

## ORIGINAL PROCEEDINGS IN FLORIDA'S APPELLATE COURTS

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In addition to appellate jurisdiction, the Florida Supreme Court and Florida's district courts of appeal have original jurisdiction to issue various types of writs. These original proceedings expand the scope of relief available in Florida's appellate courts beyond the relatively limited appellate review. For example, while appeals are available only from final judgments<sup>1</sup> and from a limited class of nonfinal orders,<sup>2</sup> original writs often can be used to obtain relief from interlocutory orders for which no immediate appeal exists.<sup>3</sup> In addition, original writs can be used to prevent harm that a final appeal would not adequately remedy.<sup>4</sup>

### *ORIGINAL JURISDICTION IN THE FLORIDA SUPREME COURT AND DISTRICT COURTS OF APPEAL*

By state constitution, the Florida Supreme Court's jurisdiction is more limited than the jurisdiction of the district courts of appeal.<sup>5</sup> Original proceedings are no exception. The Florida Supreme Court has original jurisdiction to issue writs of prohibition, mandamus, quo warranto, and habeas corpus, and has a general "all-writs" jurisdiction that allows it to issue "all writs necessary to the complete exercise of its jurisdiction."<sup>6</sup> The district courts of

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1. Fla. R. App. P. 9.030 (2002); *id.* 9.110.

2. *Id.* 9.030; *id.* 9.130.

3. *Id.* 9.100.

4. In addition, the applicable time frames may be more liberal for some writs than for appeals. While a notice of appeal must be filed with the lower court within thirty days of rendition of the order being appealed, Florida Rules of Appellate Procedure 9.110(c) and 9.130(b), there is no specific time limit for filing a petition for writ of mandamus or prohibition. *Infra* nn. 121–124 and accompanying text. However, courts will not permit a party to cure an untimely appeal by using an alternative writ. *Infra* nn. 125–126 and accompanying text.

5. Fla. Const. art. V, §§ 3(b), 4(b).

6. *Id.* art. V, §§ 3(b)(7)–(9).

appeal likewise have mandamus, prohibition, quo warranto, habeas corpus, and all-writs power.<sup>7</sup> They also have broad jurisdiction to issue writs of certiorari.<sup>8</sup>

The extraordinary writ jurisdiction of the district courts of appeal is much broader than that afforded the Florida Supreme Court.<sup>9</sup> The Florida Supreme Court's jurisdiction to issue writs of prohibition is limited to courts.<sup>10</sup> Its power to issue writs of mandamus and quo warranto is limited to writs directed to state officers and agencies.<sup>11</sup> While the Florida Supreme Court's power to issue certain writs is limited by the nature of the proceeding or the type of respondent, the district courts of appeal have no such constitutional limitations.

The most significant difference between the Florida Supreme Court's original jurisdiction and that of the district courts of appeal is that the Florida Supreme Court no longer has constitutional jurisdiction to issue a writ of certiorari.<sup>12</sup> Before the 1980

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7. *Id.* art. V, § 4(b)(3).

8. *Id.* Circuit courts are likewise given authority to issue writs of prohibition, mandamus, habeas corpus, quo warranto, and certiorari. *Id.* art. V, § 5(b).

9. *Id.* art. V, §§ 3(b), 4(b).

10. After the 1980 Florida constitutional amendments, Florida Rule of Appellate Procedure 9.030(a)(3) was amended to limit the Florida Supreme Court's prohibition jurisdiction to "courts" rather than "courts and commissions." Fla. R. App. P. 9.030(a)(3) comm. n. 1980 amend. (2002). See *State ex rel. Chiles v. Pub. Employees Rel. Commn.*, 630 S.2d 1093, 1094 (Fla. 1994) (noting that the Florida Supreme Court's power to issue writs of prohibition is to courts alone). District courts of appeal and circuit courts have jurisdiction to issue writs of prohibition to administrative bodies. See *State ex rel. Bettendorf v. Martin County Envtl. Control Hrg. Bd.*, 564 S.2d 1227, 1228–1229 (Fla. Dist. App. 4th 1990) (stating that courts having appellate jurisdiction over agencies have power to issue writs of prohibition to the agencies). When an administrative body created by special law does not fit the definition of "agency" under the Administrative Procedure Act, Fla. Stat. § 120 (2001), however, even a district court of appeal will lack jurisdiction to enter the writ. See *State ex rel. Bettendorf*, 564 S.2d at 1228 (holding that a board created by a special act and not a general law was outside the court's jurisdiction).

11. Before the 1980 amendments to the Florida Constitution, this provision referred to "agencies" rather than "state agencies." Fla. R. App. P. 9.030(a)(3) comm. n. 1980 amend.

12. *Haines City Community Dev. v. Heggs*, 658 S.2d 523, 525 n. 2 (Fla. 1995). The Court has indicated on at least one occasion that it may retain common-law certiorari power regardless of the constitution. See *State v. Pettis*, 520 S.2d 250, 259 n. 5 (Fla. 1988) (stating that "in 1980, . . . certiorari review authority was deleted entirely from the constitution by substituting the more accurate description of discretionary authority. However, because the common[-]law writ of certiorari was a part of the common law of England [and] was incorporated by statute into this state's law, this [c]ourt's certiorari power exists independently of the constitutional grant of jurisdiction."). However, this possible inherent power has apparently never been exercised, and it is generally accepted that the court lost its certiorari power with the 1980 amendments. See *1-888-Traffic Schs. v. Chief Cir. J., 4th Jud. Cir.*, 734 S.2d 413, 417 (Fla. 1999) (stating that "this Court does not have

constitutional amendments, the Florida Supreme Court had authority to issue writs of certiorari to review numerous types of orders, including “any interlocutory order passing upon a matter [that] upon final judgment would be directly appealable” to that Court.<sup>13</sup> However, the 1980 amendments eliminated the Florida Supreme Court’s certiorari jurisdiction<sup>14</sup> and replaced it with the more limited “discretionary jurisdiction,” which allows for discretionary review of six types of district courts of appeal orders.<sup>15</sup>

### OVERVIEW OF THE WRITS — REQUIREMENTS AND RELIEF

The appellate courts generally use original writs to provide some relief from an act or ruling of a lower tribunal. However, writs are not technically error-correcting mechanisms. Specific procedures and standards apply to each type of writ. If the petition does not meet the requirements of the writ, the appellate court cannot grant the writ even if the appellate court disagrees with the ruling below.<sup>16</sup> Moreover, these writs are largely discre-

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jurisdiction to consider petitions for common[-]law certiorari”).

13. Fla. R. App. P. 9.030 comm. n. 1980 amend. The previous provision stated that the supreme court

[m]ay review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, that passes upon a question certified by a district court of appeal to be of great public interest, or that is in direct conflict with a decision of any district court of appeal or of the supreme court on the same question of law, and any interlocutory order passing upon a matter which upon final judgment would be directly appealable to the supreme court; and may issue writs of certiorari to commissions established by general law having statewide jurisdiction.

