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## Florida Appeal Times

Martin J. Nash

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# FLORIDA APPEAL TIMES

MARTIN J. NASH\*

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## INTRODUCTION

There have been three important changes in the appeal time requirements in the State of Florida within the past two decades. Each of these changes has caused a great deal of confusion among the members of the bar.

In 1943, after the abolition of writs of error as the method of appellate review, the Florida Supreme Court stated that: "Some confusion at the bar existed as to the time for taking appeals from judgments and decrees . . . ."<sup>1</sup>

In 1951, Justice Fabisinski commenting on chapter 59 of the Florida Statutes enacted in 1945, stated: "The conflicting provisions provide a trap for the unwary . . . ."<sup>2</sup>

The Florida Appellate Rules occasioned similar distress after their adoption<sup>3</sup> particularly in regard to appeal time limitations. Illustrative is the appeal time requirement from the Civil Court of Record of Dade County to the district court of appeal:<sup>4</sup> in 1959—60 days,<sup>5</sup> in 1960—one calendar month<sup>6</sup> and in 1961—60 days.<sup>7</sup>

1. *Russ v. Solomon*, 152 Fla. 348, 349, 12 So.2d 121 (1943) (interpreting Fla. Laws 1941, ch. 20441).

2. *Smith v. Fletcher Motor Sales, Inc.*, 62 So.2d 60, 62 (Fla. 1952) (concurring opinion).

3. The Florida Appellate Rules as amended, January 1, 1960, became effective as rules of court on July 1, 1957.

4. Compare FLA. STAT. § 33.11 (1959) with FLORIDA APPELLATE RULE 3.2(b) (hereafter cited as F.A.R.).

5. *In re Campbell's Guardianship*, 114 So.2d 352, 354 n.3 (Fla. App. 1959).

6. *Fuller v. Riley*, 124 So.2d 499 (Fla. App. 1960).

7. *Ed Lane Auto Sales, Inc. v. Weinstein*, 132 So.2d 218 (Fla. App. 1961).

This article is an attempt to clarify the present state of the Florida law as to appeal time requirements.<sup>8</sup>

## I. GENERALLY

### A. APPEAL TIMES ARE JURISDICTIONAL

Since the time fixed for taking an appeal is jurisdictional,<sup>9</sup> an appellate court has no jurisdiction after the appeal time has elapsed.<sup>10</sup> It is incumbent upon opposing counsel to bring this absence of jurisdiction to the court's attention.<sup>11</sup> But the court may also dismiss the appeal, *sua sponte*, when it appears that the appeal time has expired.<sup>12</sup>

### B. APPEAL TIMES CANNOT BE EXTENDED BY THE COURTS OR THE LITIGANTS

It is well settled that the time for taking appeals as well as the time for filing petitions for writs of certiorari cannot be extended by the court.<sup>13</sup> Further, the litigants cannot extend the time by consent or stipulation.<sup>14</sup>

In *Lalow v. Codomo*,<sup>15</sup> the time for taking an appeal from a partial summary judgment had expired. The trial judge entered an amended partial summary judgment for the avowed purpose of providing the losing party with an opportunity to appeal the first judgment. The Florida Supreme Court, in dismissing the appeal, stated that the trial judge had no authority to extend directly or indirectly the time for filing the notice of appeal.<sup>16</sup>

A similar unsuccessful attempt to extend the appeal time by stipulation is illustrated by *Salinger v. Salinger*.<sup>17</sup> The parties stipulated that an amendment to the final decree would provide, "the effective date of such final decree shall for all purposes be August 1, 1955."<sup>18</sup> The trial court

8. This paper is limited to appeal times and does not discuss such problems as jurisdiction of the various appellate courts or methods of taking appeal, *i.e.*, certiorari or appeal, or the hazy problem of what is a final judgment, except when necessarily incidental to the main problem.

9. Congregation Temple De Hirsch v. Aronson, 128 So.2d 585, 586 (Fla. 1961); Ramagli Realty Co. v. Craver, 121 So.2d 648 (Fla. 1960); Donin v. Goss, 69 So.2d 316 (Fla. 1954); *In re Warner's Estate*, 159 Fla. 675, 32 So.2d 461 (1947); Cates v. Heffernan, 154 Fla. 422, 18 So.2d 11 (1944); Harris v. Condermann, 113 So.2d 235 (Fla. App. 1959). The prescribed time limitation for filing a petition for a writ of certiorari as established by the Florida Appellate Rules is also considered to be jurisdictional. See Harris v. Condermann, *supra*.

10. *Ibid.* But the court does have jurisdiction to dismiss the appeal. See Congregation Temple De Hirsch v. Aronson, *supra* note 9.

11. Donin v. Goss, 69 So.2d 316, 318 (Fla. 1954).

12. See Braunstein v. Silhouette, Inc., 113 So.2d 436 (Fla. App. 1959).

13. Congregation Temple De Hirsch v. Aronson, 128 So.2d 585 (Fla. 1961); Salinger v. Salinger, 100 So.2d 393 (Fla. 1958); Cortina v. Cortina, 98 So.2d 334 (Fla. 1957); Lalow v. Codomo, 88 So.2d 752 (Fla. 1956); Wiczorek v. Williams, 71 So.2d 262 (Fla. 1954); Cates v. Heffernan, 154 Fla. 422, 18 So.2d 11 (1944); Whitaker v. Sparkman, 30 Fla. 347, 11 So. 542 (1892); Jackson v. Haisley, 27 Fla. 205, 9 So. 648 (1891). For certiorari see Harris v. Condermann, 113 So.2d 235 (Fla. App. 1958).

14. Salinger v. Salinger, *supra* note 13; Donin v. Goss, 69 So.2d 316 (Fla. 1954); Cates v. Heffernan, *supra* note 13.

15. 88 So.2d 752 (Fla. 1956).

16. *Id.* at 753.

17. 100 So.2d 393 (Fla. 1958).

18. *Ibid.*

entered an order in accordance with the stipulation. An appeal was filed approximately 88 days after the rendition of the original order and 58 days after the second order based upon the stipulation. The court dismissed the appeal, reasoning that more than 60 days had elapsed from the date of the original order and that neither the parties nor the trial court could extend the time for taking an appeal.<sup>19</sup>

### C. RENDITION AS COMMENCING THE APPEAL TIME

The Florida Appellate Rules provide that appeals "shall be commenced within 60 days from the *rendition* of the final decision, order, judgment or decree appealed from . . . ."<sup>20</sup>

As commonly used, the term "rendition" describes the official act of the court of signing the final decision, order, judgment or decree. The phrase "entry of a judgment" describes the ministerial act of spreading upon the record a statement of the final conclusion reached by the court.<sup>21</sup>

The term "rendition," as used in the Florida Appellate Rules, has a different meaning than that described above. A court of general jurisdiction speaks only through its record. Until such time as the judgment, decision, order or decree is entered of record there is no competent evidence of its rendition.<sup>22</sup> The date of the judgment as rendered within the contemplation of the Florida Appellate Rules must therefore, necessarily be the date of entry by the courts.<sup>23</sup>

*Schneider v. Cohan*<sup>24</sup> is a dramatic illustration of the difference between the two uses of the term. The issue in the case was whether or not the 60 day appeal period had expired.<sup>25</sup> A summary judgment dated February 11, was filed and noted on the progress docket on the same date. However, the judgment was not recorded in the minutes of the circuit court until February 15. The filing of the appeal on April 15 was within 60 days from the date of recording, but longer than 60 days from the date of filing, notation on the progress docket and the date of the summary judgment. The Supreme Court of Florida, in holding that the appeal was timely filed, stated:

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19. *Id.* at 394.

20. F.A.R. 3.2(b). (Emphasis added.)

21. *Simmons v. Hanne*, 50 Fla. 267, 270, 39 So. 77, 78 (1905).

22. *Magnant v. Peacock*, 156 Fla. 688, 690-91, 24 So.2d 314, 315 (1945).

23. F.A.R. 1.3. The definition section of the Florida Appellate Rules defines rendition to mean, "that it has been reduced to writing, signed and made a matter of record . . . ." In this connection, "A paper is deemed to be recorded when filed with the clerk and assigned a book and page number." See also *Brenner v. Gelemter*, 90 So.2d 306 (Fla. 1956) where the supreme court reaffirmed its position that the word "rendition" means "entry." *Accord*, *Christopher v. Oliver*, 103 So.2d 240 (Fla. App. 1958) (decision under the new Florida Appellate Rules citing 3.2(b) without comment).

24. 73 So.2d 69 (Fla. 1954).

25. The governing provision in this case was FLA. STAT. § 59.08 (1959) which is Fla. Laws 1945, ch. 22854, at 834. Section 59.08 provides that "Appeals, including petitions for review by certiorari, shall be taken or filed within 60 days from and after the entry of the order . . . appealed from." It is to be noted that this statute is substantially the same as the present F.A.R. 3.2(b).

the date of the signing of the judgment by the Circuit Judge or the date the same is filed in the Clerk's office or the date the same is noted in the Progress Docket is of no consequence. The time begins to run from the effective date of the judgment and that is the day it was actually entered, that is to say recorded, in the Circuit Court minute book.<sup>26</sup>

A judgment or decree in equity, similar to a judgment at law is only considered rendered when entered in the court's records, to wit, the chancery order book.<sup>27</sup>

A note of caution is necessary at this point. The Florida Appellate Rules provide that if recording is not required by statute, then the appeal time begins to run as of the date of the filing of the order.<sup>28</sup> The probate statute which provides for filing is the most notable exception to the general rule of rendition.<sup>29</sup>

The foregoing discussion applies with equal force to petitions for writs of certiorari. Florida Appellate Rule 4.5(c)(1) provides that application for the writ shall be filed "within 60 days from the rendition of the decision . . . sought to be reviewed."<sup>30</sup>

When by statute or rule, the time for review begins to run from an event other than rendition or filing, it is highly probable that the Florida courts will equate that event with entry. In *Barry v. Robson*,<sup>31</sup> a petition for certiorari was filed 61 days after the date of the final order, but 60 days after its entry. The respondent in contesting the granting of the petition, agreed that chapter 59 of the Florida Statutes provided for a time limitation of 60 days from the entry of the final order.<sup>32</sup> However, he argued that the statute was nothing more than a rule of court and could be superseded by subsequent rules.<sup>33</sup> The respondent then contended that the Supreme Court Rule providing that the appeal time shall commence to run from the "date of the order"<sup>34</sup> superseded section 59.08 of the Florida

26. *Schneider v. Cohan*, 73 So.2d 69, 70 (Fla. 1954). (Emphasis added.)

27. As to the proposition of entry on the court's records, see generally: *Ramagli Realty Co. v. Craver*, 121 So.2d 648 (Fla. 1960) (citing F.A.R. 3.2(b) and 1.1); *Salinger v. Salinger*, 100 So.2d 393 (Fla. 1958); *Brenner v. Gelernter*, 90 So.2d 306 (Fla. 1956); *Schneider v. Cohan*, 73 So.2d 69 (Fla. 1954); *Barry v. Robson*, 65 So.2d 739 (Fla. 1954); *Winn & Lovett Grocery Co. v. Luke*, 156 Fla. 638, 24 So.2d 310 (1945); *Magnant v. Peacock*, 156 Fla. 688, 24 So.2d 314 (1945); *Wildwood Crate & Ice Co. v. Citizens' Bank*, 98 Fla. 186, 123 So. 699 (1929) (chancery).

28. F.A.R. 1.3.

29. FLA. STAT. § 732.16 (1959). See generally, 1 FLA. LAW & PRAC. *Appeals* § 28 (1955). Based upon *In re Wartman's Estate*, 128 So.2d 600 (Fla. 1961), it is arguable that the constitutional basis for this statute has been removed and thus recording, and not filing, is determinative in probate matters. See *infra* the general discussion of shorter appeal times.

30. See *Barry v. Robson*, 65 So.2d 739 (Fla. 1954).

31. *Ibid.*

32. See note 25 *supra*.

33. FLA. STAT. § 59.44 (1959) provides that the chapter is to be considered as rules of court, and "may be changed . . . or superseded by rules adopted by the supreme court of this state."

34. SUP. CT. R. 28 (1949) which is substantially the same as SUP. CT. R. 22 (1955) (a recodification) (Emphasis added.); see 31 FLA. STAT. ANN. 493 (1956).

Statutes which provided that the time shall commence from the "entry of the order."<sup>35</sup> The Supreme Court of Florida, in granting the writ of certiorari,<sup>36</sup> construed the "date of the order" to mean the effective date, a construction serving to equate the Supreme Court Rule with the statutory provision.

D. MOTIONS FOR NEW TRIAL AND PETITIONS FOR REHEARING  
AS AFFECTING "RENDITION"

A judgment is not considered rendered until a timely and proper motion or petition for a new trial, rehearing or reconsideration is disposed of by the lower court.<sup>37</sup> A contrary result would place the attorney for the losing party in the position of being required to take an appeal while his petition or motion was still pending before the trial court.<sup>38</sup> Consequently, the appellate court could well be asked to do the very thing which the lower court had already done.

