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## Common Law Writs — From the Practical to the Extraordinary

by Jack R. Reiter

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Under Florida law, unless an order completely disposes of judicial labor on a claim or falls within the narrow, enumerated categories of appealable nonfinal orders, a litigant must wait until a case is over before obtaining the right to appeal. In some circumstances, however, certain orders subject a litigant to irreparable harm and require immediate review. Perhaps a trial court has ordered immediate disclosure of materials protected by attorney-client or trade secret privileges, or denied a motion to dismiss a premature claim for punitive damages or a motion to disqualify. In such instances, and others, a litigant may be able to obtain immediate review and issuance of a common law writ, which is ingrained in our common law tradition and has evolved with our judicial framework.

Understanding the general principles governing common law writs provides a litigant with unique tools that are both practical and extraordinary.<sup>1</sup>

### Original Proceedings Described in Rule 9.100

Florida Rule of Appellate Procedure 9.100 describes the courts' original jurisdiction to issue common law writs. The rule identifies writs of mandamus, prohibition, quo warranto, certiorari, habeas corpus, and all writs necessary to the complete exercise of the courts' jurisdiction. Each of these writs warrants individual discussion, but certain general principles are universally applicable. An original writ proceeding is initiated by filing a petition directly within the appellate forum, with the appropriate filing fee, rather than by filing a notice of appeal in the lower tribunal. Fla. R. App. P. 9.100(b). In many cases, this shortens the time frame for preparing necessary materials for seeking review because certain extraordinary writ petitions must be filed within 30 days following rendition of the challenged order.<sup>2</sup> Because the clerk does not transmit a record in writ proceedings, parties wishing to include record materials must file an appendix with the petition. Fla. R. App. P. 9.100(i) & 9.220.

Unlike an appellate proceeding, the party seeking a writ is identified as the petitioner and all other parties as respondents. Fla. R. App. P. 9.100(b). Neither the trial court nor other decision-making body should be named as a respondent. Fla. R. App. P. 9.100(c)(4). Furthermore, a respondent should not respond to an original writ petition unless the court issues an order to show cause or otherwise requires a response. Fla. R. App. P. 9.100(e)(3) & (h).<sup>3</sup> Once a response is served, the petitioner has 20 days to serve a reply and supplemental appendix, if any. Fla. R. App. P. 9.100(k). An original petition dispenses with many of the stylistic requirements for an appellate brief, such as tables of contents and authorities; however, a petitioner and respondent must adhere to the font, page size, and page limit requirements and provide certificates of service and typeface compliance. Fla. R. App. P. 9.100(1).<sup>4</sup>

## Jurisdiction

### *Florida Supreme Court*

Prior to 1957, the Florida Supreme Court was the sole court of review.<sup>5</sup> In 1957, the Florida Constitution was amended to create the district courts of appeal, but the Florida Supreme Court retained its discretionary authority to issue the common law writ of certiorari to review district court decisions. The intent of the 1957 amendment, however, was to curtail Florida Supreme Court review. As one court explained, "the [1957] amendment was intended to define and confine the powers and jurisdiction of the Supreme Court in order to avoid the danger of the district courts of appeal becoming way stations on the road to the Supreme Court." *State v. G.P.*, 429 So. 2d 786, 788 n.6 (Fla. 3d DCA 1983), approved, 476 So. 2d 1272 (Fla. 1985); Fla. Const. art.V, §4(b)(2).

In 1980, another constitutional revision eliminated the Florida Supreme Court's certiorari review, while maintaining its authority to issue writs of prohibition to lower courts and writs of mandamus and quo warranto to state officers and agencies.<sup>6</sup> The court also retained its inherent power to issue writs of habeas corpus and all writs necessary to the complete exercise of its jurisdiction.

### *District and Circuit Courts*

District courts have the authority to issue writs of certiorari to review (A) nonfinal orders of lower tribunals other than those set forth in Rule 9.130 and (B) final orders of circuit courts acting in their review capacity. Fla. Const. art V, §(b)(3); Fla. R. App. P. 9.030(b). Circuit court jurisdiction to issue common law writs is also established by the Florida Constitution and outlined in Rule 9.030(c).<sup>7</sup> Circuit courts in their review capacity can issue common law writs to review nonfinal orders of lower tribunals other than those identified in Rule 9.130. Circuit courts also possess the authority to review quasi-judicial decisions of local governments or agencies not governed by the Administrative Procedure Act. Fla. R. App. P. 9.030(c)(2) & 9.100(c).

