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# APPELLATE PRACTICE GLOSSARY

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**All Writs Jurisdiction:** All writs also are known as constitutional writs. “Constitutional writs are ancillary in that they are used to preserve the power of the court to fully and effectively decide cases that have been, or will be, presented on independent jurisdictional grounds. Often no remedy is provided by the writ itself other than to preserve the court’s ability to provide relief.” Padovano, Florida Appellate Practice § 28.7; see also Mann, The Scope of the All Writs Power, 10 Fla. State L. Rev. 197 (1982) (“In practice, stay of lower court proceedings is the most common occasion for invoking the all writs power.”).

**Certiorari, Writ of:** Appellate remedy used to correct erroneous nonfinal orders when the record of a lower court shows that the proceedings have violated established principles of law or that a palpable miscarriage of justice has occurred and that the result is a substantial injury to the petitioner that cannot be adequately remedied later on appeal following rendition of a final order. See American Ry. Express Co. v. Weatherford, 84 Fla. 264, 268, 93 So. 740, 742 (1922).

**Conformed copy:** “An exact copy of a document bearing written explanations of things that were not or could not be copied, such as a note on the document indicating that it was signed by a person whose signature appears on the original.” Black’s Law Dictionary (8th ed. 2004).

**Final Order:** An order disposing of a matter on its merits, leaving nothing for the court other than enforcement of the order. The test for finality is “whether the order in question constitutes an end to the judicial labor in the cause, and nothing further remains to be done by the court to effectuate a termination of the cause as between the parties directly affected.” S.L.T. Warehouse Co. v. Webb, 304 So. 2d 97 (Fla. 1974).

**Fundamental Error:** Error that goes to the foundation of the case or to the merits of the cause of action. Sanford v. Rubin, 237 So. 2d 134 (Fla. 1970).

**Habeas Corpus, Writ of:** Remedy available to cure unlawful restraint of liberty or, in limited circumstances, to permit a parent to pursue a belated appeal. Murray v. Regier, 872 So. 2d 217 (Fla. 2002); In re E.H., 609 So. 2d 1289 (Fla. 1992).

**Mandamus, Writ of:** Remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law. A party petitioning for a writ of mandamus must establish a clear legal right to performance of the act requested, an indisputable legal duty, and no other adequate remedy. Butler v. City of Melbourne Police Dep’t, 812 So. 2d 547 (Fla. 5th DCA 2002).

**Nonfinal Order:** An order that does not dispose of a matter on its merits and that does not bring the need for further judicial labor to an end.

**Notice of Appeal:** The pleading filed in a lower court to begin an appeal to a higher court. In appeals from the circuit court to the district court, two copies of a notice of appeal, with a conformed copy of the order appealed attached to each, must be filed with the clerk of the circuit court within 30 days of rendition of the order. See Fla. R. App. P. 9.110 and 9.120.

**Party:** Parties to an appellate proceeding are identified by one of four names. The party initiating an appellate proceeding is called the “appellant” or “petitioner,” depending upon the type of order appealed. The party defending an appeal is called either the “appellee” or “respondent,” again depending upon the type of order appealed. All parties to the lower court proceeding are parties to an appeal, even if not included in the caption; thus, if four parties participated in the trial court and only one appeals, there is one appellant or petitioner and three appellees or respondents. Fla. R. App. P. 9.020(g), 9.360.

**Petition:** A petition filed in an original appellate proceeding is similar to a notice of appeal in that it is the document used to activate appellate jurisdiction to review an unappealable nonfinal order. The petition is different from a notice of appeal but similar to a brief in that it is more extensive and recites the basis for invoking the jurisdiction of the appellate court, the facts on which the petitioner relies, the nature of the relief sought, and argument in support of the petition with citations of legal authority. While most notices of appeal are one or two pages long, a petition can be up to 50 pages in length.

**Prohibition, Writ of:** The writ of prohibition is issued by a higher court to prevent a lower court from acting in excess of its jurisdiction or on a matter over which the lower court has no jurisdiction. The writ is preventive and not corrective, meaning that it commands the lower court not to do the thing it is about to do. The purpose of the writ of prohibition is to prevent the doing of something, not to compel the undoing of something already done. It cannot be used to revoke an order already entered. Hamlin v. East Coast Properties, Inc., 616 So. 2d 1175 (Fla. 1st DCA 1993).

**Quo Warranto, Writ of:** Quo warranto is a writ of inquiry as to the reason for doing the act complained of. The writ challenges the right of a person to hold an office or franchise derived from the state or to exercise some right or privilege derived from the state. State ex rel Christian v. Austin, 302 So. 2d 811 (Fla. 1st DCA 1974), aff’d in part and quashed in part sub nom., Austin v. State ex rel Christian, 310 So. 2d 289 (Fla. 1975); Padovano, *Florida Appellate Practice* at § 4.9.

**Rendition:** Rendition of an order generally occurs when a signed, written order is filed with the clerk of the lower court. Exceptions to this general rule apply; therefore, governing rules of procedure should be consulted when calculating the date of rendition. Fla. R. App. P. 9.020(h).

**Standard of Review:** The standard of review is a threshold question as to how much deference will be given to the decision of the trial court. The standard to be applied is normally spelled out in case law and depends primarily on whether the issue requires resolution of a factual dispute or a question of law or review of the trial court judge’s exercise of discretion.