Prior to the present appellate rules, it was well settled that a timely motion for a new trial tolled the time requirement.<sup>39</sup> When a petition for rehearing of an equitable decree granting affirmative relief was desired, it was necessary to secure an order to stay the running of the time period and the operation of the decree.<sup>40</sup> However, when the equitable decree did not grant affirmative relief, the petition itself, similar to the motion for a new trial at law, operated to toll the time.<sup>41</sup> This apparent distinction was based upon the fact that when affirmative relief was not asked for, the decree was self-executing, and there was no proceeding for a stay order to operate upon.<sup>42</sup>

In 1956 this distinction was obliterated by the supreme court's decision in *Ganzer v. Ganzer*.<sup>43</sup> The court stated that the purpose for tolling the time for appeal, when a timely motion for new trial or petition for rehearing was presented to the trial court, was to avoid the necessity for taking an appeal until it was determined that there was, in fact, a need for an appeal.

35. FLA. STAT. § 59.08 (1959). (Emphasis added.)

36. *Barry v. Robson*, 65 So.2d 739, 740 (Fla. 1954).

37. F.A.R. 1.3 provides: "Where there has been a timely and proper motion or petition for a new trial, rehearing or reconsideration by the lower court, the decision, judgment, order or decree shall not be deemed rendered until such motion or petition is disposed of." See *Bannister v. Allen*, 127 So.2d 907 (Fla. App. 1961) (petition for rehearing). It is to be noted that the term "disposed of" in the rule means filed and recorded by the clerk. See *Seiferth v. Seiferth*, 121 So.2d 689 (Fla. App. 1960).

38. *Kent v. Marvin*, 59 So.2d 791, 793 (Fla. 1952).

39. *Kent v. Marvin*, *supra* note 38; *City of Orlando v. Hewitt*, 92 Fla. 933, 110 So. 874 (1926).

40. *Ludman Corp. v. Moyer*, 61 So.2d 424 (Fla. 1952); *Lauderdale by the Sea Dev. Co. v. Lauderdale Surf & Yacht Estates, Inc.*, 160 Fla. 929, 37 So.2d 364 (1948).

41. *Beck v. Littlefield*, 65 So.2d 723 (Fla. 1953); *Kent v. Marvin*, 59 So.2d 791 (Fla. 1952); *Hollywood, Inc. v. Clark*, 153 Fla. 501, 15 So.2d 175 (1943); *O'Steen v. Thomas*, 146 Fla. 73, 200 So. 230 (1941); *Dade County v. Snyder*, 134 Fla. 756, 184 So. 489 (1938).

42. *Beck v. Littlefield*, *supra* note 41.

43. 84 So.2d 591 (Fla. 1956); *cf. Brenner v. Gelernter*, 90 So.2d 306 (Fla. 1956) (dicta).

The court held that no reason existed for the distinction in equitable actions granted affirmative relief, and consequently abolished it.<sup>44</sup>

### *The Motion or Petition Must be Timely*

Under both the case law and the Florida Appellate Rules the petition for rehearing and the motion for new trial must be timely filed.<sup>45</sup> A motion for a new trial at law is timely filed if served not later than 10 days after the rendition of verdict.<sup>46</sup> A petition for rehearing in equity is timely filed if it is served within 10 days<sup>47</sup> after the recording of the decree.<sup>48</sup> Rendition and recording in this context are synonymous.

The present rules, as did the prior case law, require that the motion for new trial or petition for rehearing be a proper one. This simply means that a regularized procedure must exist for obtaining a rehearing or a new trial. It is evident that when a party moves for a new trial in an equitable action, the motion is improper.<sup>49</sup> Of course, greater difficulty is presented in less obvious situations. For example, a petition for rehearing by the losing party after an order granting a summary judgment has been entered is not a proper motion.<sup>50</sup> There is neither a statutory provision nor a rule of procedure providing for a rehearing after the entry of a summary judgment. The only method of challenging the propriety of the summary judgment is by direct appeal.<sup>51</sup>

By way of further illustration, assume that a litigant petitions for rehearing after a summary judgment has been entered against him. Sixty one days after the final judgment, the trial judge denies the motion. In this situation, the 60 day appeal time has run; the petition for rehearing, since improper, did not operate to toll the time requirement. Thus, the petitioning party's appeal time has expired and the litigation is at an end.

If a litigant desires to avoid this result by filing a notice of appeal while his petition for rehearing is pending before the trial court, the filing

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44. *Canzer v. Canzer*, *supra* note 43, at 592.

45. See *supra* note 37 and cases cited *supra* notes 40, 41.

46. FLA. R. CIV. P. 2.8(b).

47. FLA. R. CIV. P. 3.16(a).

48. The ten day time requirement for filing a petition for rehearing is applicable also to motions addressed to the district courts of appeal for the certification of their decisions. After the ten day time period for petitioning a district court of appeal for rehearing has elapsed, a party litigant is not entitled to petition a district court of appeal to have its decision certified as a decision passing upon a question of great public interest. *Whitaker v. Jacksonville Expressway Authority*, 131 So.2d 22, 24 (Fla. App. 1961).

49. By the same token a petition for rehearing in a law action is improper. For example in *Mathis v. Butler*, 128 So.2d 142, 143 (Fla. App. 1961), the court ordered a remittitur or in the alternative a new trial. The plaintiff accepted the remittitur. The defendant then petitioned for a rehearing on the amount of the remittitur. It was held that the defendant's motion was improper.

50. *Counne v. Saffan*, 87 So.2d 586 (Fla. 1956); *Weisberg v. Perl*, 73 So.2d 56 (Fla. 1954); *Aurremma v. B-Thrifty Super Mkt., Inc.*, 127 So.2d 682 (Fla. App. 1961); *Marans v. Stang*, 124 So.2d 891 (Fla. App. 1960); *La Joie v. General Motors Acceptance Corp.*, 108 So.2d 497 (Fla. App. 1959).

51. *Ibid.*



of the notice of appeal will serve as an abandonment of the petition for rehearing.<sup>52</sup>

*Ramagli Realty Co. v. Craver*<sup>53</sup> is a striking example of an improper motion. The losing party moved that the trial court vacate a default judgment. The motion was granted and the default judgment was vacated, apparently eliminating the necessity for an appeal. Four months after the first judgment was rendered, the original default judgment was reinstated. The Florida Supreme Court granted certiorari and held that the time limitation of 60 days computed from the date of the final default judgment had expired and accordingly the district court of appeal was without jurisdiction to hear the appeal. The supreme court stated that the motion to vacate the default judgment was improper, and thus did not operate to toll the time. In reaching this result, the court reasoned that neither the Florida Rules of Civil Procedure, nor any other statute or rule provided for any method of procedure relating to the opening of default judgments by trial courts.<sup>54</sup> There being no provision for opening default judgments, the only method of reconsideration was by direct appeal within 60 days from the entry of the final judgment.<sup>55</sup>

The question of the existence of procedures to open default judgments is not within the scope of this article.<sup>56</sup> However, in the case of a flagrant error committed by a trial court in granting a default or summary judgment, it is questionable whether a trial court should be powerless to correct its own error, thereby forcing litigants to prosecute an appeal whose outcome is certain.<sup>57</sup> Indeed, is this not the very situation which the rule regarding the tolling of time for appeals was designed to prevent, *viz.*, the doing of a useless act?<sup>58</sup>

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52. *Frank v. Pioneer Metals, Inc.*, 114 So.2d 329 (Fla. App. 1959).

53. 121 So.2d 648 (Fla. 1960).

54. *Id.* at 653.

55. It is interesting to note that the court recognized that prior to the effective date of the rules of civil procedure, the case law had allowed the court to vacate and set aside default judgments. The court held that these decisions were rendered inapplicable because the new provisions had done away with terms of court, wherein the court had complete control over its judgments and power to vacate, modify and set them aside during the term in which they were rendered. *Ramagli Realty Co. v. Craver*, 121 So.2d 648, 653 (Fla. 1960) and the cases cited therein at n. 17.

56. The court in *Ramagli*, recognized that default judgments could be set aside or vacated when such judgments were procured by fraud, deceit or other cause which would render it void. However, the court indicated that such is not the case for judgments which were merely voidable or erroneously entered. *Ramagli Realty Co. v. Craver*, *supra* note 55. See comment, 16 U. MIAMI L. REV. 109 (1961).

57. In this connection one might speculate as to the meaning of the term "motion for reconsideration" as used in Florida Appellate Rule 1.3.

58. The Third District Court of Appeal is apparently taking a position opposite to the Florida Supreme Court. The former has allowed the trial court to hear the motion to vacate the default judgment and then taken certiorari to review the lower court in order to ascertain if there has been an abuse of discretion in denying or granting the motion to vacate. *Bursten v. Cooper*, 127 So.2d 134 (Fla. App. 1961); *White v. Spears*, 123 So.2d 689 (Fla. App. 1960). The practical effect of this rationale is to allow the lower court to set aside defaults. Although these decisions may occasion a better result, their propriety is at best questionable in the face of *Ramagli*, in which the Third District Court of Appeal was reversed.

*Application of the Rule to Probate Matters*

Prior to the revision of the Florida appellate court structure by the 1957 constitutional amendment and the adoption of the Florida Appellate Rules, the provisions relating to tolling the time when a petition for rehearing or a motion for new trial was timely filed did not apply to county judge's courts in probate matters.<sup>59</sup> This exception was based upon the fact that the county judge's courts were omitted from the group of courts designated in the enabling statute<sup>60</sup> as subject to the rules of practice and procedure promulgated by the supreme court.<sup>61</sup> Further, in the absence of statutory authority, only the legislature could provide for the tolling of the time, and section 732.19<sup>62</sup> of the Florida Statutes, relating to appeals from probate matters, did not so provide.

Appeals from the county judge's courts in probate matters are included within the scope of the present appellate rules. There are two reasons sustaining such a conclusion. First, the supreme court under the Florida Constitution has the power to regulate practice and procedure for all courts.<sup>63</sup> This constitutional power grant, unlike the enabling statute,<sup>64</sup> includes the county judge's courts within its coverage. Second, granting that the supreme court has the power to adopt appellate rules governing appeals in probate matters, the Florida Appellate Rules specifically provide that they are to be applicable to appeals from the county judge's courts in probate matters.<sup>65</sup> It affirmatively appears that the objection raised in the case of *In re Estate of Minola M. Lee*,<sup>66</sup> that the county judge's courts were specifically exempted from the provisions of the rules, has been overcome.<sup>67</sup>

*Administrative Proceedings — Petitions for Rehearing*

In reviews of administrative proceedings, whether by appeal or certiorari, a petition for rehearing operates as a supersedeas unless a statute

59. *In re Estate of Minola M. Lee*, 90 So.2d 290 (Fla. 1956). The court held that a petition for rehearing in probate was not a "proper motion." The court stated: "We find no provision of the statute or rules which authorizes or recognizes a petition for rehearing in such instances. . . . There being no authority for a petition for rehearing in the circumstances of this case, such a petition does not toll the time for taking an appeal." *Id.* at 290.

60. Fla. Laws 1943, ch. 21995, §§ 1-6, at 688 (repealed).

61. Originally FLA. EQUITY RS. 70, 71 (1950) superseded by FLA. R. CIV. P. 3.16. See also SUP. CT. R. 45 (1955).

62. FLA. STAT. § 732.19 (1959).

63. FLA. CONST. art. V, § 3.

64. Fla. Laws 1943, ch. 21995, §§ 1-6, at 688 (repealed).

65. F.A.R. 4.4 provides: "The Florida Appellate Rules relating to appeals shall apply to appeals from final orders or decrees of county judge's courts pertaining to probate matters or to estates and interests of minors and incompetents."

66. 90 So.2d 290 (Fla. 1956).

67. By way of further clarification, the court in *In re Estate of Minola M. Lee*, *supra* note 66, held that a petition for rehearing in probate was not a proper motion. However, eight years before, the supreme court had recognized that a petition for rehearing was a proper motion in probate. *In re Warner's Estate*, 160 Fla. 153, 33 So.2d 728

specifically provides for the necessity of a stay order.<sup>68</sup> Although no cases have been decided since the adoption of the appellate rules, it is submitted that a stay order is no longer necessary when review is by certiorari. The supreme court has the power to regulate all provisions necessary for the granting of writs of certiorari, including the computation of tolling of the review time requirements.<sup>69</sup> Accordingly, the Florida Appellate Rule which provides that the petition operates as a supersedeas will prevail over contrary statutory enactments.<sup>70</sup> However, when an appeal from an administrative agency is provided for by statute as a matter of right,<sup>71</sup> the statutory provisions will prevail.<sup>72</sup>

#### E. WHEN IS AN APPEAL DEEMED COMMENCED?

An appeal is commenced under the Florida Appellate Rules by filing a notice of appeal and depositing the filing fee prescribed by law with the clerk of the lower court.<sup>73</sup>

Prior to the adoption of the appellate rules it was well settled that the timely and proper filing of the notice of appeal was a jurisdictional prerequisite to an appellate court exercising its powers of review.<sup>74</sup> Consequently, the appellate rule<sup>75</sup> providing that filing of the notice of appeal shall give the court jurisdiction is merely a recodification of the former Supreme Court Rule 12,<sup>76</sup> and is similar in import to section 59.01<sup>77</sup> of

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(1948). An analysis of the *Warner* case reveals that the court based its holding upon sections 63.70, 63.71 of the chancery procedure act. Fla. Laws 1931, ch. 14658, §§ 70, 71, at 72. These provisions were repealed by Fla. Laws 1951, ch. 26962, § 2, at 1210. The repealing act indicated that the rules were superseded because of the promulgation of the "now new existing equity rules" pursuant to section 25.47 (Fla. Laws 1943, ch. 21995, §§ 1-6, at 688) which were intended to apply in the place of the statute. Unfortunately, the county judge's courts were omitted from the coverage of the statutory enabling act. Thus the equity rules, FLA. EQUITY RS. 70, 71 (1950), adopted pursuant to the enabling statute could not apply to the probate courts *even though the legislature apparently intended the rules to be applicable*. See *In re McRae's Estate*, 73 So.2d 818 (Fla. 1954). This inadvertent error occasioned a like result in all cases where rules were promulgated by the supreme court. As indicated in the text, the 1957 constitutional amendment changed this result, for unlike the statutory enabling act no court is omitted from the constitutional enabling provisions. This constitutional authority should operate to reinstate the court's holding in the *Warner* case, *supra*, which recognized that a petition for rehearing in the county judge's court is a proper motion.

