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Writ of Prohibition in Florida Since 1951

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WRIT OF PROHIBITION IN FLORIDA SINCE 1951

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Over the last 25 years, most areas of Florida law have undergone substantial, if not radical, changes. However, one aspect which has remained relatively static is the remedy of prohibition. In a previous article,[1] the authors discussed the history, scope, and procedure of the writ of prohibition in Florida and considered every Florida case pertaining to prohibition as of 1951. We will not therefore in this article reiterate the significant points discussed in the prior article, but we will endeavor to note the ways in which the writ of prohibition has been modified and note the additional situations in which prohibition has been found to be an appropriate remedy. In order to avoid needless repetition, extensive reference will be made to the prior article. Our conclusions are based upon examination of every Florida case on the subject since 1951. While every case will not be cited, those that are relevant and significant will be listed and, if helpful analytically, discussed in some detail.

LEGAL BASIS[2]

The Florida Constitution empowers the supreme court,[3] the district courts of appeal,[4] and the circuit courts[5] to issue writs of prohibition. Procedure is governed by both statute[6] and court rule.[7] The substantive law concerning prohibition continues to be shaped by the decisional law of the courts.

CHARACTERISTICS[8]

The key word in any case involving the writ of prohibition has historically been and still is "jurisdiction." When a lower tribunal threatens to act without jurisdiction or in excess of its jurisdiction, issuance of the writ is proper.[9] Prohibition remains a discretionary writ,[10] and the writ will not

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1. Wehle & Belcher, *Prohibition in Florida*, U. FLA. L. REV. 546 (1951).

2. For history and former legal basis in Florida, see Wehle & Belcher, *supra* note 1, at 546-47.

3. FLA. CONST. art. V, §3(b)(4).

4. FLA. CONST. art. V, §4(b)(3).

5. FLA. CONST. art. V, §5(b).

6. FLA. STAT. §§81.011 *et seq.* (1975).

7. FLA. APP. R. 4.5(a), (d).

8. See Wehle & Belcher, *supra* note 1, at 547-50, for a thorough discussion of the principal qualities of prohibition.

9. State *ex rel.* Fla. R.R. & Pub. Util. Comm'n v. Taylor, 104 So. 2d 745 (1st D.C.A. Fla. 1958).

10. State *ex rel.* Fla. Real Estate Comm'n v. Anderson, 164 So. 2d 265 (2d D.C.A. Fla. 1964).

issue where the petitioner is protected by another adequate remedy at law.[11] Since the writ is preventive rather than remedial, the writ will not issue when the action that is sought to be prohibited has already occurred.[12]

Prohibition is readily distinguishable from other extraordinary writs, such as certiorari,[13] mandamus,[14] and quo warranto.[15] If the reviewing court determines that a different extraordinary writ is more appropriate under the circumstances, it may, in its discretion, treat the suggestion for writ of prohibition as a petition for the more appropriate writ.[16]

A recent supreme court opinion defined prohibition as:

> [t]hat process by which a superior court prevents an inferior court or tribunal possessing judicial or quasi-judicial powers from exceeding its jurisdiction in matters over which it has cognizance or usurping jurisdiction over matters not within its jurisdiction to hear and determine.[17]

SCOPE[18]

While prohibition is available as a remedy in civil and criminal cases, it has been applied to relatively few situations. In order to establish a prima facie case, a relator must establish that the inferior tribunal intends to act in excess of or without jurisdiction.[19] When the allegations of a suggestion for writ of prohibition state a prima facie case, the court will issue a rule directing the inferior tribunal to show cause by a day certain why the writ as prayed for should not issue. If the respondent (inferior tribunal) fails to file a return (response) within the prescribed period, the writ of prohibition will issue based only upon the prima facie allegations in the suggestion.[20] If the suggestion fails to allege a prima facie case no rule will be issued, no return is required, and the suggestion will be denied.[21]

A prevalent use of prohibition in recent years has been to enforce the provisions of the speedy trial rule.[22] Issuance of the writ has been held proper even where the speedy trial issue had not been raised in the trial

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11. Corbin v. State *ex rel.* Slaughter, 324 So. 2d 203 (1st D.C.A. Fla. 1975). See also the discussion in Wehle & Belcher, *supra* note 1, at 548-50.

