

**THE DISTRICT COURT OF APPEALS OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND FL 33802-
0327**

**CASE NO.: 2D20-1205
RELATED CASE NO. 2D18-3091
L.T. No. 17-CA-4597**

ALFRED BARR,)
Plaintiff/Appellant/Petitioner,)
)
)
v.)
)
SHAINA THORPE, ET AL)
Defendant/Appellee/Respondent,)

**VERIFIED NOTICE TO INVOKE
DISCRETIONARY JURISDICTION**

RECEIVED, 02/15/2022 12:21:20 PM, Clerk, Supreme Court
RECEIVED, 02/15/2022 10:51:20 AM, Clerk, Second District Court of Appeal

NOTICE IS GIVEN that, Alfred Barr, Pro Se Plaintiff/Appellant/Petitioner, pursuant to Florida Rules of Appellate Procedure Rule 9.120, invokes the discretionary jurisdiction of the Supreme Court to review the procedural decisions of the Second District Court of Appeals, and specifically its Chief Judge. The Petitioner notices the Supreme Court of the District Court's record illustrating why this matter should be accepted for review. The District Court has ignored its duty, adopted fraud from the Appellee which prevents access to the courts, by refusing to address its duty of review, in that such duty would expose fraudulent judicial circuit conduct. The District Court has failed in its duty to comply with the directives of the Supreme court, the appellate rules, its own procedural

routine practice. The record is clear, illustrating the Appellant's Rule 9.330 and 9.331 motions are still procedurally pending. While the DCA's refusal of duty imposes sanctions without notice, prevents ruling on the pending motions, the DCA terminates the Appellant/Petitioner's Rule 9.210(d) Reply Brief, without notice, and without invoking Rule 9.315(a). While such motions are pending, the 2nd DCA issues a PCA and Mandate.¹

Therefore, the Petitioner/Appellant challenges pursuant to Rule 9.020(i) orders, January 05, 2022;² November 04, 2021; May 10, 2021; April 14, 2021; March 18, 2021; February 18, 2021; December 11, 2020; September 10, 2020; August 26, 2020; August 20, 2020; July 20, 2020. These orders usurp Art. V, § 2, Fla. Const., as the exclusive authority of the Supreme Court. The record illustrates conduct by the Second District Court of Appeals is willful, deliberate, or contumacious dereliction of duty, and as such the boiler plate denial orders are prohibited. Florida Constitution grants

¹ Supervisory jurisdiction of Supreme Court - Under constitutional power to issue writs necessary or proper to the complete exercise of its jurisdiction, the Supreme Court may exercise supervisory jurisdiction over other courts in conformity with command of this section that all courts shall be open. *Mutual Ben. Health & Acc. Ass'n v. Bunting*, 133 Fla. 646, 183 So. 321 (1938).

² the order shall not be deemed rendered as to any party until all of the motions are either withdrawn or resolved by the rendition of an order. This order was not received by the Appellant. It was recovered from the online docket.

the supreme Court exclusive rule-making authority, this power is limited to rules governing procedural matters and does not extend to substantive rights. Art. V, § 2(a), Fla. Const.”).

These decisions are within the supreme court’s jurisdiction because **(1)** a departure from the essential requirements of the law, **(2)** result in material injury and discriminate against a pro se Appellant for the remainder of the case; **(3)** that cannot be corrected on post-judgment appeal because they infect the proceedings with fraud. “*Clearly established law,*” where violated by the District Court allows for grant of certiorari review, which can derive from a variety of legal sources, including controlling case law, rules of court, statutes, and constitutional law; thus, in addition to case law dealing with the same issue of law, an interpretation or application of a statute, a procedural rule, or a constitutional provision may be the basis for granting certiorari review. Pursuant to Fla. Stat., Constitution Of The State Of Florida Article V - Judiciary Section 3. (b) (3) (7) (8) (1), and Florida Rules of Appellate Procedure Rule 9.030 (a) (2) (A), the Supreme Court can accept review because the matters have not been rendered pursuant to rule 9.020(i) Rendition of an Appellate Order, in conflict with precedented well settled law, see *King v. State*, 461 So. 2d 1370, 1373 (Fla. Dist. Ct. App. 1985). The constitutional issues of each district order involve, the appellate rulemaking

