

# Supreme Court of Florida

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Nos. 71,643; 72,262

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CORRECTED OPINION

IN RE: THE FLORIDA BAR  
RULES OF APPELLATE PROCEDURE

[July 14, 1988]

PER CURIAM.

The Florida Bar Appellate Rules Committee has submitted for our consideration proposed amendments to the Florida Rules of Appellate Procedure pursuant to Rule of Judicial Administration 2.130. The Florida Conference of District Court Judges has, in a separate petition, requested that this Court amend Rule 9.300(d) to eliminate the tolling of time for motions filed in the district courts of appeal. The Appellate Rules Committee opposes the amendment suggested by the Conference and instead proposes an amendment to Rule 9.410. We have jurisdiction. Art. V, § 2(a), Fla. Const.

We approve the amendments originally proposed by the Appellate Rules Committee. We also accept the committee's proposal to amend Rule 9.410 in lieu of the Conference proposal. We are hopeful that the strengthening of the language of Rule 9.410 will alleviate any problems relating to frivolous motion practice.

The following is a brief explanation of the rule changes approved by this Court.

Rules 9.020(g), 9.330(a) and (b), and 9.340(b) have been amended to allow a party to move for certification of a question

to the Florida Supreme Court based on conflict or question of great public importance, without also having to file a separate motion for rehearing.

Rule 9.030(b)(1)(B) has been amended to clearly reference all non-final orders prescribed in Rule 9.130.

Rule 9.100(c) has been amended to include petitions for review of non-final agency action as petitions which must be filed within thirty days of rendition of the order to be reviewed.

Rule 9.200(b)(2) has been amended to provide that a party designating the transcript can make additional copies of the transcript by his own method rather than having the court reporter make extra copies, and to assure that parties timely receive copies of the transcript.

Rule 9.310(c)(1) has been amended by deleting the requirement that bonds must be approved by the clerk of the court.

Rule 9.410 has been amended to provide for more specific sanctions when necessary.

Rule 9.900(d) has been amended to properly name the district court of appeal in this form.

Rule 9.900(g)II.5. has been amended so that the court reporter can indicate in the amended form whether the transcript will be completed in a timely manner or if an extension is needed, without having to file a separate request for extension.

Appended to this opinion are the amended and new rules of the Florida Rules of Appellate Procedure. Deletions are indicated by the use of struck-through type. New language is indicated by underscoring. All rules and statutes in conflict with the following rules are hereby superseded as of the effective date of these rules. These amendments shall become effective January 1, 1989, at 12:01 a.m.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

Appendix

1. Rule 9.020 is amended as follows:

Rule 9.020 Definitions

. . . .

(g) Rendition (of an order): the filing of a signed, written order with the clerk of the lower tribunal. Where there has been filed in the lower tribunal an authorized and timely motion for new trial or rehearing, certification, to alter or amend, for judgment in accordance with prior motion for directed verdict, notwithstanding verdict, in arrest of judgment, or a challenge to the verdict, the order shall not be deemed rendered until disposition thereof.

2. Rule 9.030 is amended as follows:

Rule 9.030 Jurisdiction of Courts

. . . .

(b) Jurisdiction of District Courts of Appeal.

(1) Appeal Jurisdiction. District courts of appeal shall review, by appeal:

. . . .

(B) non-final orders of circuit courts as prescribed by Rule 9.130~~(a)~~(3);<sup>9</sup>

3. Rule 9.100 is amended as follows:

Rule 9.100 Original Proceedings

. . . .

(c) Exceptions; Petitions for Common Law Certiorari and Review of Non-final Administrative Action. A petition for common law certiorari or for review of non-final administrative action shall be filed within 30 days of rendition of the order to be reviewed. A copy shall be furnished to the person (or chairperson of a collegial administrative agency) issuing the order.

4. Rule 9.200 is amended as follows:

Rule 9.200 The Record

. . . .