12. State *ex rel.* R.C. Motor Lines, Inc. v. Boyd, 114 So. 2d 169 (Fla. 1959); State *ex rel.* West Flagler Assoc., Ltd. v. Bd. of Regents, 238 So. 2d 677 (1st D.C.A. Fla. 1970).

13. State *ex rel.* Wainwright v. Booth, 291 So. 2d 74 (2d D.C.A.) *cert. discharged,* 300 So. 2d 257 (Fla. 1974).

14. Wincor v. Turner, 215 So. 2d 3 (Fla. 1968).

15. State *ex rel.* Booth v. Byington, 168 So. 2d 164 (1st D.C.A. 1964), *aff'd,* 178 So. 2d 1 (Fla. 1965).

16. State *ex rel.* Miami Herald Publ. Co. v. McIntosh, 322 So. 2d 544 (Fla. 1975) (suggestion for writ of prohibition treated as petition for conflict certiorari).

17. State *ex rel.* Turner v. Earle, 295 So. 2d 609, 611 (Fla. 1974).

18. See Wehle & Belcher, *supra* note 1, at 550-56.

19. State v. Smith, 56 So. 2d 536 (Fla. 1952); State v. Taylor, 104 So. 2d 745 (1st D.C.A. Fla. 1958).

20. FLA. APP. R. 4.5(d); Turner v. Olliff, 281 So. 2d 384 (1st D.C.A. Fla. 1973).

21. State *ex rel.* Hanemann v. Wingfield, 202 So. 2d 131 (1st D.C.A. Fla. 1967).

22. FLA. R. CRIM. PRAC. 3.191.

court.[23] Prohibition is appropriate in cases where a defendant is charged with either a felony[24] or misdemeanor.[25]

Another area of criminal law into which prohibition has expanded since 1951 is double jeopardy.[26] Since the supreme court set the example in 1956,[27] every district court of appeal has applied prohibition in cases asserting double jeopardy.[28]

Defendants in criminal cases have frequently attempted to seek relief via prohibition from alleged irregularities in the conduct of grand juries. Those efforts have met with mixed results. The courts have uniformly held that prohibition may not be employed even on a showing that unauthorized persons were present in the grand jury room.[29] When an accused is charged by indictment or information with a crime for which he should have received immunity,[30] he may petition for a writ of prohibition.[31] Relief may also be granted where a circuit court judge threatens to take unauthorized action regarding the grand jury,[32] and where an accused is charged by indictment or information based on an unconstitutional statute purporting to extend the jurisdiction of the courts or to grant new jurisdiction.[33]

Prohibition lies to secure disqualification of a judge.[34] Once there is a

23. State *ex rel.* Neville v. Goodman, 254 So. 2d 55 (3d D.C.A. 1971), *cert. denied,* 261 So. 2d 839 (Fla. 1972).

24. State *ex rel.* Wright v. Yawn, 320 So. 2d 880 (1st D.C.A. Fla. 1975).

25. State *ex rel.* Sibert v. Hare, 276 So. 2d 523 (4th D.C.A. Fla. 1973).

26. See Wehle & Belcher *supra* note 1, at 553, where the authors note that the case law of Florida, with one exception, had declined to apply prohibition to pleas of double jeopardy.

27. State *ex rel.* Williams v. Grayson, 90 So. 2d 710 (Fla. 1956). *See also* Strawn v. State *ex rel.* Anderberg, 332 So. 2d 601 (Fla. 1976).

28. State *ex rel.* Anderberg v. Strawn, 307 So. 2d 213 (4th D.C.A. 1975) (the court summarized the cases pertaining to the availability of prohibition in double jeopardy cases and concluded that issuing the writ in a proper case is the better view); *quashed on other grounds,* 332 So. 2d 601 (Fla. 1976); State *ex rel.* James v. Williams, 164 So. 2d 873 (3d D.C.A. Fla. 1964); Wheeler v. Cooper, 157 So. 2d 875 (2d D.C.A. Fla. 1963); State *ex rel.* Hicks v. McCrary, 141 So. 2d 323 (1st D.C.A. Fla. 1962).