authority of the Florida Supreme Court, in that the orders are unconstitutional infringements of the Florida Supreme Court's exclusive appellate rulemaking authority. The supreme court has historically treated appellate filing requirements as a procedural matter exclusively within its constitutional sphere of authority. See Markert v. Johnston, 367 So. 2d 1003, 1005 n.8 (Fla. 1978). Florida constitutional amendment empowers the supreme court to promulgate rules of practice and procedure for the courts of the state, ignoring those rules is prohibited. While the supreme court does not have the authority to create substantive rights, only rules of practice and procedure. Art. V, § 2, Fla. Const. (authorizing the supreme court to “adopt rules for the practice and procedure in all courts”); see Haven Fed. Sav. & Loan Ass'n v. Kirian, 579 So. 2d 730, 732 (Fla. 1991); Allen v. Butterworth, 756 So. 2d 52, 59 (Fla. 2000) (“Generally, the Legislature has the power to enact substantive law, while the Court has the power to enact procedural law.”) See Swearingen v. Pretzer, No. 1D19-1992, 2020 WL 7488128, at *8 (Fla. Dist. Ct. App. Dec. 21, 2020) See § 2. Administration; practice and procedure. It is a well-established principle that a statute which purports to create or modify a procedural rule of the court is constitutionally infirm. Markert v. Johnston, 367 So.2d 1003 (Fla.1978); Military Park Fire Control Tax Dist. No. 4 v. DeMarois, 407 So.2d 1020 (Fla. 4th DCA 1981).

The terms practice and procedure “encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. ‘Practice and procedure’ may be described as the machinery of the judicial process as opposed to the product thereof.” In re Fla. Rules of Criminal Procedure, 272 So.2d 65, 66 (Fla.1972) In other words, practice and procedure is the method of conducting litigation involving rights and corresponding defenses. Skinner v. City of Eustis, 147 Fla. 22, 2 So.2d 116 (1941). See State v. Raymond, 906 So. 2d 1045, 1048 (Fla. 2005).

This notice and invocation illustrate how the District Court modified, ignored and made-up interpretations of the rules to justify a conclusion against a pro se non-Caucasian Appellant, that deprives him of his fundamental rights to access the court with impartiality, as defined by the Fla. Code of Judicial conduct.

The district’s court's orders concerning Rule 9.210(c) & (d), and followed up with Fla.R.App.P. 9.210(a)(2)(E) are challenged as jurisdictional, exceeding the District Court's authority given the exclusive authority of the Supreme court pursuant to Art. V, § 2, Fla. Const. Meaning, the statutes and rules must be given their plain and ordinary meaning. Streeter v. Sullivan,

509 So.2d 268 (Fla.1987); Holly v. Auld, 450 So.2d 217 (Fla.1984).³

Uniformity must be equally applied to all litigants, as decisions concerning premature issuance of PCA's, Mandates, and the duty to comply with all procedural due process rules. Pinecrest Lakes, Inc. v. Shidel, 802 So. 2d 486 (Fla. 4th DCA 2001), discretion to recall the mandate, by the showing of good cause due to failure of the court to timely rule on a tolling motion, before issuing both the PCA and Mandate. See Goolsby v. State, 948 So. 2d 965, 966 (Fla. Dist. Ct. App. 2007); Plucinik v. State, 885 So. 2d 478, 480 (Fla. Dist. Ct. App. 2004); Rigueiro v. State, 23 So. 3d 127, 128 (Fla. Dist. Ct. App. 2009); Quilling v. Sec'y, Dep't of Corr.; Zielke v. State, 839 So.2d 911 (Fla. 5th DCA 2003); Robbins v. State, 992 So. 2d 878, 879–80 (Fla. Dist. Ct. App. 2008) and Norwood v. State, 79 So. 3d 149, 150 (Fla. Dist. Ct. App. 2012).

1. The primary premise of conflict and failure of duty are: District Court's usurpation of Art. V, § 2, Fla. Const, the Supreme Courts exclusive authority over rules.⁴ The constitutional issues of each district order, involves the appellate rulemaking authority of the Florida Supreme Court, in that the orders are unconstitutional infringements that usurp the Supreme Court

³ The Supreme Court addresses courts freewheeling interpretation of statutes and rules. When the language of a statute is clear and unambiguous and conveys a clear.

⁴ (a) The supreme court shall adopt rules for the practice and procedure in all courts

exclusive authority pursuant to Rule 9.330(a)(D)e. The conflict arises in this case because the Supreme court has exclusive subject matter jurisdiction, e.g., modification of the appellate rules; the rational basis test applies to evaluate an equal protection challenge. F.S.A. Const. Art. 1, § 2. See Estate of McCall v. United States, 134 So. 3d 894 (Fla. 2014).