Fla. Stat. Ann., Fla. Const. art. V, § 3 hist. n. (West 1995) (discussing changes to the supreme court’s jurisdiction by amendment proposed by Senate Joint Resolution Number 20-C approved in 1980 special edition).

14. The type of certiorari available to the Florida Supreme Court until the 1980 amendments is referred to as “conflict certiorari.” While some decisions use the terms interchangeably, the supreme court’s conflict-certiorari jurisdiction was not true common-law certiorari jurisdiction. The Florida Supreme Court’s true common-law certiorari jurisdiction was transferred to the district courts of appeal when those courts were created in 1957. *Dresner v. City of Tallahassee*, 164 S.2d 208, 210 (Fla. 1964).

15. Fla. R. App. P. 9.030(a)(2)(A). This class of orders includes those decisions that are certified to be in conflict with or are in express and direct conflict with decisions of another district court of appeal or the supreme court.

16. See e.g. *Aleshire v. Ackerman*, 418 S.2d 307, 308 (Fla. Dist. App. 5th 1982) (denying a writ of certiorari for failing to demonstrate a basis for relief and for failing to include an appendix); see generally Philip J. Padovano, *Florida Appellate Practice* §§ 28.9–28.12 (2001–2002 ed., West 2001) (outlining the practice and procedure necessary to invoke an appellate court’s original jurisdiction).

tionary.<sup>17</sup> Courts may issue writs in the following circumstances, but are not required to do so.<sup>18</sup>

### Certiorari

There are three main categories of orders reviewable by certiorari: (1) nonfinal orders of lower tribunals not subject to nonfinal or interlocutory appeal under Florida Rule of Appellate Procedure 9.130, (2) decisions of circuit courts acting in their appellate capacity, and (3) actions of local administrative agencies.<sup>19</sup>

Certiorari will lie to review a nonfinal order of a lower tribunal if there has been a departure from the essential requirements of law, the order causes material injury, and the harm is irreparable, such that an appeal at the conclusion of the case would not provide an adequate remedy.<sup>20</sup> The “material injury” and “irreparable harm” elements are threshold jurisdictional issues, while the “essential requirements of law” element provides the standard of review.<sup>21</sup> A departure from the essential requirements of law is more than mere error.<sup>22</sup>

Certiorari review of a nonappealable, nonfinal order is discretionary, while nonfinal appeals under Rule 9.130 are a matter of right. The circumstances in which certiorari is available are extremely narrow, but the most common application of the writ is to correct an order granting “cat-out-of-the-bag” type discovery, which, once revealed, cannot be taken back.<sup>23</sup>

In reviewing decisions of the circuit courts acting in their appellate capacity, the district courts of appeal will apply a different standard from the one stated above. To prevent petitions from amounting to a second appellate review of the same county court

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17. See *Shevin ex rel. State v. Pub. Serv. Commn.*, 333 S.2d 9, 12 (Fla. 1976) (concluding that, at its discretion, the court could decline to grant a writ regardless of the parties' rights).

18. Fla. R. App. P. 9.100(h).

19. *Id.* 9.030(b)(2)(A)–(B); *Haines City Community Dev.*, 658 S.2d at 530.

20. *Dairyland Ins. Co. v. McKenzie*, 251 S.2d 887, 888 (Fla. Dist. App. 1st 1971); *Gulf Cities Gas Corp. v. Cihak*, 201 S.2d 250, 251 (Fla. Dist. App. 2d 1967).

21. See *Parkway Bank v. Ft. Myers Armature Works, Inc.*, 658 S.2d 646, 648–649 (Fla. Dist. App. 2d 1995) (explaining the difference between a dismissal of a petition for certiorari and a denial of certiorari).

22. *Ivey v. Allstate Ins. Co.*, 774 S.2d 679, 682 (Fla. 2000); *Stilson ex rel. Hopkins v. Allstate Ins. Co.*, 692 S.2d 979, 982 (Fla. Dist. App. 2d 1997).

23. *Martin-Johnson, Inc. v. Savage*, 509 S.2d 1097, 1099 (Fla. 1987).

order, the standard of review is generally very strict.<sup>24</sup> In such “‘second appeal’ certiorari” cases,<sup>25</sup> the writ will not be issued absent a showing that the circuit court exceeded its jurisdiction or violated a “‘clearly established principle of law resulting in a miscarriage of justice.’”<sup>26</sup> The possible precedential effect of a decision is one relevant factor in determining whether it amounts to a miscarriage of justice.<sup>27</sup> Petitions to review a decision of a circuit court acting in its appellate capacity should be filed with the district court of appeal having appellate jurisdiction over the circuit court.<sup>28</sup>

Circuit courts perform certiorari review of orders issued by local administrative bodies.<sup>29</sup> However, this review is limited to quasi-judicial orders.<sup>30</sup> As a matter of procedural due process, this

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24. There appears to be some lack of uniformity among the various district courts of appeal in applying the standard. See generally *State v. Wilson*, 690 S.2d 1361, 1364 (Fla. Dist. App. 2d 1997) (Altenbernd, J., dissenting) (discussing the differences among the district courts of appeals in applying the miscarriage-of-justice standard).

25. *Dept. of Hwy. Safety & Motor Vehicles v. Alliston*, 813 S.2d 141, 144 (Fla. Dist. App. 2d 2002).

26. *Ivey*, 774 S.2d at 682 (citing *Haines City Community Dev.*, 658 S.2d at 528). When the circuit court reviews an administrative finding, the circuit court determines

(1) whether procedural due process [was] accorded; (2) whether the essential requirements of law . . . [were] observed; and (3) whether the administrative findings and judgment [were] supported by competent substantial evidence.

*Haines City Community Dev.*, 658 S.2d at 530. These three components have been recognized repeatedly in Florida Supreme Court cases. E.g. *Educ. Dev. Ctr., Inc. v. City of W. Palm Beach Zoning Bd. of App.*, 541 S.2d 106, 108 (Fla. 1989); *City of Deerfield Beach v. Vaillant*, 419 S.2d 624, 626 (Fla. 1982). In contrast, on a subsequent certiorari petition to the district court of appeal, the district court will look only at whether procedural due process was accorded and whether the circuit court applied the correct law. *Haines City Community Dev.*, 658 S.2d at 530; *Martin County v. City of Stuart*, 736 S.2d 1264, 1265 (Fla. Dist. App. 4th 1999). This test will be applied under the general miscarriage-of-justice standard applicable to review of decisions of circuit courts sitting in their appellate capacity. See e.g. *Alliston*, 813 S.2d at 145 (evaluating whether to grant certiorari based on the miscarriage-of-justice standard).

27. *Stilson*, 692 S.2d at 983.

