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Sample Multiple Choice Questions (1-10)

1. During cross examination of plaintiff's medical witnesses in a medical malpractice case in state court, plaintiff's counsel contemporaneously objected on specific grounds to certain questions posed by defense counsel. The trial court overruled the objections. **What else must be done to preserve the issue for appellate review?**
 - (a) Plaintiff must move for mistrial.
 - (b) Plaintiff must move for new trial.
 - (c) Plaintiff must request a curative instruction.
 - (d) Nothing further is required.

Answer: D. *Simpson v. State*, 418 So. 2d 984, 986 (Fla. 1982); *Simmons v. Baptist Hosp.*, 454 So. 2d 681, 682 (Fla. 3d DCA 1984); *Eickmeyer v. Dunkin Donuts of America, Inc.*, 507 So. 2d 1193, 1195 n.4 (Fla. 3d DCA 1987).

2. A federal district court denied a state prisoner's petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in a non-capital case. **The order denying the petition is appealable:**

- (a) As a final order as of right.
- (b) An an interlocutory order with leave of count.
- (c) Only after the issuance of a certificate of appealability.
- (d) As of right as a matter of statutory law.

Answer: C. 28 U.S.C. § 2253.

3. **What standard of review does a state district court of appeal apply in reviewing a petition for writ of prohibition challenging a trial court's subject matter jurisdiction?**

- (a) Clearly erroneous.
- (b) De novo.
- (c) Abuse of discretion.
- (d) Substantial competent evidence.

Answer: C. *Chase Bank of Texas Nat'l Ass'n v. State, Dep't of Ins.*, 860 So. 2d 472, 475 (Fla. 1st DCA 2003).

4. **Which of the following is not a final appealable order in a state court proceeding?**

- (a) An order dismissing in its entirety a compulsory counterclaim.
- (b) A final judgment entered after a settlement and reserving jurisdiction to enforce the settlement, if necessary.
- (c) A final judgment reserving jurisdiction to rule on the issue of prejudgment interest.
- (d) A final judgment reserving jurisdiction to rule on the taxation of expert witness fees.

Answer: A. Fla. R. App. P. 9.110(k); *Westgate Miami Beach, Ltd. v. Newport Operating Corp.*, 55 So. 3d 567, 574-75 (Fla. 2010).

5. **A Florida district court of appeal may recall its mandate in order to revisit a decision it rendered:**

- (a) At any time.
- (b) Upon motion served not later than 30 days after issuance.
- (c) Not later than 120 days after its issuance.
- (d) Not later than the expiration of the term of the court.

Answer: C. Fla. R. App. P. 9.340(a).

6. Pursuant to Florida Rule of Criminal Procedure 3.800, a motion to correct a sentencing error while the judgment is on appeal may be served by appellate counsel:

- (a) At any time.
- (b) Before the party's first brief is served.
- (c) Before the reply brief is due.
- (d) Before the State's answer brief is due.

Answer: B. Fla. R. Crim. P. 3.800(a)(b)(2).

7. Which of the following nonfinal orders may NOT be appealed in federal court?

- (a) An order refusing to modify an injunction.
- (b) An order permitting a receiver to dispose of property.
- (c) An order remanding a diversity case to state court because the notice of removal was untimely.
- (d) An order terminating the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

Answer: C. 28 U.S.C. § 1292(a); 28 U.S.C. § 1447(d); *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127-28 (1995).

8. **A petition for writ of mandamus filed in a state appellate court should name as respondent(s) only:**

- (a) The trial judge.
- (b) All opposing parties in the trial court.
- (c) The trial judge and all opposing parties in the trial court.
- (d) All parties in the trial court that are not named as petitioners, but the trial judge must be named as a party in the body of the petition.

Answer: D. Fla. R. App. P. 9.100(e)(1),(2).

9. **The following final Florida county court order MUST be reviewed directly by the district court of appeal:**

- (a) An order certified to be of great public importance.
- (b) An order upholding the constitutionality of a state statute.
- (c) An order certified to require immediate resolution.
- (d) An order finding that a state statute is invalid.

Answer: D. § 26.012(1), Fla. Stat. (2014); Fla. R. App. P. 9.030(b).

10. **A frivolous appeal in Florida state court is one where the issue on appeal:**

- (a) Presents an argument that was rejected by another appellate court.
- (b) Fails to cite recent precedent from a Florida state appellate court.
- (c) Presents no justiciable question and is devoid of merit.
- (d) Fails to include record citation to support the facts in the brief.

Answer: C. See *Visoly v. Security Pacific Credit Corp.*, 768 So. 2d 482 (Fla. 3d DCA 2000); *Procacci Commercial Realty, Inc. v. Dep't of Health and Rehabilitative Services*, 690 So.2d 603 (Fla. 1st DCA 1997); *Brahmbhatt v. Allstate Indem. Co.*, 655 So. 2d 1264 (Fla. 4th DCA 1995).



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Sample Essay Question

In a Florida state civil appeal, the appellant has served an initial brief containing statements of fact that are alleged to have been revealed in a deposition occurring on a date after rendition of the final judgement. This portion of the statement of facts does not contain record citations. The brief does, however, include a footnote that indicates the author intends to move to supplement the record and file the transcript of that deposition once it is transcribed. The motion to supplement the record is filed 10 days later, along with a copy of the deposition.

How should the appellate court address the submission of the brief and the motion?

ESSAY QUESTION MODEL ANSWER

With respect to the brief, it was improper for counsel to include statements of fact in the record that do not have pinpoint record citations. This problem was not cured by advising the court that a motion to supplement and the transcript are forthcoming. The brief should be stricken or the offending facts ignored. The portion of the case and facts containing facts that are not supported by the record is improper and should be stricken. *See Rosenberg v. Rosenburg*, 511 So. 2d 593, 595 n. 3 (Fla. 3d DCA 1987); *Rampart Life Associates, Inc. v. Turkish*, 73 So. 2d 384, 385 (Fla. 4th DCA 1999).

The motion to supplement with the deposition should be denied. The deposition should be ignored. The record on appeal contains only those things that were filed in the lower court before final judgment is rendered. The deposition did not occur until after rendition of the final judgment. For these reasons the deposition transcript would not properly be a part of the record or subject to a motion to supplement the record. (Fla. R. App. P. 9.200).

Moreover, the court may sanction counsel for including inappropriate materials. The deliberate use of the deposition facts violates Florida Rules of Ethics precluding a lawyer from influencing a judge except as permitted by law or rules of court. (Fla. R. Prof. Reg. 4-3.5)