- a. expressly⁵ declares valid a state statute.⁶
- b. expressly construes a provision of the state ... constitution.⁷
- c. expressly affects a class of constitutional or state officers.⁸

⁵ Article V, section 3(b)(3), Florida Constitution.

⁶ Omega Title Naples, LLC v. Butschky, No. 2D19-1151, 2021 WL 4125796, at *2 (Fla. Dist. Ct. App. Sept. 10, 2021) a boilerplate order that parrots the provisions of the statute without identifying the admissible evidence adduced at the evidentiary hearing is insufficient.

⁷ ...due process requirement applies to litigants involved in civil proceedings. See, e.g., Lomax v. Taylor, 149 So.3d 1135, 1136 n.2 (Fla. 2014),... in that the required procedure before sanctioning a litigant in a civil case); Deprivation of Procedural due process, equal access to the courts-Art. I, § 2, Fla. Const. Denial of the Equal Protection Clause of the Fourteenth Amendment; disregard for the standard of review. Uniformity must be equally applied to all litigants, as decisions concerning premature issuance of Mandates. Barile v. Gayheart, 80 So.3d 1085 (2012), held that party was denied due process when, without notice, the ... court unilaterally declared the hearing would continue on a different claim, thereby switching issues to one which one party was not expecting and for which they were unprepared. Again, such material irregularity is in conflict with Gaspar's Passage, LLC v. RaceTrac Petroleum, Inc., 243 So. 3d 492, 500 (Fla. Dist. Ct. App. 2018)

⁸ The court in Jackson v. Leon Cty. Elections Canvassing Bd., 204 So. 3d 571, 579 (Fla. Dist. Ct. App. 2016), held the ... court abused its discretion and violated due process rights by failing to address several pre-trial motions before issuing a final order; See Mizrahi v. Mizrahi, 867 So.2d 1211, 1213

d. expressly and directly conflicts with a decision of another district court of appeal and of the supreme court on the same question of law,⁹ Florida Rules of Appellate Procedure, Rule's 9.210(c), Rule 9.020(h) Rendition (of an Order), (1) Motions Tolling Rendition - (B) (2) Effect of Motions Tolling Rendition; Rule 9.330(a)(2)(A); (B); (D).

(Fla. 3d DCA 2004). A trial court may not sua sponte craft remedies that violate the parties' due process rights.

⁹ St. Paul Fire & Marine Ins. Co. v. Indem. Ins. Co. of N. Am., 675 So. 2d 590, 592 (Fla. 1996); Harris v. Gattie, 263 So. 3d 829, 831–32 (Fla. Dist. Ct. App. 2019); Bolton v. SE Prop. Holdings, LLC, 127 So.3d 746 (Fla. 1st DCA 2013); due process and the right to access to courts dictates that all pro se litigants, civil and criminal alike, must be given notice and an opportunity to respond before preventing the filing of further pleadings. See Rule 9.210(c). Sheppard v. Inverness Coca-Cola Bottling Co., App. 2 Dist., 322 So.2d 583 (1975). A trial court may not sua sponte craft remedies that violate the parties' due process rights. Daniels v. Sorriso Dental Studio, LLC, 164 So.3d 778, 782 (Fla. 2d DCA 2015). Barile v. Gayheart, 80 So.3d 1085 (2012), held that party was denied due process when, without notice, the ... court unilaterally declared the hearing would continue on a different claim, thereby switching issues to one which one party was not expecting and for which they were unprepared. See Liton Lighting v. Platinum Television Group, Inc. 2 So.3d 366, 367 (Fla. 4th DCA 2008) ("When a trial judge sua sponte dismisses a cause of action on grounds 'not pleaded,' the ... judge denies the parties due process because the claim is being dismissed without 'notice and an opportunity for the parties and counsel to be heard. (Kerrigan, Estess, Rankin, & McLeod v. State, 711 So.2d 1246, 1249 (Fla. 4th DCA 1998).

See Petion v. State, 48 So. 3d 726 (Fla. 2010)¹⁰ Courts interpreting a statute endeavor to give effect to every word of a statute so that no word is construed as mere surplusage.

This notice attaches a Motion For Leave To Proceed In Forma Pauperis/Affidavit Of Indigency By The Petitioner/Appellant.

