 386 U.S. 738 (1967).

256. *Gantt*, 714 So. 2d at 1116.

257. *Id.* at 1116–17.

258. *Id.* at 1117 (citing FLA. STAT. § 924.051 (1997)).

259. 372 So. 2d 1363 (Fla. 1979).

260. *Gantt*, 714 So. 2d at 1117.

E. *Belated Appeals*

In *State v. Trowell*,²⁶¹ the supreme court resolved conflict among the districts by concluding that a defendant who seeks a belated appeal after a guilty plea need not allege that there exists a potentially meritorious issue.²⁶² The court aligned itself with the approach taken by the First District in the case under review²⁶³ and by the Fourth District in *Gunn v. State*,²⁶⁴ while rejecting the conclusions to the contrary reached by the Second²⁶⁵ and Third Districts.²⁶⁶

XVI. APPEALS IN TERMINATION OF PARENTAL RIGHTS CASES

In *G.L.S. v. Department of Children & Families*,²⁶⁷ the supreme court found that an order which initially terminates parental rights in a child dependency case is a partial final judgment;²⁶⁸ a partial final judgment is reviewable either on appeal from the partial final judgment or on appeal from the final judgment in the case.²⁶⁹

The Second District, in *K.W. v. Department of Children & Families*,²⁷⁰ clarified the question of what steps appointed counsel should take when unable to identify an arguable issue in an appeal from an order terminating parental rights.²⁷¹ Aligning itself with the three district courts that had spoken on the subject,²⁷² the court rejected the necessity to follow the procedures set forth in *Anders v. California*,²⁷³ which allows attorneys

261. 739 So. 2d 77 (Fla. 1999).

262. *Id.* at 78.

263. *Trowell v. State*, 706 So. 2d 332 (Fla. 1st Dist. Ct. App. 1998) (en banc), *decision approved by* 739 So. 2d 77 (Fla. 1999).

264. 612 So. 2d 643 (Fla. 4th Dist. Ct. App. 1993).

265. *Bridges v. Dugger*, 518 So. 2d 298 (Fla. 2d Dist. Ct. App. 1987).

266. *White v. Singletary*, 711 So. 2d 640 (Fla. 3d Dist. Ct. App. 1998), *quashed in part*, 24 Fla. L. Weekly (Sept. 2, 1999) (quashing "the part of the decision below denying petitioner's request for belated appeal").

267. 724 So. 2d 1181 (Fla. 1998).

268. *Id.* at 1185-86.

269. *Id.*

270. 24 Fla. L. Weekly D87 (2d Dist. Ct. App. Dec. 23, 1998).

271. *Id.* at D87.

272. *See* *J.A. v. Department of Health & Rehab. Servs.*, 693 So. 2d 723 (Fla. 5th Dist. Ct. App. 1997); *Jimenez v. Department of Health & Rehab. Servs.*, 669 So. 2d 340 (Fla. 3d Dist. Ct. App. 1996); *Ostrum v. Department of Health & Rehab. Servs.*, 663 So. 2d 1359 (Fla. 4th Dist. Ct. App. 1995).

273. 386 U.S. 738 (1967).

handling criminal appeals to satisfy their ethical obligations under similar circumstances.²⁷⁴

Instead, the court concluded that attorneys who cannot identify an arguable issue shall file motions to withdraw, reciting the necessity to do so.²⁷⁵ The motion must include:

- (1) the last known address of the parent; (2) a statement that, if requested, counsel will assist the parent in obtaining the record; (3) a request that the parent be given forty days to file a pro se brief; and (4) a certificate of service upon all relevant parties, including the parent.²⁷⁶

The court indicated that upon receipt of a sufficient motion to withdraw, it would enter and forward to the parent's last known address an order allowing the parent to file a pro se brief within forty days.²⁷⁷ If no brief is received, the motion to withdraw will be granted and the appeal dismissed.²⁷⁸ If a brief is received, it will be examined to determine whether it raises a preliminary basis for reversal.²⁷⁹ If so, the motion to withdraw will be denied and counsel ordered to file a supplemental brief.²⁸⁰ If not, the appeal will be subject to summary affirmance.²⁸¹

XVII. APPEALS IN JUVENILE CASES

The supreme court, in *A.G. v. Department of Children & Family Services*,²⁸² held that an order declaring a child dependent may be challenged on appeal from a subsequent final disposition order.²⁸³ The court found such orders to be analogous to initial orders terminating parental rights that were found in *G.L.S. v. Department of Children & Families*,²⁸⁴ discussed in the preceding section of this article, and reviewable as a partial final judgment or on appeal from a subsequent final judgment.²⁸⁵

274. *K.W.*, 24 Fla. L. Weekly at D87 (citing *Anders v. California*, 386 U.S. 738 (1967)).