28. Counsel should note that Rule 9.030(b)(4) allows county-court orders to bypass circuit court appellate review and proceed directly to the district court of appeal if the county court certifies a question of statewide application having great public importance or affecting the uniform administration of justice. This type of review is discretionary with the district court of appeal, which may either accept the case for appellate review or reject the certification and remand the case to the circuit court sitting in its appellate capacity. Fla. R. App. P. 9.030(b)(4).

29. *Eckert v. Bd. of Commrs. of the N. Broward Hosp. Dist.*, 720 S.2d 1151, 1153 (Fla. Dist. App. 4th 1998).

30. *Bd. of County Commrs. of Brevard County v. Snyder*, 627 S.2d 469, 474 (Fla. 1993); *County of Volusia v. City of Daytona Beach*, 420 S.2d 606, 609 (Fla. Dist. App. 5th 1982). Review of legislative actions, as opposed to judicial actions, is by “a de novo action seeking

type of certiorari review is as of right, rather than discretionary.<sup>31</sup> Findings of the administrative body are reviewed under a “competent substantial evidence” standard.<sup>32</sup>

### Mandamus

Mandamus is a common-law writ that compels an official to fulfill a duty or act that the official is required by law to perform.<sup>33</sup> The petitioner must demonstrate that the act is required by law, that it is ministerial in nature — meaning the act requires no discretion<sup>34</sup> — that he or she has a clear legal right to the performance of the act,<sup>35</sup> that demand has been made upon the official to perform the act and he or she has refused,<sup>36</sup> and that there is no adequate or complete alternative remedy.<sup>37</sup> Mandamus is most frequently used to compel a public official to perform his or her duty, but the writ also will compel the actions of an officer or director of a private corporation if the law requires him or her to perform the particular duty.<sup>38</sup>

### Prohibition

A writ of prohibition prevents a lower tribunal from acting outside its jurisdiction or exceeding its judicial powers over a

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declaratory or injunctive relief in circuit court,” and is subject to a “fairly debatable standard of review.” *Minnaugh v. County Commrs. of Broward County*, 752 S.2d 1263, 1265 (Fla. Dist. App. 4th 2000), *aff’d*, 783 S.2d 1054 (Fla. 2001).

31. See e.g. *Haines City Community Dev.*, 658 S.2d at 530 (saying that “certiorari in circuit court to review local administrative action . . . is not truly discretionary common-law certiorari, because the review is of right”); *Parker v. Leon County*, 627 S.2d 476, 479 (Fla. 1993) (agreeing that petition for certiorari writ is a common-law right); *Educ. Dev. Ctr., Inc. v. Palm Beach County*, 721 S.2d 1240, 1241 (Fla. Dist. App. 4th 1998) (holding that petitioners were entitled to certiorari review); see *DSA Marine Sales & Serv., Inc. v. County of Manatee*, 661 S.2d 907, 904 (Fla. Dist. App. 2d 1995) (finding that, in review of administration actions, due process requires that litigants have the right to be heard).

32. *Snyder*, 627 S.2d at 474; *De Groot v. Sheffield*, 95 S.2d 912, 916 (Fla. 1957); *contra Skaggs-Albertson’s v. ABC Liquors, Inc.*, 363 S.2d 1082, 1091 (Fla. 1978) (applying a departure from the essential-requirements-of-law standard).

33. *State ex rel. Buckwalter v. City of Lakeland*, 150 S. 508, 511 (Fla. 1933).

34. *City of Miami Beach v. Mr. Samuel’s, Inc.*, 351 S.2d 719, 722 (Fla. 1977).

35. *Fla. Parole Commn. v. Criner*, 642 S.2d 51, 52 (Fla. Dist. App. 1st 1994).

36. *Dickey v. Cir. Ct., Gadsden County*, 200 S.2d 521, 528 (Fla. 1967).

37. *Shevin*, 333 S.2d at 12.

38. See e.g. *State ex rel. Fussell v. McLendon*, 109 S.2d 783, 785 (Fla. Dist. App. 3d 1959) (mandating custodian of corporate records to make them available for inspection by shareholders as required by law).

matter.<sup>39</sup> The petitioner directs the desired relief toward the judge or officer of the lower tribunal, including administrative agencies acting in a quasi-judicial capacity.<sup>40</sup> The issuance of a writ of prohibition commands the respondent to cease and desist from the threatened action to which the petitioner objects.<sup>41</sup>

The requisites for issuance of a writ of prohibition are as follows: first, a lower court or tribunal must be acting without jurisdiction or in excess of its jurisdiction; second, the writ will effectively prevent or forestall an impending present injury to the petitioner; and third, the petitioner must have no other appropriate or adequate legal remedy.<sup>42</sup> A writ of prohibition keeps an inferior court or tribunal from exceeding its jurisdiction, but it does not cure an erroneous exercise of jurisdiction.<sup>43</sup>

Prohibition is preventive rather than corrective.<sup>44</sup> It can be used solely to prevent future actions and generally cannot be used to revoke an order already entered or when the proceedings below have been completed.<sup>45</sup> Thus, the petition generally must be filed before the court has exercised its jurisdiction and entered an order.<sup>46</sup>

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39. *The Florida Bar*, 329 S.2d 301, 302 (Fla. 1974); *see generally* Fla. Stat. ch. 81 (providing rules and procedure for filing a writ of prohibition).

40. *Muina v. Sheriff of Gulf County*, 376 S.2d 276, 276 (Fla. Dist. App. 1st 1979) (stating that prohibition can “lie against” only judicial or quasi-judicial power); *City of Oakland Park v. State ex rel. Playpen S., Inc.*, 406 S.2d 1195, 1195 (Fla. Dist. App. 4th 1981) (holding that the trial court erred in granting prohibition against the city’s legislative actions).

41. *English v. McCrary*, 348 S.2d 293, 296–297 (Fla. 1977).

42. *See generally id.* (emphasizing the narrow scope of writs of prohibition and listing their prerequisites).

43. *Mandico v. Taos Constr., Inc.*, 605 S.2d 850, 854 (Fla. 1992); *S. Rec. & Tape Serv. v. Goldman*, 502 S.2d 413, 414 (Fla. 1986); *English*, 348 S.2d at 297; *Bd. of County Commrs. of Metro. Dade County v. Wood*, 662 S.2d 417, 418 (Fla. Dist. App. 3d 1995); *U. of Miami v. Klein*, 603 S.2d 651, 652 (Fla. Dist. App. 3d 1992); *see* Bonita Kneeland Brown & Tracy Raffles Gunn, *Prohibition*, in *Florida Appellate Practice* ch. 21 (4th ed., Fla. B. 1998) (providing a complete discussion of proper uses of prohibition).

44. *English*, 348 S.2d at 296.

45. *Sparkman v. McClure*, 498 S.2d 892, 895 (Fla. 1986); *English*, 348 S.2d at 296; *Adminstr., Retreat Hosp. v. Johnson*, 660 S.2d 333, 337 (Fla. Dist. App. 4th 1995).