29. State *ex rel.* Christian v. Rudd, 302 So. 2d 821 (1st D.C.A. 1974), *modified,* 310 So. 2d 295 (Fla. 1975). In *Rudd,* however, the court did grant a writ of certiorari based on the presence of unauthorized persons in the grand jury room. State v. Willard, 54 So. 2d 183 (Fla. 1951).

30. FLA. STAT. §§914.04-.05 (1975).

31. Buchanan v. State *ex rel.* Husk, 167 So. 2d 38 (3d D.C.A. Fla. 1964), *cert. denied,* 174 So. 2d 742 (Fla.), *cert. denied,* 382 U.S. 954 (1965); State v. Newell, 102 So. 2d 613 (Fla. 1958); State v. Pearson, 68 So. 2d 400 (Fla. 1953); State v. Willard, 54 So. 2d 179 (Fla. 1951).

32. State *ex rel.* Gerstein v. Baker, 243 So. 2d 464 (3d D.C.A. 1971) (judge prohibited from summoning and impaneling a grand jury); State *ex rel.* Oldham v. Baker, 226 So. 2d 21 (3d D.C.A. Fla. 1969) (judge prohibited from conducting in *camera* inspection of grand jury testimony where no criminal case pending).

33. Vann Cott v. Driver, 243 So. 2d 457 (2d D.C.A. 1971), *quashed,* 257 So. 2d 541 (Fla. 1973). *But see* State *ex rel.* Rash v. Williams, 302 So. 2d 474 (3d D.C.A. Fla. 1974) for the qualification that the unconstitutional statute must go to the fundamental jurisdiction of the court before prohibition will be invoked. *Accord* as to ordinance, Smith v. Bettinghaus, 178 So. 2d 201 (2d D.C.A. Fla. 1965). *See also* Wehle & Belcher, *supra* note 1, at 551-52.

34. Wehle & Belcher, *supra* note 1, at 552.

finding that the affidavits filed in support of the motion for disqualification are legally sufficient, the trial judge should relinquish jurisdiction.[35] However, the disqualified judge does have authority to enter an order transferring the case to another judge.[36] In order to make a prima facie case in prohibition, the affidavits must assert facts from which a conclusion of disqualification may be reached.[37] Further, in order for prohibition to lie, the judge whose disqualification is sought must have been presented with a suggestion of disqualification accompanied by supporting data[38] and compliance with the other statutory requirements must be demonstrated.[39]

It is difficult to generalize about the type of showing which must be made to establish prejudice. Potential bias has been found where litigants had a law suit pending against the trial judge,[40] where the trial judge presiding over a bribery case was the alleged object of the bribery,[41] and where counsel for defendant had previously actively campaigned for the judge's impeachment.[42] The following examples have been held to be insufficient to justify issuance of the writ: comments by the judge on post-trial, rather than trial matters,[43] mere comments by the judge concerning his legal philosophical beliefs,[44] and the fact that the judge had passed the legal retirement age.[45] In a proper case, prohibition will issue to disqualify persons, other than judges, sitting in a judicial or quasi-judicial capacity.[46] In such instances the same standards relative to the disqualification of judges will be applied.[47]

Prohibition has been rarely used to remedy improper venue.[48] However,

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35. Brewton v. Kelly, 166 So. 2d 834 (2d D.C.A. Fla. 1964).