## Certiorari

Certiorari is clearly the most versatile writ. As the Florida Supreme Court explained, "The writ [of certiorari] functions as a safety net and gives the upper court the prerogative to reach down and halt a miscarriage of justice where no other remedy exists. . . . The writ is available to obtain review in such situations when no other method of appeal is available." *Broward County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001) (citing *Degroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)).<sup>8</sup> A proverbial jack-of-all-trades, the writ of certiorari fulfills distinct roles in different forums, and its scope changes depending upon the procedural circumstances. On one hand, the writ offers a discretionary mechanism for reviewing a nonfinal order, yet it also provides a method for reviewing, as a matter of right, a final order issued by an administrative agency or local government authority acting in a quasi-judicial capacity.

A petition for a writ of certiorari must include the basis for invoking the jurisdiction of the court, facts on which the petitioner relies, nature of the relief sought, and argument in support of the petition and appropriate citations of authority. Fla. R. App. P. 9.100(g). As noted above, certiorari is governed by a

strict, 30-day filing deadline that is jurisdictional. Fla. R. App. P. 9.100(c)(1). A motion for rehearing challenging a nonfinal order will not toll the time for seeking such review.<sup>9</sup> Accordingly, if certiorari review is sought, the petition must be filed – not merely served – within 30 days following rendition of the subject order.

### Nonfinal Orders Issued by Circuit Courts

Most litigators will likely encounter an order issued by a circuit court that does not fall within the very narrow category of appealable, nonfinal orders enumerated in Rule 9.130, but which will result in irreparable harm that cannot be cured by a subsequent appeal at the end of litigation. When facing such an order, the writ of certiorari provides a mechanism for obtaining immediate review. To demonstrate the basis for a writ of certiorari, the petitioner must establish that the order departs from the essential requirements of law, causes irreparable harm, and cannot be remedied on appeal.<sup>10</sup> Courts have repeatedly cautioned, however, that certiorari will not be used to expand jurisdiction beyond the parameters set forth in Rule 9.130 or circumvent the strong disfavor for piecemeal review.<sup>11</sup> Certiorari in this context is completely discretionary. As one court explained,

[T]here exists a valid distinction between certiorari and appellate jurisdiction and the distinction is more than a mere difference in form. Under a writ of certiorari, the exercise of jurisdiction is discretionary with the court and is used to determine whether the essential requirements of law have been complied with to the material injury of the petitioner. *Aroida Corp. v. City of Sarasota*, 213 So. 2d 756, 761 (Fla. 2d DCA 1968).

When issuing the writ of certiorari, a court's authority is limited to quashing the order that departed from the essential requirements of law.<sup>12</sup> The scope of review is severely curtailed, and the mere existence of error will not justify issuance of the writ. "In granting writs of common law certiorari, the district courts of appeal should not be as concerned with the mere existence of legal error as much as the seriousness of the error. . . . The district courts should exercise this discretion only when there has been a violation of clearly established law resulting in a miscarriage of justice."<sup>13</sup> A nonfinal order issued by an administrative agency governed by the APA is also reviewable by certiorari. Because final orders issued by such agencies are reviewed by appeal in a district court, nonfinal orders issued by these agencies are reviewed by the district courts through certiorari. F.S. §120.68, (2004); Fla. R. App. P. 9.100(c)(3).

Theoretically, while any nonfinal order issued by a lower tribunal is potentially reviewable by certiorari, many of these circumstances are clearly defined by case law. For example, certiorari is appropriate to quash a discovery order requiring production of privileged or confidential information<sup>14</sup> or clearly irrelevant materials if disclosure will result in irreparable harm.<sup>15</sup> Certiorari may also provide relief to quash an order allowing punitive damages before a party has satisfied statutory prerequisites.<sup>16</sup>

Certain courts have also recognized certiorari as a mechanism for reviewing a contempt order,<sup>17</sup> an order denying stay pending disposition of another pending case, and a fee order issued by an appellate court acting in its review capacity.<sup>18</sup> Also, while orders denying a motion to dismiss are typically not immediately reviewable, a writ of certiorari is an appropriate remedy for quashing an order denying a motion to dismiss a premature bad faith claim against an insurance carrier or a

medical malpractice claim if the plaintiff has not satisfied statutory presuit requirements.<sup>19</sup> Certiorari is also appropriate when a trial court violated separation of powers principles by ordering an executive agency to pay the costs for a court-appointed expert in advance.<sup>20</sup> The foregoing reflect orders that cannot be remedied on plenary review. Accordingly, original jurisdiction through certiorari was appropriate.