46. In a few instances, however, the writ has been used successfully to prevent the enforcement of orders already entered. *Dix v. Richardson*, 427 S.2d 1067, 1068 (Fla. Dist. App. 1st 1983); *Columbo v. Legendre*, 397 S.2d 1043, 1044 (Fla. Dist. App. 5th 1981); *see generally English*, 348 S.2d at 297 (holding that prohibition is appropriate when the order entered is void for lack of jurisdiction).

### Quo Warranto

Quo warranto is a civil proceeding, based on both statute and common law, used to test the right of a person either to hold an office or franchise or to exercise some right or privilege.<sup>47</sup> The class of persons permitted to bring a petition for quo warranto is very limited. At common law, only the attorney general had this power.<sup>48</sup> In many cases, the decision to bring the petition still lies in the sole discretion of the attorney general, and that office cannot be compelled to file the petition.<sup>49</sup>

The statutory provisions for quo warranto have created several exceptions allowing other petitioners to seek the writ. One exception allows a person who claims a right to hold public office to bring a petition for quo warranto that challenges the rights of the person currently holding that office if the attorney general refuses to do so.<sup>50</sup> Another exception allows the state attorney to bring quo warranto actions relating to certain corporate powers and practices.<sup>51</sup> Some cases also appear to expand the availability of the common-law writ beyond the attorney general to persons having an “interest” in the matter.<sup>52</sup>

### Habeas Corpus

Habeas corpus literally translated means “you have the body” and refers to the traditional *habeas corpus ad subjectiendum*, which is a writ directed to the person detaining another.<sup>53</sup> It is used to test the legality of the detention and to compel production of the detainee.<sup>54</sup> State and federal constitutions guarantee the writ of habeas corpus.<sup>55</sup>

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47. Fla. Stat. § 80.

48. *Farrington v. Flood*, 40 S.2d 462, 464 (Fla. 1949); *State ex rel. Wurn v. Kasserman*, 179 S. 410, 411 (Fla. 1938).

49. *E.g. State ex rel. Moodie v. Bryan*, 39 S. 929, 948 (Fla. 1905).

50. Fla. Stat. § 80.01.

51. *Id.* § 545.08.

52. *See Martinez v. Martinez*, 545 S.2d 1338, 1339 (Fla. 1989) (holding that a state representative has standing to question the governor's power to call a special legislative session); *MacNamara v. Kissimmee River Valley Sportsmans' Assn.*, 648 S.2d 155, 164–165 (Fla. Dist. App. 2d 1994) (holding that association members had standing to bring quo warranto proceedings involving spoil that island members used for recreation).

53. *Black's Law Dictionary* 715 (Bryan A. Garner ed., 7th ed., West 1999).

54. *Id.*; *see generally* Fla. Stat. § 79 (stating that a detainee's writ shall be granted if he or she can show probable cause that he or she has been detained unlawfully).

55. U.S. Const. art. I, § 9, cl. 2; Fla. Const. art. I, § 13.



Habeas corpus most often is used in criminal cases, but it can also provide a civil remedy, where appropriate, in cases such as child-custody matters.<sup>56</sup> The adoption of Florida Rule of Criminal Procedure 3.850, which now provides the exclusive vehicle for a collateral attack on a judgment or sentence of criminal conviction, narrowed the criminal application of habeas corpus.<sup>57</sup>

The power to grant writs of habeas corpus lies with the supreme court, the district courts of appeal, and the circuit courts.<sup>58</sup> If a habeas proceeding filed in the supreme court or district court of appeal requires an evidentiary hearing, the court can refer that portion of the case to a circuit judge commissioner.<sup>59</sup> By court operating procedure, the Florida Supreme Court refers habeas petitions to a single justice.<sup>60</sup> No other justice reviews the petition unless the assigned justice requests review.<sup>61</sup> Notably, the Florida Constitution prohibits courts from charging a filing fee for filing a petition for writ of habeas corpus.<sup>62</sup>

#### All-Writs Jurisdiction

In addition to the specifically named writs, Florida's constitution gives courts power to issue "all writs necessary to the complete exercise" of their jurisdiction.<sup>63</sup> This power also is referred to as "constitutional-writs" power.<sup>64</sup>

The constitutional-writs power is not an independent grant of jurisdiction. Instead, it may be used only in matters over which the court already has or will obtain jurisdiction.<sup>65</sup> This power most

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56. *Suarez Ortega v. Pujals de Suarez*, 465 S.2d 607, 610 (Fla. Dist. App. 3d 1985).

57. Fla. R. Crim. P. 3.850 (2002); *Patterson v. State*, 664 S.2d 31, 32 (Fla. Dist. App. 4th 1995).

58. Fla. R. App. P. 9.030(a)(3), (b)(3), (c)(3).

59. *Baggett v. Wainwright*, 229 S.2d 239, 243 (Fla. 1969).

60. *The Supreme Court of Florida: Manual of Internal Operating Procedures*, § II(c)(2), in *Florida Rules of Court, State*, 1279, 1282 (West 2002) [hereinafter *Manual of Internal Operating Procedures*].

61. *Id.*

62. Fla. Const. art. I, § 13. The normal appeal filing fee is due with all other original petitions. There is, however, no filing fee due to the lower court. Fla. Stat. §§ 25.241(3), 35.22(3).

63. Fla. Const. art. V, §§ 3(b)(7), 4(b)(3).

64. Padovano, *supra* n. 16, at § 28.7.

65. *Fla. Sen. v. Graham*, 412 S.2d 360, 361 (Fla. 1982); *Shevin*, 333 S.2d at 12; *Seaboard Air Line R.R. Co. v. Gay*, 68 S.2d 591, 594 (Fla. 1953); *State ex rel. Watson v. Lee*, 8 S.2d 19, 21 (Fla. 1942), *overruled on other grounds*, *Coase v. Canal Auth.*, 209 S.2d 865 (Fla. 1968); *see St. Paul Title Ins. Corp. v. Davis*, 392 S.2d 1304, 1305 (Fla. 1981) (holding that a petitioner could not utilize the court's all-writs jurisdiction to seek discretionary

frequently is used to preserve the court's existing or future jurisdiction over a separate proceeding, such as one to compel a stay of lower-court proceedings pending an appeal.<sup>66</sup> Additionally, constitutional-writs power may be used to protect the court's jurisdiction over a matter not presently before that court, but only if that court ultimately will have jurisdiction over the primary appeal or proceeding.<sup>67</sup> In the past, the constitutional-writs power also has been used, albeit sparingly, to correct erroneous judgments that previously have been affirmed on appeal.<sup>68</sup> However, it will be used only when necessary to allow the court to fully exercise its jurisdiction.<sup>69</sup>

### Form of the Petition

A notice of appeal is a short-form, easily prepared document. In contrast, a petition is a speaking, self-contained pleading that must contain the entire argument of the petitioner.<sup>70</sup> Therefore, no separate brief is permitted<sup>71</sup> and a petitioner should assume that he will have no other chance to convince the court of the merits of his claim.