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

279. *K.W.*, 24 Fla. L. Weekly at D87.

280. *Id.*

281. *Id.*

282. 731 So. 2d 1260 (Fla. 1999).

283. *Id.* at 1261-63.

284. 724 So. 2d 1181 (Fla. 1998).

285. *Id.* at 1261.

In *Department of Juvenile Justice v. E.R.*,²⁸⁶ the Third District found that the Department of Juvenile Justice has standing to appeal orders modifying the commitment of juveniles.²⁸⁷ The same court concluded in *Department of Children & Families v. Morrison*,²⁸⁸ that the Department of Children and Families had standing to challenge a circuit court order directing the department to place a juvenile, who had been found incompetent to stand trial, in a secure facility, in which there was no integration of adult patients with juveniles.²⁸⁹

XVIII. ATTORNEY'S FEES

In *Bell v. U.S.B. Acquisition Co.*,²⁹⁰ the supreme court found that *Florida Rule of Appellate Procedure* 9.020(h), which provides that "if a party . . . is required or permitted to do an act within some prescribed time after service of a document, and the document is served by mail, 5 days shall be added to the prescribed period," does not extend the time for seeking review pursuant to rule 9.400(c) of a trial court's order on appellate attorney's fees.²⁹¹ The court pointed out that rule 9.400(c) allows for review within thirty days of *rendition* of the order to be reviewed and that the five-day mailing rule applies only when an act is to be done within a specified number of days from *service* of a document.²⁹²

XIX. COSTS

The appellant in *Mulato v. Mulato*²⁹³ appealed from a circuit court order denying a motion for appellate costs.²⁹⁴ The motion was untimely under *Florida Rule of Appellate Procedure* 9.400(a), which requires that such motions be filed within thirty days of the issuance of mandate.²⁹⁵ The Fourth District affirmed the denial of the motion, finding that the time requirement of the rule is jurisdictional and that compliance with it cannot be waived.²⁹⁶

286. 724 So. 2d 129 (Fla. 3d Dist. Ct. App. 1998).

287. *Id.* at 130.

288. 727 So. 2d 404 (Fla. 3d Dist. Ct. App. 1999).

289. *Id.* at 405.

290. 734 So. 2d 403 (Fla. 1999).

291. *Id.* at 412-13.

292. *Id.* at 412 (citing FLA. R. APP. P. 9.400(c)).

293. 734 So. 2d 477 (Fla. 4th Dist. Ct. App. 1999).

294. *Id.* at 478.

295. *Id.*

296. *Id.*

XX. REHEARING

The Fourth District granted a motion for rehearing in *Teca, Inc. v. WM-TAB, Inc.*,²⁹⁷ withdrawing a per curiam affirmance and substituting an en banc opinion reversing the judgment under review.²⁹⁸ In a specially concurring opinion, Judge Klein noted that the motion for rehearing was less than two pages and was limited to one issue.²⁹⁹ Judge Klein then stated:

I believe there are two things which can be learned from this experience. First, although Florida Rule of Appellate Procedure 9.330 does not limit the length of motions for rehearing, long motions for rehearing are not nearly as effective as short ones. They should almost never exceed three or four pages. Second, although we see far too many motions for rehearing, they can be appropriate, even in cases which are initially affirmed without opinion.³⁰⁰

In *DeBiasi v. Snaith*,³⁰¹ the Fourth District considered an appeal in a legal malpractice case from an order granting summary judgment for the defendant lawyer on the basis that alleged negligence was excused under the doctrine of judgmental immunity.³⁰² The attorney had filed a timely motion for certification, rehearing, and rehearing en banc of an appellate decision.³⁰³ Within fifteen days of the denial of the motion, but more than fifteen days after the opinion had been issued, the attorney filed a motion for certification of conflict with decisions of other district courts and of a question of great public importance.³⁰⁴ The motion for certification was denied as untimely despite the attorney's argument that *Florida Rule of Appellate Procedure* 9.330 permits motions for certification to be filed within fifteen days of orders denying rehearing.³⁰⁵ The lawyer's client then brought the malpractice suit, alleging that the untimely filing of the motion for certification deprived the client of the opportunity to have the appellate decision overturned.³⁰⁶

297. 726 So. 2d 828 (Fla. 4th Dist. Ct. App. 1999) (en banc).