36. State *ex rel.* Ginsberg v. Wisehart, 120 So. 2d 810 (3d D.C.A. Fla. 1960).

37. State *ex rel.* Solomon v. Sloan, 234 So. 2d 697 (3d D.C.A.), *cert. denied*, 239 So. 2d 267 (Fla. 1970).

38. State *ex rel.* Peebles v. Smith in and for Marion County, 291 So. 2d 102 (1st D.C.A. Fla. 1974).

39. State *ex rel.* Jensen v. Cannon, 163 So. 2d 535 (3d D.C.A. Fla. 1964). *See also* FLA. STAT. ch. 38 (1975).

40. Turner v. Cooper, 267 So. 2d 85 (4th D.C.A. Fla. 1972).

41. State *ex rel.* Arnold v. Revels, 113 So. 2d 218 (1st D.C.A. Fla. 1959).

42. State *ex rel.* Brewton v. Kelly, 166 So. 2d 834 (2d D.C.A. Fla. 1964).

43. State *ex rel.* Shelton v. Sepe, 254 So. 2d 12 (3d D.C.A. Fla. 1971).

44. State *ex rel.* Gerstein v. Stedman, 233 So. 2d 142 (3d D.C.A.), *cert. discharged*, 238 So. 2d 615 (Fla. 1970).

45. State *ex rel.* Booth v. Byington, 168 So. 2d 164 (1st D.C.A. 1964), *aff'd*, 178 So. 2d 1 (Fla. 1965) (quo warranto held to be the proper remedy for disqualifying a judge who is over the maximum retirement age).

46. State *ex rel.* Allen v. Board of Pub. Instruction of Broward County, 214 So. 2d 7 (4th D.C.A. 1968), *cert. discharged*, 219 So. 2d 430 (Fla. 1969); *cf.* The Florida Bar, 329 So. 2d 301 (Fla. 1974), (prohibition inappropriate to challenge qualification of a trial referee in disciplinary proceeding against attorney because referee lacked authority to reach or implement a final decision).

47. State *ex rel.* Cannon v. Churchill, 195 So. 2d 599 (4th D.C.A. Fla. 1967).

48. See Wehle & Belcher, *supra* note 1, at 553. Most venue questions are decided by means of interlocutory appeal, pursant to FLA APP. R. 4.2.

where the pleadings showed that the only proper venue lay in another county, the writ of prohibition was issued.[49]

Contrary to prior case law, recent decisions have applied prohibition to contempt matters.[50] The inadequacy of habeas corpus as a remedy has been noted.[51] It has been held that prohibition is an appropriate procedure to invoke against a judge who is about to cite a party for contempt when the party's action does not constitute contempt.[52] Prohibition is also properly directed to a state agency threatening contempt.[53] Obviously, where the trial court is acting within its jurisdiction, the writ will not issue,[54] even though the court may be exercising its valid jurisdiction erroneously. Jurisdiction to act includes the power to err.[55]

While many judicial powers are inherent, the authority of the courts to consider some matters is specifically conferred by statute. Where a court derives its jurisdiction from a statute, prohibition is appropriate upon the passage of a statute divesting such jurisdiction.[56] Similarly, when a statute provides for an exclusive remedy in an administrative agency, the circuit court is implicitly stripped of jurisdiction to entertain a suit on the same subject matter that was formerly cognizable at common law.[57] If a jurisdictional basis is found to exist, prohibition will not lie to test the correctness of the lower court order.[58] Under extraordinary circumstances, a court of equity has been held to have authority to entertain an action not regularly within its jurisdiction where two other actions have resulted in an impasse.[59]

A facet of the trial court's jurisdiction tested in recent prohibition cases is the power of the court to restrict news coverage of judicial proceedings. A so-called "gag" order has been prohibited in a criminal case "to the extent that the order operates as a prior restraint upon constitutionally

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49. State *ex rel.* McGreevy v. Dowling, 223 So. 2d 89 (3d D.C.A. Fla. 1969); *cf.* Pitts v. McCrary, 251 So. 2d 694 (1st D.C.A. Fla. 1971) (suggestion was denied where defendant in criminal case sought change of venue based on presence of prejudice and animosity in community).

50. Wehle & Belcher, *supra* note 1, at 554.

51. State *ex rel.* Scussel v. Kelly, 152 So. 2d 767 (2d D.C.A. 1963), *quashed*, 167 So. 2d 870 (Fla. 1964) (the district court issued the writ but the supreme court disagreed, holding that the suggestion was premature).

52. Wilkes v. Revels, 245 So. 2d 896 (1st D.C.A. 1970), *cert. denied*, 247 So. 2d 437 (Fla. 1971); State *ex rel.* Gillham v. Phillips, 193 So. 2d 26 (2d D.C.A. Fla. 1966).