Florida Rule of Appellate Procedure 9.100 controls the content of the petition.<sup>72</sup> The petition's opening paragraph should cite Rule 9.100 as authority for filing the writ, and this paragraph should give a brief description of the proceedings below and the relief sought.<sup>73</sup> Furthermore, the body of the petition should contain the following sections, customarily headed by roman numerals:

- I. **Basis for Jurisdiction.** This part should cite the section of the Florida Constitution and the appellate rule that

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review of a per curiam affirmance without opinion); *see generally* Robert T. Mann, *The Scope of the All Writs Power*, 10 Fla. St. U. L. Rev. 197 (1982) (providing a complete discussion of the all-writs power).

66. *E.g. Ga. S. & Fla. Ry. Co. v. Duval Connecting R.R.*, 193 S.2d 19, 20 (Fla. Dist. App. 1st 1966), *aff'd*, 203 S.2d 612 (Fla. 1967); *see generally* Padovano, *supra* n. 16, at § 28.7; Mann, *supra* n. 65, at 197.

67. *Chiles*, 630 S.2d at 1095; *City of Tallahassee v. Mann*, 411 S.2d 162, 163 (Fla. 1981).

68. *E.g. Wild v. Dozier*, 672 S.2d 16, 18 (Fla. 1996).

69. *See 1-888-Traffic Schs.*, 734 S.2d at 417 (declining to exercise its all-writs power).

70. Fla. R. App. P. 9.100 comm. n. 1977 amend.

71. *Id.*

72. *Id.* 9.100(g).

73. *Id.*

form the basis for invoking the jurisdiction of the appellate court. Due to the importance of the threshold jurisdictional issue, the petitioner should demonstrate that the writ is the proper remedy to pursue under the circumstances of the particular case.<sup>74</sup>

- II. **Facts on Which Petitioner Relies.** The facts should describe, without argument, the circumstances of the case and the actions of the respondent.<sup>75</sup> The petitioner should support each fact with a reference to record documents included with the petition as an appendix.<sup>76</sup> Also, the appendix should include both record evidence demonstrating that the petitioner timely made required objections in the lower tribunal and the formal rulings denying those objections.<sup>77</sup>
- III. **Nature of Relief Sought.** In this section, the petitioner should request that the court enter an order to show cause to the respondent and ultimately enter a writ. The petitioner should explain the precise nature of the relief being requested.
- IV. **Argument.** This section should consist of unnumbered paragraphs containing the supporting argument and authority on which the petitioner relies for the merits of the petition.

### Parties

Only the aggrieved party may file a petition.<sup>78</sup> The petition should include all parties whose substantial rights may be affected by the proceeding.<sup>79</sup>

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74. See *Parkway Bank*, 658 S.2d at 650 (dismissing a writ of certiorari for lack of jurisdiction); *Bared & Co., Inc. v. McGuire*, 670 S.2d 153, 157 (Fla. Dist. App. 4th 1996) (explaining that failure to show irreparable harm in the petition for common-law certiorari will result in dismissal for lack of jurisdiction).

75. See *Williams v. Winn-Dixie Stores, Inc.*, 548 S.2d 829, 830 (Fla. Dist. App. 1st 1989) (striking the brief due to the argumentative nature of the statement of facts); *Sabawi v. Carpentier*, 767 S.2d 585, 586 (Fla. Dist. App. 5th 2000) (granting a motion to strike an answer brief for the inclusion of legal argument in the statement of the case).

76. Fla. R. App. P. 9.220.

77. See *State ex rel. Fla. Real Est. Commn. v. Anderson*, 164 S.2d 265, 268 (Fla. Dist. App. 2d 1964) (noting that petitioner's objection to jurisdiction had never been formally ruled on by the lower court).

78. *Spaziano v. Gleason*, 618 S.2d 736, 736 (Fla. Dist. App. 2d 1992).

79. *Bigham v. Ocala Brick & Tile Co.*, 156 S. 246, 252 (Fla. 1934).

In prohibition and mandamus cases, the judge or lower tribunal historically was named as the respondent.<sup>80</sup> By rule, the lower tribunal or judge is now omitted from the caption of the case.<sup>81</sup> However, the lower tribunal or judge remains a formal party to the proceeding, and this party “must be named as such in the body of the petition” and served with copies.<sup>82</sup> The named respondents are parties opposing the petition and all other parties who are not petitioners.<sup>83</sup>

### The Appendix

There is no record of appeal in an original proceeding,<sup>84</sup> and the clerk of the lower court will not transmit any documents to the appellate court.<sup>85</sup> Therefore, it is the petitioner’s responsibility to provide the court with an appendix that complies with Florida Rule of Appellate Procedure 9.220.<sup>86</sup> The appendix must be filed with the petition, and the petition must cite to relevant pages in the appendix.<sup>87</sup> The appendix also must be bound separately or separated by an appropriate divider or tab, and must contain an index.<sup>88</sup> For the court’s convenience, the appended materials should be numbered or lettered.

### Response to the Petition

A respondent is neither required nor permitted to file a response to a petition unless the court orders this action.<sup>89</sup> The order will be in the form of a show-cause order, and will state the time when the response is due.<sup>90</sup> The response should contain facts and appropriate arguments, which could be both jurisdictional and on the merits, in opposition to the writ’s issuance.<sup>91</sup> The

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80. *See Anderson Inv. Co. v. Lynch*, 540 S.2d 832, 833 (Fla. Dist. App. 4th 1988) (amending the case style to name the lower tribunal judge as the respondent).

81. Fla. R. App. P. 9.100(e)(1).

82. *Id.* 9.100(e)(2).

83. *Id.* 9.100(e)(2)–(3).

84. *Id.* 9.100(i).

85. *Id.*

86. *Id.* 9.100(g); *see Aleshire*, 418 S.2d at 308 (denying a petition for writ of certiorari when petitioner did not attach an appendix with a copy of the order sought to be reviewed).

87. Fla. R. App. P. 9.100(g).

88. *Id.* 9.220.

89. *Id.* 9.100(j).

90. *Id.* 9.100(h).