68. *Redwing Carriers v. Carter*, 64 So.2d 557 (Fla. 1953).

69. *Wilson v. McCoy Mfg. Co.*, 69 So.2d 659 (Fla. 1954); *Harris v. Condermann*, 113 So.2d 235 (Fla. App. 1959). See also general discussion on appeals from administrative bodies.

70. F.A.R. 4.5; cases cited note 69 *supra*.

71. See *State v. Furen*, 118 So.2d 6 (Fla. 1960).

72. See the general discussion on shorter appeal times and appeals from administrative bodies for a further analysis of the area.

73. F.A.R. 3.2(a).

74. *State ex rel. Diamond Berk Ins. Agency, Inc. v. Carroll*, 102 So.2d 129 (Fla. 1958); *Counne v. Saffan*, 87 So.2d 586 (Fla. 1956). Cf. F.A.R. 3.2(d).

75. F.A.R. 3.2(d) provides: "EFFECT OF FILING NOTICE. The filing of the notice of appeal and deposit of the filing fee with the clerk of the lower court shall give the Court jurisdiction of the subject matter and of the parties to the appeal."

76. SUP. CT. R. 12(5).

77. FLA. STAT. § 59.01 (1959).

the Florida Statutes. The filing requirement is applicable to final and interlocutory appeals,<sup>78</sup> criminal appeals<sup>79</sup> and petitions for writs of certiorari.<sup>80</sup>

The supreme court in *State ex rel. Diamond Berk Insurance Agency, Inc. v. Carroll*,<sup>81</sup> strictly construed the filing of the notice of appeal requirement.<sup>82</sup> Through a clerical error the original filing of the notice of appeal was with the clerk of the appellate court rather than with the clerk of the lower court as required by the appellate rules. The supreme court was "compelled" to hold that the appellate rule required timely filing of the notice of the appeal *at the place required by the rules*.<sup>83</sup>

The new appellate rules apparently added an additional jurisdictional requirement, non-existent under the former statutes or conforming rules.<sup>84</sup> One of the new rules<sup>85</sup> provides that the filing of the notice of appeal and *deposit of the filing fee* shall give the court jurisdiction. The word "apparently" is used because the only case directly on point held that the requirement of deposit of the filing fee is not jurisdictional. In this case, *State ex rel. Moore v. Murphree*,<sup>86</sup> an appeal was taken from the county judge's court to the circuit court. Although the notice of appeal was filed within the 2 day time period required by section 83.27<sup>87</sup> of the Florida Statutes, the filing fee was not paid until 11 days thereafter and then in the wrong amount. The circuit court denied the motion to dismiss, and the respondent brought a writ of prohibition in the district court of appeal. The latter court denied the writ and in that fashion affirmed the circuit court.

The appellate court evidently followed the maxim that remedial statutes should be liberally construed. In this connection, the court was of the opinion that, "the rule must yield to dictates of reason and ethics upon which the law is founded."<sup>88</sup> The court reinforced its reasoning when

78. F.A.Rs. 4.2(b) & (g).

79. F.A.R. 4.5(c)(1). It is to be noted that applications for writs of certiorari are filed with the clerk of the appellate court rather than the clerk of the lower court as in other cases.

80. F.A.R. 6.4.

81. 102 So.2d 129 (Fla. 1958).

82. Although the filing requirement is strictly construed, the failure of the lower court clerk to transmit a certified copy of the notice and the filing fee to the clerk of the appellate court is not considered to be jurisdictional. F.A.R. 3.2(d). Other requirements not jurisdictional in nature apparently are liberally construed. For example, substantial compliance with the content requirement of the notice is sufficient. *Seaboard Air Line R.R. v. Holt*, 80 So.2d 354 (Fla. 1955); followed in *State ex rel. Diamond Berk Ins. Agency, Inc. v. Carroll*, *supra* note 81 (dicta).

83. *Id.* at 130.

84. See for example FLA. STAT. § 59.01(8) (1959).

85. F.A.R. 3.2(d).

86. 106 So.2d 430 (Fla. App. 1958).

87. FLA. STAT. § 83.27 (1959). See also FLA. STAT. § 83.38 (1959) which provides for a ten day time limitation in landlord-tenant removal cases originally instituted in the county courts.

88. *State ex rel. Moore v. Murphree*, 106 So.2d 430, 432 (Fla. App. 1958).

it stated that section 83.27 and 83.28<sup>89</sup> which provide for appeal times in this situation, do not provide that a filing fee must be paid in order to prosecute an appeal. They further indicated that the former rule<sup>90</sup> as to the payment of the filing fee was disconnected and had no relationship to the statutes and rules concerning the jurisdictional requirements of filing the notice of appeal. The lumping together of these two provisions, the filing of the notice of appeal and the payment of the filing fee, occurred doubtless from inadvertance and the rule as to the payment of the filing fee was not to be considered jurisdictional.<sup>91</sup> But, of course, this lumping together is equally susceptible of the opposite inference, that the rule as to payment of the filing fee was intended to be jurisdictional.

The conclusion is inescapable that despite the result reached in *Murphree*, the appellate rule, *prima facie*, makes the payment of the filing fee jurisdictional.

It might prove costly to take the *Murphree* decision at face value until such time as other Florida courts substantiate the result of the case, especially in the teeth of the strict construction given by the supreme court in *State ex rel. Diamond Berk Ins. Agency, Inc. v. Carroll*.<sup>92</sup>

#### F. TAXATION OF COSTS

Since 1832,<sup>93</sup> a provision concerning taxation of costs has appeared in either the rules of court or the statutes. The provision of the Florida Appellate Rule is substantially the same as prior rules,<sup>94</sup> and in effect provides that no appeal may be taken by the original plaintiff until he shall have first paid all costs accrued in the first suit which have been specifically taxed against him.<sup>95</sup>

In addition, the new rule<sup>96</sup> incorporates former Supreme Court Rule 29,<sup>97</sup> which provided that when taxation of costs is assigned as error and a supersedeas of the order taxing the costs has been obtained, repayment of the costs is not required.

While these provisions are not jurisdictional,<sup>98</sup> any broad statement may prove to be misleading. The provisions of the rule are mandatory, and when a proper and timely motion is made the court is without discretion and must dismiss the appeal.<sup>99</sup> Failure to comply with this rule will

89. See note 87 *supra*.

90. SUP. CT. R. 12(2) (1955) (filing); SUP. CT. R. 2(5) (1955) (filing fee).

91. *State ex rel. Moore v. Murphree*, 106 So.2d 430, 432 (Fla. App. 1958).

92. 102 So.2d 129 (Fla. 1958).

93. Fla. Act Feb. 10, 1832, § 7. For the history and source of this act see notes following FLA. STAT. ANN. § 59.09 (1969).

94. *E.g.*, FLA. STAT. § 59.09 (1959).

95. F.A.R. 3.2(f).

96. *Ibid.*

97. SUP. CT. R. 29 (1955).

98. *O'Connell v. Mason*, 93 So.2d 71 (Fla. 1957).

99. *Funke v. Federal Trust Co.*, 99 So.2d 636, 637 (Fla. App. 1958); *Spector v. Ahrenholz*, 99 So.2d 714 (Fla. App. 1958). See also the earlier cases collected in *Spector v. Ahrenholz*, *supra*.

cause a prompt termination of the litigation.<sup>100</sup> However, unlike a jurisdictional requirement the provisions of this rule are for the benefit of the defendant and may be waived.<sup>101</sup>

#### G. COMPUTATION OF TIME: SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS<sup>102</sup>

##### *Exclude the First Day — Include the Last*

The Florida Appellate Rule<sup>103</sup> is declaratory of a long established law in Florida, that in computing time from a particular day, or when the act is to be performed within a specified period after a day named, the first day designated is excluded and the last day of the period is included.<sup>104</sup>

##### *Intervening Saturdays, Sundays and Legal Holidays*

If the time period in question is shorter than seven days, all Saturdays, Sundays and legal holidays are excluded in the computation of the time period,<sup>105</sup> absent a contrary legislative declaration.<sup>106</sup> The correlative rule provides that if the time period is longer than seven days, all Saturdays, Sundays and legal holidays are to be included in the computation, absent a contrary legislative declaration.<sup>107</sup>

The Florida Appellate Rule<sup>108</sup> which codified the preceding proposition did not provide that the legislature could enact a contrary rule for the computation of the appellate time. However, it is arguable that the power to establish rules for the computation of time is a necessary auxiliary to

100. In one interesting case, *Villanueva v. Shayne, Inc.*, 96 So.2d 537 (Fla. 1957), the costs were taxed against the plaintiff. After the defendant had filed a notice of appeal, the plaintiff filed a joinder of appeal without paying the costs taxed against him or assigning the payment of costs as error. Upon proper and timely motion, the court dismissed the plaintiff's joinder of appeal on the grounds that the plaintiff should not be allowed to accomplish indirectly that which could not have been accomplished directly.

101. For example, in *Funke v. Federal Trust Co.*, 99 So.2d 636 (Fla. App. 1958), entering into a stipulation for an extension of time in which to file a brief constituted a waiver. See also *O'Connell v. Mason*, 93 So.2d 71 (Fla. 1957); *Berb v. New York Life Ins. Co.*, 81 So.2d 630 (Fla. 1955).

102. The prior rule did not include Saturdays and legal holidays within the scope of its operation. Accordingly, the case law dealt only with Sundays. However, the new appellate rule, F.A.R. 3.18 includes such days within its operation. As a result, Saturdays and legal holidays are included within the discussion of the prior cases in that the holding of these cases will apply with equal force to Saturdays and legal holidays.

103. F.A.R. 3.18 provides: "In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run is not to be included. The last day of the period so computed shall be counted . . . ."

104. *Simmons v. Hanne*, 50 Fla. 267, 39 So. 77 (1905); *Savage v. State*, 18 Fla. 970 (1882).

105. *Smithie v. State*, 88 Fla. 70, 101 So. 276 (1924); *Croissant v. DeSoto Improvement Co.*, 87 Fla. 530, 101 So. 37 (1924).

106. *Smithie v. State*, *supra* note 105.

107. Cases cited note 105 *supra*.

108. The applicable portion of F.A.R. 3.18 provides: "When the period of time prescribed or allowed shall be less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as any other day and not as a holiday."

the power to establish the time for appeal, an admitted legislative power.<sup>109</sup> On the other hand, it should be borne in mind that the Florida Constitution<sup>110</sup> has given the supreme court the power to regulate practice and procedure. In furtherance of this power, the court has enacted rule 3.18,<sup>111</sup> dealing with the exclusion of these days, without a savings clause providing for contrary legislative enactments. It would defeat the purpose of the appellate rules to hold that all incidental rules relating to the time for appeal requirements are controlled by the legislature. The most satisfactory and probable result would be a holding that the exclusion of Saturdays, Sundays and legal holidays in regard to the computation of time is peculiarly within the sphere of the supreme court's constitutional power and not weakened by the possibility of a contrary legislative enactment.<sup>112</sup>

*Exclusion of the Last Day of the Period When That Day  
is a Saturday, Sunday or Legal Holiday*

The original position of the Florida courts was that when an act was to be performed in fulfillment of a statutory requirement, the time period was not extended if the last day fell on a Saturday, Sunday or legal holiday, unless the legislative intent to exclude these days from the computation was manifested in some manner.<sup>113</sup>

The rationale of this rule was, simply, when the legislature fixes a limitation of time more than seven days it knows that the period must necessarily include one or more Saturdays or Sundays, and hence, if it intends to exclude them, it can and should say so.<sup>114</sup> Absent such a statutory provision, the judiciary through the adoption of rules of court has the power to exclude these days.<sup>115</sup>

Subsequently, pursuant to the enabling statute, section 25.47<sup>116</sup> of the Florida Statutes, the supreme court enacted a rule of practice which excluded these days from the computation of the time requirement, a rule contrary to the court's prior position. In *Carlile v. Spofford*,<sup>117</sup> the court was called upon to resolve the clash between the two diametrically opposed rules.

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109. *Ramagli Realty Co. v. Craver*, 121 So. 2d 648 (Fla. 1960). See also the general discussion of this area under the topic, Power to Regulate Practice and Procedure *infra*.

110. FLA. CONST. art. V, § 3.

111. F.A.R. 3:18.

112. The foregoing discussion is to be restricted to appellate review by direct appeal as opposed to review by certiorari. See *infra* notes 216-31 and accompanying text.