53. State *ex rel.* Greenberg v. State Bd. of Dentistry, 297 So. 2d 628 (1st D.C.A. 1974), *cert. discharged*, 300 So. 2d 900 (Fla. 1975).

54. State *ex rel.* Pearson v. Johnson, 334 So. 2d 54 (4th D.C.A. Fla. 1976); Miller v. Balikes, 166 So. 2d 610 (3d D.C.A. Fla. 1964).

55. White v. State *ex rel.* Johnson, 160 Fla. 965, 37 So. 2d 580 (1948); State *ex rel.* O'Donnell v. Hall, 175 So. 2d 792 (2d D.C.A. Fla. 1965).

56. Tobler v. Beckett, 297 So. 2d 59 (2d D.C.A. Fla. 1974).

57. Winn-Lovett Tampa, Inc. v. Murphee, 73 So. 2d 287 (Fla. 1954) (exclusive remedy for workmen's compensation lies under Workmen's Compensation Act).

58. Florida Dept. of Health & Rehabilitation Serv. v. Patten, 277 So. 2d 320 (1st D.C.A. Fla. 1973) (authority for circuit judge to enter special order in juvenile case found in Rules of Juvenile Procedure).

59. Lewis v. Hodge, 254 So. 2d 397 (2d D.C.A. Fla. 1971).

privileged publication or communication."[60] Another free press issue raised in the context of a prohibition proceeding contested the authority of a trial court to conduct a closed dissolution of marriage proceeding. Of the two cases rendered on the subject, one district court has granted relief[61] while the other district court has upheld the trial court thereby permitting the closed proceedings.[62]

Most defenses in a civil trial do not concern a court's jurisdiction; therefore prohibition is inappropriate. Not even res judicata, if successfully pleaded and proved, divests a court of jurisdiction.[63] Sovereign immunity, however, has been found to so fundamentally affect the jurisdiction of the court that prohibition would lie.[64]

While conceding that a trial court initially had jurisdiction, the question sometimes arises whether that jurisdiction has been lost. The general rule is that even though no appeal has been taken, trial courts have authority over their own orders and judgments and can vacate, amend, or reform them only in the manner and within the time provided by rule or statute.[65] Where no rule or statute is violated, a trial court has been held to have the power, even after final judgment has been satisfied, to enter a stay of execution order to permit an appeal.[66] However, once the appellate court has issued its mandate following an appeal, a trial court's attempt to review its decision is without authority and may be prohibited.[67]

Prohibition is also applicable to administrative bodies which render judicial or quasi-judicial decisions.[68] The rules of prohibition applicable to courts appear to be identical for administrative agencies.[69]

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60. State *ex rel.* Miami Herald Publishing Co. v. Rose, 271 So. 2d 483 (2d D.C.A. Fla. 1972); *see also* State *ex rel.* Miami Herald Publishing Co. v. McIntosh, 340 So. 2d 904 (Fla. 1977) *reversing* 320 So. 2d 861 (4th D.C.A. Fla. 1975). Relator had filed for prohibition in the supreme court which denied relief but decided to treat the petition as one for conflict certiorari, 322 So. 2d 544 (Fla. 1975).

61. State *ex rel.* Gore Newspaper Co. v. Lyson, 313 So. 2d 777 (4th D.C.A. Fla. 1975).

62. State *ex rel.* English v. McCray, 328 So. 2d 257 (1st D.C.A. Fla. 1976) (petition for certiorari filed in supreme court March 9, 1976).

63. State *ex rel.* Paluska v. White, 162 So. 2d 697 (2d D.C.A. Fla. 1964).

64. Department of Natural Resources v. Circuit Court, 317 So. 2d 772 (2d D.C.A. Fla. 1975). *See also* State Road Dept. v. Taylor, 167 So. 2d 748 (1st D.C.A. Fla. 1964) (sovereign immunity was raised in prohibition action but was dismissed because copy of complaint not attached to suggestion).