298. *Id.* at 829.

299. *Id.* at 831 (Klein, J., concurring specially).

300. *Id.* (citations omitted).

301. 732 So. 2d 14 (Fla. 4th Dist. Ct. App. 1999).

302. *Id.* at 15.

303. *Id.*

304. *Id.*

305. *Id.*

306. *DeBiasi*, 732 So. 2d at 15.

The district court recognized that a literal reading of the rule presented “a degree of ambiguity,” but held that the filing of a motion for rehearing or clarification does not toll the time for the filing of a motion for certification.³⁰⁷ The court also stated that “mere ‘ambiguity of a rule’ of procedure, without more, does not equate to the somewhat more amorphous realm of ‘fairly debatable’ or ‘unsettled area of the law’ to which the doctrine of judgmental immunity is applied.”³⁰⁸ Accordingly, the court reversed the order granting summary judgment.³⁰⁹

The Third District, in *Perez v. State*,³¹⁰ granted the state’s motion for rehearing which asserted for the first time that the defendant did not preserve an issue that had formed the basis for an opinion reversing the defendant’s conviction and sentence.³¹¹ The court noted that in the past it had been reluctant to consider new arguments made on rehearing that were not raised in the main appeal,³¹² but indicated that such a general practice does not deter it from considering such an argument when recent developments in the law or the justice of the cause persuades it to do so.³¹³ The court then pointed to the enactment of the Criminal Appeal Reform Act of 1996, which mandates that an appeal may not be taken from a trial court judgment or order unless a prejudicial error is alleged and is properly preserved or, if not, would constitute fundamental error.³¹⁴ In deciding to consider the state’s argument, the court stated that it was giving “great weight to the clearly expressed intent of the Florida Legislature that review of criminal appeals must be limited to those issues which have been properly preserved in the trial court or which constitute fundamental error.”³¹⁵

In *Barnes v. State*,³¹⁶ the state filed a motion for rehearing which, among other things, called the court’s attention to an erroneous attribution in the court’s opinion.³¹⁷ The motion was signed by an assistant attorney general other than the one who had handled the case to that point and by an assistant state attorney.³¹⁸ Without reaching any decision on the merits of the motion, the court determined that it would issue a corrected opinion deleting the attribution and accordingly sent a copy of the corrected opinion

307. *Id.* at 16.

308. *Id.*

309. *Id.*

310. 717 So. 2d 605 (Fla. 3d Dist. Ct. App. 1998).

311. *Id.* at 605–06.

312. *Id.* at 606.

313. *Id.*

314. *Id.*

315. *Perez*, 717 So. 2d at 606.

316. 24 Fla. L. Weekly D1250 (4th Dist. Ct. App. May 26, 1999).

317. *Id.* at 1250.

318. *Id.*

to West Publishing (“West”).³¹⁹ Shortly afterwards, the court received a copy of a letter from the assistant state attorney to West asking that West “withhold alteration of any portion of the opinion” until the court had finally disposed of the case.³²⁰

Subsequently, a document styled as “Appellee’s Supplemental Motion for Rehearing/Rehearing En Banc,” signed only by the assistant state attorney, was filed.³²¹ The court then issued an order to the attorney general and the assistant state attorney to show cause why the supplemental motion should not be stricken as unauthorized.³²² The order called attention to section 16.01(4) of the *Florida Statutes*, which provides that the attorney general shall handle all suits in the district courts of appeal, and section 27.02 of the *Florida Statutes*, which indicates that the state attorney shall appear in the circuit and county courts on behalf of the state.³²³

The assistant attorney general who signed the motion for rehearing filed a response which indicated that the supplemental motion was filed without any prior notice to the attorney general’s office.³²⁴ The response did not adopt any part of the supplemental motion.³²⁵ The assistant state attorney also filed a response, recognizing the statutory provisions cited in the court’s order, but arguing that a state attorney has a common law right unaffected by those statutes to represent the state in criminal appeals.³²⁶

The defendant filed a reply to the assistant state attorney’s response, bringing to the court’s attention that there had never been a motion to substitute counsel for the initial assistant attorney general on the case and the fact that the state attorney’s office, “apparently unhappy with the performance of the Attorney General’s office,” did not become involved with the case until after the issuance of the court’s opinion.³²⁷ The defendant also contended that the state attorney’s office had a “recent practice” of intervening in cases when a decision of the court was “adverse to that office,” and asked that the court strike the supplemental motion.³²⁸

The court indicated that none of the cases cited by the assistant state attorney had decided that a state attorney has a common law right to represent the state in a higher court.³²⁹ Rather, the court said, they merely

319. *Id.*

320. *Id.*

321. *Barnes*, 24 Fla. L. Weekly at D1250.