### **Certiorari Review as a Matter of Right**

The writ of certiorari plays a much broader role when seeking review of a final decision rendered by an administrative agency not governed by the APA or a local government acting in a quasi-judicial role when review is not otherwise available under general law. Fla. R. App. P. 9.100(c)(2). For such decisions, certiorari review is akin to a traditional appeal.<sup>21</sup> When a circuit court's original jurisdiction is invoked to review this type of decision, the circuit court evaluates whether the lower tribunal afforded due process, adhered to the essential requirements of law, and if the ultimate conclusion was supported by competent substantial evidence.<sup>22</sup>

Once the circuit court, sitting in its review capacity, issues a decision, a district court has jurisdiction to review the circuit court's appellate decision through certiorari. Fla. R. App. P. 9.030. District court review by certiorari of a circuit appellate decision, however, is extremely limited. This "second-tier" review, as it is often characterized, is not available as a matter of right, but is governed by a much stricter standard.<sup>23</sup>

The Florida Supreme Court recently addressed second-tier review and emphasized that a district court, when reviewing an appellate decision rendered by a circuit court, can only consider whether: 1) due process was observed, and 2) there was a departure from the essential requirements of law.<sup>24</sup> The "substantial competent" evidence component applicable on first-tier review to the circuit appellate division disappears. This maintains the district court's jurisdiction to review a circuit court's appellate opinion, while reinforcing the principle that a party is only entitled to one appeal. Accordingly, certiorari review can actually vary within related proceedings – serving first as a method of guaranteed review in a circuit court for a quasi-judicial decision for which no other review exists, and then as a limited mechanism for further review of that circuit court's appellate conclusion.

### **Prohibition**

Unlike most forms of appellate relief, the writ of prohibition is preventative, rather than corrective.<sup>25</sup> The 30-day time limit does not apply. Prohibition is a very narrow writ that functions to empower a higher court to prevent an inferior court or tribunal from improperly exercising jurisdiction over a controversy; however, it is not the appropriate tool for revoking an order already entered.<sup>26</sup> If a petition for a writ of prohibition demonstrates a preliminary basis for entitlement to relief, the court can issue an order to show cause why relief should not be granted. Unlike other original writ proceedings, once a show cause order issues in prohibition, it automatically stays the lower court proceeding. Fla. R. App. P. 9.100(h).<sup>27</sup>

The writ of prohibition is commonly sought when a judge denies a motion for recusal.<sup>28</sup> It is also the appropriate method for forcing a lower tribunal, including an administrative agency, to dismiss a matter for lack of jurisdiction.<sup>29</sup>

### **Mandamus**

The writ of mandamus is typically used to require a government actor to perform a nondiscretionary duty or obligation that he or she has a clear legal duty to perform.<sup>30</sup> It cannot be used to establish a legal right, but instead applies to enforce a right already established.<sup>31</sup> The writ of mandamus will issue to require a trial court to comply with the mandate of an appellate court.<sup>32</sup> The writ can also be used to require the clerk of courts to accept a pleading for filing with court records.<sup>33</sup> Like prohibition, no specific time deadline applies to mandamus. Unlike a writ of prohibition, which is preventive, the writ of mandamus can be sought to require a court to exercise its jurisdiction if such jurisdiction has been improvidently refused.<sup>34</sup> Furthermore, while constitutional challenges to legislative action should ordinarily be brought in a trial court as a direct action, the writ allows review of the constitutionality of legislative acts when the "functions of government" will be affected without an immediate determination.<sup>35</sup>

