

# Types of Appellate Proceedings

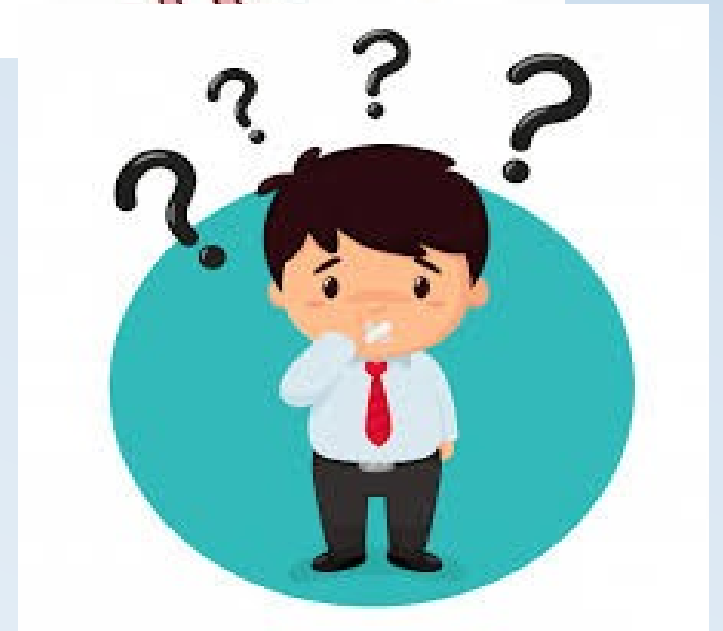
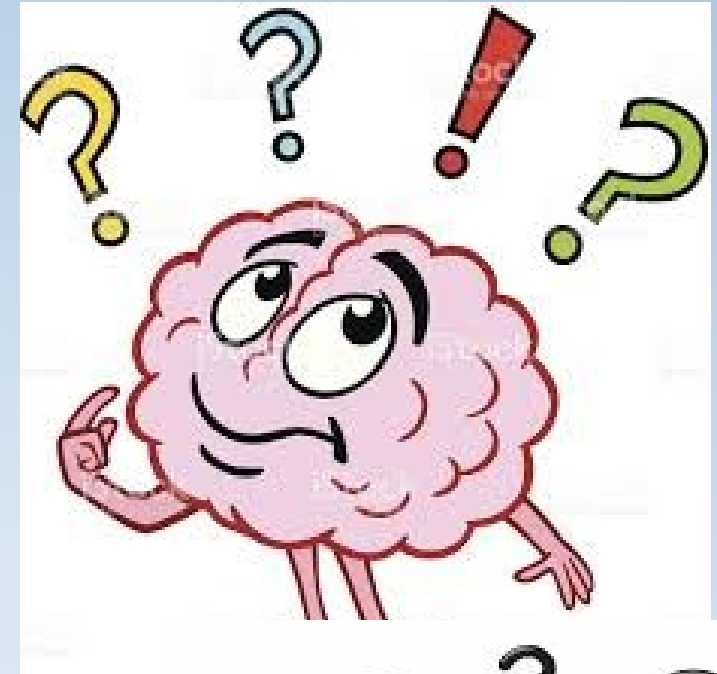
“What’s done is done. What’s done cannot be undone.”  
Lady Macbeth.

Or can it?  
The GAL “Appeals for the Pro Bono Practitioner” Seminar



## • Types of Appellate Proceedings

- Rule 9.110 – Appeals of Final Orders
- Rule 9.100 – Extraordinary Petitions
- Rule 9.130 – Appeals of Nonfinal Orders



## Rule 9.110 - Appeals of Final Orders

- Notice of Appeal
  - Timing depends on “rendition” under rule 9.020(h)
  - Rendition requires a signed, written order filed with the clerk of the lower court
  - Various authorized and timely motions listed in rule 9.020(h) toll rendition of a final judgment
  - A Notice of Appeal is not due until the lower court rules on these motions
  - If there is no motion tolling rendition a Notice of Appeal must be filed within 30 days after rendition of the order to be appealed
  - If there is a timely authorized motion a Notice of Appeal must be filed within 30 days after the court enters a signed order on the motion







**I HATE HOW AFTER  
AN ARGUMENT  
I THINK OF MORE  
CLEVER THINGS  
I SHOULD HAVE SAID**

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## The Record

- Clerk of lower court prepares record and Index to Record within 50 days of Notice and files it within 110 days of Notice
- Transcripts are requested via designation to court reporter

**Jurisdiction** – appellate court has jurisdiction over any ruling or matter before entry of the Final Judgment if it has not already ruled

- **Initial Brief** - due filed within 70 days of Notice, but if the Index has not been provided by the clerk extensions of time for the Initial and all other Briefs are available
- **Stays** – must be requested from the trial court with review of the ruling in the appellate court under rule 9.310
- **Oral argument** – separate request under rule 9.320
- **Motions for rehearing, etc.** – under rule 9.330