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.*

326. *Barnes*, 24 Fla. L. Weekly at D1250.

327. *Id.*

328. *Id.*

329. *Id.*

showed that a state attorney represented one of the parties.³³⁰ “We can understand why the Attorney General might prefer to appoint the State Attorney . . . to represent the state” on appeal in particular cases, the court noted.³³¹ The mere fact that the attorney general may have done so in certain situations, the court continued, “does not create any common law right in an assistant state attorney to represent the state in an appellate court without the express authorization of the Attorney General.”³³²

Turning to the facts of the case, the court concluded that the attorney general apparently did approve of the assistant state attorney’s participation in the preparation of the initial motion for rehearing, but that the supplemental motion was not approved by the attorney general.³³³ The court therefore deemed the supplemental motion to be unauthorized and granted the defendant’s motion to strike it.³³⁴ In a footnote, the court provided some insight into the manner in which it makes appropriate non-substantive corrections, such as the one arising from the erroneous attribution in the case under review and cautioned attorneys not to take it upon themselves to become involved in the publication process.³³⁵

Although we have struck the supplemental motion for rehearing, we do wish to stress that our opinions are subject to correction by us at any time before we have decided pending motions for rehearing. We frequently correct an opinion promptly when someone calls our attention to a factual, grammatical, orthographic or other kind of error, inaccuracy or omission not necessarily affecting any substantive decision on our part. The lawyers involved need draw no dire conclusions from our so doing except that we desire to remove such errors from an opinion no matter what else we might do. And, we trust, we need not bother to explain why it is not for attorneys representing the parties in a case in our court to attempt to tamper with the publication of our decisions or to attempt to countermand our directions to West Publishing.³³⁶

330. *Id.* at D1250–51.

331. *Barnes*, 24 Fla. L. Weekly at D1251.

332. *Id.*

333. *Id.*

334. *Id.*

335. *Id.*

336. *Barnes*, 24 Fla. L. Weekly at D1252 n.4.

XXI. MANDATE

In *Raulerson v. State*,³³⁷ one panel of the Fourth District affirmed a criminal defendant's conviction without opinion.³³⁸ Several months later, a different panel, considering the same issue that had been raised by the defendant, reversed the conviction of a codefendant.³³⁹ After the defendant filed a motion to recall mandate in his case, the court withdrew the mandate in the codefendant's case in order to resolve the conflict.³⁴⁰ After an en banc conference, the court was persuaded that the opinion in the co-defendant's case was correct and that the defendant's conviction should not have been affirmed.³⁴¹

The court indicated that the defendant's motion to recall mandate would have been appropriate had the court still been in the same term of court in which his conviction was affirmed.³⁴² Since the motion was not filed until after the term of court had expired, however, the court concluded that it did not have the authority to recall the mandate.³⁴³ The court therefore treated the motion to recall mandate as a petition for habeas corpus, granted the petition, and vacated the defendant's conviction and sentence.³⁴⁴

XXII. A LOOK TO THE FUTURE

Over the upcoming year, the Florida Appellate Court Rules Committee will submit to the supreme court the committee's four-year cycle report. This report will set forth proposed amendments to the rules. The changes that the court decides to adopt will unquestionably have a significant impact on appellate practice in Florida.

Of course, the courts in the next year will provide answers to many of the questions raised by the cases discussed in this article. These answers, as they frequently do, will likely generate new questions. These questions, and others, will continue to provide the large number of court decisions that shape the field of appellate practice.

337. 724 So. 2d 641 (Fla. 4th Dist. Ct. App. 1999).

338. *Id.* at 642.

339. *Id.*

340. *Id.*

341. *Id.*

342. *Raulerson*, 724 So. 2d at 642-43.

343. *Id.* at 643.

344. *Id.*