91. *Id.* 9.100(j).

response should include citations to the petitioner's appendix, or it may have its own supplemental appendix.<sup>92</sup>

If no response is submitted within the designated time, the court may treat the lack of response as an admission of the allegations of the petition.<sup>93</sup> However, the court still must determine whether the petition makes a prima facie case for relief in that event.<sup>94</sup>

In prohibition and mandamus proceedings, the judge or lower tribunal may file a response to the petition, but these parties have no obligation to do so absent a specific order to that effect.<sup>95</sup> The parties seeking to oppose the relief sought must file the response.<sup>96</sup>

The petitioner may serve a reply to the response within twenty days or within the court-ordered time frame.<sup>97</sup> The reply can include a supplemental appendix.<sup>98</sup>

#### Effect of Filing the Petition

Merely filing a petition does not stay the lower court order or action from which relief is sought.<sup>99</sup> A separate motion for stay is required.<sup>100</sup>

In prohibition cases, an appellate court's issuance of a show-cause order immediately "stay[s] further proceedings in the lower tribunal."<sup>101</sup>

#### Multiple or Incorrect Avenues of Relief

An appellate court must treat an improper petition for a specific writ as if the proper remedy had instead been sought.<sup>102</sup> Flor-

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92. *Id.*

93. *Daugherty v. McNeal*, 643 S.2d 665, 665 (Fla. Dist. App. 5th 1994); *Paulson v. Evander*, 633 S.2d 540, 541 (Fla. Dist. App. 5th 1994).

94. *State ex rel. Ginsberg v. Wiseheart*, 120 S.2d 810, 811 (Fla. Dist. App. 3d 1960).

95. Fla. R. App. P. 9.100(e)(3).

96. *Id.*

97. *Id.* 9.100(k).

98. *Id.*

99. *Samuels v. Franz*, 632 S.2d 73, 74 n. 3 (Fla. Dist. App. 2d 1993).

100. Fla. R. App. P. 9.310(a).

101. *Id.* 9.100(h).

102. *Id.* 9.040(c); see e.g. *Allen v. McClamma*, 500 S.2d 146, 147 (Fla. 1987) (treating a petition for writ of prohibition as one for certiorari); *Shannon v. Singletary*, 678 S.2d 466, 467 (Fla. Dist. App. 1st 1996) (ordering a lower court to treat a petition for writ of prohibition as one for mandamus); *Lail v. Anderson*, 665 S.2d 312, 312 (Fla. Dist. App. 2d 1995) (treating a petition for a writ of prohibition as one for certiorari); *N. Shore Med. Ctr. v.*

ida Rule of Appellate Procedure 9.040(c) requires the court to take this approach.<sup>103</sup> Nevertheless, the rule further provides that the court has no obligation to “seek the proper remedy.”<sup>104</sup> Therefore, if counsel is unsure which original proceeding may apply in a given case, it is preferable to file petitions in the alternative for more than one writ rather than to rely on the court to discern the available alternatives. The filing must be timely and complete as to all forms of relief sought.<sup>105</sup>

### PROCEDURE

#### Controlling Authority

Article V, Section 3(b)(7) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(3) authorize the Florida Supreme Court to issue writs.<sup>106</sup> The authority of the district courts of appeal is found in Article V, Section 4(b)(3) of the Florida Constitution and Rule 9.030(b)(3).<sup>107</sup> Rule 9.100 controls the method of proceeding in an original proceeding in the appellate courts.<sup>108</sup> Article V, Section 5(b) of the Florida Constitution, Rule 9.030(c)(3), and Florida Rule of Civil Procedure 1.630 govern the application for writs in circuit court.

#### Choosing the Correct Forum for the Petition

A petition generally is filed in the court having direct appellate and supervisory jurisdiction over the subject matter.<sup>109</sup> A

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*Capua*, 634 S.2d 1141, 1142 (Fla. Dist. App. 3d 1994) (treating a petition for writ of prohibition as a timely notice of appeal); *M.M. v. Korda*, 544 S.2d 318, 319 n. 1 (Fla. Dist. App. 4th 1989) (treating a petition for writ of prohibition as one for mandamus); *Morse v. Moxley*, 691 S.2d 504, 505–506 (Fla. Dist. App. 5th 1997) (treating a writ of prohibition as one for certiorari).

103. Fla. R. App. P. 9.040(c); see generally Fla. Const. art. V, § 2(a) (forbidding dismissal for improper remedy).

104. Fla. R. App. P. 9.040(c).

105. See *Maliska v. Broome*, 609 S.2d 711, 711 n.1 (Fla. Dist. App. 4th 1992) (refusing to treat a petition for writ of prohibition as one for certiorari because of a lack of timeliness); *Bellomo v. Gagliano*, 792 S.2d 1285, 1286 (Fla. Dist. App. 5th 2001) (treating a notice of appeal as a timely filed petition for writ of certiorari and directing that a proper petition and appendix be filed within ten days); *Lawrence v. Orange County*, 404 S.2d 421, 422 (Fla. Dist. App. 5th 1981) (refusing to treat a petition for writ of prohibition as one for certiorari when filed beyond thirty days of the rendition of the order).

106. Fla. Const. art. V, § 3(b)(7); Fla. R. App. P. 9.030(a)(3).

107. Fla. Const. art. V, § 4(b)(3); Fla. R. App. P. 9.030(b)(3).

108. Fla. R. App. P. 9.100.

109. *Resolution Trust Corp. v. Mayor & City Commn.*, 633 S.2d 1119, 1120 (Fla. Dist.

court cannot review by original writ any subject matter over which it otherwise lacks jurisdiction. For example, a district court of appeal cannot review judicial assignments by original writ because the Florida Supreme Court has exclusive jurisdiction to review judicial assignments.<sup>110</sup>

The 1980 amendment to Article V, Section 3(b)(7) of the Florida Constitution appears to permit the Florida Supreme Court to issue writs of prohibition to any court. However, the Court traditionally has accepted jurisdiction to issue these writs to circuit courts only when it ultimately would have appellate or discretionary jurisdiction over the matter.<sup>111</sup>

Generally, mandamus proceedings are filed in the place where the duty sought to be compelled is to be performed.<sup>112</sup> However, governmental respondents may have a special venue privilege.<sup>113</sup>

Specific rules of procedure, located at Florida Rule of Appellate Procedure 9.100(f), control petitions filed in circuit court that seek review of judicial or quasi-judicial acts.<sup>114</sup> Aside from requiring a notation on the petition's caption, this rule primarily directs the circuit-court clerk's office in handling the case and does not impose substantial additional requirements upon the attorney who is filing the petition.<sup>115</sup>

Unlike notices of appeal, which are filed in the lower court, petitions for original writs are filed with the appellate court from

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App. 1st 1993); *Fla. Dept. of Community Affairs v. Escambia County*, 582 S.2d 1237, 1238 (Fla. Dist. App. 1st 1991); *Dupont v. Hershey*, 576 S.2d 442, 443 (Fla. Dist. App. 4th 1991); *State ex rel. Bettendorf*, 564 S.2d at 1228.

110. *Rivkind v. Patterson*, 672 S.2d 819, 820 (Fla. 1996).