- **Rule 9.100 - Petitions**

- Petitions of all types are filed with the clerk of the reviewing court
- Five types of petitions – certiorari, mandamus, prohibition, habeas corpus, and quo warranto
- All must be filed with an appendix containing the relevant documents
- Most common – certiorari to review discovery orders, but for GAL in adoption proceedings; must be filed within 30 days of entry of the order to be reviewed, no motion tolls that time
- There is no time frame for the other types of petitions but a safe rule of thumb is no more than 30 days

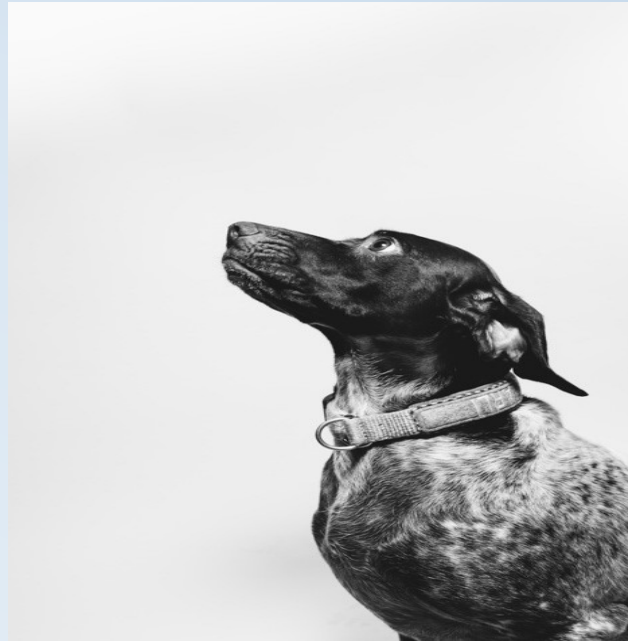


- A reviewing court has broad discretion to accept or reject petitions
- After filing the court will issue an order directing a response, denying, or dismissing
- Until the court issues an order the opposing party is not required to do anything
- Few courts permit oral argument in petition proceedings
- If this is a petition on a time-sensitive matter a stay may be necessary



- Under rule 9.310 a motion for stay must first be submitted to the trial court, then if denied reviewed by motion in the appellate court under the same rule

- Stay!!!!!!



- The other writs, less common, are: mandamus to require a court to do something for which it has no discretion; prohibition to review a court's refusal to recuse itself; habeas corpus to require appearance of a person; and quo warranto to challenge an official's right to hold office

- **Rule 9.130 – Appeals of Non-Final Orders**

- File a notice of appeal with the clerk of the lower court within 30 days of entry of the Order to be reviewed

- No motion tolls the time to file the notice, and the Initial Brief is due filed within 15 days, although motions for extension are permitted except in certain cases

- The Initial Brief must be accompanied by an appendix containing all relevant record documents and transcripts as necessary

- If a stay is necessary, a motion must be filed in the lower tribunal under rule 9.130 and the order on that motion reviewed in the appellate court





- **Types of rule 9.130 appeals potentially involved in GAL cases**
  - Venue
  - Injunctions
  - Personal jurisdiction
  - Immediate possession of property
  - In family law matters: the right to immediate monetary relief, child custody, time sharing, validity of marital agreements
  - Enforceability of a settlement agreement
  - Receiverships
  - Disqualification of counsel

- **Ordering the issues for the Appellant or Petitioner**
- **De novo issues**
  - statutory interpretation – *Bank of New York Mellon v. Glenville*, 252 So. 3d 1120, 1126 (Fla. 2018)
  - constitutionality of statutes – *Hayes Robertson Group, Inc. v. Cherry*, 280 So. 3d 1126, 1130 (Fla. 3d DCA 2018)
  - directed verdicts – *State Farm Florida Insurance Company v. Figueroa*, 218 So. 3d 886, 888 (Fla. 4<sup>th</sup> DCA 2017)
  - contract interpretation-- *Holmes v. Florida A & M University*, 260 So. 3d 400, 404 (Fla. 1<sup>st</sup> DCA 2018)

- summary judgments – *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 131 (Fla. 2000)
- failure to apply correct law -- *Canakaris v. Canakaris*, 382 So. 2d 1197, 1202 (Fla. 1980)
- fundamental error – *State v. Smith*, 241 So. 3d 53, 55 (Fla. 2018)
- orders compelling appraisal – *People's Trust Insurance Company v. Tracey*, 251 So. 3d 931, 933 (Fla. 4<sup>th</sup> DCA 2018)



- **Framing the issues**

- Appellant/petitioner - load with specific but accurate facts favoring reversal
- Appellee/respondent – load with specific but accurate facts favoring affirmance but follow the order of issues established by
- Appellant/Petitioner or explain any departure