113. *Simmons v. Hanne*, 50 Fla. 267, 39 So. 77 (1905).

114. *Id.* at 274, 39 So. at 80. This position was carried forward in *Newsom v. State*, 54 So.2d 58 (Fla. 1951) (appeal from a conviction of armed robbery); *In re Warner's Estate*, 160 Fla. 103, 33 So.2d 728 (1948).

115. *Bacon v. State*, 22 Fla. 46 (1886).

116. Fla. Laws 1943, ch. 21995, §§ 1-6, at 688 (repealed).

117. 65 So.2d 545 (Fla. 1953).

In that case, an appeal was taken from the circuit court to the supreme court. The 60th day of the appeal time was a Sunday and the appeal was lodged on the 61st day, a Monday. According to its prior position, the time for taking an appeal was a statutory requirement. Since the statute did not specifically provide for the exclusion of Sunday in the computation of the appeal time, the prior position of the court demanded that the appeal be dismissed. The court, in holding that the appeal was timely filed,<sup>118</sup> disregarded its prior position and utilized Common Law Rule 7 (a) and Equitable Rule 32(a), both of which provided for the exclusion of Sundays from the time computation.

In the subsequent case of *In re McRae's Estate*,<sup>119</sup> the supreme court affirmed its position in *Carlile* by again reasoning that the enabling statute had given the court the authority to make rules of practice and procedure. However, the case was distinguished from *Carlile*, and an opposite result was reached because the enabling statute did not give the supreme court the power to make rules of practice and procedure for the county judge's courts. The supreme court held that in this case as well as in all other cases when an appeal is taken from the county judge's court in probate matters, its prior position was still the controlling rule.<sup>120</sup>

Thus, at the time of the adoption of the Florida Appellate Rules,<sup>121</sup> Saturdays, Sundays and legal holidays falling on the last day of the appeal time were excluded, except for the computation of time for appeals from the county judge's court in probate matters. The Florida Appellate Rules were specifically made applicable to probate matters<sup>122</sup> and thus the objection of *In re McRae's Estate*<sup>123</sup> has now been obviated.

At the risk of being repetitive, it is necessary to raise the problem of the power of the legislature over the judiciary in this area. *Ramagli Realty Co. v. Craver*<sup>124</sup> suggests that the power to provide the period of time for obtaining appellate review is a power possessed by the legislature. It is not unreasonable to assume that the power to establish rules incident to the power to establish appeal times is likewise within legislative control. It would then follow, that the power to establish rules concerning the in-

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118. *Ibid.*

119. 73 So.2d 818 (Fla. 1954).

120. *Id.* at 819, 820. See *supra* notes 59-67 and accompanying text.

121. F.A.R. 3.18 provides:

The last day of the period so computed shall be counted, unless it is a Saturday, Sunday or a legal holiday, in which event the period shall run until the end of a next day which is neither a Saturday, Sunday nor a legal holiday. . . . If an act be required to be performed on a day certain and such day fall on a Saturday, Sunday, or legal holiday, the act shall be performed on the next day which is neither a Saturday, Sunday nor a legal holiday.

122. F.A.R. 4.4.

123. 73 So.2d 818 (Fla. 1954).

124. 121 So.2d 648, 652 (Fla. 1960). See also the general discussion as to Power to Regulate Practice and Procedure *infra*.



clusion or exclusion of these days for the purposes of computing the time for appeal is solely within legislative control. It must be strongly reiterated that the aforementioned assumption will do violence to the intent and purpose of the Florida Appellate Rules. If the court in *Carlile* could provide that its own rules would control on the authority of an enabling statute, certainly the court can now hold that its own rules will prevail over contrary legislative enactments on the authority of a constitutional provision.<sup>125</sup>

The foregoing discussion must be restricted to review by appeal as opposed to review by certiorari. The supreme court has the unfettered power to regulate the time for review through the medium of certiorari, and this power includes the incidental power to establish rules for the computation of the time requirement.<sup>126</sup>

#### *Combinations of Excluded Days*

The supreme court in *Azales Homes, Inc. v. Makela*<sup>127</sup> refused to extend the *Carlile* rationale when the 60th day for appeal fell on a Sunday, July 4, the 61st day fell on a legal holiday, July 5, and the petition for certiorari was taken on the 62nd day, a Tuesday. The court dismissed the appeal as not timely. The Florida Appellate Rules have changed this result. The rules provide in effect, that the period shall run until the end of the next day which is *neither* a Saturday, Sunday, nor a legal holiday.<sup>128</sup>

## II. POWER TO REGULATE PRACTICE AND PROCEDURE

The revision of the Florida appellate court system in 1957 heralded the promulgation of the Florida Appellate Rules of Practice and Procedure.

The rules were adopted under the authority of article five, section three of the Florida Constitution which provides: "The practice and procedure in all courts shall be governed by rules adopted by the supreme court."<sup>129</sup>

The rules were designed to control the practice and procedure in all three appellate tribunals. Rule 1.1 provides: "From their effective date they shall govern all proceedings in the Supreme Court, the district courts of appeal, and the circuit courts in the exercise of their appellate jurisdiction."<sup>130</sup>

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125. See note 110 *supra*.

126. *Zeller v. Industrial Research, Inc.*, 77 So.2d 616 (Fla. 1955); *Florida E. Coast Ry. v. George*, 91 Fla. 42, 107 So. 266 (1926).

127. 77 So.2d 451 (Fla. 1955).

128. See note 121 *supra*.

129. FLA. CONST. art. V, § 3.

130. F.A.R. 1.1.

In order to prevent the possible conflict of the rules with pre-existing statutes, the rules provide for the superseding of all conflicting statutes and rules. Statutes and other rules<sup>131</sup> not conflicting with the appellate rules remain in effect as rules promulgated by the supreme court.<sup>132</sup>

Notwithstanding a plain reading, the scope of the rules has presented perplexing problems. Merely because the supreme court enacted a particular rule does not necessarily mean that it was within the constitutional power of the court to have done so. An analysis of the rules demands a determination of the scope of their power source. This is, in effect, a determination of the meaning of the terms, practice and procedure. Once the scope of the rules has been ascertained, an additional determination is necessary as to which statutes have been superseded by the new appellate rules and which statutes continue in force as rules of court. It is altogether possible that a statute may have been continued in part and superseded in part.

These problems, like Banquo's ghost, appear at disconcerting times and are being resolved in a rather piecemeal fashion. This particular section is devoted to resolving these problems as they relate to the power to regulate and establish times for appeal.

The terms, practice and procedure, as a practical matter are synonymous. They can be said to be the form or mode of proceedings in courts of justice for the enforcement of rights or the redress of wrongs, as distinguished from the substantive law which gives the right or denounces the wrong. It contemplates the "how" of the thing with a view toward the orderly dispatch and administration of justice.<sup>133</sup>

What of appeal times? Are they substantive law, establishing a right-duty, or are they requirements as to the mode of proceeding? The Florida Supreme Court in *Ramagli Realty Co. v. Craver*<sup>134</sup> held that:

The determination of the time in which appeals may be taken is a legislative and not a judicial function. The power of this Court under the Constitution to adopt rules or procedure does not encompass the power to prescribe the time in which appeals may be prosecuted.<sup>135</sup>

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131. In the case of *In re Wartman's Estate*, 128 So.2d 600, 603 (Fla. 1961), the supreme court commenting as to its holding in *Ramagli Realty Co. v. Craver* stated: "Under this decision, the last three words in the rule, viz. 'or these rules' must be regarded as surplusage." See text at note 151 *infra*.

132. F.A.R. 1.4.

133. See generally BLACK, LAW DICTIONARY (4th ed. 1951); Joiner & Miller, *Rules of Practice and Procedure: A Study of Judicial Rule Making*, 55 MICH. L. REV. 623, 634-35 (1957). For a complete bibliography of contemporary writing see STAFF OF ADVISORY COMM. ON PRACTICE AND PROCEDURE, STATE OF N.Y., THIRD PRELIMINARY REPORT 891 (1959).

134. 121 So.2d 648 (Fla. 1960).

135. *Id.* at 652.

This blanket explanation without supporting rationale is unfortunate. The fact remains that the judiciary has established the time for appeals in the Florida Appellate Rules.<sup>136</sup> Does the court intend to imply that such a provision is unconstitutional? Certainly not. The subsequent paragraphs represent an attempt to explain the court's statement.

*Ramagli* cited as authority<sup>137</sup> the decision in *Reed v. Cromer*,<sup>138</sup> a 1923 case. That case concerned the problem of whether or not the 90 day appeal time provided for by statute, could be modified or changed by the court, or waived by the appellee. The court concluded that as it lacked the power or authority to modify or change the requirement, it certainly would be a strange doctrine to permit a party litigant to waive this requirement.<sup>139</sup>

Two points should be noted: (1) in the *Reed* case, the court was not concerned with a conflicting rule of court; (2) the *Reed* case was decided in 1923 and the *Ramagli* case in 1960, after the adoption of the constitutional provision concerning the regulation of practice and procedure.

The concept of separation of powers, which divides our state government into three branches, does not establish a distinct line of demarcation. Rather, the successful functioning of the system demands some overlapping of functions and cooperation between the branches. If the judiciary has the power to establish a particular rule of practice and procedure, it is elementary that until it has pre-empted the field through a rule of court, a legislative enactment is to be recognized as valid and is to be given full force and effect. If the legislature has the exclusive power until it has pre-empted the field, a rule of court will be given full force and effect.<sup>140</sup> With these rules in mind, assuming that the judiciary had the power to establish appeal time limitations, the absence of a contrary rule of court in the *Reed* case necessarily resulted in the court giving effect to the legislative enactment.

Further, at the time of the *Reed* decision the judiciary did not have the power to regulate rules of practice and procedure.<sup>141</sup> Thus, even if the supreme court in the *Reed* case was faced with a direct clash between

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136. F.A.R. 3.2(b).

137. *Ramagli Realty Co. v. Craver*, 121 So.2d 648, 652 n.14 (Fla. 1960).

138. 86 Fla. 390, 98 So. 329 (1923).

139. *Id.* at 392, 98 So. at 330.

140. See note 133 *supra*.

141. As a general proposition there are three sources of power which allow the judiciary to regulate practice and procedure: statutory enabling acts, constitutional authority and inherent power. In 1923, there was only a limited statutory enabling act, no constitutional authority and the Florida courts were not considered as possessing inherent power to promulgate such rules. In regard to inherent power, see *Petition of Florida State Bar Ass'n. for Promulgation of New Florida Rules of Civil Procedure*, 145 Fla. 223, 199 So. 57 (1940). Compare this case with the Florida Supreme Court order integrating the Florida Bar by virtue of its "inherent" powers and its later pronouncement in F.A.R. 1.1 that the rules were adopted pursuant to its "inherent" powers.

its own rules and contrary legislative enactments, the court did not have the power to prevail.

In 1960, the supreme court had the constitutional power to adopt rules of practice and procedure.<sup>142</sup> Indeed, prior to the constitutional amendment of 1957 the supreme court through statutory enabling acts,<sup>143</sup> had the power to regulate practice and procedure in all courts and matters except probate.<sup>144</sup>

Why then does the legislature, and not the judiciary, have the power to establish appeal times? The answer is simply that both have the power. However, a legislative enactment will prevail over a contrary rule of court. This is so because appeal times are substantive in nature. The constitutional grant to the supreme court in article five, section three,<sup>145</sup> to regulate practice and procedure, impliedly incorporates within its terms the prohibition that the rules must not abridge, enlarge or modify any substantive rights of the litigants.<sup>146</sup> In the absence of a legislative enactment, the judiciary has the power to establish the appeal time requirements. However, when the legislature has enacted a contrary provision, that provision is a substantive right which cannot be enlarged, modified or abridged by the judiciary and thus the legislative enactment must prevail.

The legislative power is not absolute. If the rights of the litigants to invoke appellate jurisdiction by authorized appellate procedures are so circumscribed by statutory regulation as to unduly limit or curtail the right of appeal, it would violate the constitution.<sup>147</sup>

*State v. Furen*<sup>148</sup> is an illustration of the operation of the substantive right rationale. In that case an appeal as a matter of right was provided by statute from the Pinellas County Water and Navigation Control Authority to the circuit court. This statutory provision conflicts with the

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142. FLA. CONST. art. V, § 3.

143. Chapter 59 of the Florida Statutes, FLA. STAT. § 59.08 (1959), was enacted in 1945. This chapter was intended to consolidate, revise and amend the prior chapters 59 and 67 of the Florida Statutes to conform with appellate proceedings generally. However, the chapter was intended to be controlling only in those situations where appeal times were not provided for by statute. The preamble of the act (Fla. Laws 1945, ch. 22854) provided: "Whereas, appellate procedure in criminal matters, in probate matters, in civil cases from most, if not all, inferior courts, is governed by other statutes, so that Chapters 59 and 67 have only a limited application, if they apply at all, to appellate proceedings to courts other than the supreme court . . ." Former section 25.03 provided that the Supreme Court of Florida shall have the power to: "(1) make, amend, annul, or modify rules of practice or pleading of the supreme court or any other court as it may see fit not inconsistent with law" (Fla. Laws 1873, ch. 1938, § 12). However, this section did not apply to probate courts as that court was omitted from the group of courts to be supervised by the Supreme Court of Florida in section 25.47 (Fla. Laws 1943, ch. 21995, §§ 1-6, at 688).