### **Quo Warranto**

Quo warranto is used to test a person's right or privilege arising from the state.<sup>36</sup> It may be sought to determine an individual's right to hold public office or to challenge a public officer's attempt to exercise a right derived from the state.<sup>37</sup> The writ has been used to prevent a public defender from advancing a class action on behalf of juveniles in federal court<sup>38</sup> and to challenge the legality of city's actions regarding annexation ordinances.<sup>39</sup> The writ has also issued to require a municipality to levy a tax to pay a fixed indebtedness.<sup>40</sup>

As with prohibition and mandamus, the rules of appellate procedure do not provide a specific deadline for filing a petition for writ of quo warranto, but practicality will usually dictate that the litigant seek relief promptly. When seeking a writ of prohibition, mandamus, or quo warranto, although the lower tribunal is a party, neither the lower tribunal nor trial judge should be named as a respondent in the caption, but rather must be identified in the body of the petition. Fla. R. App. P. 9.100(e)(1) & (2).

### **Habeas Corpus<sup>41</sup>**

The purpose of a writ of habeas corpus is to inquire into the legality of a prisoner's present detention.<sup>42</sup> Habeas corpus should not be used to present issues which should have been raised at trial, on appeal, or in postconviction proceedings. The habeas process is often used to raise ineffective assistance of appellate counsel, the denial of reasonable bail, and the legality of detention in extradition proceedings.<sup>43</sup>

### **All-writs Jurisdiction**

The all-writs jurisdiction represents a court's inherent authority to protect its power to adjudicate a specific controversy by precluding other courts from usurping its function. The all-writs provision does not confer added jurisdiction, however, and should not be used to circumvent an appellate

court's limited role as a court of review.<sup>44</sup> For example, the Florida Supreme Court has utilized its all-writs authority to maintain the existence of DNA evidence and hold a statutory deadline for seeking postconviction DNA testing in abeyance.<sup>45</sup> By doing so, the court was able to render a meaningful decision on the constitutional validity of a statutory deadline for DNA testing that would impact pending postconviction proceedings in cases in which a sentence of death had been imposed. Like other writs, courts reject efforts to invoke the all-writs jurisdiction as a subterfuge for creating appellate avenues otherwise barred. Thus, the Florida Supreme Court has rejected a petition to invoke its all-writs authority to require a district court to write an opinion when the district court issued a per curiam affirmance.<sup>46</sup> As the court noted, requiring the district court to issue an opinion in place of a per curiam affirmance would circumvent the Florida Supreme Court's limited jurisdiction.<sup>47</sup>

## Conclusion

Although not all of common law writs continue in use, the extraordinary writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus, and all-writs power remain identified in the Florida Constitution and Florida Rules of Appellate Procedure. These common law writs continue to provide litigants with unique and powerful tools for obtaining relief when appellate remedies are unavailable.

1 Under English common law, a writ represented a command from the king which provided a litigant with the right to bring an action before the King's Bench or Court of Common Pleas, perceived as the ultimate decision-making authority. The United States inherited these writs, and while many have been abolished or have become unnecessary, such as the writ of *coram nobis*, which has been replaced by the right to file a motion for relief under Florida Rule of Civil Procedure 1.540, certain writs remain powerful tools for obtaining review. See generally F. W. Maitland, **The Forms of Action at Common Law** (1962).

2 A petition for writ of certiorari; petition to review quasi-judicial actions of agencies, boards, and commissions of local government which are reviewable by certiorari; petition to review nonfinal agency action under the Administrative Procedure Act; and a petition challenging an order of the Department of Corrections in a prisoner disciplinary proceeding must be filed within 30 days from rendition.

3 *Rightler v. Pompano Beach Police & Fireman's Pension Fund*, 467 So. 2d 461 (Fla. 4th D.C.A. 1985) (noting that the court must issue an order to show cause and require an opportunity to be heard if a petition for writ of certiorari demonstrates a basis for immediate relief).

4 The petition and response are limited to 50 pages, and the reply is limited to 15 pages. **Fla. R. App. P. 9.100(k)**.

5 *State v. Wilson*, 690 So. 2d 1361, 1363 (Fla. 2d D.C.A. 1997); *Mut. Ben. Health & Accident Ass'n v. Bunting*, 133 Fla. 646, 183 So. 321 (1938); **Fla. Const.** art. V, §5.