(b) Transcript of Proceedings.

. . . .

(2) Within 30 days of service of a designation, or within the additional time provided for under subsection (b)(3) of this rule, the court reporter shall transcribe and

deliver to the clerk of the lower tribunal the designated proceedings and shall furnish copies as requested in the designation. If a designating party directs the court reporter to furnish the transcript to fewer than all parties, that designating party shall serve a copy of the designated portion of the transcript on the parties within 5 days of receipt from the court reporter. The transcript of proceedings shall be securely bound in volumes not to exceed 200 pages each. Each volume shall be prefaced by an index containing the names of the witnesses, a list of all exhibits offered and introduced in evidence, and the pages where each may be found.

5. Rule 9.310 is amended as follows:

Rule 9.310 Stay Pending Review

. . . .

(c) Bond.

(1) Defined. A good and sufficient bond is a bond with a principal and two personal sureties or one surety company authorized to do business in the State of Florida ~~and approved by the clerk or judge of the lower tribunal.~~

6. Rule 9.330 is amended as follows:

Rule 9.330 Rehearing; Clarification; Certification

(a) Time for Filing; Contents; Reply. A motion for rehearing or for clarification of decision, or for certification, may be filed within 15 days of an order or within such other time set by the court. ~~A The~~ motion for rehearing or clarification shall state with particularity the points of law or fact which the court has overlooked or misapprehended. The motion shall not re-argue the merits of the court's order. A reply may be served within 10 days of service of the motion.

(b) Limitation. A party shall not file more than one ~~such~~ motion for rehearing or for clarification of decision and one motion for certification with respect to a particular decision.

7. Rule 9.340 is amended as follows:

Rule 9.340 Mandate

. . . .

(b) Extension of Time for Issuance of Mandate. If a timely motion for rehearing or for clarification, or for certification, has been filed, the time for issuance of the mandate or other process shall be extended until 15 days after rendition of the order denying the motion or, if granted, until 15 days after the cause has been fully determined.

8. Rule 9.410 is amended as follows:

Rule 9.410 Sanctions

After ten days' notice, ~~on its own motion, from the court may impose sanctions for any violation of these rules, or for the filing of any proceeding, motion, brief or other paper which is frivolous or in bad faith. Such sanctions may include the following may be imposed for violation of these rules:~~ reprimand, contempt, striking of briefs or pleadings, dismissal of proceedings, costs, attorney's fees or other sanctions.

9. Rule 9.900 is amended as follows:

Rule 9.900 Forms

. . . .

(d) Notice to Invoke Discretionary Jurisdiction of Supreme Court.

IN THE DISTRICT COURT OF  
APPEAL OF THE ~~DISTRICT~~  
OF FLORIDA, ~~DISTRICT~~

CASE NO.

. . . .

(g) Designation to Reporter.

. . . .

II. Reporter's Acknowledgment

. . . .

~~5. Transcript will be completed on \_\_\_\_\_ or an extension of time is needed until \_\_\_\_\_.~~

DATE: \_\_\_\_\_  
\_\_\_\_\_ Official Court Reporter

5a. The transcript will be available within thirty (30) days of service of the foregoing designation and will be filed on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

OR

5b. For the following reason(s) the court reporter requests an extension of time of \_\_\_\_\_ days for preparation of the transcript which will be filed on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_:  
\_\_\_\_\_.

Two Original Proceedings - Florida Rules of Appellate Procedure

Rutledge R. Liles, President, The Florida Bar, Jacksonville, Florida; Stephen N. Zack, President-elect, Miami, Florida; Joseph Nesbitt, President, Florida Conference of District Court of Appeal Judges, Miami, Florida; George W. Hersey, President-elect, Florida Conference of District Court of Appeal Judges, West Palm Beach, Florida; Larry Klein, Chairman, The Florida Bar Appellate Rules Committee, West Palm Beach, Florida; and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida,

for Petitioners