144. *Ibid.*

145. See note 142 *supra*.

146. *State v. Furen*, 118 So.2d 6, 11-13 (Fla. 1960).

147. *De Bowes v. De Bowes*, 149 Fla. 545, 554, 7 So.2d 4, 8 (1942).

148. 118 So.2d 6 (Fla. 1960).

Florida Appellate Rule which provides that all appeals from administrative bodies shall be by certiorari.<sup>149</sup> The court indicated that the scope of review by appeal is greater than the scope of review by certiorari. The method of review is a substantive right, and thus, the legislative method of review, appeal, must prevail over the judicial method, certiorari.

It should be recognized that a substantive right rationale presents difficult problems. The term "substantive right" lends itself to a variety of meanings. For example, are the rules incidental to the establishment of appeal times, such as the computation of time, or the tolling of time, substantive rules?<sup>150</sup> It is hoped that the Florida courts will restrict the use of this rationale for if it finds wide acceptance, the result will be to qualify the great majority of the appellate rules by the proviso, "unless the judiciary and should prevail over contrary legislative enactments.

If the appellate rules are to remain effective, the *incidental* requirements of appeal times should be considered peculiarly within the power of the judiciary and should prevail over contrary legislative enactments.

### III. SHORTER APPEAL TIMES

As has been previously stated, a legislative enactment establishing appeal time requirements will prevail over a contrary rule of court. Thus, it is not surprising to find that the Florida Appellate Rules have provided for this result. Rule 3.2(b) provides for a time requirement of 60 days, "unless some other period of time for taking an appeal is specifically provided by statute or these rules."<sup>151</sup>

At first blush, the effect of the savings clause was to retain the status quo as to appeal times as it existed previously under chapter 59 of the Florida Statutes.<sup>152</sup> A closer analysis reveals that the constitutional basis for some of the pre-existing statutes had been removed by the 1957 constitutional amendment.

The former article five, section eleven of the Florida Constitution, provided for final appellate jurisdiction in the circuit courts as to certain

149. F.A.R. 4.1.

150. The only indication of the supreme court's position is found in *In re Wartman's Estate*, 128 So.2d 600, 603 (Fla. 1961):

A careful study of the rules will reveal that in those instances where the subject dealt with is one lying in the grey area between "practice and procedure" and substantive law, the rule and statute have been preserved out of an abundance of caution and until such rules have been construed by this Court as falling within one or the other categories.

For examples of "procedure" as opposed to "substance" see *Lundstrom v. Lyon*, 86 So.2d 771 (Fla. 1956); *Hamel v. Danko*, 82 So.2d 321 (Fla. 1955).

151. F.A.R. 3.2(b). See note 131 *supra*.

152. See note 143 *supra*. Under the provisions of FLA. STAT. § 59.08 (1959) a 60 day time limitation was provided. However, that section only applied in those situations where an appeal time limitation was not otherwise specifically provided for by statute. See *Fonell v. Williams*, 157 Fla. 673, 26 So.2d 800 (1946).

specified matters and "such other matters as the legislature may provide."<sup>153</sup> The legislature by virtue of this power source, enacted statutes providing for appeals to be taken to the circuit court, and in addition provided the time limitation for prosecuting these appeals. The 1957 constitutional amendment removed this power source.<sup>154</sup> The Constitution, as amended, provides that the appellate jurisdiction of the circuit court consists of final appellate jurisdiction in all civil and criminal cases arising in the county courts, or before the county judge's court, of all misdemeanors tried in criminal courts of record, and all cases arising in the municipal courts, small claims courts and courts of justices of the peace.<sup>155</sup>

Consequently, the statutes which provided for appeals to be prosecuted to the circuit court in matters other than those specified above, no longer have any constitutional support, yet they remain on the statute books.

The initial determination that these statutes were no longer effective occurred in *Codomo v. Shaw*.<sup>156</sup> The problem in that case was the determination of the proper court to hear an appeal from a final judgment of the Florida Real Estate Commission suspending the registration of the petitioner as a real estate broker. The respondents claimed that the petitioner, who had applied for a writ of certiorari to the supreme court, had a full and complete remedy through an appeal to the circuit court as provided for by statute, section 475.35 of the Florida Statutes.<sup>157</sup> The supreme court held that the constitutional basis for the statute had been removed by the constitutional amendment, and thus the petitioners did not have the right to review by appeal.<sup>158</sup> However, the court held that the circuit court had the power to issue the common law writ of certiorari and declined jurisdiction in favor of this action.<sup>159</sup>

The *Codomo* decision was the forerunner of a series of cases all revolving about the issue of the constitutional support of these statutes. All these cases reached the *Codomo* result.<sup>160</sup> For example:

153. FLA. CONST. art. V, § 11 (1885) (repealed).

154. See, e.g., *Codomo v. Shaw*, 99 So.2d 849 (Fla. 1958).

155. FLA. CONST. art. V, § 6(3).

156. 99 So.2d 849 (Fla. 1958).

157. Then Fla. Laws 1947, ch. 24090, at 1028 (amended by Fla. Laws 1959, ch. 197). For the proper procedure today see FLA. STAT. § 475.35 (1959).

158. *Codomo v. Shaw*, 99 So.2d 849, 851 (Fla. 1958).

159. This holding is in direct conflict with the holding in *State v. Furen*, 118 So.2d 6 (Fla. 1960). In that case the court held that where an appeal is given as a matter of right by statute, the statutory method prevails over the appellate rule which in this case provided that all appeals from administrative bodies shall be by certiorari. The court indicates that the statutory method, appeal, is a substantive right which cannot be abridged by the court. The conflict was rendered moot by the subsequent amendment of the section by Fla. Laws 1959, ch. 197. See FLA. STAT. § 475.35 (1959).

160. Under the prior statutes a double appeal was given in probate matters; first an appeal to the circuit court from the probate court, followed by an appeal from the circuit court to the supreme court. In the following cases, the original appeal was taken to the circuit court; after the constitutional amendment became effective, the second appeal was

A. In *Rosenblum v. Boss*,<sup>161</sup> the Third District Court of Appeal held that the constitutional basis for section 33.11,<sup>162</sup> providing for an appeal from the civil court of record to the circuit court, had been removed, and the district court of appeal was the proper appellate court under the constitution as amended.

B. In *State v. J. K.*,<sup>163</sup> a juvenile court was held to be a trial court within the meaning of article five, section five, subsection three of the Florida Constitution. Accordingly, the constitutional support for section 39.14<sup>164</sup> was removed and appeals were to be taken to the district court of appeal rather than to the circuit court as provided for by that statute.

C. The case of *In re Wartman's Estate*<sup>165</sup> involved an appeal in a probate matter. The court held that the constitutional support for section 732.16,<sup>166</sup> providing for an appeal to the circuit court, had been removed, and the appeal was properly taken to the district court of appeal under the constitution as amended.

It may be said as a general rule that when a statute provides for an appeal to be taken to a specified court other than the court indicated in the constitution, the constitutional support for such a statute has been eliminated and the court specified in the constitution is the proper appellate tribunal.

#### A. THE PROBLEM OF THE CONSTITUTIONAL SUPPORT FOR STATUTORY APPEAL TIME REQUIREMENTS

Granting that the constitutional support for the statutory designation of the appellate tribunal has failed, has the same fate befallen the appeal time requirements found in these statutes?

It must be noted that the appellate rules were enacted subsequent to the constitutional amendment. Thus, the savings clause of rule 3.2(b), unless otherwise provided for by statute, can not work a resurrection of statutes providing for appeal times which had fallen prior to the effective date of the appellate rules.

Up until March, 1961, no court in Florida had discussed the problem of whether or not the constitutional support for the appellate time re-

dismissed on the grounds that the constitutional basis for such an appeal had been removed. *In re Wood's Estate*, 114 So.2d 640 (Fla. App. 1959); *In re Juen's Estate*, 105 So.2d 908 (Fla. App. 1958); *In re Rasey's Estate*, 105 So.2d 904 (Fla. App. 1958).

161. 101 So.2d 596, 598 (Fla. App. 1958). *Accord*, *Fuller v. Riley*, 124 So.2d 499 (Fla. App. 1960); *Foster v. Rauzin*, 11 Fla. Supp. 180 (Cir. Ct. 1958).

162. FLA. STAT. § 33.11 (1959).

163. 104 So.2d 113, 116 (Fla. App. 1958). *Accord*, *In re Evans*, 116 So.2d 783 (Fla. App. 1960); *In re C.E.S.*, 106 So.2d 610 (Fla. App. 1958).

164. FLA. STAT. § 39.14 (1959).

165. 118 So.2d 838, 839 (Fla. App. 1960), *rev'd on other grounds*, 128 So.2d 600 (Fla. 1961).

166. FLA. STAT. § 732.16 (1959).

quirements established by statutes had been removed. However, the shorter appeal time requirements were continued as effective, apparently either by retaining the statutory provisions inviolate, or by allowing the appellate rules to work a resurrection of these statutes.<sup>167</sup>

In the leading case of *In re Wartman's Estate*,<sup>168</sup> the Third District Court of Appeal certified to the supreme court the question of whether the period of appeal from final orders or decrees of the county judge's court in probate matters was 30 days, as provided for by section 732.16(2)<sup>169</sup> of the Florida Statutes, or 60 days, as provided for by rule 3.2(b)<sup>170</sup> and section 59.08<sup>171</sup> of the Florida Statutes.

In a unanimous opinion the Florida Supreme Court held that the time for appeals was 60 days rather than 30 days.<sup>172</sup>

The court reasoned that under the former constitutional provisions, appellate jurisdiction was lodged in the circuit court in cases arising before judges of the county courts in matters pertaining to their probate jurisdiction and in the management of the estates of infants. The statutes governing appellate times for probate proceedings were enacted under the authority of this constitutional provision and were designed to implement it. Today, the present constitution does not grant this appellate jurisdiction to the circuit courts. The appellate jurisdiction of the circuit court and the right of double appeal provided for and implemented by this statute no longer exists. Therefore, all statutory sections referring to this appellate avenue, including shorter appeal times, have fallen under the onslaught of the constitutional amendment.

The court was of the opinion that the shorter appeal time provision of the statute must fail under the principles of statutory interpretation. The court footnoted as follows:

If any of the provisions of the act that are held to be illegal, induced to any appreciable extent its passage, the entire act fails in view of the interdependence of the provisions . . . .

In such cases, the test is whether the court can say that the legislature would not have enacted the law under scrutiny except for the provision held unconstitutional. Where the objectionable provision is an integral part of the statute and cannot be separated from it without doing violence to the legislative intent, the entire statute will be held invalid.<sup>173</sup>

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167. See *Fuller v. Riley*, 124 So.2d 499 (Fla. App. 1960).

168. 128 So.2d 600 (Fla. 1961). Followed in *In re Estate of Robertson*, 131 So.2d 7 (Fla. 1961); *Congregation Temple De Hirsch v. Aronson*, 128 So.2d 585 (Fla. 1961); *Whitaker v. Jacksonville Expressway Authority*, 129 So.2d 188 (Fla. App. 1961) (explained); *In re Mullin's Estate*, 128 So.2d 617 (Fla. App. 1961).

169. FLA. STAT. § 732.16(2) (1959).

170. F.A.R. 3.2(b).

171. FLA. STAT. § 59.08 (1959).

172. *In re Wartman's Estate*, 128 So.2d 600, 605 (Fla. 1961).

173. *Id.* at 604 n.12.



The court summarily disposed of the respondent's argument that the 30 day provision of the statute was revived by the Florida Appellate Rules, by holding that the court, through the appellate rules, has no constitutional authority to revive a portion of an unconstitutional statute.<sup>174</sup>

The impact of the *Wartman* decision cannot be overemphasized. Hereafter, the time for taking an appeal in probate matters, and cases concerning estates and interests of minors and incompetents, shall be 60 days. In addition, all other statutes which refer to the applicability of the probate appeal time provisions will also be governed by this decision.<sup>175</sup>

In other areas where the constitutional support for the appellate provisions has been removed, an inquiry must be launched as to whether the objectionable provision is an integral part of the whole statute, or whether it can be separated from the statute without doing violence to the legislative intent.<sup>176</sup>

In this connection, a survey of the cases indicates that they can be divided into two categories: (1) those cases and statutes establishing a shorter appeal time because of special subject matters, and (2) those cases and statutes dealing with appeal time requirements from courts without regard to specific subject matters.

#### *Civil Appeals — Special Subject Matter*

##### ACTIONS INVOLVING THE REMOVAL OF TENANTS

In *Placid York Co. v. Calvert Hotel Co.*,<sup>177</sup> the plaintiff brought a petition for the removal of a tenant in the civil court of record and received a final judgment in his favor. The appeal time requirement of two days<sup>178</sup> was not met, and the district court of appeal dismissed the appeal. The court indicated that the statute provided for an immediate and limited appeal period in order to assure speedy relief to a landlord against a defaulting tenant. It is to be noted that the court did not consider the 60 day limitation provided for by the appellate rules as controlling. The court assumed that the statutory time period, as provided for in a pre-existing statute, remained in force after the adoption of the appellate rules.

##### RESTORATION OF THE STATUS OF COMPETENCY

In the case of *In re Guardianship of Campbell*,<sup>179</sup> an appeal from an order of the county judge was taken to the district court of appeal

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174. *Id.* at 604.