6 Senate Joint Resolution No. 20-C (1980); *In re Emergency Amendments to Rules of Appellate Procedure*, 381 So. 2d 1370 (Fla. 1980).

7 County courts do not have the authority to issue original writs.

8 See also William A. Haddad, *The Common Law Writ of Certiorari in Florida*, 29 U. Fla. L. Rev. 207, 214 (1977) (noting that certiorari is a “catch-all writ” to review orders and decisions not otherwise subject to review).

9 Fla. R. App. P. 9.020(h) (standing for general principle that rendition of an order is only tolled by an authorized and timely motion); *Decktight Roofing Servs., Inc. v. Amwest Sur. Ins.*, 841 So. 2d 667, 668 (Fla. 4th D.C.A. 2003) (noting that motion for rehearing will not toll time for filing petition for writ of certiorari to challenge a nonfinal order).

10 See *Sheridan Health Corp., Inc. v. Total Health Choice, Inc.*, 770 So. 2d 221 (Fla. 3d D.C.A. 2000).

11 *State v. G.P.*, 429 So. 2d 786 (Fla. 3d D.C.A. 1983), approved, 476 So. 2d 1272 (Fla. 1985). See *Marina Bay Hotel & Club, Inc. v. McCallum*, 733 So. 2d 1133 (Fla. 4th D.C.A. 1999) (noting general principle that Rule 9.130 is to restrict the number of appealable nonfinal orders).

12 *ABG Real Estate Dev. Co. of Fla., Inc. v. St. John’s County*, 608 So. 2d 59 (Fla. 5th D.C.A. 1992).

13 *Wilson*, 690 So. 2d at 1363.

14 *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995); *Quarles & Brady, LLP v. Birdsall*, 802 So. 2d 1205 (Fla. 2d D.C.A. 2002); *State Farm Mut. Auto. Ins. Co. v. Kendrick*, 780 So. 2d 231 (Fla. 3d D.C.A. 2001).

15 *Allstate Ins. Co. v. Boecher*, 733 So. 2d 993 (Fla. 1999).

16 *Globe Newspaper Co. v. King*, 658 So. 2d 518 (Fla. 1995).

17 Courts disagree regarding whether a contempt order is reviewable as an appealable nonfinal order or through certiorari. See *Caruso v. Super Vision Int’l, Inc.*, 845 So. 2d 947 (Fla. 5th D.C.A. 2003); *Stewart v. Mussoline*, 487 So. 2d 96 (Fla. 3d D.C.A. 1986).

18 *Allstate Ins. Co. v. Titusville Total Health Care*, 848 So. 2d 1166 (Fla. 5th D.C.A. 2003).

19 *Liberty Mut. Ins. Co. v. The Farm, Inc.*, 754 So. 2d 865 (Fla. 3d D.C.A. 2000) (noting certiorari is appropriate to quash a premature bad faith claim against an insurance carrier); *Hartford Ins. Co. v. Mainstream Constr. Group, Inc.*, 864 So. 2d 1270 (Fla. 5th D.C.A. 2004) (same). See also *Fassy v. Crowley*, 884 So. 2d 359, 363 (Fla. 2d D.C.A. 2004) (“Certiorari jurisdiction may lie when chapter 766 presuit requirements are at issue . . . . The statutes requiring presuit notice and screening “cannot be meaningfully enforced postjudgment because the purpose of the presuit screening is to avoid the filing of the lawsuit in the first instance.”).

20 See *Office of the State Attorney for the Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527 (Fla. 3d D.C.A. 2005) (granting the writ of certiorari to quash an order requiring an arm of the executive branch to pay for witness testimony because the judiciary’s mere exercise of discretionary power over an executive agency’s budgetary discretion violates the separation of powers doctrine). See *Dept. of Corrections v. Grubbs*, 884 So. 2d 1147, 1148 (Fla. 2d D.C.A. 2004); *Brown v. Feaver*, 726 So. 2d 322, 325 (Fla. 3d D.C.A. 1999).

21 *Arovida Corp. v. City of Sarasota*, 213 So. 2d 756, 761 (Fla. 2d D.C.A. 1968) (noting that the Florida Constitution vests the circuit courts with broad authority, including the power to issue original writs unless otherwise provided by general law).