65. Kippy Corp. v. Colburn, 177 So. 2d 193 (Fla. 1965). *See also* Shelby Mut. Ins. Co. v. Pearson, 236 So. 2d 1 (Fla. 1970); State *ex rel.* Huntley Bros., Inc. v. Gooding, 149 So. 2d 55 (1st D.C.A.), *cert. denied,* 155 So. 2d 615 (Fla. 1963) (after 10 days for rehearing passed, trial court lost jurisdiction); State *ex rel.* Ashby v. Haddock, 149 So. 2d 552 (Fla. 1962) (after statutory period for notice of probate expired, order of probate became conclusive).

66. Chapman v. Rose, 295 So. 2d 667 (2d D.C.A. Fla. 1974).

67. King v. L & L Investors, Inc., 136 So. 2d 671 (3d D.C.A. Fla. 1962). *But see* Avant v. Waites, 295 So. 2d 362 (1st D.C.A. Fla. 1974) (holding that a trial court has post-mandate jurisdiction to entertain a motion pursuant to FLA. R. CIV. P. 1.540(b)).

68. Grissom v. State *ex rel.* Stephenson, 104 So. 2d 55 (2d D.C.A. Fla. 1958).

69. State v. Earle, 295 So. 2d 609 (Fla. 1974) (remedy at law must be inadequate); State v. Boyd, 114 So. 2d 169 (Fla. 1959) (prohibition preventative rather than corrective remedy).

An appellate court, too, may lack jurisdiction, thereby making prohibition in a superior court a proper remedy. For instance, the filing of an untimely notice of appeal does not vest jurisdiction in the appellate court and review by such court will be prohibited.[70] Nor may the appellate court review an interlocutory order which is not appealable.[71] So long as the notice of appeal is timely filed, mere defects associated with the notice will not act to destroy appellate jurisdiction.[72] Even a notice of appeal which is prematurely filed is sufficient to confer jurisdiction upon the appellate court where the notice is filed subsequent to the oral judgment of the court but prior to the written final judgment.[73]

Prohibition is generally said to lie only to challenge *subject matter* rather than *personal* jurisdiction.[74] However, two courts have held that prohibition is a proper remedy when a court attempts to impose its jurisdiction upon a party over whom it has no authority.[75]

PROCEDURE

The procedure for seeking a writ of prohibition may be found in the Florida Appellate Rules[76] and in the Florida Statutes.[77] Given the extraordinary nature of the remedy, the courts generally act swiftly in prohibition cases. In the supreme court, procedure has changed drastically.[78] According to Sid J. White, Clerk of the Supreme Court, as soon as a suggestion is filed and docketed, it is assigned, usually within one day of filing, to a five-member panel.[79] If the panel determines that the suggestion establishes a prima facie case, it will issue a rule directing the lower court to show cause, usually within ten days, why the writ should not issue.[80] If the court decides that oral argument would be helpful, it directs the Clerk to set the case for hearing on the next motion day after all briefs are filed.[81] The relator is permitted not

70. State *ex rel.* Sebers v. McNulty, 326 So. 2d 17 (Fla. 1975); State v. Smith, 160 So. 2d 518 (Fla. 1964).

71. State v. Pierce, 269 So. 2d 664 (Fla. 1972).

72. State *ex rel.* Shevin v. Rawls, 290 So. 2d 477 (Fla. 1974) (notice of appeal timely filed but in wrong district); State v. Carroll, 151 So. 2d 5 (Fla. 1963) (defendant, rather than plaintiff, erroneously designated as appellant in notice of appeal); State *ex rel.* Moore v. Murphree, 106 So. 2d 430 (1st D.C.A.), *cert. denied,* 108 So. 2d 48 (Fla. 1958) (filing fee deposited in incorrect amount). *See also* Williams v. State, 324 So. 2d 74 (Fla. 1975).

73. See State *ex rel.* Shevin v. Rawls, 326 So. 2d 173 (Fla. 1976) which cites as controlling Williams v. State, 324 So. 2d 74 (Fla. 1975).

74. State v. Herin, 80 So. 2d 331 (Fla. 1955); State v. Shields, 83 So. 2d 271 (Fla. 1955); State *ex rel.* Ferre v. Kehoe, 179 So. 2d 403 (3d D.C.A. Fla. 1965).