175. For example, FLA. STAT. § 393.12(4) (1959) provides that the probate statutory time limitation, FLA. STAT. § 732.16 (1959) is controlling. In that the probate statutory time is now invalid, the general provisions of F.A.R. 3.2(b) and FLA. STAT. § 59.08 (1959) will control, viz., 60 days.

176. Evidently this is to be the test. See *supra* note 173 and accompanying text. For an illustration of the use of this test see *infra* notes 183-90.

177. 109 So.2d 604 (Fla. App. 1959).

178. FLA. STAT. § 83.27 (1959).

179. 114 So.2d 352 (Fla. App. 1959).

some 50 days after the entry of the order. Florida Statutes, section 394.22<sup>180</sup> provided for an appeal time requirement of 15 days. The court held that this time requirement was within the savings clause of rule 3.2(b), and dismissed the appeal.

#### JUVENILE COURTS

In the case of *In re Evan's Estate*,<sup>181</sup> an appeal from a final child custody order of the juvenile court was taken to the district court of appeal. The court raised the issue of jurisdiction, *sua sponte*, when it appeared that the appeal was taken after the 10 day limitation provided for by section 39.14<sup>182</sup> of the Florida Statutes had expired, and accordingly dismissed the appeal. It is to be noted that the court made reference to the necessity of a shorter appeal time in this special proceedings. The court stated:

There is sound basis in reason and logic why appeals from special statutory proceedings should be limited to a period of time less than that normally provided for appeals from final judgments. *Accelerating the time for appeals so that the status of the juvenile may be promptly settled was within the legitimate discretion of the legislature and comes within the exception in Rule 3.2(b) Fla. App. Rules . . .*<sup>183</sup>

#### *Are the Shorter Appeal Time Statutes Still Effective?*

Subsequent to the initial writing of this paper, the First District Court of Appeal was faced with this very problem. In *Whitaker v. Jacksonville Expressway Authority*,<sup>184</sup> an appeal was taken within the 60 day time requirement of the Florida Appellate Rules but without the 30 day time period provided for by statute<sup>185</sup> in eminent domain proceedings. The court discussed *Wartman* and pointed out that in *Wartman* the double right of appeal provision was so interrelated to the appeal time provisions as to make all the statutory provisions inseparable.<sup>186</sup> Thus, when one fell the other fell. The court further indicated that the double right of appeal was not present in the appellate procedures of the eminent domain statutes.<sup>187</sup> Accordingly the court held that the entire appellate procedures

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180. FLA. STAT. § 394.22 (1959).

181. 116 So.2d 783 (Fla. App. 1960).

182. FLA. STAT. § 39.14 (1959).

183. *In re Evan's Estate*, 116 So.2d 783, 784 (Fla. App. 1960). (Emphasis added.)

184. 129 So.2d 188 (Fla. App. 1961).

185. FLA. STAT. § 73.14 (1959).

186. *Whitaker v. Jacksonville Expressway Authority*, 129 So.2d 188, 189-93 (Fla. App. 1961).

187. *Ibid.*

did not fall as a result of the constitutional amendment; rather the effect of the amendment was to amend:

by implication the above quoted section of the statute relating to appeals from final judgments entered in eminent domain proceedings by substituting the district courts of appeal for the Supreme Court as the proper forum to which appeals should be taken . . . .<sup>188</sup>

As a result the 30 day time period was not invalidated but was preserved as determinative under the authority of *Wartman* and the savings clause<sup>189</sup> of the Florida Appellate Rules.

It is to be noted that the court in no way sustained the statute on the grounds of the existence of a special subject matter. Instead, the court hinged its holding on the existence or non-existence of a double right of appeal provision. In *Whitaker* a finding that the double right of appeal provision did not exist necessarily led to the conclusion that the appeal time was severable from the invalid portions and thus preserved inviolate.

The *Whitaker* case stands for the following short-hand proposition: a double right of appeal before the 1957 constitutional amendment equals invalidation of the appeal time provisions after the amendment, while one right of appeal to the supreme court before the 1957 constitutional amendment equals substitution of the district courts of appeal for the supreme court without change in the shorter appeal time after the amendment.<sup>190</sup>

It is the writer's opinion that the shorter appeal time statutes remain inviolate. The common thread running through the shorter appeal time statutes is the manifestation of the legislature's desire to terminate litigation promptly due to the special subject matter of the statutes. A Florida court following the *Wartman* test could deduce that the legislature would have provided for shorter appeal times even in the absence of the now invalid portions of the statutes relating to certain appellate procedures.

On the other hand, the *Wartman* decision indicates that if the constitutional support for these certain appellate provisions has been removed and these provisions are interdependent with the appeal time provisions of these statutes, the constitutional support for the appeal time provisions has failed also. This result may be avoided through a finding that the shorter appeal time provisions are not interdependent with the invalid appellate procedures as in the *Whitaker* case. A decision of invalidity would probably trigger an immediate legislative reaction of re-enacting the shorter appeal time provisions for most special subject matters.

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188. *Id.* at 193.

189. F.A.R. 3.2(b).

190. An attempt was made to certify the *Whitaker* case to the supreme court as a decision passing upon a question of great public interest. *Whitaker v. Jacksonville Expressway Authority*, 131 So.2d 22 (Fla. App. 1961). This attempt failed due to procedural defects. See note 48 *supra*.

*Civil Appeals — Courts*

## SHORTER APPEAL TIMES FOR COURTS

Under the prior constitutional provisions, the legislature had the power to create courts and establish final appellate jurisdiction in the circuit courts. These provisions have been repealed by the 1957 constitutional amendment. Consequently, the *Wartman* rationale should be applicable in this area and the shorter appeal time provisions, interdependent upon the invalid appellate procedures and unsupported by any other power source, should fail.

## APPEALS FROM THE CIVIL COURT OF RECORD

Prior to the *Wartman* decision, the Third District Court of Appeal indicated that the time limitation of "one calendar month" provided for by section 33.11<sup>191</sup> of the Florida Statutes could not be sustained. In a footnote to *In re Guardianship of Campbell*<sup>192</sup> the court stated:

It should be noted that although the Supreme Court held . . . that section 33.11 . . . limited the time for appeals *formerly had* from the Civil Court of Record to the circuit court to "one calendar month", that the period for appeal from the Civil Court of Record to the District Court of Appeal is now the same as for appeals from circuit courts, that is, 60 days. . . . This is true for the reason that under the prior constitutional provision, section 33.11 . . . provided a special method of appeal. This special appeal was abolished by the present constitutional provision . . . .

However, when this exact situation was presented to this same court in *Fuller v. Riley*,<sup>193</sup> the court sustained the statute as within the exception of 3.2(b) and held that the proper time limitation was "one calendar month." The court did not dismiss the appeal because of the footnote cited above, but announced that it would henceforth follow its present pronouncement. The court did not attempt to distinguish the other cases, but rather on the authority of the prior cases, sustained the shorter appeal time.

The supreme court by its decision in *Wartman* has impliedly reversed the position of the district court of appeal in the *Fuller* case. The sole power source for the legislature to enact statutory provisions was the now repealed provisions allowing the legislature to create courts and establish final appellate jurisdiction in the circuit courts. There is no reason to suppose that the legislature would have intended the shorter appeal time provisions relating to courts to survive the invalidation of the interde-

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191. FLA. STAT. § 33.11 (1959).

192. 114 So.2d 352, 354 n.3 (Fla. App. 1959).

193. 124 So. 2d 499 (Fla. App. 1960) (Pearson, J. dissented on other grounds).

pendent prescribed appellate procedure.

The rationale of the *Whitaker*<sup>194</sup> case, if applied to a factual situation concerning the one calendar month appeal time from the civil court of record will likewise invalidate the shorter appeal time. It is to be noted that the *Whitaker* case was distinguished from *Wartman* because of the absence of the double right of review provision in the eminent domain statutes.<sup>195</sup> As a result, the court in effect held that the invalid appellate procedures were severable from the shorter appeal time provision of the eminent domain statutes.

The appellate procedure established in chapter 33 of the Florida Statutes contains provisions for a double review of the cause.<sup>196</sup> Thus, even the *Whitaker* court would reach the *Wartman* result, *viz.*, invalidation of the entire appellate procedure, in a case like *Fuller*.

It appears that the constitutional support for the implementing appellate procedure provisions of chapter 33, including the shorter appeal time provision of one calendar month has been removed. Consequently, the 60 day time limitation of Florida Appellate Rule 3.2(b)<sup>197</sup> and section 59.08<sup>198</sup> of the Florida Statutes should be controlling.<sup>199</sup>

#### APPEALS FROM THE MUNICIPAL COURTS

Rule 6.2 provides for a 90 day appeal time for a defendant convicted in a criminal action.<sup>200</sup> Rule 6.3 provides for a 30 day appeal time for the state.<sup>201</sup> Section 932.52 of the Florida Statutes provides for a 30 day appeal time for a defendant from a criminal conviction in a municipal court.<sup>202</sup> The district court of appeal discussed the conflict between these two

194. *Whitaker v. Jacksonville Expressway Authority*, 129 So.2d 188 (Fla. App. 1961).

195. See *supra* notes 184-90.

196. FLA. STAT. § 33.11 (1959) provides for an appeal to be prosecuted to the circuit court within one calendar month. FLA. STAT. § 33.12 (1959) provides for certiorari to the supreme court within 30 days. However, the review of the cause is to be as if "it had been carried by a writ of error." The ultimate result should be an appeal to the district court of appeal within 60 days provided for by the appellate rule, with the supreme court exercising appellate jurisdiction when applicable under the constitutional provisions, *e.g.*, conflict among the district courts of appeal.

197. F.A.R. 3.2(b).

198. FLA. STAT. § 59.08 (1959).

199. Subsequent to the submission of this article for publication, the Third District Court of Appeal reversed its holding in the *Fuller* case and thus sustained the position taken in the text. See *Ed Lane Auto Sales, Inc. v. Weinstein*, 132 So.2d 218 (Fla. App. 1961) (60 day time to appeal).

200. F.A.R. 6.2 provides: "Any appeal by the defendant shall be taken within 90 days after the judgment is entered, or from the judgment or sentence, or both, within 90 days after the sentence is entered."

201. F.A.R. 6.3 provides:

An appeal may be taken by the state only within thirty days after the order or sentence appealed from is entered, except that when the defendant takes an appeal from the judgment the state may, not later than ten days after the defendant files his assignments of error and serves a copy thereof, take an appeal authorized by Section 924.07(4), Florida Statutes . . . .

202. FLA. STAT. § 935.52(2) (1959).

provisions in *City of Miami v. Gilbert*.<sup>203</sup> The court stated that section 932.52, under which the instant appeal was taken, had been superseded by the Florida Appellate Rules in all respects when there was a conflict.

The Second District Court of Appeal was faced with the same situation in *Clark v. City of Orlando*.<sup>204</sup> That court reached an opposite result on the grounds that rule 6.1 did not deal with appeals from municipal courts to circuit courts. Rule 3.2(b) was held to be controlling, with the result that the savings clause continued the statute, section 932.52(b), in effect.

The court recognized that the appellate rules had been amended to make rules 6.2 and 6.3 applicable to appeals from municipal courts to the circuit courts in criminal cases,<sup>205</sup> but the court indicated that the appeal in the present case was taken prior to the effective date of the amendment and refused to pass upon the applicability of the amended rule with reference to the time for taking appeals.

It should be noted that under the former constitutional provisions the circuit court had appellate jurisdiction to hear appeals from municipal courts. This provision continued unchanged under the constitution as amended. The rule of *Wartman* is not applicable in this situation because the constitutional support for the implementing statute has not been removed.<sup>206</sup>

Rule 6.1<sup>207</sup> does not incorporate within its provisions a savings clause as contained in rule 3.2(b).<sup>208</sup> When the problem is next presented the stage will be set for the court to consider directly the problem as to what provision should prevail, a rule of court, or a statutory provision.

#### B. SHORTER APPEAL TIMES FOR INTERLOCUTORY ORDERS AND APPEALABLE MOTIONS

One further problem is to be considered. Assuming that the shorter appeal time provided for by statutes is controlling in appeals from final judgments, is it also controlling in interlocutory appeals and other appealable motions not final in their nature? There is no answer to this question as of this date. In *Edwards v. Miami Shores Village*,<sup>209</sup> an appeal was taken from an order granting a new trial in a condemnation proceeding. The problem was whether section 59.08<sup>210</sup> providing for 60 days, or

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203. 102 So.2d 818, 819 n.1 (Fla. App. 1958).

204. 109 So.2d 416 (Fla. App. 1959).

205. F.A.R. 6.1 as amended provides: "Appeals in criminal cases to the Supreme Court, the district courts of appeal and to the circuit courts (including appeals from municipal courts), shall be prosecuted in accordance with Part VI of these rules . . ."

206. See notes 168-76 *supra* and accompanying text.

207. F.A.R. 6.1.

208. F.A.R. 3.2(b).

209. 40 So.2d 360 (Fla. 1949).

210. FLA. STAT. § 59.08 (1959).

section 73.14<sup>211</sup> which provided for a time limitation of 30 days controlled. The court held that the shorter appeal time provided for in section 73.14 was not confined to final judgments but extended to all reviewable orders within the scope of the statute's subject matter.<sup>212</sup> Under this reasoning, in every appeal, whether interlocutory or final in nature, the shorter appeal time of the statutes will control.