VERIFICATION

Fla. Stat., §92.525 “Under penalties of perjury, I declare that I have read the foregoing Rule 1.540(b) and Rule 1.530 and that the facts stated in it are true.”

Date: February 15, 2022

Alfred Barr

Alfred Barr, Appellant/Petitioner
P.O. Box 2467
Fort Lauderdale, FL 33301
Tel: (813) 767-2270
Email: abarr@communic.net

¹⁰ Based on the conflicting standards of review expressed in these decisions this Court accepted review to resolve the conflict between Petion and J.D. See Petion was released from incarceration. ... we exercise our discretion to retain jurisdiction in this case to address the conflict and resolve the uncertainty with regard to the presumption applied to bench trials. See State v. Matthews, 891 So.2d 479, 483 (Fla.2004). Mootness does not divest this Court of jurisdiction because conflict still exists in the decisions, and the issue presented is capable of repetition yet evading review. See *id.* (citing Holly v. Auld, 450 So.2d 217, 218 n. 1 (Fla.1984)). Accordingly, we elect to proceed with review of this issue to clarify the appropriate standard of review for bench trials regardless of Petion's release from prison.

Certificate of Service

I hereby certify that on the 15TH day of FEBRUARY 2022, the following document was filed and served via the E-filing system pursuant to the rules of service and served upon the Appellee' at shaina@thorpelawyers.com; filed with the clerk of the Florida Second District Court of Appeals.

Alfred Barr

Alfred Barr
P.O. Box 2467
Fort Lauderdale, FL 33301
Tel: (813) 767-2270
email: abarr@communic.net

Rule 9.045 (a) (b)(d) (e) Certificate of Compliance¹¹

The text in this document is black and in distinct type, double-spaced. Footnotes and quotations are single-spaced and are in the same size type, with the same spacing between characters, as the text in the body of the document. Headings and subheadings are at least as large as the document's text and are single-spaced. This Computer-generated document is filed in either Arial 14-point font. The certificate is contained in the document immediately following the certificate of service.

Alfred Barr

Alfred Barr
P.O. Box 2467
Fort Lauderdale, FL 33301
Tel: (813) 767-2270
email: abarr@communic.net

¹¹ Florida Rules of Appellate Procedure Rule 9.900. FORMS(d) Notice to Invoke Discretionary Jurisdiction of Supreme Court.

In the Supreme Court of Florida

ALFRED BARR
Petitioner/Appellant

v.
Shania Therese et al
Respondent/Appellee

CASE NO. 2020-1205

MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS/AFFIDAVIT OF INDIGENCY BY PETITIONER/APPELLANT

1. I have 0 dependents. (Include only those persons you list on your U.S. Income tax return.)
Are you Married?...Yes... No Does your Spouse Work?...Yes....No
Annual Spouse Income? \$ N/A

2. I have a net income of \$ 0 paid () weekly () every two weeks () semi-monthly () monthly ()
yearly () other N/A.
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and
similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid () weekly () every two weeks () semi-monthly () monthly () yearly () other A/A.
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second job Yes \$ No
Social Security benefits
For you Yes \$ No
For child(ren)..... Yes \$ No
Unemployment compensation Yes \$ No
Union payments Yes \$ No
Retirement/pensions Yes \$ No
Trusts Yes \$ No
Veterans' benefits Yes \$ No
Workers compensation Yes \$ No
Income from absent family members Yes \$ No
Stocks/bonds Yes \$ No
Rental income Yes \$ No
Dividends or interest Yes \$ No
Other kinds of income not on the list Yes \$ No
Gifts Yes \$ No

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No")
Cash Yes \$ No
Bank account(s) Yes \$ No
Certificates of deposit or
money market accounts Yes \$ No
Boats* Yes \$ No
Savings account Yes \$ No
Stocks/bonds Yes \$ No
Homestead Real Property* Yes \$ No
Motor Vehicle* Yes \$ No
Non-homestead real property/real estate* Yes \$ No

*Show loans on these assets in paragraph 5.

Check one: I () DO (X) DO NOT expect to receive more assets in the near future. The asset is N/A

5. I have total liabilities and debts of \$ 305K as follows: motor vehicle \$ 0 ; home \$ 144K ;
other real property \$ 0 ; child support paid direct \$ 0 ; credit cards \$ 0 ; medical bills
\$ 0 ; cost of medicines (monthly) \$ UNKNOWN ; and other \$ N/A

6. If you have been convicted of a crime and are incarcerated, you must complete the questions in this
paragraph and attach the required copy of your inmate trust account.