75. Rehrer v. Weeks, 106 So. 2d 865 (2d D.C.A. Fla. 1958). *See also* State *ex rel.* O'Dare v. Kehoe, 189 So. 2d 268 (3d D.C.A. 1966), *cert. denied,* 200 So. 2d 812 (Fla. 1967).

76. FLA. APP. R. 4.5(a)2(d). The Florida Appellate Rules are currently being revised, but, as of the publication date of this article, the process of revision has not been completed. Thus, it is impossible to predict any change in procedure.

77. FLA. STAT. §§81.011 *et seq.* (1975).

78. Wehle & Belcher, *supra* note 1, at 544.

79. Letter from Sid J. White to Judge Tyrie A. Boyer (April 12, 1976).

80. *Id.*

81. *Id.*

more than ten days to file a reply brief.[82] The cause is then either set for hearing or returned to the court for final disposition.[83]

Procedure in the four district courts of appeal follow, of course, the applicable appellate rules, but the internal procedures may slightly vary. It is thought that the procedure employed by the first district, as described by Clerk Raymond E. Rhodes,[84] is typical. According to Mr. Rhodes, the suggestion for writ of prohibition, which is to be supported by a brief at the time of filing, is immediately taken to the Chief Judge and assigned to a three judge panel. If it is determined that the suggestion makes out a prima facie case, a rule nisi is issued, generally giving the respondent 10 days to respond thereto.[85] If the court determines that oral argument would be desirable, the cause is set to be heard, usually on the next motion day, although special hearings are utilized in rare instances.[86]

Practice in the circuit court varies slightly but in general closely follows the relevant statutory and appellate rules.

Care should be taken in complying with the technical rules of prohibition. Suggestions have been denied because the proper party was not joined,[87] and because of a failure to provide the reviewing court with a sufficient record.[88] Choosing a receptive forum is also important, because the supreme court has ruled that it will not grant relief in a second prohibition action where another appellate court has previously denied the original suggestion.[89] Prohibition should initially be filed in the superior court having immediate appellate jurisdiction over the inferior court.[90]

CONCLUSION

This article has been approached with trepidation. As one court observed some 10 years ago, "No single statement of the general principles governing the issuance of the writ of prohibition can be made that will not be at variance with some decisions on the subject."[91] Nevertheless, an effort has been made to discern the contexts within which prohibition may be employed, and the directions toward which the use of the writ is moving.

While the nature and scope have remained relatively stable over the

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82. *Id.*

83. *Id.*

84. Letter from Raymond E. Rhodes to Judge Tyrie A. Boyer (April 7, 1976).

85. *Id.*

86. *Id.*

87. Eagan v. Florida Indus. Comm'n, 217 So. 2d 293 (Fla. 1968); State v. Gordon, 107 So. 2d 401 (2d D.C.A. Fla. 1958).

88. Pettie v. Kronberg, 300 So. 2d 44 (4th D.C.A. Fla. 1974); State *ex rel.* Roose v. Vordermeier, 209 So. 2d 685 (4th D.C.A. Fla. 1968).

89. State *ex rel.* Kovnot v. Ferguson, 313 So. 2d 710 (Fla. 1975).

90. State *ex rel.* Brewer v. Pettie, 294 So. 2d 120 (4th D.C.A. Fla. 1974); Johnston v. State *ex* rel. Carter, 213 So. 2d 435 (1st D.C.A. Fla. 1968); State *ex rel.* Fla. Real Estate Comm'n v. Anderson, 164 So. 2d 265 (2d D.C.A. Fla. 1964); Washington Fed. Sav. & Loan Ass'n v. State *ex rel.* Bradley, 155 So. 2d 393 (3d D.C.A. Fla. 1963).

91. Smith v. Bettinghaus, 178 So. 2d 201 (2d D.C.A. Fla. 1965).

past 25 years, there are potential subjects for growth:[92] but so long as the focus remains on jurisdiction, the expansion of prohibition into new areas will probably be slow. Consequently, given the narrow scope of the writ, the estimate that not over 10 percent of practicing lawyers in Florida will encounter prohibition in a lifetime of practice[93] is still viable today.

92. See text accompanying notes 59-61, 74 *supra*.
93. Wehle & Belcher, *supra* note 1, at 546.