The only contrary statement occurred some eight years later, and then it was *obiter dictum*. In *Houk v. Dade County*,<sup>213</sup> an appeal was prosecuted from a post-final judgment order refusing to allow a fee for services of the defendant's attorney in a prior appeal in which they were successful. The court held that it did not have jurisdiction because the 30 day limitation of section 73.14 had expired. The court assumed, but did not decide, that the statute would not govern petitions for certiorari, or interlocutory orders.<sup>214</sup>

The stronger position is the stand taken in the *Edwards* case, for there is absolutely no reason to distinguish an interlocutory order from a final order once the legislature by statute has determined that the *subject matter* of the action necessitates a shorter appeal time.<sup>215</sup>

#### IV. CERTIORARI AS THE METHOD OF REVIEW

The supreme court has the sole power to establish time limitations when review of the controversy is to be had through the medium of a writ of certiorari as opposed to the use of an appeal.<sup>216</sup>

Since 1865<sup>217</sup> the Florida Constitution has provided a power grant of original jurisdiction in the supreme court to supervise the lower courts.<sup>218</sup> In this connection, the supreme court has the power to issue extraordinary writs, for example: prohibition, quo warranto, mandamus and common law certiorari. This power grant cannot be extended, limited or regulated

211. FLA. STAT. § 73.14 (1959).

212. *Edwards v. Miami Shores Village*, 40 So.2d 360, 361 (Fla. 1949).

213. 97 So.2d 272 (Fla. 1957).

214. *Id.* at 273.

215. See note 183 *supra* and accompanying text.

216. *Wilson v. McCoy Mfg. Co.*, 69 So.2d 659 (Fla. 1954); *Atlantic Coast Line R.R. v. Mack*, 64 So.2d 304 (Fla. 1952); *State ex rel. Buckwalter v. City of Lakeland*, 112 Fla. 200, 150 So. 508 (1933); *Brinson v. Tharin*, 99 Fla. 696, 127 So. 313 (1930).

217. The 1861 and 1865 Florida Constitutions provided that "the said court shall always have the power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other original and remedial writs as may be necessary to give it a general superintendence and control of all other courts." This provision appeared originally in the 1845 constitution. The power grant as read today provides: "The Supreme Court may issue all writs necessary or proper to a complete exercise of its jurisdiction." FLA. CONST. art V, § 4(2).

218. The power grant set forth in note 217 *supra*, was interpreted in *Ex parte White*, 4 Fla. 165 (1851) to provide a two-fold power grant, one of which is "a general superintendence and control of all other courts, and this by means of all appropriate, original and remedial writs known to common law." *Ex parte White*, *supra* at 173. When the present wording of the provision was interpreted in *Florida v.*

by statute.<sup>219</sup> Thus, as between a statute and the Florida Appellate Rules, the rules providing for time limitations in the exercise of this jurisdiction will prevail.

Common law certiorari is to be distinguished from statutory or constitutional certiorari.<sup>220</sup> The latter term is normally used to designate situations where a review on the merits is had through certiorari.

The power to establish time requirements for the exercise of statutory certiorari is also within the power of the judiciary.

In *Wyman v. Nussbaum*,<sup>221</sup> the supreme court was faced with a conflict between the 60 day time limitation of section 59.08 for filing a petition for writ of certiorari, and the 30 day time limitation of section 12, chapter 8221 of the Laws of Florida, 1921. The court held that the 60 day time requirement was the proper one. It is to be noted that chapter 59 at the time of this decision applied only to review by the supreme court.

In the later case of *Smith v. Fletcher Motor Sales, Inc.*,<sup>222</sup> the court reached an opposite result. The petitioner argued that section 59.08 was intended to provide a uniform alternative method of appeal from orders of state boards and commissions,<sup>223</sup> and thus the 60 day time requirement of section 59.08 controlled rather than the 30 day requirement provided by the workmen's compensation statutes.<sup>224</sup> The court held that in this peculiar situation the workmen's compensation statute controlled, and the petition for the writ of certiorari was denied.<sup>225</sup>

The court reasoned that in this particular litigation, it is the policy of the legislature to provide a speedy method of review. To effect a change in this salutary policy would seem to require an express legislative mandate directed specifically to appeals in workmen's compensation cases.<sup>226</sup> The court reinforced its reasoning by indicating that the legislature in the subsequent re-enactment of the workmen's compensation statutes provided

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Gleason, 12 Fla. 190 (1868), the court followed the interpretation of the provision as made in *Ex parte White*, *supra*, even though the writs were not individually specified.

219. *Brinson v. Tharin*, 99 Fla. 696, 127 So. 313 (1930).

220. Broadly speaking, common law certiorari is used by a superior tribunal to review the actions of an inferior tribunal where it has exceeded its jurisdiction, or has not proceeded in accordance with the essential requirements of the law in cases where no direct appellate proceedings are provided for by law. Common law certiorari can not be used to question the correctness of the lower court's judgment on the merits. *Saffran v. Adler*, 152 Fla. 405, 12 So.2d 124 (1943). See also *Adams & Miller, Origins and Current Status of the Extraordinary Writs*, 4 U. FLA. L. REV. 421, 448, 460 (1951).

221. 159 Fla. 813, 32 So.2d 824 (1947). *Contra*, *Sirman v. Conklin*, 154 Fla. 304, 17 So.2d 298 (1944).

222. 62 So.2d 60 (Fla. 1952).

223. See note 143 *supra*.

224. Fla. Laws 1935, ch. 17481, § 27, at 1479 (repealed). See generally FLA. STAT. § 440.27 (1959).

225. *Smith v. Fletcher Motor Sales, Inc.*, 62 So.2d 60, 61 (Fla. 1952).

226. *Ibid.*



for the statute's appellate procedures to be controlling in all cases of inconsistency.<sup>227</sup>

Two years later, the supreme court on the same facts reached an opposite conclusion. In *Wilson v. McCoy Mfg. Co.*,<sup>228</sup> the court, without mentioning the *Smith* decision, held that the 60 day requirement of Supreme Court Rule 28<sup>229</sup> prevailed over the 30 day requirement of the workmen's compensation statute.<sup>230</sup>

Any further controversy in this area was rendered moot by the subsequent amendment of section 440.27 to provide for a 60 day time limitation for petitioning for a writ of certiorari.<sup>231</sup>

The *Wilson* decision stands for the proposition that for statutory certiorari, as well as for common law certiorari, the judiciary has the power to establish time limitations for petitioning for the writ, and in situations where the rules of court conflict with statutes, the rules will prevail.

## V. APPEALS FROM ADMINISTRATIVE BODIES

The Florida Appellate Rules provide that appeals from administrative bodies shall be by certiorari.<sup>232</sup> The rules further provide that the time requirement for petitioning for the writ shall be 60 days from rendition.<sup>233</sup> All statutes and rules in conflict with the Florida Appellate Rules have been superseded.<sup>234</sup> Thus, the time limitation of 60 days for applying for the writ governs all situations where review is had by certiorari.

A word of caution must be added at this point. When a statute provides that the method of review from an administrative body shall be by appeal, certiorari will not be available. In *State v. Furen*,<sup>235</sup> the Supreme Court of Florida held that the right to an appeal is a substantive right which cannot be enlarged or abridged by the judiciary. Further, in such situations the legislative mandates will prevail over rules of court.

Even in a *State v. Furen* situation, when an appeal as a matter of right must be accorded to the litigants, it is arguable that the 60 day limitation of section 59.08 is applicable rather than a shorter period of time as provided for by statute.

The supreme court in *Fonel v. Williams*,<sup>236</sup> stated that chapter 59

227. *Ibid.*

228. 69 So.2d 659 (Fla. 1954).

229. SUP. CT. R. 28 (1957).

230. Fla. Laws 1935, ch. 17481, § 27, at 1479 (repealed). See generally, FLA. STAT. § 440.27 (1959).

231. Fla. Laws 1935, ch. 17481, § 27, at 1479 was subsequently amended by Fla. Laws 1955, ch. 29778 (codified as FLA. STAT. § 440.27 (1959)), to provide an appeal time of 60 days, which corresponds with the supreme court's holding in *Wilson v. McCoy Mfg. Co.*, 69 So.2d 659 (Fla. 1954).

232. F.A.R. 4.1.

233. F.A.R. 4.5(c)(1).

234. F.A.R. 1.4.

235. 118 So.2d 6 (Fla. 1960).

236. 157 Fla. 673, 675, 26 So.2d 800, 801 (1946).

was intended to consolidate, revise and amend chapters 59 and 67, to conform them to current court rules, and "to extend them to appellate proceedings from orders of state boards, commissions and other bodies where appeals are allowed." This construction by the supreme court is a proper one. For example, section 59.01(2)(a) provides that the chapter shall also be applicable: "As a uniform alternative method of taking appeals from orders of state boards, commissions, and other bodies, where appeals from such orders are permitted by law . . ." <sup>237</sup>

Section 59.43, dealing with the application of the chapter, includes within its application appellate proceedings from boards, commissions and other bodies where provided for by law, and "*where otherwise provided may be used as an alternative method of review.*" <sup>238</sup>

It is at this point that it is well to recall the prior discussion of the *Smith v. Fletcher Motor Sales*<sup>239</sup> and *Wilson v. McCoy* cases.<sup>240</sup> In the *Smith* case, the petitioner argued that the uniform alternative method of taking an appeal from an administrative body allowed him to take his appeal within 60 days rather than the 30 days provided by the workmen's compensation statutes. The court rejected this argument and held that the shorter time limitation of section 440.35 prevailed.

The holding of the case should be confined to workmen's compensation proceedings and not extended to reviews of other administrative bodies for two reasons: (1) The court implied that workmen's compensation cases are unique,<sup>241</sup> and require a shorter period of time to fulfill the purpose of the statute. The corollary to this proposition is that other statutes do not occupy this unique position. The court in the *Smith* case did not decide that the chapter was inapplicable as an alternative method of appeal from all administrative bodies, but rather that the decision was, by implication, limited to workmen's compensation cases. (2) The court was able to show the unique nature of the workmen's compensation statute by directing attention to a subsequent legislative declaration which specifically provided that the provisions of the statute were controlling in preference to other statutes or rules inconsistent with the statutory provisions.<sup>242</sup> Other statutes providing for shorter appeal times do not contain

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237. FLA. STAT. § 59.01(2)(a) (1959).

238. FLA. STAT. § 59.43 (1959). (Emphasis added.)

239. 62 So.2d 60 (Fla. 1952).

240. 69 So.2d 659 (Fla. 1954).

241. *Smith v. Fletcher Motor Sales, Inc.*, 62 So.2d 60, 61 (Fla. 1952). The court stated: "From the history of the Workmen's Compensation Act, . . . it is apparent that in this particular class of cases it is the policy of the Legislature to provide a speedy method of appeal in order to secure to injured workers as quickly as possible the compensation provided for them under the Act . . ."

242. *Id.* at 61.

this legislative declaration. Indeed the enactment of chapter 59, with the express purpose of providing an alternative method of appeal from administrative bodies, can be taken as a legislative declaration that the 60 day time limitation of section 59.08<sup>243</sup> was intended to be controlling, as opposed to the prior statutory provisions.

#### A. WHAT COURT HAS JURISDICTION TO REVIEW THE ACTIONS OF ADMINISTRATIVE AGENCIES?

All three appellate tribunals — the supreme court, the district courts of appeal and the circuit courts — have the constitutional power to review administrative proceedings.

##### *Circuit Courts*

An administrative hearing is considered quasi-judicial in character and is not a true trial court hearing. The proceedings do not appear in the judicial department as a judicial case until they are brought into the court system.<sup>244</sup> Accordingly, the circuit courts, through the power grant of original jurisdiction contained in the Constitution of Florida, have original jurisdiction to review administrative actions.<sup>245</sup>

When the circuit courts review administrative actions they operate as trial courts. The district courts of appeal are vested with appellate jurisdiction to hear appeals from "trial courts," unless an appeal as a matter of right may be prosecuted to the supreme court. Accordingly, a type of double review of administrative action is provided for by the Florida Constitution.<sup>246</sup>

##### *District Courts of Appeal*

The jurisdiction of the district courts of appeal to review administra-

243. FLA. STAT. § 59.08 (1959).

244. *State v. Furen*, 118 So.2d 6 (Fla. 1960); *Fraternal Order of Eagles v. Proudfoot*, 116 So.2d 245 (Fla. 1959); *South Atl. S.S. Co. v. Tutson*, 139 Fla. 405, 190 So. 675 (1939).

245. FLA. CONST. art. V, § 6(3) provides: "The circuit courts shall have exclusive original jurisdiction in all cases in equity . . . in all cases at law not cognizable by subordinate courts . . ."

246. FLA. CONST. art. V, § 5(3) provides that appeals from trial courts in each appellate district may be taken to the court of appeal of such district as a matter of right.

tive action is limited to those appeals provided for by law.<sup>247</sup> For example, the review of the proceedings of the Florida Air Pollution Control Commission, by statute, are to be taken to the district court of appeal.<sup>248</sup>

### *Supreme Court*

The Constitution of Florida provides that the supreme court may issue writs of certiorari to commissions established by law.<sup>249</sup> It is to be noted that the exercise of this jurisdiction is discretionary with the court.