22 *Combs v. State*, 436 So. 2d 93 (Fla. 1983).

23 *Haines City Cmty. Dev. v. Heggs*, 647 So. 2d 855 (Fla. 2d D.C.A. 1994), *approved*, 658 So. 2d 523 (Fla. 1995); *Bottcher v. Walsh*, 834 So. 2d 183, 184-85 (Fla. 2d D.C.A. 2002).

24 *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195 (Fla. 2003).

25 *State ex rel. Sarasota County v. Boyer*, 360 So. 2d 388 (Fla. 1978); *English v. McCrary*, 348 So. 2d 293 (Fla. 1977).

26 *Id.* at 296-97.

27 The Third District Court of Appeal noted that an order merely requiring a response to a petition for writ of prohibition, unlike a show cause order, does not stay the lower court proceeding. *Alonso v. State*, 879 So. 2d 80 (Fla. 3d D.C.A. 2004) (withdrawn from publication on other grounds) (explaining the difference between a show cause order and an order merely requiring a response).

28 *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

29 *Boyer*, 360 So. 2d at 391. The Florida Supreme Court can only issue writs of prohibition to lower courts. **Fla. R. App. P.** 9.030. Therefore, a petition to an administrative agency should be sought from a district court of appeal. *State ex rel. Fla. Dept. of Natural Res. v. Dist. Ct. of App., Second Dist.*, 355 So. 2d 772 (Fla. 1978).

30 *State ex rel. Dos Amigos, Inc. v. Lehman*, 100 Fla. 1313, 131 So. 533 (Fla. 1930) (holding that a writ of mandamus is appropriate to compel a municipality to levy a tax that it is legally bound to impose). *See also Austin v. Crosby*, 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004) (holding that mandamus may only be granted if there is a clear legal obligation to perform a duty in a prescribed manner).

31 *Austin*, 866 So. 2d at 744.

32 *Superior Garlic Int'l, Inc. v. E&A Produce Corp.*, 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).

33 *Mantilla v. State*, 615 So. 2d 809 (Fla. 3d D.C.A. 1993).

34 *Coral Springs Tower Club II Condo. Ass'n v. Dizafalo*, 667 So. 2d 966 (Fla. 4th D.C.A. 1996) (concluding that mandamus is appropriate if circuit court refuses to exercise jurisdiction over a controversy, unless a remedy is available by appeal).

35 *Allen v. Butterworth*, 756 So. 2d 52 (Fla. 2000).

36 *Ex parte Smith*, 96 Fla. 512, 118 So. 306 (1928).

37 *State ex rel. Bruce v. Kiesling*, 632 So. 2d 601, 603 (Fla. 1994) (recognizing the petition for a writ of quo warranto as the appropriate method for challenging a person's claim to a right to hold public office).

38 *State ex rel. Smith v. Brummer*, 426 So. 2d 532 (Fla. 1982).

39 *Orange County v. City of Orlando*, 327 So. 2d 7 (Fla. 1976).

40 *State ex rel. Dos Amigos, Inc. v. Lehman*, 100 Fla. 1313, 1331, 131 So. 533 (Fla. 1930).

41 The specific procedures for pursuing a writ of habeas corpus and nuances unique to the writ are beyond the scope of this article.

42 *Wright v. State*, 857 So. 2d 861 (Fla. 2003), cert. denied, 541 U.S. 961 (2004).

43 *Id.* (citing *Patterson v. State*, 664 So. 2d 31, 31 (Fla. 4th D.C.A. 1995)).

44 *Stallworth v. Moore*, 827 So. 2d 974, 978 (Fla. 2002); *State ex rel. Chiles v. Pub. Employees Relations Comm'n*, 630 So. 2d 1093 (Fla. 1994).

45 *In re: Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A) (Postconviction DNA Testing)*, 857 So. 2d 190, 191 (Fla. 2003) (Lewis, J., specially concurring).

46 *R.J. Reynolds Tobacco Co. v. Kenyon*, 882 So. 2d 986 (Fla. 2004).

47 *Id.*

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This column is submitted on behalf of the Appellate Practice Section, Thomas D. Hall, chair, and Wendy S. Loquasto, editor.

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