111. See *Dept. of Agric. & Consumer Servs. v. Bonanno*, 568 S.2d 24, 26 (Fla. 1990) (issuing a writ of prohibition restraining a circuit judge from exercising jurisdiction); *Pub. Serv. Commn. v. Fuller*, 551 S.2d 1210, 1210 (Fla. 1989) (considering a petition for a writ of prohibition against a circuit judge); *State v. Bloom*, 497 S.2d 2, 2 (Fla. 1986) (considering a petition for a writ of prohibition against a circuit judge); *Moffitt v. Willis*, 459 S.2d 1018, 1020 (Fla. 1984) (considering a petitioner's writ of prohibition and quashing the lower court's order); see generally Philip J. Padovano, *Florida Practice: Appellate Practice* § 22.3 (West 2002) (discussing appealable pretrial orders).

112. *State v. Parks*, 113 S. 702, 703 (Fla. 1927); see *Conner v. Mid-Fla. Growers, Inc.*, 541 S.2d 1252, 1255 (Fla. Dist. App. 2d 1989) (reasoning that an enforcement proceeding is properly brought in the same venue as adjudication when a taking occurred).

113. See e.g. *Dugger v. Grooms*, 582 S.2d 136, 136 (Fla. Dist. App. 1st 1991) (noting that a state could assert its venue privilege in a specific county).

114. Fla. R. App. P. 9.100(f)(1).

115. *Id.* 9.100(f)(2); *id.* 9.100(f)(3).

which relief is sought.<sup>116</sup> Filing a notice of appeal with the lower court and a petition with the appellate court does not preclude the appellate court from treating a timely notice of appeal as a timely petition, or vice versa.<sup>117</sup>

### Timing of Petitions

A petition for writ of certiorari must be filed within thirty days of the rendition of the order sought to be reviewed.<sup>118</sup> Failure to timely file the petition is a jurisdictional defect and the petition will be summarily dismissed.<sup>119</sup> Counsel should be cautious in determining the rendition date of the order, because orders subject to certiorari review generally are those orders for which a motion for rehearing is unauthorized and that do not toll rendition.<sup>120</sup>

There is no deadline for filing a petition for writ of prohibition under the rules. Because a party is attempting to prevent an exercise of jurisdiction, however, it is critical that the party file the petition before the harmful order is entered. A court may deny the petition if the petitioner delays seeking relief.<sup>121</sup> Thus, even though there is no deadline, delay is unwise.

Likewise, there is no jurisdictional deadline for filing a petition for writ of mandamus. However, mandamus is equitable in nature and the doctrine of laches applies.<sup>122</sup> Unreasonable delay in seeking the writ can be grounds for the court to deny the petition.<sup>123</sup> Similarly, while habeas petitions have no stated time requirement, the court may deny a delayed request based on the doctrine of laches.<sup>124</sup>

Courts will not permit the lack of a jurisdictional time limit for mandamus or prohibition to extend the thirty-day jurisdic-

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116. *Id.* 9.100(a); *id.* 9.030.

117. *Jones v. Off. of the Sheriff*, 541 S.2d 1149, 1149 (Fla. 1989); *Johnson v. Citizens St. Bank*, 537 S.2d 96, 97–98 (Fla. 1989); *Dept. of Health & Rehabilitative Servs. v. C.G.*, 556 S.2d 1243, 1244–1245 (Fla. Dist. App. 5th 1990).

118. Fla. R. App. P. 9.100(c).

119. *Ashley v. Moore*, 742 S.2d 533, 534 (Fla. Dist. App. 1st 1999).

120. *Shellnutt v. Citrus County*, 660 S.2d 393, 394 (Fla. Dist. App. 5th 1995).

121. *Alma's Italian & Seafood Restaurant v. Jones*, 627 S.2d 605, 606 (Fla. Dist. App. 1st 1993).

122. *State v. Adams*, 238 S.2d 843, 844 (Fla. 1970).

123. *Alma's Italian & Seafood Restaurant*, 627 S.2d at 606; *Jordan v. Fla. Parole & Probation Commn.*, 403 S.2d 591, 592 (Fla. Dist. App. 1st 1981).

124. *Anderson v. Singletary*, 688 S.2d 462, 463–464 (Fla. Dist. App. 4th 1997).



tional time periods for appeal or certiorari.<sup>125</sup> If remedies are sought in the alternative, the filing must be timely and complete as to all alternative remedies.<sup>126</sup>

### Oral Argument

Normally, the Florida Supreme Court and the district courts of appeal will permit oral argument on a petition for original writ only if a justice or judge requests it, “regardless of whether a party has requested it.”<sup>127</sup> However, court rules do not specifically preclude oral argument, and a request for oral argument can be made in an extraordinary case.<sup>128</sup> Parties must request oral argument in “a separate document served . . . no[ ] later than the time the last brief of that party is due.”<sup>129</sup> Counsel is well advised to include in the request one or more considered and specific reasons why the particular case warrants the unusual procedure of oral argument.

### *EFFECT OF ISSUANCE OR DENIAL OF WRIT*

#### Res Judicata and Law of the Case

Generally, “the denial of a writ . . . without opinion is not [r]es judicata” when the denial is for reasons other than the merits of the petition.<sup>130</sup> Likewise, a finding that an order did not amount to a departure from the essential requirements of law or cause irreparable harm, sufficient to warrant relief by certiorari, does not preclude the party from raising the same issue on plenary appeal.<sup>131</sup>

Caution is required in applying this rule to prohibition proceedings. Prior case law held that the denial of a writ of prohibi-

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125. *Shevin ex rel. State*, 333 S.2d at 12.

126. *Id.*

127. *Manual of Internal Operating Procedures*, *supra* n. 60, at § II(C)(1), 1282.

128. Fla. R. App. P. 9.320 comm. nn. 1977 amend.

129. *Id.* 9.320.

130. *Pub. Employees Rel. Commn. v. Dist. Sch. Bd. of De Soto County*, 374 S.2d 1005, 1010 (Fla. Dist. App. 2d 1979). This rule is widely followed and well established. *E.g. Fy-man v. State*, 450 S.2d 1250, 1252 n. 3 (Fla. Dist. App. 2d 1984); *Thomas v. State*, 422 S.2d 93, 94 (Fla. Dist. App. 2d 1982); *Cappetta v. State*, 471 S.2d 1290, 1291–1292 (Fla. Dist. App. 3d 1985); *Am. Fedn. of Govt. Employees v. DeGrio*, 454 S.2d 632, 635 (Fla. Dist. App. 3d 1984).