My inmate number is: N/A

Amount currently held in inmate trust account: \$ N/A

Attach photocopy of your trust account records for the preceding six (6) months or for whole time of
incarceration, whichever period is shorter.

RECEIVED, 02/15/2022 10:51:21 AM, Clerk, Second District Court of Appeal

I certify that I have have not been adjudicated indigent under section 57.081, 57.085 or 28 U.S.C. § 1915. If your answer is "YES" and it occurred twice in the preceding three (3) years, you are required to list each suit, action, claim, proceeding, or appeal which you have intervened in any court or other adjudicatory forum in the proceeding five years. (LIST ONLY REQUIRED IF PARTY FILING MOTION HAS BEEN ADJUDICATED INDIGENT TWICE IN THE PROCEEDING 3 YEARS.)

1. 2D19-3091
2. ~~2D-21-2732~~
3. 21-CA-6716
4. _____
5. _____

Attach extra sheet(s) if necessary.

I ALFRED BARR (insert name) assert that I am presently unable to pay court costs and fees, and under penalty of perjury, I swear or affirm that all statements in this affidavit are true and complete.

7. I understand that I may be required to make payments for fees and costs to the clerk in accordance with § 57.082(5) or § 57.085, Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

8. A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under § 57.082, Florida Statutes, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, Florida Statutes. **I attest that the information I have provided on this application is true and accurate to the best of my knowledge.**

Signed this 15 day of February, 2022.

Alfred Barr

Signature of Applicant for Indigent Status

ALFRED BARR

Print Name

P.O. Box #2467

Fort Lauderdale FL 33301

Address

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Appellee Shaina Thorpe et
Shaina O Thorpe@lawyers.com via e portal and the 2nd DCA

(insert name(s) and address(es) of attorney(s) and any unrepresented party(ies) in the case) by
mail/email this 15 day of February, 2022.

Alfred Barr

Signature of Applicant for Indigent Status

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

January 05, 2022

CASE NO.: 2D20-1205

L.T. No.: 17-CA-4597

ALFRED BARR

v. SHAINA THORPE, ESQ., ET AL.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing and clarification by written opinion is denied.

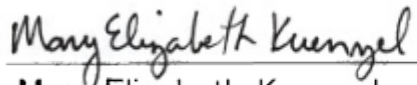
I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

SHAINA THORPE, ESQ.
CINDY STUART, CLERK

ALFRED BARR

mep



Mary Elizabeth Kuenzel
Clerk



**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-
0327**

May 20, 2021

CASE NO.: 2D20-1205

L.T. No.: 17-CA-4597

ALFRED BARR

v. SHAINA THORPE, ESQ., ET AL.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's rehearing en banc request with separate appendix is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

SHAINA THORPE, ESQ.
CINDY STUART, CLERK

ALFRED BARR

mep

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk



SECOND DISTRICT COURT OF APPEAL OF FLORIDA
P.O. BOX 327
LAKELAND, FLORIDA 33802-0327
(863) 499-2290

February 15, 2022

Re: Alfred Barr
v.
Shaina Thorpe, Esq., Et Al.
Appeal No.: 2D20-1205
Trial Court No.: 17-CA-4597
Trial Court Judge:

Florida Supreme Court
Attn: Clerk's Office

Attached is a certified copy of the notice invoking the discretionary jurisdiction of the Supreme Court, pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.

The filing fee prescribed by Section 25.241(2)(a), Florida Statutes, was paid through the portal.

The filing fee prescribed by Section 25.241(2)(a), Florida Statutes, was received by this court and is attached.

The filing fee prescribed by Section 25.241(2)(a), Florida Statutes, was not received by this court.

Petitioner/Appellant has been previously determined insolvent by the circuit court or our court in the underlying case.

Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's motion to proceed without payment of costs in this case.

No filing fee is required because:

- Summary Appeal, pursuant to rule 9.141
- From the Unemployment Appeals Commission
- A Habeas Corpus proceeding
- A Juvenile case
- Other: Not Required

In criminal cases, the notice of appeal was filed in the lower tribunal on _____.

If there are any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,

Mary Elizabeth Kuenzel
Clerk

By: Joshua Dannelley

MK: jd

cc (without attachments):
Shaina Thorpe, Esq.
Alfred Barr