The difficult problem in this area is caused by the overlapping of jurisdiction of the supreme court and the circuit courts. One point is certain—an appeal must be taken to the circuit court when a statute provides for appeal as the method of appellate review.<sup>250</sup> However, when no method of review is provided for by statute, or where review is to be had by certiorari as provided for by statute, both courts may exercise jurisdiction to review administrative action.

In the absence of any established procedure, it is contemplated that the supreme court will decline jurisdiction, as it did in *Codomo v. Shaw*,<sup>251</sup> in favor of the circuit court assuming jurisdiction. In similar situations the circuit court will operate as a trial court to build a record upon which a review may be predicated. On the other hand, when there is a complete record, capable of review, the supreme court should assume jurisdiction and review the action.<sup>252</sup>

It is arguable that when the circuit court reviews administrative action it acts as a trial court and the applicable Florida Appellate Rules do not apply. However, the appellate rules contemplate that they should apply with equal force to review of administrative actions as seen by rule 1.3, which defines a lower court for purposes of the appellate rules as an administrative body.<sup>253</sup>

### CONCLUSION

In large part, the problems presented in this article arose from the fact that after each change in the law respecting appellate times, the prior

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247. FLA. CONST. art. V, § 5(3).

248. FLA. STAT. § 403.19 (1959).

249. FLA. CONST. art. V, § 4(2).

250. *State v. Furen*, 118 So.2d 6 (Fla. 1960).

251. 99 So.2d 849 (Fla. 1958).

252. See F.A.R. 4.1 and FLA. STAT. § 440.27 (1959).

253. F.A.R. 1.3.

statutes and rules were retained on the statute books. These problems were compounded in that the Florida Appellate Rules, which provided that all statutes in conflict with the rules were superseded, did not designate the statutes which were in fact to be superseded. The conflicting cases which have arisen to plague the practitioner are the result of this policy of oversimplification.

From this conflict a few guiding principles have developed. It is unquestioned that legislative enactments dealing with appeal times will prevail over contrary rules of court. These statutes create substantive rights which cannot be abridged or enlarged by rules of court.

However, the power of the judiciary to establish time requirements for the filing of petitions for writs of certiorari is unquestioned. The legislature may indirectly claim this power by the simple expedient of enacting statutes providing for an appeal as the method of appellate review which must be given as a matter of substantive right.

The truly pressing problem is the need for a more exact classification of a rule as to what is substantive and what is procedural. The grey area between substantive rights and practice and procedure casts an ominous shadow on the effectiveness of the appellate rules. If the incidental requirements of appeal times, such as the filing of the appeal, and the tolling of the time for appeal, are construed to be substantive in nature, then the Florida Appellate Rules will become a mere shell, for one would now read into the great majority of its provisions the proviso, "unless otherwise provided for by statute."

During the progress of this writing, the decision of *In re Wartman's Estate*<sup>254</sup> was handed down by the supreme court. It is impossible to determine the full repercussions of this decision. Some possible points of distinction and some analogies have been presented as well as other speculations. Suffice to say that the opinion serves to maintain the effectiveness of the Florida Appellate Rules.

Finally, it is submitted that there is no logical reason for a variation of the time limitation for appeals from court to court. Only in those situations where there is a necessity for a shorter appeal time due to the peculiar nature of the subject matter of the action, should pre-existing statutes be held to remain inviolate under the constitution as amended.

The Florida Appellate Rules should be considered remedial in nature and therefore should be liberally construed. It must be remembered that one of the reasons for the failure of common law pleading and practice was the undue importance placed upon technicalities and form rather

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254. 128 So.2d 600 (Fla. 1961).

than upon the merits of the cause. The courts of this state would do well to heed this lesson when they are next called upon to construe the Florida Appellate Rules.

COURTS	APPELLATE COURT	REFERENCE	TIME	REFERENCE	WHEN DOES TIME BEGIN TO RUN	REFERENCE	COMMENTS
Municipal Courts	Cir. Ct.	Fla. Stat. 932.52(1) Const. art. V, § 6 (3)	1 30 days	Fla. Stat. 932.52(2)	From and After Rendition	Fla. Stat. 932.52(2)	1. Note the conflict with F.A.R. 4.7 and 6.2; contrast City of Miami v. Gilbert, 102 So.2d 818 (Fla. App. 1958) with Clark v. City of Orlando, 109 So.2d 416 (Fla. App. 1959).
1. Criminal Appeals	Cir. Ct.	Fla. Stat. 932.52(1) Fla. Stat. 26.53	2 By Def.—90 days By State—30 days	F.A.R. 6.2 F.A.R. 6.3	For def. after judgment entered or from judgment, sentence, or both. For the state—order or sentence or both (see also Fla. Stat. 924.07).	F.A.R. 6.2 F.A.R. 6.3	2. See note 1 <i>supra</i> .
Metropolitan Courts	Considered to be a Municipal Court for purposes of appeal. See <i>Boyd v. County of Dade</i> , 123 So.2d 323 (1960).						
Justices of the Peace	3 Cir. Ct.	Const. art. V, § 6(3)	60 days 6 months for Certiorari	4 F.A.R. 3.2(b) Fla. Stat. 81.28	Rendition	F.A.R. 3.2(b) Fla. Stat. 81.28	3. Constitutional amendment has removed support for Fla. Stat. 34.01(5) providing for appellate jurisdiction in the county court. 4. F.A.R. have probably superseded Fla. Stat. 81.28 and 3.2(b) will govern these appeals except for criminal appeals.
1. Criminal Appeals	Cir. Ct. (de novo)	5 Const. art. V, § 11 Fla. Stat. 26.53 Fla. Stat. 932.56	30 days if de novo	Fla. Stat. 932.53	Date of judgment or sentence	Fla. Stat. 932.53	5. This provision only applies to de novo appeals. When the circuit court sits as a trial court (as in this situation) a further appeal can be taken to the district court of appeal.
6 2. Criminal Cases	Cir. Ct. (not de novo)	Const. art. V, § 11 Fla. Stat. 26.53 Fla. Stat. 932.56	7 By Def.—90 days By State—30 days	F.A.R. 6.2 F.A.R. 6.3 Fla. Stat. 924.09 Fla. Stat. 924.10	F.A.R. 6.2 and 6.3 govern all criminal appeals (see Municipal Courts— <i>Criminal Appeals</i> ).		6. The failure to request an appeal de novo under Fla. Stat. 932.56 will result in the application of this section ( <i>Criminal Cases</i> ). 7. There are no statutory provisions or rules of court providing the time limitation for appeals to the circuit court when it does not hear the appeal de novo. In all probability 4.7, 6.1, 6.2, 6.3 of the F.A.R. would be applicable. Note the possibility of the application of the <i>Orlando</i> case. (See note 1 <i>supra</i> .) Other possibilities are Fla. Stat. 932.56, 924.10, 924.09.
Juvenile Courts	Dist. Ct. App.	8 Const. art. V, § 5(3)	10 days	Fla. Stat. 39.14(2)	Entry of order	Fla. Stat. 39.14(2)	8. A juvenile court is a trial court within the meaning of art. V, § 5(3) of the constitution. See <i>State v. J. K. 104 So.2d 113</i> (Fla. App. 1958).
County Courts	Cir. Ct.	Const. art. V, § 6(3)	60 days	F.A.R. 3.2(b) Fla. Stat. 59.08 Fla. Stat. 34.18	Rendition	F.A.R. 3.2(b)	
1. Criminal Cases	Cir. Ct.	Const. art. V, § 6(3) Fla. Stat. 26.53	By Def.—90 days By State—30 days	F.A.R. 6.2 F.A.R. 6.3 (See also Fla. Stat. 924.09 and 924.10)	See F.A.R. 6.2 and 6.3 which govern all criminal appeals. See also Fla. Stat. 924.09, 924.10.		
Small Claims Courts	Cir. Ct.	Const. art. V, § 6(3)	60 days	F.A.R. 3.2(b) also Fla. Stat. 42.18, 59.08, 34.18.	Rendition	F.A.R. 3.2(b)	
Civil Court of Record— 1. Duval	Dist. Ct. App.	Const. art. V, § 5(3)	60 days	9 F.A.R. 3.2(b)	Rendition	F.A.R. 3.2(b)	9. F.A.R. are applicable because no other time is stated by statute.
2. Dade	Dist. Ct. App.	Const. art. V, § 5(3)	10 60 days	F.A.R. 3.2(b)	Rendition	F.A.R. 3.2(b)	10. <i>Ed. Lane Auto Sales, Inc. v. Weinstein</i> , 132 So.2d 218 (Fla. App. 1961).
11 Criminal Courts of Record— 1. Misdemeanors	Cir. Ct.	Const. art. V, § 6(3)	By Def.—90 days By State—30 days	F.A.R. 6.2 F.A.R. 6.3 Accord, Fla. Stat. 924.09, 924.10	F.A.R. 6.2 and 6.3 govern this situation. See Municipal Courts— <i>Criminal Appeals</i> .		11. Note the applicability of F.A.R. 4.7 and 6.1 in this situation.
1. Felonies (Non-Capital)	Dist. Ct. App.	Const. art. V, § 5(3)	By Def.—90 days By State—30 days	F.A.R. 6.2 F.A.R. 6.3	F.A.R. 6.2 and 6.3 govern this situation. See Municipal Courts— <i>Criminal Appeals</i> .		
County Judges Court— 1. Probate	Dist. Ct. App.	12 Const. art. V, § 5(3)	60 days	13 F.A.R. 3.2(b)	Filing	Fla. Stat. 732.16	12. Constitutional amendment has removed the support for the statute providing for appeal to the circuit court. In <i>re Wartman's Estate</i> , 128 So.2d 600 (Fla. 1961), held that the constitutional support for Fla. Stat. 732.16 has been removed and that F.A.R. 3.2(b) and Fla. Stat. 59.08 control the time for appeal. 13. Fla. Stat. 393.12(4) and 746.16 provide that Fla. Stat. 732.16 controls the appeal time. However, Fla. Stat. 732.16 has been declared invalid in <i>In re Wartman's Estate</i> . Thus, F.A.R. 3.2(b) is now applicable.
2. Interest of Minors	Dist. Ct. App.	Const. art. V, § 5(3) See Fla. Stat. 744.06(2)	60 days	14 F.A.R. 3.2(b)	Rendition	F.A.R. 3.2(b)	14. See note 13 <i>supra</i> .
3. Interest of Incompetents	Dist. Ct. App.	Const. art. V, § 5(3)	60 days	F.A.R. 3.2(b)	Rendition	F.A.R. 3.2(b)	
4. All Others Not Criminal	Cir. Ct.	Const. art. V, § 6(3)	60 days	F.A.R. 3.2(b)	Rendition	F.A.R. 3.2(b)	
5. Criminal	Cir. Ct.	Const. art. V, § 6(3) Fla. Stat. 26.53	By Def.—90 days By State—30 days	F.A.R. 6.2 F.A.R. 6.3 Fla. Stat. 924.09, 924.10	F.A.R. 6.2 and 6.3. See Municipal Courts— <i>Criminal Appeals</i> .		
Circuit Court District Courts of Appeal	Depending upon the appellate provisions of the Florida Constitution.		60 days	F.A.R. 3.2(b)	Rendition	F.A.R. 3.2(b)	





**APPENDIX B  
APPEAL TIMES BY SUBJECT MATTER**

SUBJECT	REFERENCE	APPEAL TIME	REFERENCE	TIME RUNS	COMMENTS
Florida Appellate Rules— 1. Bond Validation	F.A.R. 4.3	20 days	F.A.R. 4.3 Fla. Stat. 75.08	Rendition	<i>General Notes:</i> The individual subject matter time limitations established as per this appendix govern the appeals. In the absence of such special time limitations the general requirements applicable to each court govern the appeal time.
2. Taxation of Costs	F.A.R. 3.16	20 days	F.A.R. 3.16	Entry	
Statutory— 1. Statutory Liens	Fla. Stat. Ch. 86	10 days	Fla. Stat. 86.06(8)	Rendition	
2. Removal of Tenants a. County Judge b. County Court	Fla. Stat. Ch. 85	2 days 10 days	Fla. Stat. 83.27(1) Fla. Stat. 83.38	Entry Rendition	
Restoration of Mental Competency (Sumiland Training Centers)	Fla. Stat. Ch. 393	60 days	1 F.A.R. 3.2(b)	Entry	1. Fla. Stat. 393.12(4) provided that the probate statutory appeal time would be applicable, viz., 30 days. However, <i>In re Wartman's Estate</i> held that provision invalid. Thus, the general provision of the F.A.R. of 60 days should control.
Restoration of Mental Competency	2 Fla. Stat. Ch. 394	15 days	Fla. Stat. 394.22 (15)(F)	Entry	2. Fla. Stat. 394.22 provides that the appeal should be taken to the circuit court; this has been abolished and the appeal is now taken to the district court of appeal.
Eminent Domain	Fla. Stat. Ch. 73	30 days	3 Fla. Stat. 73.14	Rendition	3. <i>Whitaker v. Jacksonville Expressway Authority</i> , 129 So.2d 188 (Fla. App. 1961).
Delayed Birth Certificates	Fla. Stat. Ch. 382	30 days	Fla. Stat. 382.45	Date of Order	