131. *Parkway Bank*, 658 S.2d at 649 n. 3; *Don Mott Agency, Inc. v. Harrison*, 362 S.2d 56, 58 (Fla. Dist. App. 2d 1978); *Keay v. City of Coral Gables*, 236 S.2d 133, 135 (Fla. Dist. App. 3d 1970).

tion was a ruling on the merits and, unless the reviewing court stated otherwise, the denial became the law of the case.<sup>132</sup> However, several courts now seem to hold that the denial does not constitute the law of the case unless the ruling expressly states that it was on the merits, or it appears that a merits determination was the only possible basis for the denial.<sup>133</sup>

### Successive Writs

“[O]nce a petitioner seeks [a writ] in a particular court[,] . . . [the petitioner] has picked [a] forum . . . [and] is not entitled to a second or third opportunity for the same relief by the same writ in a different court.”<sup>134</sup> However, if the petitioner seeks a remedy in the incorrect forum, the court will remand the petition to the proper forum.<sup>135</sup> Likewise, a petitioner generally cannot file successive petitions for different types of writs on the same issue.<sup>136</sup>

### Preclusive and Other Effects of Failing to File Petitions

In the great majority of circumstances, electing not to file a petition for certiorari or extraordinary writ does not impact a party's ability to raise the issue on plenary appeal. As a practical matter, however, if the plenary appeal truly fails to provide an adequate remedy, an error may become harmless or incurable after final judgment.<sup>137</sup>

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132. *Obanion v. State*, 496 S.2d 977, 979–980 (Fla. Dist. App. 3d 1986); *Edwards v. State*, 689 S.2d 1251, 1252 (Fla. Dist. App. 4th 1997); *Hobbs v. State*, 689 S.2d 1249, 1250 (Fla. Dist. App. 4th 1997).

133. *Sumner v. Sumner*, 707 S.2d 934, 934 (Fla. Dist. App. 2d 1998); *Smith v. State*, 738 S.2d 410, 412 (Fla. Dist. App. 5th 1999); see *Barwick v. State*, 660 S.2d 685, 691 (Fla. 1995) (holding that denials of petitions for writs of prohibition, in cases involving judicial disqualification, must state “with prejudice” to prevent further review on that issue).

134. *Tsavaris v. Scruggs*, 360 S.2d 745, 747 n. 2 (Fla. 1978) (citing *Jenkins v. Wainwright*, 322 S.2d 477 (Fla. 1975)); see *State ex rel. Kovnot v. Ferguson*, 313 S.2d 710, 710 (Fla. 1975) (noting that the Florida Constitution does not allow multiple opportunities for the same writ); *Fla. Parole & Probation Commn. v. Baker*, 346 S.2d 640, 641 (Fla. Dist. App. 2d 1977) (disallowing a petition for a writ as it was the third attempt to obtain a writ regarding the same subject matter).

135. Fla. Const. art. V, § 2(a); Fla. R. App. P. 9.040(b); see *Allen*, 500 S.2d at 147 (remanding petitions for writs of mandamus and prohibition to circuit court); *Kohut v. Evans*, 623 S.2d 569, 570 (Fla. Dist. App. 4th 1993) (reviewing a case that was transferred to the proper court after a petition was improperly filed).

136. *Johnson v. State*, 589 S.2d 456, 457 (Fla. Dist. App. 5th 1991).

137. *E.g. Lockhart v. State*, 655 S.2d 69, 73–74 (Fla. 1995) (holding an allegedly confidential disclosure harmless error on final appeal).

Furthermore, there is no appellate alternative to quo warranto proceedings challenging the authority of a prosecutor.<sup>138</sup> If a petition for quo warranto is not filed, any error as to the official's authority is waived.<sup>139</sup>

#### Appeal or Review of Filing on Petition

A circuit-court order issued in an original proceeding is reviewable in a district court of appeal as a matter of direct appeal from a final order or judgment.<sup>140</sup> Thus, it generally is unnecessary to use another extraordinary writ as the appeal vehicle.<sup>141</sup>

Similarly, the Florida Supreme Court may review a district court of appeal order concerning a writ under the same conditions that the supreme court reviews other district court orders through its discretionary power.<sup>142</sup> A court reviewing an order from an original proceeding will limit its review to those matters within the jurisdiction of the original proceeding.<sup>143</sup>

#### Attorneys' Fees for Original Proceedings

A party who prevails on a petition is not necessarily entitled to attorneys' fees unless the subject of the writ was a separate claim that would support an independent proceeding.<sup>144</sup> However, a party who is otherwise entitled to attorneys' fees in a given case should file a motion for appellate attorneys' fees in conjunction with filing the writ.<sup>145</sup>

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138. *Carey v. State*, 349 S.2d 820, 822 (Fla. Dist. App. 3d 1977).

139. *Id.*; *Dugger v. State*, 351 S.2d 740, 741 (Fla. Dist. App. 3d 1977).

140. *Leonard v. Morgan*, 548 S.2d 803, 803–804 (Fla. Dist. App. 1st 1989); *State v. Brown*, 527 S.2d 207, 207 (Fla. Dist. App. 3d 1987); *Loftis v. State*, 682 S.2d 632, 633 (Fla. Dist. App. 5th 1996).

141. *See State v. Shaw*, 643 S.2d 1163, 1164 (Fla. Dist. App. 4th 1994) (limiting the district court of appeal's jurisdiction to review a prohibition order entered by the circuit court acting in its appellate capacity to certiorari review).

142. *See Mandico*, 605 S.2d at 851–852 (reviewing a district court's granting of a writ of prohibition); *Bloom v. McKnight*, 502 S.2d 422 (Fla. 1987) (reviewing a district court's grant of a writ of prohibition), *overruled on other grounds*, *State v. Agee*, 622 S.2d 473 (Fla. 1993); *S. Rec. & Tape Serv. v. Goldman*, 502 S.2d 413, 414 (Fla. 1986) (reviewing a district court's denial of a writ of prohibition).

143. *Bay Bank & Trust Co. v. Lewis*, 634 S.2d 672, 678 (Fla. Dist. App. 4th 1994); *see McKinney v. Yawn*, 625 S.2d 885, 886 (Fla. Dist. App. 1st 1993) (reviewing a circuit court's order denying discharge of a criminal charge).

144. *Foley v. Fleet*, 652 S.2d 962, 963 (Fla. Dist. App. 4th 1995).

145. *Id.* Although Rule 9.400 allows service of a motion for appellate attorneys' fees up until the time for service of the reply brief, it is safer to file the motion with the petition in an original proceeding in case a show-cause order is never issued. While a petitioner does

*CONCLUSION*

The original-writs jurisdiction granted to Florida's appellate courts provides avenues of relief not available by traditional appeal. While the prerequisites for each writ are very specific, and counsel must comply with the technical requirements for the petition, original proceedings are a useful and often efficient way to access Florida's appellate system.

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not prevail in a proceeding in which a show-cause order is not issued, it appears that some appellate courts may award conditional attorneys' fees even for the losing petition, with fees to be collected in the event that the petition prevails at the end of the case. *Aksomitas v. Maharaj*, 771 S.2d 541, 544 (Fla. Dist. App. 4th 2000); *see generally* Tracy Raffles Gunn, *Attorneys' Fees on Appeal: Basic Rules and New Requirements*, 76 Fla. B.J. 31 (Apr. 2002) (discussing recent changes in the law concerning attorneys' fees on appeal).